University of Antwerp

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# Effectiveness of the Indigenous Justice of Jach'a Karangas in the Framework of the Egalitarian and Plural Justice of Bolivia

PhD thesis submitted for the degree of Doctor of Law at the University of Antwerp to be defended by Leonardo Villafuerte Philippsborn

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By

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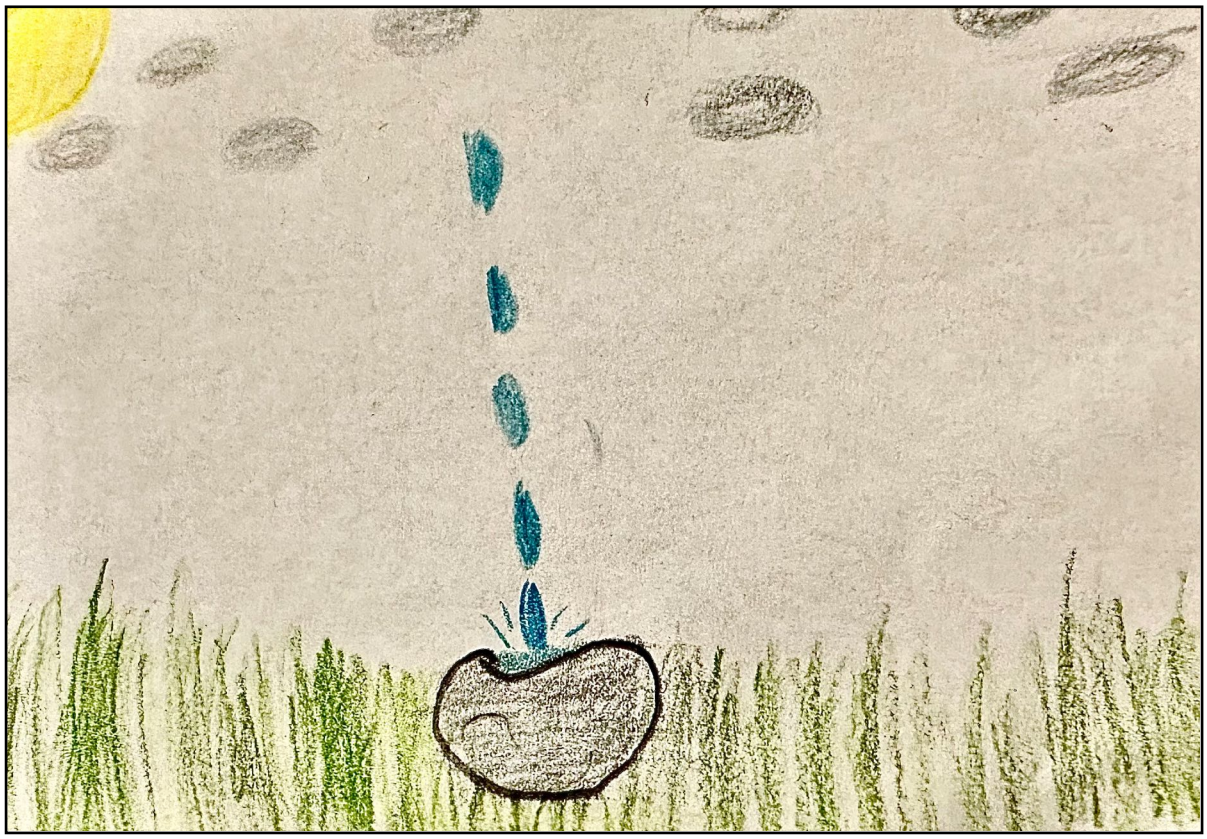


*Gutta cavat lapidem*
*-Ovid*

*Credits: painting by Luciano Villafuerte*

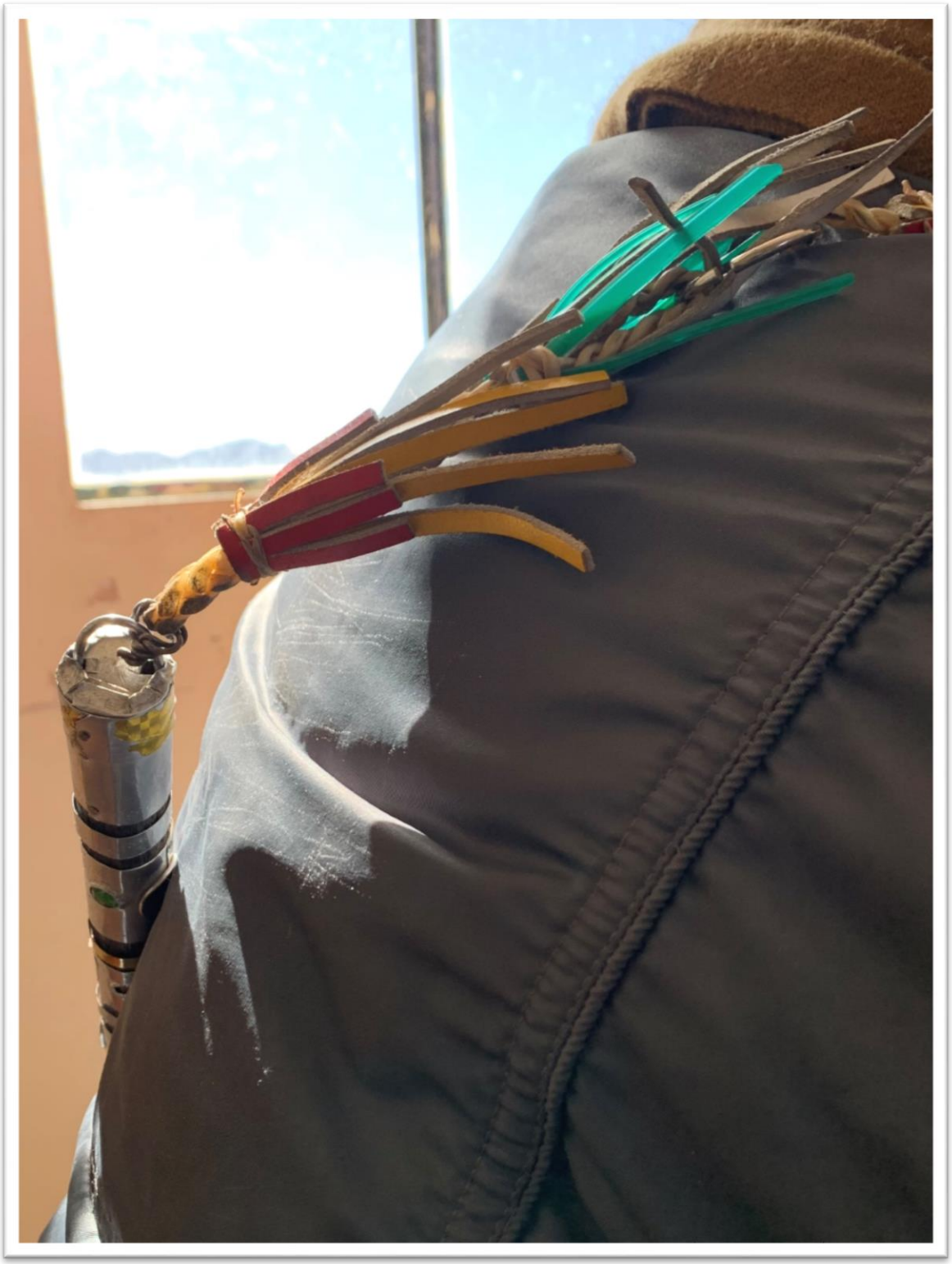
*To curiosity, conundrum, and real-life-*
*matters, the inexorable drivers to go beyond.*

*To the indigenous peoples' healthy margin of irreverence and perseverance,*
*you are the living proof of dignity and resilience.*

*To my adoring family and my adamantine friends, you are the*
*season and time of day where I always want to be.*

*Specially:*
*To my endless better half, you are my wings, nightmare*
*buffer, compass, and source of love and happiness.*
*To my always-glowing-in-the-dark son, you*
*are my sign of renovation, hope, and life.*

*And finally, but not least, to my irreducible and always*
*human professors, you are the Virgils to my academic hells and*
*purgatories, and the model of a scholar to follow.*



The Bolivian flag in a whip in the back of an indigenous authority during a friendly meeting

*Credits: photo by Leonardo Villafuerte, 2022*

# Ph.D. Jury Composition

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# Abbreviations

| | |
|---|---|
| ACHP | African Charter on Human and Peoples' Rights (1986) |
| ACHPR | African Commission on Human and Peoples' Rights |
| ACHR | American Convention on Human Rights |
| C107 | ILO Convention Concerning Indigenous and Tribal Populations No. 107 (1957) |
| C169 | ILO Indigenous and Tribal Peoples Convention No. 169 (1989) |
| IACtHR | Inter American Court of Human Rights |
| ICCPR | International Covenant on Civil and Political Rights (1976) |
| ICESCR | International Covenant on Economic, Social, and Cultural Rights (1976) |
| ILO | International Labour Organization |
| IPs | Indigenous peoples |
| JK | Nación Originaria Suyu Jach'a Karangas |
| OAS | Organization of American States |
| OASDRIP | OAS American Declaration on the Rights of Indigenous Peoples (2016) |
| UN | United Nations |
| UNDRIP | United Nations Declaration on the Rights of Indigenous Peoples (2007) |

# Introduction

Collective indigenous rights are increasingly expressly recognized and have thus become more present and intense.[1] This phenomenon occurs both in the domestic law of some countries, for instance, Bolivia, Colombia, Ecuador, and Mexico, which introduced changes in their constitutions and norms in that sense, and in international law. The Indigenous and Tribal Populations Convention from 1957 No. 107 (C107) and the Indigenous and Tribal Peoples Convention from 1989 No. 169 (C169), both adopted by the International Labor Organization,[2] the United Nations Declaration on the Rights of Indigenous Peoples[3] (UNDRIP), approved by its General Assembly in 2007, as well as the more recently approved American Declaration on the Rights of Indigenous Peoples[4] (OASDRIP) from 2016, are evidence of the latter.

This incremental recognition emerges in the context of the gradual acceptance of a preexisting reality[5] and the need to respect indigenous peoples' customs, traditions, rules, and legal systems, which are indispensable for their existence, well-being, and integral development.[6] The basis of such recognition can be found in their collective rights and, mainly, in their prerogative of self-determination.[7] The UNDRIP represents a process that has gradually transformed indigenous peoples from *victims to actors*, introducing an era where the core of the indigenous debate is their rights rather than their claims[8] and where indigenous peoples influence agendas, norms, and human rights movements.[9] Nonetheless,

[1] Benjamin J Richardson, 'Indigenous Peoples, International Law and Sustainability' (2001) 10 Review of European, Comparative & International Environmental Law 1.

[2] Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (adopted 26 June 1957, entered into force 2 June 1959) 328 UNTS 247 (ILO); Convention Concerning Indigenous and Tribal Peoples in Independent Countries (adopted 27 June 1989, entered into force 5 September 1991) 28 ILM 1382 (ILO), 169.

[3] United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (adopted 9 December 2007) A/61/L.67/Annex.

[4] American Declaration on the Rights of Indigenous Peoples (OASDRIP) (adopted 15 June 2016) AG/RES. 2888 (XLVI O/16).

[5] 'One of the most powerful arguments for the recognition of indigenous self-determination is the "historical and rectificatory justice" argument which puts the state's authority over indigenous groups in doubt. Indigenous peoples perceive the recognition of their right to self-determination as a formal proclamation of denouncing the policies of destruction and assimilation that they have experienced in the past and an acknowledgment that they can determine their life without interference by states.' Alexandra Xanthaki, *Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land* (Cambridge University Press 2007) 132.

[6] United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

[7] Claire Charters, 'A Self-Determination Approach to Justifying Indigenous Peoples' Participation in International Law and Policy Making Special Issue: Minority Groups Across Settings: Global and Regional Dimensions' (2010) 17 International Journal on Minority and Group Rights 215; Siegfried Wiessner, 'The Cultural Rights of Indigenous Peoples:Achievements and Continuing Challenges' (2011) 22 European Journal of International Law 121.

[8] Mauro Barelli, 'The Role of Soft Law in the International Legal System: The Case of the United Nations Declaration on the Rights of Indigenous Peoples Shorter Articles' (2009) 58 International and Comparative Law Quarterly 957.

[9] Kristen A Carpenter and Angela R Riley, 'Indigenous Peoples and the Jurisgenerative Moment in Human Rights Essay' (2014) 102 California Law Review 173; Linda Wallbott, 'Indigenous Peoples in UN REDD+ Negotiations: "Importing Power" and Lobbying for Rights through Discursive Interplay Management' (2014) 19 Ecology and Society art21; Rhiannon Morgan, *Transforming Law and Institution: Indigenous Peoples, the United Nations and Human Rights* (2016) <https://www.taylorfrancis.com/books/e/9781315550084> accessed 21 September 2019.

human rights limitations might still exist, primarily in terms of recognition of collective rights. [10] On the contrary, Castellino suggests that the regimes for their protection were more substantial before the United Nations era.[11]

Lemaitre says in a case study on Guyana that even though international instruments recognize indigenous peoples' rights, 'there is often a gap between the protection granted by international law and how it is implemented in practice.' [12] Possibly for such reasons, indigenous people across Latin America continue to judicialize their protests appealing to legal entitlements to claim greater autonomy and protest against the effects of dominant patterns of economic development.[13] On that issue, it has been contended that 'advocates for indigenous peoples' rights should learn to take a supportive role enabling indigenous peoples to speak with their own voice and actualize their autonomy.' [14]

Indigenous peoples benefit from certain rights that are not available to the rest of the population.[15] As it happens with the indigenous peoples' crucial right to self-determination;[16] or the right to participate in decision-making and project development through their free, prior, and informed consent, even though this right could be overlooked by local legislations[17] or interpreted flexibly.[18] It is also the case of 'indigenous peoples' rights to their customary legal regimes and corresponding states' obligations to respect and recognize customary law, in order to secure their human rights, as principles of international customary law, and as such binding on all states.' [19]

This situation brought a new dynamic to the relationship between States and indigenous peoples, generating a series of complex legal tensions,[20] contradictions, [21] and difficulties in accepting their self-determination.[22] In such a context, the interaction between States' sovereignty and indigenous peoples'

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[10] K Engle, 'On Fragile Architecture: The UN Declaration on the Rights of Indigenous Peoples in the Context of Human Rights' (2011) 22 European Journal of International Law 141.

[11] Joshua Castellino, 'The Protection of Minorities and Indigenous Peoples in International Law: A Comparative Temporal Analysis Special Issue: Multicultural Policies' (2010) 17 International Journal on Minority and Group Rights 393.

[12] Sophie Lemaitre, 'Indigenous Peoples' Land Rights and REDD: A Case Study' (2011) 20 Review of European, Comparative & International Environmental Law 150, 150.

[13] Rachel Sieder, '"Emancipation" or "Regulation"? Law, Globalization and Indigenous Peoples' Rights in Post-War Guatemala' (2011) 40 Economy and Society 239.

[14] Rosa Cordillera A Castillo and Fatima Alvarez-Castillo, 'The Law Is Not Enough: Protecting Indigenous Peoples' Rights Against Mining Interests in the Philippines' 271, 271.

[15] *Sébastien Grammond. Identity Captured by Law. Membership in Canada's Indigenous Peoples and Linguistic Minorities, McGill-Queen's University Press, Montréal & Kingston, 2009, 252 p.* (Recherches amérindiennes au Québec Érudit 2009) <http://id.erudit.org/iderudit/045012ar> accessed 21 September 2019.

[16] BG Karlsson, 'Indigenous Politics: Community Formation and Indigenous Peoples' Struggle for Self-determination in Northeast India' (2001) 8 Identities 7.

[17] Philippe Hanna and Frank Vanclay, 'Human Rights, Indigenous Peoples and the Concept of Free, Prior and Informed Consent' (2013) 31 Impact Assessment and Project Appraisal 146.

[18] Mauro Barelli, 'Free, Prior and Informed Consent in the Aftermath of the UN Declaration on the Rights of Indigenous Peoples: Developments and Challenges Ahead' (2012) 16 The International Journal of Human Rights 1.

[19] B Tobin, *Indigenous Peoples, Customary Law and Human Rights - Why Living Law Matters* (Taylor and Francis 2014) bk abtract <https://www.scopus.com/inward/record.uri?eid=2-s2.0-84954615377&partnerID=40&md5=b43b1ccf0905e65fc8fbd1e1dad79552>.

[20] L Stephen, 'Women's Land Rights and Indigenous Autonomy in Chiapas: Interlegality and the Gendered Dynamics of National and Alternative Popular Legal Systems', *Decoding Gender: Law and Pract. in Contemp. Mex.* (Rutgers University Press 2007) <https://www.scopus.com/inward/record.uri?eid=2-s2.0-84899393918&partnerID=40&md5=dbebde6e4cd4de8fe6e3caed5d30f289>.

[21] Cindy Holder, 'Culture as an Activity and Human Right: An Important Advance for Indigenous Peoples and International Law' (2008) 33 Alternatives: Global, Local, Political 7.

[22] Timo Koivurova, 'From High Hopes to Disillusionment: Indigenous Peoples' Struggle to (Re)Gain Their Right to Self-Determination' (2008) 15 International Journal on Minority and Group Rights 1.

collective rights is generating conflicts in sensitive areas such as natural resources exploitation,[23] environmental protection,[24] land access,[25] indigenous peoples' habitat conservation, and the scope of their autonomy and competencies, among others.

Bolivia also finds itself in this situation[26] since it recognized indigenous peoples' rights in its 1994 and 2009 constitutions. However, in the latter, it became the Plurinational State of Bolivia, introducing a remarkable pluralism, given that it has designed, among others, an egalitarian plural justice system. The Bolivian egalitarian plural justice is unique to some extent from a comparative law perspective.[27] Although it only has one judicial function, three different jurisdictions are the base of its plural justice[28] according to article 179 of the Bolivian Constitution: the ordinary, the agri-environmental, and the indigenous jurisdictions.[29] The three of them are under the constitutional control of the Plurinational Constitutional Court (PCC).[30] The 2009 Constitution states that the Supreme Court of Justice, departmental courts of justice, sentencing courts, and judges exercise ordinary jurisdiction; the Agri-environmental Court and agri-environmental judges handle the agri-environmental jurisdiction; while indigenous authorities exert the indigenous jurisdiction. The Constitution also determines that the ordinary and indigenous jurisdictions are hierarchically equal, which gives the 'egalitarian' characteristic to the Bolivian justice system.[31] Fromherz argues that Bolivia has an egalitarian legal

[23] John B Henriksen, 'Research on Best Practices for the Implementation of the Principles of ILO Convention No. 169. Case Study 7. Key Principles in Implementing ILO Convention No. 169' 83; Heather A Northcott, 'Realisation of the Right of Indigenous Peoples to Natural Resources under International Law through the Emerging Right to Autonomy' (2012) 16 The International Journal of Human Rights 73; Denise Humphreys Bebbington, 'Extraction, Inequality and Indigenous Peoples: Insights from Bolivia' (2013) 33 Environmental Science & Policy 438.

[24] Rickard Lalander, 'Rights of Nature and the Indigenous Peoples in Bolivia and Ecuador: A Straitjacket for Progressive Development Politics?' (2014) 3 Revista iberoamericana de estudios de desarrollo = Iberoamerican journal of development studies 148.

[25] Lorenza Belinda Fontana, 'Indigenous Peoples vs Peasant Unions: Land Conflicts and Rural Movements in Plurinational Bolivia' (2014) 41 The Journal of Peasant Studies 297; Jérémie Gilbert, *Indigenous Peoples' Land Rights under International Law: From Victims to Actors: Second Revised Edition* (Brill 2016) <http://booksandjournals.brillonline.com/content/books/9789004323254> accessed 20 June 2018.

[26] Boaventura de Sousa Santos, 'Cuando los excluidos tienen Derecho: justicia indígena, plurinacionalidad e interculturalidad', *Justicia indígena, plurinacionalidad e interculturalidad en Bolivia* (1st edn, Fundación Rosa Luxemburg / AbyaYala 2012).

[27] Christopher J Fromherz, 'Indigenous Peoples' Courts:Egalitarian Juridical Pluralism, Self-Determination, and the United Nations Declaration on the Rights of Indigenous Peoples Comment' [2007–2008] University of Pennsylvania Law Review 1341.

[28] The Plurinational Constitutional Court (PCC) asserted that the Constitution recognizes legal pluralism following Hoekema, i.e., the State law does not reserve the exclusivity to unilaterally determine the legitimacy and scope of other recognized legal systems. So then, indigenous peoples establish their laws through self-determination and without State interference, in *Sentencia Constitucional Plurinacional 0388/2014* [2014] Plurinational Constitutional Court Expediente 02918-2013-06-CCJ, Gualberto Cusi Mamani [III.4].

[29] Nonetheless the Bolivian constitution article 179.I stablishes that 'existirán jurisdicciones especializadas reguladas por la ley' [there shall be specialized jurisdictions regulated by the law]. Constitución Política del Estado Plurinacional de Bolivia 2009.

[30] Article 196 of the Constitution establishes that the PCC ensures the Constitution's supremacy and exercises control of constitutionality. Its article 202 allows the PCC to resolve constitutionality matters in actions for protection, freedom, and compliance (articles 125, 128, 130, and 134), which could be filed against the decisions of ordinary, indigenous, and agri-environmental jurisdictions. Besides, the PCC resolves the indigenous authorities' queries on applying their legal norms to a specific case and conflicts of competence between jurisdictions, according to article 202 of the Constitution.

[31] The PCC maintained that there is recognition of equal legal pluralism that derives from the constitutional recognition of the equal hierarchy of the indigenous jurisdiction with the ordinary one and of the ordinary legal system with the indigenous system, under article 179.II of the Constitution, in *Sentencia Constitucional Plurinacional 0300/2012* [2012] Plurinational Constitutional Court Expediente 00157-2012-01-AIA y 00188-2012-01-AIA (acumulado), Mirtha Camacho Quiroga [III.1.2].

pluralism that follows the UNDRIP articles 38 and 43 and that 'there is nothing inherently inappropriate in, and indeed much to be gained from, a state implementing a novel constitutional system that serves as an experiment to be adopted by other states if successful.'[32] The constitutional, agri-environmental, and ordinary jurisdictions are termed in this dissertation as the formal jurisdictions because of their classical State arrangement, in contrast to the indigenous jurisdiction or indigenous justice.

The exercise of indigenous jurisdiction was selected as the object of this research because it is sensitive to the interest of continuity and persistence of indigenous peoples through their self-determination, cultures, laws, and the validity of their authorities and institutions. To the extent that indigenous peoples assert these aspects, they can effectively decide their members' disputes which, in turn, not only renews the commitment of a given people over their culture and identity but reaffirms their existing institutions. A community's distinctiveness shall be condemned to disappear through assimilation into a larger society if its ways of life are ignored, forgotten, or neglected. In this sense, Boaventura expressed that:

> '[E]l derecho y la justicia son una de las ventanas privilegiadas para analizar las contradicciones, las ambivalencias, los ritmos, los avances y retrocesos de los procesos de transformación social… lo que verdaderamente distingue las luchas indígenas de las restantes luchas sociales en el continente americano es el hecho de reivindicar una precedencia histórica y una autonomía cultural.'[33]

One should wonder what would happen if indigenous peoples would entirely submit their customs, ways of life, cultures, institutions, and others to the prevalent orders imposed on them, which could be termed conquest, colonization, or the subsequent States foundations. It could be said that there is a healthy margin of legal irreverence in which indigenous peoples should act to conserve their identities and, consequently, their survival. Indigenous justice could be a crucial way to strengthen and maintain indigenous identity providing for the survival, dignity, and well-being of indigenous peoples, which are the general planned goals of the recognition of collective rights to indigenous peoples.[34]

Under this context, whereas indigenous peoples are entitled to exert their jurisdiction to resolve their members' disputes as an exercise of a collective right, their indigenous members have, in turn, the individual right to demand or claim justice from their indigenous peoples. When the latter occurs, indigenous peoples become the duty bearers of their members' claims, not as the defendants but as the ones that must resolve their disputes. This research aims to assess the indigenous peoples' collective right to exercise jurisdiction and not the individual rights of their members. Hence, the scope of this dissertation excludes due process, access to justice, or other individual rights.

International and local legal systems took a long time to accept and recognize indigenous peoples' collective rights. Although these rights were generally denied, prohibited, or declared illegal, they have received international recognition since the mid-20th century, and the States are slowly admitting them into their legal systems.[35] This transformation from 'illegal to legal' is also taking place with indigenous justice. In some Latin American States, e.g., Bolivia, Colombia, and Ecuador, it is already admitted to

[32] Fromherz (n 27) 1341.
[33] Sousa Santos (n 26) 12. Own translation: 'Law and justice are one of the privileged windows to analyze the contradictions, the ambivalences, the rhythms, the advances and setbacks of the processes of social transformation... what truly distinguishes the indigenous struggles from the rest of the social struggles in the American continent is claiming historical precedence and cultural autonomy.
[34] Article 43 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); Article XLI of the American Declaration on the Rights of Indigenous Peoples (OASDRIP).
[35] Salvador Schavelzon and Corp e-libro, *El nacimiento del Estado Plurinacional de Bolivia etnografía de una Asamblea Constituyente* (CLACSO 2012).

indigenous peoples' jurisdictions to resolve disputes among their members. However, this is not necessarily the case for individual disputes concerning public or general interest issues, such as human rights or natural resources. Their resolution is predominantly conceived as a judicial function that should remain in the state monopoly. Countries are aware not only that the preservation of the validity of their formal legal institutions might depend, to some extent, on the respect of their laws[36] but also that a more extensive and substantial indigenous justice may be a possible source of none-observance and weakness of their public order and a threat against their authority.[37] After all, State's sovereignty is closely related to deciding and enforcing its institutions and legal framework.[38] Therefore, the right to exercise indigenous jurisdiction is a delicate question that can affect the sovereignty of States and the self-determination of indigenous peoples.

The exercise of indigenous jurisdiction is a collective right recognized in favor of indigenous peoples in applying justice and resolving disputes of their indigenous members about legally delimited matters that emerge from relations or acts caused in the indigenous territory and whose effects occur there. The C169, ratified by Bolivia in 1991, recognizes this collective right when it refers to indigenous jurisdiction in its general policy, ordering respect to 'the methods customarily practised by the peoples concerned for dealing with offenses committed by their members' [39] and the right to retain their customs and institutions.[40] The UNDRIP, which was enacted as a Bolivian law[41] in 2007, recognizes the right to promote, develop, maintain and strengthen legal institutions, structures, and juridical systems.[42] The OASDRIP echoes the UNDRIP but includes the collective *right to their juridical system* that shall be recognized and respected by national, regional, and international legal systems.[43] The Bolivian Constitution also recognizes the indigenous people's right to practice their juridical systems. [44]

The study of indigenous justice has several possible dimensions. For instance, Orellana, in his doctoral dissertation,[45] considered 'how indigenous community law is shaped and reshaped in a context of interaction with state authority. By focusing on processes of conflict resolution and observing the way in which discursive interaction in these processes gives rise to forms of law characterized by syncretism.' [46] The study concluded how such interaction provides the elements for developing specific indigenous legal orders that allow indigenous communities to constitute themselves as semiautonomous social fields.

Another perspective may concern inter-jurisdictional coordination between justice systems. Grijlava and Exeni suggested that there is a complex variety of ways of coordination, cooperation, and

[36] For example, the Kelsenian logic endowed a primary role to the efficacy of norms as a condition for norms validity. Hans Kelsen, *General Theory of Law and State* (Harvard University Press 1949) 41–42.
[37] In this sense, John-Nambo (2002) argued that colonial power in Black French-speaking Africa introduced a so-called *indigenous justice* related to an imposed and imported judicial order. He concluded that '[c]larity of Justice in Africa and therefore its effectiveness necessarily involves the breaking away from institutional colonial logic.' J John-Nambo, 'The Legacy of Colonial Justice in Black Africa' (2002) 51–52 Droit et Societe 325, 325.
[38] Cedric Ryngaert, *Jurisdiction in International Law* (OUP Oxford 2008).
[39] Article 9 of the Convention Concerning Indigenous and Tribal Peoples in Independent Countries.
[40] Article 8.2 of the ibid.
[41] 'At the national level, consideration has been given to the content of the UNDRIP in the drafting of the Constitutions of Bolivia and Ecuador' Cathal M Doyle, *Indigenous Peoples, Title to Territory, Rights and Resources the Transformative Role of Free Prior and Informed Consent* (2017) 105.
[42] Articles 5 and 14 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
[43] Articles VI, XXII and XXXIV of the American Declaration on the Rights of Indigenous Peoples (OASDRIP).
[44] Article 30.II numerals 2 and 14 of the Constitución Política del Estado Plurinacional de Bolivia.
[45] Written at a time when egalitarian plural justice was still not recognized in Bolivia, but when the existence of indigenous peoples and their self-determination was already constitutionally entrenched.
[46] René Orellana Halkyer, 'Interlegalidad y Campos Jurídicos. Discurso y derecho en la configuración de órdenes semiautónomos en comunidades quechuas de Bolivia.' (Universiteit van Amsterdam 2004) 331.

competence conflicts between ordinary and indigenous jurisdictions. They conclude that, in front of jurisdictions' competence conflicts, it is preferable to resolve them through the constitutional case law in accordance with pluralism, egalitarian plural justice, and interculturality.[47] Viaene and Fernández-Maldonado confronted the progressive Ecuadorian constitutional recognition of indigenous justice with the lack of legal implementation of coordination and cooperation mechanisms, demonstrating that the practical exercise of indigenous justice may be hampered.[48] Elechi, Morris, and Schauer studied the 'African indigenous justice system in contemporary times and [made] a case that these justice principles can be applied to justice making in the United States and other places.' [49]

Indigenous justice also has been analyzed through the effectiveness approach. For instance, Sarah Macgregor researched the Sex offender treatment programs: effectiveness of prison and community-based programs in Australia and New Zealand concerning sexual offenses and 'an overview of current methods for addressing the treatment needs of Indigenous sex offenders.' [50] She concludes through a quantitative method and the Static 99 tool that twelve of thirteen programs were effective in reducing sexual recidivism; however, the 'effectiveness of indigenous programs is yet to be determined.' [51]

## Limiting the Dissertation

The author of this dissertation actively participates in the transdisciplinary learning community (TLC) organized in the framework of the Flemish Interuniversity Council Institutional University Cooperation (VLIR-UOS IUC) with the Universidad Católica Boliviana "San Pablo" (UCB),[52] 'with the aim to do research "with" instead of 'about' people living in vulnerable situations due to poverty, social exclusion, migration, oppression and violence' (IUC Partner Programme, 2016). The TLC has decided to conduct its intervention in the central Altiplano or the Bolivian Plateau, an extensive land covering the southern part of Lake Titicaca, in the department of La Paz, to the department of Oruro.

The Altiplano has been the cradle of millenary ancient cultures. The pre-Inca indigenous people Nación Originaria Suyu Jach'a Karangas (JK) is one of them. It occupies a large extension in the department of Oruro, on average at 4000 meters above sea level. According to article one of the Organic Statute of JK, it has an extensive territory of 28.517 square kilometers, and it preceded the *Tihuanacota*

[47] Agustín Grijalva Jiménez and José Luis Exeni Rodríguez, 'Coordinación entre justicias, ese desafío', *Justicia indígena, plurinacionalidad e interculturalidad en Bolivia* (Fundación Rosa Luxemburg / AbyaYala 2012) <http://site.ebrary.com/id/10832426> accessed 22 September 2019.

[48] Lieselotte Viaene and Guillermo Fernández-Maldonado, 'Legislating Coordination and Cooperation Mechanisms between Indigenous and Ordinary Jurisdictions. Reflections on Progress and Setbacks in Ecuador.', *Critical Indigenous Rights Studies* (Routledge Taylor & Francis Group 2019).

[49] OO Elechi, SVC Morris and EJ Schauer, 'Restoring Justice (Ubuntu): An African Perspective' (2010) 20 International Criminal Justice Review 73, 73.

[50] Sarah Macgregor, *Sex Offender Treatment Programs: Effectiveness of Prison and Community Based Programs in Australia and New Zealand* (Indigenous Justice Clearinghouse Canberra, Australia 2008) 7–8.

[51] ibid 13.

[52] The PhD research is part of IUC Project 4: Rights of indigenous peoples and transformation of social conflicts in Bolivia (P4). As established in P4, the PhD candidate participates in and integrates the results of the fieldwork into the doctoral investigation. As part of the P4, the PhD candidate contributes through his research to strengthening the knowledge and research capacities of the Faculty of Law and Political Sciences of UCB and to developing capabilities in indigenous peoples to foster the exercise of their collective rights in the framework of human rights and plural justice (IUC Partner Programme, 2016). UCB has four regionals along Bolivia, in Tarija (the southern part), Santa Cruz (oriental part), Cochabamba (central part) and La Paz (western part). In each of these regionals, there is a TLC. The PhD researcher is part the TLC of La Paz. See https://www.vliruos.ucb.edu.bo/ for more information.

civilization, the Spanish colonization, and the Bolivian State.[53] Remarkably, JK has a hierarchical structure of indigenous authorities that exerts indigenous jurisdiction to resolve its members' disputes under its own law. [54] Furthermore, ordinary and agri-environmental formal courts are settled in its indigenous territory.

Amid this context, the author of this research held a meeting on 18 December 2017 with the authorities of JK (*Apu Mallkus, Apu T'allas, Mallkus and Mama T'allas of Council, and Mallkus and Mama T'allas of Marka*). Along with other concerns,[55] JK's indigenous justice was one of the main ones of the Mallkus of Council. They complained that their indigenous justice is being challenged by formal jurisdictions against their customs and own law. They also said that some indigenous members are indifferent to JK's indigenous jurisdiction because they might omit to accept their agreements or decisions and even bypass the indigenous authorities through State justice. These situations are especially so for some indigenous who previously emigrated to the cities and now return (called residents) without recognizing the original authorities, especially when the residents are former police or military. Furthermore, they said the disputes mainly arise from land possession, quarrels, fights, and injuries.

In this context, a positive approach and openness were achieved with JK's authorities, which expressly consented to this study on their indigenous jurisdiction. Thanks to the inter-institutional mutual cooperation agreement signed on 30 April 2018 between JK and UCB,[56] it was authorized to conduct this research in exchange for free training courses[57] organized to strengthen the exercise of its indigenous rights. Consequently, one of this agreement's objectives is:

> 'incidir en mejorar la aplicación y práctica de los Derechos de los Pueblos Indígenas y los derechos humanos en el marco del proceso de construcción de la Justicia Plural en Bolivia. Para el logro de este objetivo se realizarán… la investigación de campo para identificar obstáculos y buenas prácticas en la relación entre la Jurisdicción estatal Ordinaria y Agroambiental y la Jurisdicción Indígena.'[58]

[53] Consejo de Gobierno del Suyu Jach'a Karangas, 'Estatuto Orgánico de La Nación Originaria Suyu Jach'a Karangas' (19 diciembre 2011), Article 1. This document can be consulted in Annex A: Interinstitutional Agreement, Research Authorization, and Normative Documents of Nación Originaria Suyu Jach'a Karangas on page 415.

[54] Inti Schubert and Petronilo Flores Condori, *Sistemas jurídicos indígenas originario campesinos en Bolivia. Tres aproximaciones: Curahuara de Carngas (Oruro), Sacaca (Potosí) y Charagua (Santa Cruz)* (2012) 17.

[55] The council of mallkus was concerned about other issues as well, such as indigenous identity, the justice rituals, territories and lands, the validity of documents, family and gender identity, water (use and governance), prior and informed consultation, mining pollution, and internal normative development, among others.

[56] Universidad Católica Boliviana 'San Pablo' and Nación Originaria Suyu Jach'a Karangas, *Convenio marco de cooperación interinstitucional entre la Universidad Católica Boliviana 'San Pablo' y la Nación Originaria Suyu Jach'a Karangas* 6. A copy of the interinstitutional agreement is in Annex A.

[57] It is a P4 objective 'the training 90 Indigenous Promoters of Rights in three geographic regions of Bolivia… In the Altiplano zone the project will work with the Karangas-Aymara Nation… The training courses will focus in three topics: 1. Collective and individual rights. 2. Democracy from a pluralistic sense. 3. Capacity building, from an equal gender perspective, to do Impact litigation in cases of infringement of rights' (IUC Partner Programme, 2016, pp. 63-64).

[58] Clause third of Universidad Católica Boliviana 'San Pablo' and Nación Originaria Suyu Jach'a Karangas *Convenio UCB-JK* (n 56). Own translation: 'influence the improvement of the application and practice of the rights of indigenous peoples and human rights within the framework of the process of building Plural Justice in Bolivia. To achieve this objective… field research will be carried out to identify obstacles and good practices in the relationship between the Ordinary and Agri-environmental State Jurisdiction and the Indigenous Jurisdiction.'

## Research Problem

This research concerns the effectiveness of the right to exercise indigenous jurisdiction through a case study regarding Jach'a Karangas (JK) in Bolivia between 2009 and 2019. This case study concerns Bolivia because, since 2009, it has become a plurinational State with an egalitarian plural justice system model. Thus, the analysis period covers this legal model's first decade of experience allocating the indigenous peoples' right to exercise jurisdiction. Finally, JK is a two-thousand-year-old indigenous people that existed before the Spanish colonial invasion and the creation of the Bolivian State, with a solidly established system of organization and institutions that traditionally exercises jurisdiction in resolving disputes among its members.

The approach to indigenous justice in this dissertation regards the assessment of the exercise of indigenous jurisdiction effectiveness as a collective right. Rights are recognized to produce effects in reality: they allow to achieve desired ends and claim their observance to whoever wants to affect them. Therefore, the effectiveness angle will allow the evaluation to what extent the right to indigenous jurisdiction recognized by Bolivia to indigenous peoples of JK produces such effects. Whilst indigenous justice is the object of extensive research, few studies have investigated the effectiveness of the law regarding indigenous justice. However, none of them have evaluated the effectiveness of the collective right to exercise indigenous jurisdiction in Bolivia's legal and actual context and its egalitarian plural justice system through a case study.

The research problem thus is to assess the effectiveness of JK in resolving disputes through the exercise of the right to indigenous jurisdiction in the legal framework of Bolivia's egalitarian plural justice system.

## Research Questions

The main research question of this dissertation is: *What is the effectiveness of JK's right to exercise its jurisdiction in resolving disputes under the legal framework of the Bolivian egalitarian plural justice system?*

The answer to the main research question is addressed through the following specific questions.

First research question: *What is the scope of the content and limits of the collective right to exercise indigenous jurisdiction through its formal recognition by the Bolivian international and local legal framework?*

Second research question: *To what extent does the behavior of duty bearers, considering its legal scope and limits, allow JK's jurisdiction the possibility of resolving disputes?*

> Research sub-question 2a: *To what extent does the Bolivian Judicial Organ, through its constitutional case law and the behavior of the lesser hierarchy formal courts settled in JK, allows JK's jurisdiction the possibility of resolving disputes?*
>
> Research sub-question 2b: *To what extent does the behavior of JK's indigenous members allow its jurisdiction the possibility of resolving disputes?*

Third research question: *To what extent does JK's jurisdiction exercise and its competence claims, regarding its legal scope and limits, allow it the possibility of resolving disputes?*

Research sub-question 3a: *To what extent does JK exercise its indigenous jurisdiction regarding its legal scope and limits?*

Research sub-question 3b: *To what extent does JK have the interest to assert the duties of its duty bearers concerning its right to exercise indigenous jurisdiction?*

Each of the research questions and sub-questions is explained below.[59]

## Relevance

JK is interested in improving the effectiveness of its indigenous jurisdiction, according to the opinions and claims of its principal authorities gathered on 18 December 2017. Such a stance proves the interest of this indigenous people in performing its judicial right to solve the emerging controversies of its members and strengthen it within the Bolivian egalitarian plural justice system. However, as shown in the state of the art, the effectiveness of the right to exercise indigenous jurisdiction in Bolivia's legal and real context has not been analyzed. Therefore, this study aims to fill that research gap and, at the same time, provide some usefulness to the interests of JK.

To this end, this study proposes a model for analyzing the effectiveness of rights to describe and explain the degree of the practical realization of a legal system that considers both the right holders' interests and the duty bearers' performance. More to the point, the analytical model to assess the effectiveness of rights deepens into reality and within legal frameworks to assess the reasons that endorse the fulfillment or frustration of a specific right in a localized sphere. The study also aims to contribute to a deeper understanding of the reasons for the strengths and weaknesses of JK's indigenous justice to achieve its practical purpose of resolving indigenous disputes.

Through a collaborative and dialogical approach with JK's authorities, the dissertation also aspires to propose ways to make JK's indigenous justice more effective, if possible. The indigenous jurisdiction's exercise is part of indigenous peoples' self-determination and culture, both aspects related to the flourishing and prosperity of the communities from the point of view of their dignity, sovereignty, and identity. However, the Bolivian recognition of egalitarian justice can be rhetorical and remain in normative statements without practical application, which could negatively impact indigenous peoples' development and security, diminishing or threatening their ways of living.[60] An analysis of the effectiveness of the exercise of indigenous jurisdiction and its subsequent discussion with the indigenous authorities of JK could result in identifying practical ways to make it more effective both in its implementation and in the event of possible claims against its illegal interferences.

## Content and Structure

This doctoral dissertation is organized into seven chapters structured into the following three parts: research framework, contextual framework, and effectiveness of Jach'a Karangas' collective right to exercise indigenous jurisdiction. Before briefly introducing each of them, it is highlighted that this thesis is based on the effectiveness of collective rights. It is a model of analysis to explain the degree of the practical realization of a legal system and its causes regarding the perspective of the coexistence of two legally mediated forces, that is, the fulfillment or frustration of the rights holders' empirical goals in front of the correlative duty performance by their bearers. Its primary concern is not discussing the law's

[59] Cf. ‘Research Questions’ Content’ on page 52.
[60] IUC Partner Programme, 2016.

effectiveness, which fixes its examination on the norm's aims and prescriptive effects, but instead assessing the rights holders' liberty to pursue their objectives within limits imposed by the law.

The First Part, called research framework, addresses Chapter one on the methodology. It starts by justifying the adoption of the case study strategy. Then, its first section provides an operational concept of the effectiveness of rights and its elements: cause, planned effect, real effect, and the roles of rights holders and duty bearers. It is stressed that the definition and elements of the effectiveness of rights have a crucial role in the research design. The following section focuses on establishing what the elements of the effectiveness of the right to exercise indigenous jurisdiction of Jach'a Karangas are, the research questions' content, the research proposition, the units of analysis and observation, linking the data to research propositions, the criteria for interpreting the findings, the sources and methods to collect data, and ethical considerations about data collection.

The Second Part presents the contextual framework at the international, national, and local levels through chapters two, three, and four. Chapter two presents the meaning of indigenous peoples from a legal approach concerning international sources and the Bolivian Constitution. The chapter aims to describe indigenous peoples' traits to sustain the study's proposition and understand the content of this category in Bolivian law. Chapter three, on the other hand, describes the collective right to exercise indigenous jurisdiction from the Bolivian perspective. To this end, its first section presents a theoretical notion of collective rights. Then, the second section explains how Bolivia became a Plurinational State, recognizing both nations and their collective rights, among which the indigenous peoples occupy a predominant place. The third section presents an analytical description concerning the Bolivian content of the collective right to exercise jurisdiction from its international and constitutional legal framework. Its final section portrays this collective right's limits. Chapter four, which is the final one of this part, contextualizes the indigenous people Nación Originaria Suyu Jach'a Karangas because this collectivity is the subject of this case study. It accounts for JK's geographic location, structure, authorities, and justice system, among others.

The Third Part presents the study's findings, discussion, and conclusion. It is organized into three chapters. Chapter five includes three sections to tackle a SWOT analysis to systematize the study's central findings through the criteria of strengths, weaknesses, opportunities, and threats. They also explain the reasons that sustain the effectiveness evaluation contained in the following chapter. Chapter six evaluates JK's effectiveness in exercising its jurisdiction from the perspectives of the duty bearers and the right holder and compares the results with other indigenous peoples living in Bolivia. Moreover, interpretations of the findings are provided by contrasting the real effects with the planned effect. Finally, Chapter seven concludes this thesis. Apart from summarizing the research and the most important results, it also suggests some recommendations to improve the effectiveness of this collective right. This chapter ends by offering implications for this research and future research suggestions.

# Part I

# Research Framework

# Chapter 1: Methodology

## Introduction. A Case Study on the Effectiveness of Rights

### *Defining the Strategy of the Research*

Robert K. Yin, in the first chapter of his work '*Case Study Research,'* [61] strongly encourages researchers to consider three conditions when choosing e a case study strategy. First, the study must refer to 'how' and 'why' research questions, that is, to explanatory inquiries of real-life events to find their reasons and not to questions about quantities, places, or actors. Second, the research is about contemporary events rather than historical ones with several possible evidence, such as documents, interviews, and observation. Finally, the case study is preferred whenever it is not feasible to experiment because the researcher has little or no control over actual behavioral events.

On account of such premises, the present case study concerns the effectiveness of the actual exercise of the indigenous jurisdiction of Nación Originaria Suyu Jach'a Karangas (JK) within Bolivia's egalitarian and plural justice. It considers the period between 2009 and 2019, since the beginning of the current Bolivian Constitution, which establishes its egalitarian plural legal system. This ten-year period is contemporary with Bolivian reality, despite the abrupt change in the Bolivian central government that occurred in October 2019 due to the resignation of the previous administration[62] and the global paralysis due to the Covid-19 pandemic that began in March 2020 in Bolivia.[63] In accordance with the final research interviews held in 2020, Jach'a Karangas' jurisdiction did not change to the present.[64] Moreover, the resigning government party, Movement Towards Socialism (MAS by the acronym of its name in Spanish), recovered the government after the democratic election of late 2019,[65] and the legal framework related to the collective right to exercise indigenous jurisdiction has not changed to the present.

Furthermore, the exercise of rights involves the right holder, which in this case is JK, and the duty bearers, which are Bolivia and indigenous individual. The existing data to assess such effectiveness

[61] Robert K Yin, *Case Study Research: Design and Methods* (3rd ed, Sage Publications 2003) ch Introduction.

[62] It is noted that the same government that began in 2006, with Evo Morales Ayma as the Bolivian president, remained until 2019, when he resigned. Max Fisher, 'Bolivia Crisis Shows the Blurry Line Between Coup and Uprising (Published 2019)' *The New York Times* (12 November 2019) <https://www.nytimes.com/2019/11/12/world/americas/bolivia-evo-morales-coup.html> accessed 25 October 2021.

[63] Centro de Estudios para el Desarrollo Laboral y Agrario - CEDLA, 'COVID-19: Cronología en Bolivia – Página 4 – CEDLA' <https://cedla.org/cedla/covid-19-cronologia-en-bolivia/> accessed 25 October 2021.

[64] An indigenous authority stated that many community members who lived in the city returned from the countryside, which produced some land conflicts that the indigenous jurisdiction resolved (interview G-2020-03). Other authorities stated that during the rigid quarantine, the authorities limited their functions (interview G-2020-11) and that the community members generally have refrained from conflicts (interview G-2020-20). Furthermore, the interviews established that the change of government did not change the situation of the Jach'a Karangas indigenous jurisdiction at all (interviews G-2020-03, G-2020-07, G-2020-11, G-2020-20, and G-2020-23, cf. Annex D).

[65] 'Bolivia Election: Evo Morales' Ally Luis Arce Set for Win' *BBC News* (19 October 2020) <https://www.bbc.com/news/world-latin-america-54591963> accessed 25 October 2021; Deutsche Welle (www.dw.com), 'Mandate for Socialists after MAS Wins Big in Bolivia | DW | 20.10.2020' (*DW.COM*) <https://www.dw.com/en/mandate-for-socialists-after-mas-wins-big-in-bolivia/a-55340675> accessed 25 October 2021.

mainly comprises international, Bolivian, and indigenous peoples norms, case law, cases, interviews with different actors, and indigenous documents. Putting all these elements together, it is self-evident that the investigator has no control over the effectiveness of events that correspond to the exercise of indigenous jurisdiction, the behavior of indigenous individuals, and the State decisions taken on the matter.

More to the point, Nigel King comprises that '[q]uantitative research is concerned with measurement, precisely and accurately capturing aspects of the social world that are then expressed in numbers, percentages, probability values, variance ratios [and so on].' [66] On the contrary, qualitative research 'do[es] not rely on numbers as the unit of analysis.' [67] The study analyzes and describes mainly the Bolivian legal framework, case law, cases, JK's internal documents, and indigenous members' perceptions involving the exercise of its jurisdiction. Hence, the research paradigm is qualitative. However, the research also quantifies the recurrences of the analysis results related to the Plurinational Constitutional Court's case law in the assessment period, according to the indicators proposed in the research design. Even though the study quantifies these effectiveness recurrences, it is predominantly qualitative since it relies on a legal-descriptive analysis of the collected data. Consequently, the present research prioritizes the understanding *(verstehen),* the meaning, and the human experience over measurements[68] to appreciate better the reasons regarding the effectiveness of the right to indigenous jurisdiction of JK within Bolivia.

Given the existent compatibility of the grounds to choose a case study with the characteristics of the present dissertation, the case study is selected as the main strategy for the current research.

## *Defining the Type and Design of Case Study*

On the one hand, and after having established that this research is carried out through the case study strategy, the question arises as to what type of case study does an investigation into the effectiveness of rights belong to. Among the different kinds of case studies that exist,[69] it is deemed that an investigation into the effectiveness of the rights consists of a *descriptive* and *explanatory* study.

Since effectiveness aims to contrast a planned and practical effect with the actual effect obtained through implementing a specific right, it is first necessary to describe these phenomena and then explain them. Descriptive research aims to show the occurrences within a certain sector with base information[70] to characterize, contextualize, decompose, and systematize a phenomenon.[71] In this case, the description comprises giving an account of the Bolivian legal and case-law frameworks, indigenous jurisdiction and the perceptions of formal judges, indigenous authorities and people of JK (for greater precision, confront the research questions and the units of analysis later in this chapter).

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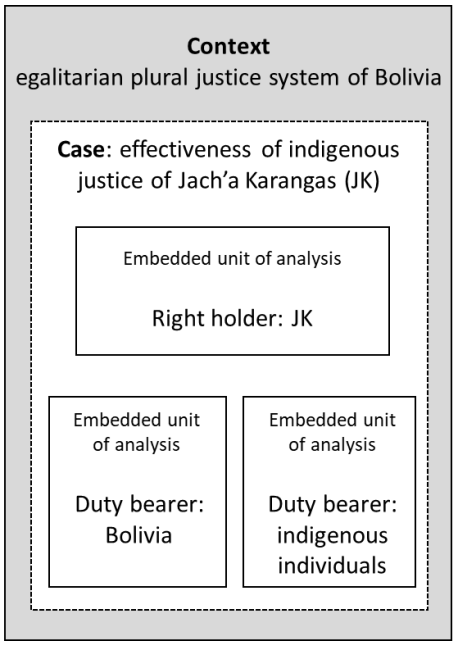
[66] Nigel King, *Interviewing in Qualitative Research* (SAGE 2010) 7.
[67] ibid.
[68] ibid 13–14.
[69] Thus, a case study could be explanatory, exploratory, descriptive, multiple-case studies, intrinsic, instrumental and collective according to Pamela Baxter and Susan Jack, 'Qualitative Case Study Methodology: Study Design and Implementation for Novice Researchers' (2008) 13 The qualitative report 544, 547–549.
[70] Iván Arandia, 'Metodología y técnicas de investigación jurídica. Aspectos generales', *Bases metodológicas para la investigación del derecho en contextos interculturales* (Órgano Judicial, Instituto de la Judicatura de Bolivia, AECID, Fundación PIEB 2009) 111.
[71] Iván Arandia, 'Metodología y técnicas de investigación jurídica. Aspectos generales', *El diseño de un proyecto de investigación con enfoque socio-jurídico-III. La estrategia metodológica.* (Órgano Judicial, Instituto de la Judicatura de Bolivia, AECID, Fundación PIEB 2009) 205.

Explanatory research seeks 'to explain the presumed causal links in real-life interventions.'[72] It aims to determine the relationships between the different variables that influence a phenomenon.[73] The present study is explanatory because it takes place in the interplay of a cause, its planned effect, and its real effect, aiming to explain to what degree the cause produces the planned effect, or in other words, the extent to which a specific collective right (established as the cause) produces the planned effects by its holder in reality.

On the other hand, case studies can be designed as single-case and multiple-cases, each of which can be holistic or embedded, depending on whether a case is studied in its context (single) or several cases in their contexts (multiple) and if in each of them a single unit of analysis (holistic) or several (embedded) are analyzed. [74] Thus, since this research is limited to assessing the effectiveness of JK's jurisdiction exercise, it corresponds to the research design of a single-case embedded study (as shown in Figure 1).

*Figure 1. Case study design*




*Notes*: This figure corresponds to the design of Robert K. Yin. The dotted lines between the context and case indicate that the boundaries between both are not likely to be sharp.[75]

Although Yin advises against conducting a single-case study due to its limited analytical benefits, the possible lack of direct replication, and 'fears about the uniqueness or artifactual condition surrounding the case,' [76] in this study there are some aspects that may alleviate these pitfalls to some extent. On the one hand, two of the study's analysis units correspond to the Bolivian State's laws and constitutional jurisprudence. Then, as explained later, given that both units of analysis apply in a generalized and binding way to all the indigenous peoples residing in Bolivia, the findings related to this case study could be replicated to them, overcoming the single case study's drawbacks to some extent. On the other hand, given that the effectiveness of other Bolivian indigenous peoples can be glimpsed through the

[72] Baxter and Jack (n 69) 547.
[73] Arandia (n 70) 111.
[74] Yin (n 61) 39–40.
[75] ibid 40.
[76] ibid 54.

constitutional case law as well, the collected data of JK's sources of information may serve to compare it with them and enrich the analysis.

It must be considered, in any case, that there are 36 recognized official languages in Bolivia[77] and an approximately similar number of indigenous peoples, each of which has different customs and uses with consequently also diverse indigenous justices. Given this reality, it would not be possible to evaluate the effectiveness of indigenous jurisdiction in Bolivia even if this study were conducted with two or three indigenous peoples simultaneously. Therefore, in this framework, although it is possible to deduce the effectiveness from the laws and jurisprudence, the effectiveness of each justice is only possible from an inductive perspective.

Furthermore, JK is one of these indigenous peoples, with an active indigenous jurisdiction and its own internal organization, in whose territory there are lower-ranking formal courts with which it maintains an interrelation. Moreover, within the deductive-inductive perspective referred to, the objective of this study is to assess the degree of effectiveness of JK's jurisdiction exercise within the Bolivian egalitarian justice framework, expecting that the findings and results to be obtained may provide an approach to the effectiveness of indigenous justice in Bolivia and may hold some usefulness as an experience for other local contexts. These features might render this case study relevant.

Having argued in favor of conducting a single-case study, the next methodological step, according to Yin, is the research design that accounts for the 'logical sequence that connects the empirical data to a study's initial research questions and, ultimately, to its conclusions.'[78] It comprises five components: research questions, a proposition (if any), units of analysis, the logic linking the data to the propositions and criteria for interpreting the findings.[79] However, it is not feasible to continue this path unless the meaning and elements of the effectiveness of the rights are defined, as it is one of the cores of this research, and as such, its content arranges the research design's components. Therefore, the following section is dedicated to justifying the effectiveness of the rights as a model of analysis, setting its elements, and operationally defining it to design this research.

[77] Article 5 of the Constitución Política del Estado Plurinacional de Bolivia.
[78] Yin (n 61) 20.
[79] ibid 21.

# Section 1.1: A Meaning of the Effectiveness of the Rights

*Stephen Munzer, in 1972, said that 'the notion of efficacy can have application only in regard to things about which questions relating to accomplishment or production of results or effects may sensibly be raised.'*[80]

*Given that the Law has been designed to produce effects in society, then the questions arise: Does it produce them? To what extent?*

There are groups of persons in each social organization and structure who, when faced with a relevant situation, create rules of behavior or norms to govern it. Lawmakers tend to order social, economic, political, and cultural realities, among others. Laws have purposes and seek finalities, whether explicit or implicit, since the domains of Law correspond to the ought to be. Such planned effects or aims, in any case, are imposed by their creator.

People are extraordinary beings who sometimes behave as laws dictate without knowing them. On other occasions, instead, they are aware of their content and consciously decide not to comply with them for some reason. In return, people also have rights that, unlike laws, are exercised as instruments to achieve their ends. These purposes largely depend on their will, with the optional possibility to pursue their goals or not, according to their interest.

Those aims are relevant to effectiveness. In the case of norms, they are essential to consider if their designer's interests are translated into reality. That is, for example, if the legislator's aims in a State are actually achieved through law compliance. On the other hand, rights' effectiveness focus on considering if people's interests are accomplished in practice, i.e., if they can reach their practical goals.

Although this section aims to define the effectiveness of rights and identify its elements to provide an analytical framework for its assessment, the effectiveness of laws is described first. Very relevant authors, especially in the philosophical and socio-legal fields, have dedicated time and space in their writings to refer to this kind of effectiveness. On the other hand, it has not happened with rights' effectiveness, at least not to provide an analytical framework for their assessment. To that end, with the support of the theory of the laws' effectiveness, as a kind of effectiveness, a general definition of Law's effectiveness will be induced, and then a notion of the rights' effectiveness is deduced as another kind of effectiveness. With this concept, a framework will be proposed to evaluate the effectiveness of rights.

## Defining Effectiveness of Law

Legal norms regulate individual and collective human behavior. Lawmakers acknowledge the actual situations that need regulation and then elaborate and implement laws.[81] The recipients of the rules

[80] Stephen R Munzer, *Legal Validity* (Nijhoff 1972) 30–31.

[81] From an international to local approach, implementation refers to the process of putting international commitments into practice: the passage of domestic legislation, promulgation of regulations, creation of institutions (both domestic and international), and enforcement of rules. Kal Raustiala, 'Compliance & Effectiveness in International Regulatory Cooperation.' (2000) 32 Case Western Reserve Journal of International Law 387, 392.

could comply with them by acting as intended, that is, by doing what the norm prescribes. Otherwise, the norm keepers need to enforce them, i.e., apply them.

Legal norms respond to one or more purposes since they are means to accomplish ends. Sometimes these purposes are explicit in the norms themselves, but sometimes the general context of life, the passage of time, or its interpretation (through the processes of its implementation, compliance or appliance) elucidate them, or even change them.[82]

For no experts, it is a common ground to believe that law can magically modify social reality and, consequently, laws seem to be the panacea for every social disease.[83] Even though '[a] norm is more than a mere reflection of behavior [since] it can also guide behavior,'[84] it is self-evident that social problems continue regardless of legal norms: reality hardly changes.[85] The sheer existence of the law does not compel the performance of the action that it prescribes. 'All that a law can do is to try to induce someone to a particular course of action, by threats or rewards, perhaps. In other words, a law is, despite its imperative form, essentially a kind of persuasion.'[86]

There are numberless possible reasons to adjust (or not) one's behavior to a legal norm. For instance, compliance and noncompliance with the law could be intentional or unintentional. Notwithstanding the common legal presumption that everybody knows the law, seldom one knows the law and acts accordingly. It seems more likely that one behaves legally by common sense than by truly lawful consciousness. On the other hand, one may be aware of the law but have no intention of fulfilling it.[87] In this sense, the awareness and the acceptance[88] of the law could play preponderant roles in intentional behavior.

Whereas awareness presupposes adequate language, communication and understanding of the law, its acceptance or rejection relies on its awareness. In fact, from a reasonable perspective, one can only accept or reject a rule if one acknowledges it. However, it would not be infrequent that one discerns it differently, at least partially, since the message contained in the law is hardly univocal.

If there is no spontaneous change in people's behavior to comply with the law, such compliance can be enforced through actions filed by those who consider themselves affected. It is also possible that those who feel affected do not demand compliance and simply tolerate the breach of the law. If there is a legal action, a judge or a court must make a decision, which may enforce or disregard the norm. However, the simple decision alone rarely suffices to give legal protection and resolve the conflict. The interested parties' efforts, the authorities' participation, and the lack of will to achieve compliance by the losing party are not uncommon. Hence, the decision shall be enforced by the judge. Then, in both scenarios,

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[82] '[T]he purpose of a particular law may not be clearly stated by its maker or emitter. What is more, as the law acquires a history, those who apply it, follow it, or disregard it re-shape both the law and its purposes to correspond to their power and their influence' as stated by Antony Allott, 'The Effectiveness of Law' (1980–1981) 15 Valparaiso University Law Review 229, 233.

[83] Luis María Bandieri, *La mediación tópica* (1. ed, El Derecho 2007) 22.

[84] Pieter van Dijk, 'Normative Force and Effectiveness of International Norms' (1987) 30 German Yearbook of International Law 9, 9.

[85] Allott (n 82) 230.

[86] ibid 235.

[87] 'The so-called "representatives" of the people (…) are in fact typically unrepresentative of their constituents; the law-making elite feels itself free to make laws, indeed to impose laws, even if well aware that these laws will meet serious popular resistance or fail to accord with public attitudes and wants.' ibid 237.

[88] 'It is impossible for law to hold men to conformity with a standard so much more strict than that to which they are willing to conform that the difficulties of enforcement will prove insuperable. This is the problem of what may be called the effectiveness of law.' John Dickinson, 'Legislation and the Effectiveness of Law' (1931) 17 American Bar Association Journal 645, 649.

i.e., in the simple compliance or the judiciary enforcement, if there is a change in the reality, it will be possible to say that the law has produced effects. The law's 'primary aim is to produce effects on behavior that would not otherwise have occurred.'[89]

Hans Kelsen argued that social orders were meant to refrain or perform certain acts.[90] However, despite its sociological and political importance, it is not possible to ascertain scientifically 'what motives induce men to comply with the rules of law (…)[91] All we can do is to make more or less plausible conjectures.'[92] Then, he expressed, '[o]bjectively, we can ascertain only that the behavior of men conforms or does not conform with the legal norms.'[93]

For these reasons, Kelsen understood the effectiveness of norms as their compliance. 'That a legal order is "efficacious", strictly means only that people's conduct conforms with the legal order.'[94] 'Efficacy of law means (…) that the norms are actually applied and obeyed.'[95] In 1965, in his Pure Theory of Law, Kelsen termed the correspondence of the behavior of people with the legal order as normative effectiveness, in contrast to causal effectiveness, which refers to the real motives of compliance, that is, to avoid legal punishments or achieve its rewards. [96] Effectiveness is, in the end, whether laws are applied by the judges and obeyed by the people.

Fifteen years later, Antony Allot argued that 'a general test of the effectiveness of a law (a particular provision of a legal system) is … to see how far it realizes its objectives.'[97] Given that a legal norm is effective when it is complied,[98] its effectiveness corresponds to the degree of its compliance.[99] Antony Allot fits his understanding in three different kinds of norms. When a norm is *preventive* of some behavior, its effectiveness regards the extent of the diminishing of such behavior; when it is *curative* of wrongs and injustices, it is the degree of their correction; and when it is *facilitative*, it would be effective at the providing extent of the respective 'recognition, regulation, or protection for an institution of the law'.[100]

In 1987, Pieter van Dijk maintained that norms have internal and external effectiveness. While the first aims at the coherence of the law through its values and objectives,[101] the second refers to the empirical conformity of the actual behavior with the standard set in the norms.[102] In other words, '[b]y its normative force a norm contributes to the realization of what ought to be. If the norm succeeds in this, one speaks of the effectiveness of (the normative force of) the norm.'[103] The maximum effect of the law is in the interaction between the normative force and social reality. If the actual behavior conforms to the behavior foreseen in the norm, there is empirical effectiveness. However, he reflected that

[89] Raustiala (n 81) 387.
[90] Kelsen (n 36) 15.
[91] 'Whether or not men do actually behave in a manner to avoid the sanction threatened by the legal norm, and whether or not the sanction is actually carried out in case its conditions are fulfilled, are issues concerning the efficacy of the law.' ibid 30.
[92] ibid 24.
[93] ibid 40.
[94] ibid 24.
[95] ibid 39–40.
[96] Hans Kelsen, *Pure Theory of Law* (Max Knight tr, Lawbook Exchange 2005) 26–27.
[97] Allott (n 82) 233.
[98] ibid 234.
[99] ibid.
[100] ibid.
[101] van Dijk (n 84) 22.
[102] ibid.
[103] ibid 9.

'effectiveness of and compliance with a norm are not necessarily identical.'[104] Extending the application of normative effectiveness, in 1993 Francis Snyder refers 'not only to compliance but also to implementation, enforcement and impact'[105] of the law 'on political, economic and social life.'[106]

In 1998 Harold Koh understood that the mere correspondence of the own behavior with the norm is not enough. It is necessary to discern the underlying reasons for such an occurrence, which might depend on the degree of internalization of the norm when people behave. He explains that acting in accordance with the law may occur for 'coincidence, conformity, compliance and obedience.'[107] It depends on the degree of internalization of the norm that people have when they behave. As Koh explains, either there is a simple 'coincidence' because the statute is unknown, and the person is unaware of it, or there might be 'conformity,' representing a convenience to act without an internal obligation to abide. In both cases, the legal norm does not sway the behavior. It could also concern 'compliance,' the author continuous, which comprises awareness of the rule and acceptance of its influence for reward or avoiding punishment. Finally, there is 'obedience,' as an internalized norm in the person's value system, representing a ruled-induced behavior.[108] In his perspective, compliance is a causal matter that emphasizes not only the adequacy of the conduct but also its reasons. He concludes that the 'most effective legal regulation thus aims to be *constitutive*, in the sense of seeking to shape and *transform personal identity* … self-enforcement is widely recognized as both more effective and more efficient than third-party controls.' [109]

In 2000 Kal Raustiala[110] explained that effectiveness can be understood[111] in very ambitious ways in the sense that the objectives of laws or public policies are achieved.[112] However, given the inherent difficulty or the impossibility of pinpointing the factors that lead to such changes, Raustiala claims that 'many analysts define and assess effectiveness in more modest terms: as observable, desired changes in behavior.'[113] He differentiates effectiveness from pure compliance with the law. As he claims, '[c]ompliance generally refers to a state of conformity or identity between an actor's behavior and specified rule.'[114] With this notion dwelling in mind, it is quite clear that such a state of conformity or identity is, by itself, a necessary and sufficient condition of compliance with the law. It matters the state of compliance and not how or why it happened. Then, 'to speak of compliance is to be agnostic about causality: compliance as a concept draws no causal linkage between a legal rule and behavior.'[115]

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[104] ibid 24.
[105] Francis Snyder, 'The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques' (1993) 56 The Modern Law Review 19, 24–25.
[106] ibid 19.
[107] Harold Hongju Koh, 'The 1998 Frankel Lecture: Bringing International Law Home' [1998] Houston Law Review 623, 627.
[108] ibid 628.
[109] ibid 629.
[110] His approach is both legal and form political sciences, as he expressly claims. A compressed version is found in Kal Raustiala and Anne-Marie Slaughter, 'International Law, International Relations and Compliance' (2002) SSRN Scholarly Paper ID 347260 539 <https://papers.ssrn.com/abstract=347260> accessed 29 November 2018.
[111] Despite the Kal Raustiala's theoretical approach is under the International Regulatory Cooperation context, his analysis of effectiveness and compliance of the law is 'applicable, with minor variations, to the study of any legal rule or standard' Raustiala (n 81) 399.
[112] Observable, desired changes in behavior, improvement the state of the underlying problem or the achievement of its inherent policy objectives. 'Effectiveness can be defined in varying ways: as the degree to which a given rule induces changes in behavior that further the goals of the rule; the degree to which a rule improves the state of the underlying problem; or the degree to which a rule achieves its inherent policy objectives.' ibid 393.
[113] ibid 394.
[114] ibid 391.
[115] ibid 398.

Though frequently the interplay of effectiveness and compliance is so proximate that they appear to be the same, that is when the adopted actions of the agent lead to fulfilling the law, it is not the case in other scenarios that Raustiala addresses in his research. In abstract terms, the first one ensues when, despite noncompliance, effectiveness is observed through the desired change in behavior of the agent to abide by the law. The second is when, despite the agent's full compliance with the law, there is no effectiveness since there is not an observable change of behavior.

Raustiala proves his point with some examples. For the first case, among others, he cites the environmental law in the United States, such as the Clean Air Act, that, despite the high level of non-compliance, there are noticeable changes in the behavior of some cities, e.g., Los Angeles, that improved its quality air.[116] Alternatively, the '[s]peed limits on freeways … are rarely complied within a strict sense … but speed limits appear to dampen traffic speeds nonetheless.'[117] In other words, even without actual law compliance, there is an observable change of behavior, which Raustiala considers the effectiveness of the law. For the second case, the international whaling treaties historically defined a 'total whale-catch quotas set to roughly match the demand of the whaling industry.'[118] Alternatively, the 'Non-Proliferation Treaty obliges many states to do what they are currently doing: not use or develop nuclear weapons.'[119] In both cases, there was evident compliance with the law, [120] but without any change of behavior, i.e., without the effectiveness of the law in Raustiala's terms.

Raustiala understood that 'an effective rule is simply a rule that leads to observable, desired behavioral change. Effectiveness is the measure of that change.' [121] One can argue that whereas compliance is obtained by achievement, effectiveness relates to a 'motivation to comply.'[122] In such terms, effectiveness refers to a 'causality: to claim that a rule is "effective" is to claim that it led to certain behaviors or outcomes, which may or may not meet the legal standard of compliance.'[123] However, this author acknowledges the impossibility of determining the factors that could induce the effectiveness of norms in the actors involved.

In 2014, Timothy Meyer, in the same sense as Raustiala, considered that 'restricting the meaning of effectiveness to compliance may understate the very notion of effectiveness.'[124] Whereas compliance asks if the conduct equals the 'prescribed legal standard,' effectiveness questions if the law causes a particular behavior.[125] Then, effectiveness and compliance of the law are different.[126] Consequently, 'a

[116] ibid 394–395.
[117] ibid 395.
[118] ibid 392.
[119] ibid 392–393.
[120] 'It is not required that the actual behavior of individuals be in absolute conformity with the order. On the contrary, a certain antagonism between the normative order and the actual human behavior to which the norms of the order refer must be possible. Without such a possibility, a normative order would be completely meaningless.' Kelsen (n 36) 120.
[121] Raustiala (n 81) 393–394.
[122] Alf Ross, in the context of his classification of personal directives, specifically the sanctioned ones, when a directive is given by A (sender) in her interest to B (receiver), and B believes that a reward or a punishment is the possible outcomes of his compliance or noncompliance, considers effectiveness as follows: 'If B believes that the situation is of this kind, then there has been produced in him a motivation to comply with the directive, which is in that case said to be effective. This does not mean that B will actually comply with the directive, since this motivation may be outweighed by others.' Alf Ross, *Directives and Norms.* (London, Routledge and Kegan 1968 1968) 39.
[123] Raustiala (n 81) 398.
[124] Timothy Meyer, 'How Compliance Understates Effectiveness The Idea of Effective International Law' (2014) 108 Proceedings of the Annual Meeting, published by the American Society of International Law 168.
[125] ibid 169.
[126] ibid.

rule can exhibit (1) high compliance and high effectiveness; (2) low compliance and low effectiveness; (3) high compliance and low effectiveness; or (4) low compliance and high effectiveness.'[127] Although these conclusions are obtained regarding the conduct of the State and the international law, they can be generalized to other subjects, as the author also remarks.

The difference between effectiveness and compliance under the terms referred by Raustiala and Meyer, as a change of behavior, only would be feasible if the norm does not demand a specific behavior for its compliance. In such a case, compliance amounts to effectiveness,[128] and this is also true when partial compliance occurs. For instance, Dworkin's example of the social rule of a group of churchgoers to remove their hats before entering the church,[129] even though it is used here outside of its context, demonstrates the impossibility of differentiating compliance from effectiveness.

In 2014 Liam Murphy stated that 'compliance does not tell us why subjects comply.'[130] He differentiates the effectiveness of the international law as inducing compliance (the degree to which law affects the behavior of the subject),[131] as enforcement ('concerns the ability of the legal system itself to induce compliance –as it were, deliberately'),[132] and as providing a moral reason for compliance.[133]

In 2016 Pavó Acosta concluded that, in general, there is a broad consensus among multiple sources to define effectiveness as the ability to achieve the desired effect or the level of achievement of goals and objectives; nonetheless, it is not the case when effectiveness refers to the law. [134] He explained that effectiveness is a philosophic concept of law concerning two levels. The first one, termed effectiveness of the norms, supposes the fulfillment of their practical and immediate purposes.[135] Like Kelsen's position, he asserted that the relevant issue is whether the laws' addressees obey them and if the judges apply them.[136] The second one, or social effectiveness,[137] regards the subsequent social, economic, and political effects that derive from the first level, the fulfillment of the intended objectives of the norm. [138] Whereas the first level is related to legal positivism; the second belongs to the functionalist approach. Acosta understood that a law's effectiveness equals the degree to which a norm influences the behavior

[127] ibid.
[128] The same analysis but regarding implementation and compliance of the European Court of Human Rights in D Anagnostou and A Mungiu-Pippidi, 'Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter' (2014) 25 European Journal of International Law 205, 211.
[129] Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press 1977) 50.
[130] Liam Murphy, 'Varieties of Effectiveness: What Matters Symposium: The Idea of Effective International Law' (2014–2015) 108 AJIL Unbound 99, 100.
[131] ibid.
[132] ibid 101.
[133] In the last kind of effectiveness, Liam Murphy refers only to the States in front of the international law and considers the reputation, retaliation, and reciprocity as such reasons, in addition to the fact that States are few and one's noncompliance affects relatively more to the rest. ibid 102.
[134] Rolando Pavó Acosta, 'Las Investigaciones Sociojurídicas Acerca de La Eficacia y Efectividad Del Derecho; Algunas Alternativas Metodológicas' (2016) 02 Revista Internacional Consinter de Direito 442–443 <http://editorialjurua.com/revistaconsinter/revistas/ano-ii-volume-ii/parte-3-aspectos-relevantes-no-futuro-do-direito/las-investigaciones-sociojuridicas-acerca-de-la-eficacia-y-efectividad-del-derecho-algunas-alternativas-metodologicas/> accessed 10 February 2019.
[135] ibid 443.
[136] Acosta distinguishes the formal effectiveness from material effectiveness. While in the first one an individual rule is issued under the general norm, in the last one a consistent behavior with the general and the individual norms is required. ibid 450.
[137] Acosta explains that legal realism demands fairness instead of a pure legal approach. Consequently, norms' efficacy should be verified to satisfy the social needs for which they were emitted in the first place. ibid 446..
[138] ibid 443–444.

of its recipients in the intended sense.[139] For example, suppose a law had the aim of reducing unemployment. In that case, it is necessary to analyze how much of that objective it actually achieved.

Acosta presents a formula of effectiveness for each of its levels. The degree of normative effectiveness[140] equals the degree of compliance plus the degree of application.[141] For the second, social effectiveness equals the social purposes minus the social outcomes, where the norm shall be effective if the outcomes surpass or are equivalent to the purposes.[142] An investigation following the second formula would involve the following operations: 1) theoretically model the legal purposes, 2) empirically evaluate the actual results (considering favorable and unfavorable results), and 3) compare the ends with the results. [143] Acosta acknowledges the difficulties of measuring the first formula and the impossibility of the second one since the subjective and complex criteria they comprise. [144]

It is noteworthy that it is common ground among the authors to say that effectiveness surpasses the boundaries of mere legal research. Effectiveness goes beyond the law and its enforcement, where legal methods and doctrines exist, accessing the reality realm of social, anthropological, or political approaches.[145]

## Generalizing Effectiveness

The norms' effectiveness (and law in general) and not the rights' effectiveness is the foci of the revised authors. However, despite the broadness of their conceptions, none of the reviewed literature defines 'effectiveness' in formal or generic terms regarding the Law. [146] To apply the concept of 'effectiveness' to measure or evaluate possible specific legal phenomena, at least from a theoretical approach, it seems relevant to propose a general definition of 'effectiveness' for Law. Thus, from that general definition (that is, of the genus), an operative concept of 'effectiveness' could be deduced to assess a specific area or component of the Law. For example, an operational definition of effectiveness for rights could be deduced in the case that occupies this research. Following this purpose of generalizing an effectiveness

[139] ibid 447.
[140] Acosta describes five factors that could determine normative effectiveness. The quality of the norm (a coherent, complete, and rational regulation), its functionality (or its application frequency on the intended relationships), the quality of its application (legal procedures), the quality of its interpretation (norms' selection, meaning, and scope), and the legal conscience (set of knowledge conceptions, ideas, opinions, and values of individuals about the legal system). ibid 459.
[141] ibid 450.
[142] ibid 454.
[143] ibid.
[144] ibid.
[145] Munzer (n 80); Allott (n 82); van Dijk (n 84); Snyder (n 105); Koh (n 107); Raustiala and Slaughter (n 110); Meyer (n 124); Murphy (n 130); Acosta (n 134).
[146] The concept of effectiveness does not belong exclusively to law. It is also applied in other fields of knowledge. For example, the conductivity of a cable concerning the expected loss of signal strength per kilometer and its actual performance, or a drug designed to increase a particular hormone. Such as medicine, engineering, computer science, mathematics, social sciences, biochemistry, genetics, molecular biology, physics, and astronomy. According to Scopus, in the 'effectiveness' topic, more than 10 thousand researches per year have been published in all the sciences since 1993, reaching more than 170 thousand in 2021, and Only 4.4% regarded to social sciences in 2021, and if the query is limited to the keywords 'law' and 'legislation,' there is only 358 documents in 2021. 'Scopus - Analyze Search Results for "effectiveness" | Signed In' <https://www.scopus.com/term/analyzer.uri?sid=5701b33f7cc6935d38f3635e803403bb&origin=resultslist&src=s&s=TITLE-ABS-KEY%28effectiveness%29&sort=plf-f&sdt=b&sot=b&sl=28&count=2009036&analyzeResults=Analyze+results&txGid=e82566d056c46145a5454475e854adbf> accessed 25 June 2022.

concept for Law, the common elements of the revised concepts of the laws' effectiveness are brought together in Table 1.

*Table 1: Common elements in the effectiveness of the law*

| Author | Cause | Planned effect | Real effect |
|---|---|---|---|
| **Hans Kelsen (1949-1965)** | Law | Compliance - obedience | The behavior of men conforms (or not) with the legal norms |
| **Antony Allot (1980)** | Law | Compliance | Degree of compliance |
| | Preventive law | Prevent some behavior | The extent of the diminishing of such behavior |
| | Curative law | Curate wrongs and injustices | Degree of the correction of wrongs and injustices |
| | Facilitative law | Provide respective recognition, regulation or protection | Degree of the providing respective recognition, regulation or protection |
| **Pieter van Dijk (1987)** | External effectiveness of the norm | Realization of what ought to be | The extent of such realization |
| | | Conformity of actual behavior with the standard of behavior laid down in a norm | The degree of such conformity |
| | Internal effectiveness of the norm | Shaping the values and objectives underlying the norm and reflected explicitly or implicitly in the norm | The extent of achieving such values and objectives |
| **Francis Snyder (1993)** | Implementation, enforcement and impact of law | Effects on political, economic and social life | The degree of such planned effect |
| **Harold Koh (1998)** | Law | Obedience of law | Coincidence (unawareness) |
| | | | Conformity (convenience) |
| | | | Compliance (awareness and influence for reward or punishment) |
| | | | Obedience (internalized norm in the value system) |
| **Kal Raustiala (2000)** | Law | Observable, desired changes in behavior | The extent of the desired changes in behavior |
| | | Improvement the state of the underlying problem | The extent of the improvement of the state of the underlying problem |
| | | Achievement of its inherent policy objectives | The degree of the achievement of its inherent policy objectives |
| **Timothy Meyer (2014)** | Law | Particular behavior | The degree of the achievement of the particular behavior |
| **Liam Murphy (2014)** | Law | Inducement of compliance | The degree in which law affects the behavior of the subject |
| | | Enforcement of the law | The extent of the legal system to induce compliance |
| **Pavó Acosta (2016)** | Law | Fulfillment of its practical, immediate purposes by influencing the behavior of its recipients in the intended sense | The degree in which the addressees of the norm obey it |
| | | | The degree the judges apply the norms |

*Source*: Self-made on the basis of the authors mentioned.

All the cited authors identified three main elements when referring to effectiveness: a cause, a planned effect, and a real effect. [147] Thus, all authors identified the law or the norm as the cause. Regarding the intended effect (purposes, objectives, or finalities), they varied between compliance, obedience, application of the law, and the law's influence on society, the economy, or politics. They also acknowledged the cause's ability to produce effects or achieve those ends in reality. Following this, they understood that it was necessary to compare the planned effect with the actual effects produced to evaluate the effectiveness.

The need for causation became increasingly evident throughout the evolution of the effectiveness concept yielded from the literature review. That is, not only should the cause have the possibility of producing its purpose, but it actually produces the result to some extent. There would be a spurious correlation and no effectiveness if the identified object were not the cause of the effect. In the unemployment example, it is necessary to prove that the law produced the decrease in unemployment or that this decrease was at least concurrent with other causes and not due to an independent cause, such as, for instance, a significant improvement in the economy. [148] The simple demonstration of the effect's existence does not prove the cause.[149] For this reason, effectiveness differs from mere compliance. While the latter might assume causality,[150] but may occur for various reasons or causes, in the effectiveness, the cause must be the reason for the effect. With this, Koh's coincidence is overcome.

Bearing in mind these elements, it is possible to generalize the notion of effectiveness. *It is a criterion to measure or evaluate the degree of achievement of the planned effects of any set of defined Law causes in contrast to the actual effects produced, provided that the condition of causation is met.* In the comparison between the planned effect and the actual effect it is feasible to tell the effectiveness of a cause. If the real effect equals or surpasses the intended effect, [151] then the object is effective or more effective. If the real effect is less than expected, it is less effective or ineffective. In any case, a measure (a percentage or any quantum) or a qualitative evaluation (e.g., a previously defined scale or indicators) should determine or estimate the degree of effectiveness of an object regarding its specific effect or effects (see Table 2).

In theory, it could be said that it is possible to measure or assess the effectiveness of any given legal or juridical phenomenon, as long as it is capable of producing effects and has expected or planned effects inside or outside of the legal system. Therefore, 'effectiveness' is a generic parameter requiring: (a) a

Catherine Soanes and Angus Stevenson (eds), *Oxford Dictionary of English* (2nd ed., rev, Oxford University Press 2005) 555.ibid 1182.John Aldrich, 'Correlations Genuine and Spurious in Pearson and Yule' (1995) 10 Statistical Science 364.Raustiala (n 81) 398; Meyer (n 124) 169.Acosta (n 134) 454.[147] The Oxford Dictionary defines effectiveness using these three elements as well. 'Effective' is an adjective that means the 'successful in producing a desired or intended result.' Catherine Soanes and Angus Stevenson (eds), *Oxford Dictionary of English* (2nd ed., rev, Oxford University Press 2005) 555. Furthermore, when the suffix '*-ness'* is added to 'effective,' it becomes a noun, referring to the state or condition of being effective, according to ibid 1182.

[148] This could be an example of the so-called *spurious correlations* John Aldrich, 'Correlations Genuine and Spurious in Pearson and Yule' (1995) 10 Statistical Science 364.

[149] For instance, how many tourists are in the position to declare their precise awareness of the content and limits of the foreign Law of the country where they are? Nonetheless, they usually fulfill it. Additionally, how many of them can affirm that they are acting within this legal framework because of it. In many scenarios, people act according to the Law without knowing it.

[150] Cf. Raustiala (n 81) 398; Meyer (n 124) 169. This authors use the same principles but in a narrow sense.

[151] With an approximation to Acosta (n 134) 454.

defined cause or a determined object.[152] (b) A planned effect of the cause.[153] Finally, (c) its actual effects, considering its causation with the cause.

*Table 2: Measurement or evaluation of effectiveness*

Given that $E = c \rightarrow e\ (r - p)$

| If | | Then | |
|---|---|---|---|
| | | Quantitative | Qualitative |
| | In percentage | E | |
| (r - p) > 0 | (100% - 80%) to (81% - 80%) | 20% to 1% | More effective |
| (r - p) = 0 | (100% - 100%) | 0% | Effective |
| (r - p) < 0 | (99% - 100%) to (1% - 100%) | -1% to - 99% | Less effective |
| | (0% - 100%) | -100% | Ineffective |

*Source:* Self-made.
*Note*: Effectiveness (E), cause (c), effect (e), real effect (r), and planned effect (p).

According to the scale of time and the possibility of changes, one can consider phenomena as variant or invariant in time. There is the possibility to approach the effectiveness of an object in producing its effects during a defined period, as an invariant phenomenon, or comparing the different occurring effects within a period (that is, a longitudinal analysis). In both scenarios, the definition of *effectiveness* remains the same.

Evaluating or measuring the effectiveness of an object is not inquiring about the reasons or efficiency of such effectiveness.[154] Effectiveness only considers the causality, as mentioned earlier, comparing the desired effects with the real ones. It does not intend to explain the reasons for such correlation (why the cause produces the effect) nor if such correlation achieves maximum productivity and minimum wasted

[152] E.g., norms, declarations, treaties, conventions, recommendations, contracts, customs, rights, duties, legal procedures, precautionary measures, legal sanctions or punishments, benefits, case law, adjudications, legal communications, among others.

[153] For instance, adequately complying with international legal standards when legislating, subsuming or applying the norms to a specific case, achieving knowledge of the material truth of the facts before the ruling, change in the behavior of a population or individuals, direct or indirect improvement of development, economy, governance, social coexistence or environmental issues, the rehabilitation, deterring or recidivism of the condemned, reduction of criminality, and so on. The examples regard variegated, broad, and generic ideas. The UN's previous Millennium Development Goals or the current Sustainable Development Goals are also possible examples to use as planned effects. These generic ideas, which might involve criticism, contradictions, and imprecisions, are intended only to depict the point. A more precise example would be to assess the effectiveness of a tax incentive rule whose planned effect is to increase state revenues of the year by 20%.
Ryan Fortson and Jacob A Carbaugh (2014) understood that: '[t]here are many ways in which the effectiveness of tribal courts may be defined, with corresponding differences in the measures employed. Effectiveness may be measured, for example, in terms of recidivism rates of participants, judicial satisfaction with the tribal court process, defendant/litigant satisfaction with the tribal court process, and victim and community-wide satisfaction with the tribal court process.' Ryan Fortson and Jacob A Carbaugh, 'Survey of Tribal Court Effectiveness Studies' (2014–2015) 31 Alaska Justice Forum 1, 16.

[154] While effectiveness 'concerns meeting the objectives set and achieving the intended results', efficiency regards to 'getting the most from the available resources,' and economy 'means minimizing the costs of resources' as defined in: 'Auditing guidelines 4 | Site ISSAI' para 8 <http://www.issai.org/main.jsp?doui_processActionId=setLocaleProcessAction&locale=pt_BR&lumA=1&lumII=8A8182D5564672AE015647B9A5FD3552&lumPageId=8A8182D55636FE56015646249C8E22DF> accessed 14 April 2019.

effort or expense.[155] Nonetheless, when evaluating the effectiveness of any given object, it is likely also to revise the reasons for its effects since the cause producing the effect is the precondition of effectiveness. Then, the questions are whether the cause produced the effect and to what extent the effect occurs influenced by the cause. In other words, whether an object produces the effect as in a causality relationship.

To refer that an object is the 'cause' and that certain phenomena are 'effects' does not mean that they really are a 'cause' and 'effect.' An effectiveness study could determine if this causation exists at a given time and circumstance. Before this study, that an object is a cause, and the subsequent phenomena are effects implies only the approach of a hypothesis. In addition, since these are legal phenomena that correspond to the 'ought to be' rather than the 'is,' it is feasible that causality disappears or changes at another time and circumstance.

## Effectiveness of the Rights

Following the plan outlined, the general definition of the Law's effectiveness and its elements are applied to deduce and propose an operational definition of the rights' effectiveness adapted to its particularities.

The effectiveness of laws underlies the translation from standards to reality, from specific rules to their compliance, changing the subject's behavior to abide by the norms and fulfill the laws' purposes as a consequence of their prescriptions. In other words, to adjust the subject's behavior to the standard of conduct defined by laws in reason or because of them. Such effectiveness is nomo-centric: it revolves around the whim of the norms.

Although some legal rules contain rights, not all rights are enclosed in a binding norm, nor does every norm includes rights. Legal standards tend to shape peaceful coexistence for the group's survival,[156] 'coordinate peoples' actions … and make their actions compatible.'[157] Pieter van Dijk defined a norm as a standard of behavior '[o]n the basis of a norm one can determine how one ought to behave in a particular situation'.[158] The norms impose effects to achieve their goals, among which are, for example, sanctions in the event of noncompliance.[159]

On the contrary, rights do not prescribe a standard of conduct or behavior for the right holder. Rights are mainly related to freedom. The right holder does not have the duty to act, omit, or seek a specific goal but the power to decide and choose how to attain his expected benefits, objectives, or ends. As the legal norms, rights are instruments or means to reach purposes. Nevertheless, while the goals of the first are filled with the legislator's purpose, the objectives of the rights also pertain to its holders based on their own genuine interests. Rights are vehicles that allow everyone to achieve their objectives.[160]

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[155] Cf. Jane Stapleton in Lawyer-Economist: Marginalized Causation in Helen Beebee, Christopher Hitchcock and Peter Charles Menzies (eds), 'Causation in the Law', *The Oxford handbook of causation* (Oxford University Press 2009) 762–764.
[156] Norberto Bobbio, *El tiempo de los derechos* (Editorial Sistema 1991) 103.
[157] Michael Adams, 'Norms, Standards, Rights' (1996) 12 European Journal of Political Economy 363, 366.
[158] van Dijk (n 84) 12.
[159] Bobbio (n 156) 76–77.
[160] Dworkin differentiates right-based and duty-based political theories. The former is 'concerned with the independence rather than the conformity of individual action. They suppose and protect the value of individual thought and choice' Dworkin (n 129) 172. On the contrary, the duty-based theory concerns 'the moral quality of

Subsequently, the rights' effectiveness shall differ from the laws' effectiveness since purposes also belong to their holder, i.e., to the subject entitled to them. Their effectiveness shall be construed from the objectives set by their holders. Then, the right holder becomes relevant, using (her) rights to act a certain way to satisfy her pursuits. While acting in such a way, that person will hardly prioritize or even consider laws' objectives.[161] Thus, the aims set by the right holder are as practical or empirical as simply walking to work instead of taking a taxi to exercise or drinking tap water to satisfy her thirst. The practical purposes chiefly define the acts and omissions of people, since their actions tendentially point to freedom, generating a possible tension with the limits established by law.

However, it is stressed that the Law translates ex-post such actions and omissions to qualify them as licit or illicit, elucidating the current limits, rights, and related legal norms.[162] Actions exist independently of the law and whether they are considered an exercise of rights or as a transgression to its limits. As a result, while the laws' effectiveness tries to translate laws' effects into reality by pursuing their goals, rights' effectiveness concerns the right holder's practical interests and objectives. Then, if effectiveness is a criterion to measure or evaluate the degree of achievement of the planned effects of any set of designed causes in contrast to the actual effects produced, then rights' effectiveness shall consider the practical purposes set by the right holder and the real ones attained in the exercise of rights.

## *Having a Right*

### *Rights are Relational and Grant Discretion to Their Holders*

One would deem rights important only if they are hindered, impeded, or affected at some point by others. In such a situation, rights are used to claim and try to obtain or regain their recognition by demanding others to refrain from trying to affect or ignore them in any way possible. For instance, if a court of justice ignores the duty to provide a due process, the affected party is entitled to (or has the right to) demand the court. Dworkin said: 'an individual has a *right* to a particular political act, within a political theory, if the failure to provide that act, when he calls for it, would be unjustified within that theory even if the goals of the theory would, on the balance, be disserviced by that act.'[163]

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his acts, because they suppose that it is wrong, without more, for an individual to fail to meet certain standards of behavior.' ibid.

[161] It should be admitted that this will not be the case in relatively extreme situations where there is an internalized feeling of affectation toward other people or society, in which the violation of the Law might be presupposed. Thus, in these situations, possibly the feeling of illegality and rupture of the social order will be present in the act or omission of people.

[162] 'Si los particulares, en las relaciones entre ellos, son dueños de perseguir, en virtud de su autonomía, los fines prácticos que mejor responden a sus intereses, el orden jurídico es, con todo, árbitro de ponderar tales fines según sus tipos, atendiendo a la trascendencia social, tal como él la entiende, conforme a la sociabilidad de su función ordenadora.' Emilio Betti, *Teoría General del Negocio Jurídico* (Segunda edición, Editorial Revista de Derecho Privado 1943) 50.

The exercise of rights encompasses at least two different dimensions. The so-called 'is' (*Sein*) and the 'ought to be' (*Sollen*), i.e., the natural or existent factual reality (is) and the legal dimension (ought to be). For the exercise of rights, the 'is' is construed as peoples' actions and omissions independently of their legal examination and categorization. On the other hand, the 'ought to be' corresponds to the Law as a sum of principles, statutes, standards, decisions, freedoms, limits, and sanctions, among others, that were developed to regulate the subject's behavior to some extent.

[163] Dworkin (n 129) 169. The referred quote dwells in the context of political goals (as a state of affairs) and political duties (raised within a political theory) regarding the use of the social contract and his discussion with Rawl.

Rights are relational, i.e., they are functional to require others to perform their duties toward recognizing and complying with them, especially when rights might be affected in any possible way. This sense of rights also grounds their relevance and justifies their legitimacy: they have sufficient inner reason to impose duties on others. Wesley Newcomb Hohfeld, in his 1913's famous analysis,[164] identified four kinds of rights:[165] (claim) right, privilege (freedom), power (ability), and immunity.[166] They always regard a relation between two subjects and an action or ascription.[167] Hohfeld presents the possible relations that subjects may have through *correlatives* (i.e., whereas as one subject has a particular position, the related person shall have a defined other position) and *opposites* (i.e., exhibiting that it is not possible that the same subject, at the same time and regarding the same object has the same position). Under the name of Jural Correlatives, he identified the following four: right – duty, privilege – no-right, power – liability, and immunity – disability, clarifying that claim-right, liberty (or legal freedom)-privilege, ability-power, and exemption-immunity prove to be synonyms.[168] Under Jural Opposites, Hohfeld distinguishes the following four: right – no-right, privilege – duty, power – disability, and immunity – liability. [169]

Hohfeld further exemplifies that a *claim-right*[170] fits in the instance: 'if X has a right against Y that he shall stay off the former's land, the correlative (and equivalent) is that Y is under a duty toward X to stay off the place.'[171] Following the previous example, *liberty* or *freedom* is that X 'himself has the privilege of entering on the land; or, in equivalent words, X does not have a duty to stay off.'[172] Since *power* is the 'volitional control… to affect the particular change of legal relations',[173] X has the power or ability to abandon his property, 'and -simultaneously and correlatively- to create in other persons privileges and powers relating to the abandoned object -e.g. the power to acquire title to the latter by appropriating it.'[174] The other persons are *liable* because their relations with X are altered. Finally, given that *immunity* is 'one's freedom from the legal power or "control" of another as regards some legal relation,'[175] X has the power to alienate his land to Y or others but has immunities against them since all of them are under *disability* regarding shifting their legal interest: they cannot alienate X's property.[176]

It is notable that, in some examples of Hohfeld, the so-called privileges and powers might pertain to activities that the right holder can adopt if he chooses to, and regardless of the referred relation with others, as the instances of entering or abandoning the land depicted. Furthermore, claim rights also admit the right holder to decide whether to claim against the duty bearer or not. Consequently, liberty

[164] Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays* (Yale University Press 1920) ch Some Fundamental Legal Conceptions as Applied in Judicial Reasoning I.
[165] Marlies Galenkamp, *Individualism versus collectivism: the concept of collective rights* (Gouda Quint 1998) 46; John Finnis, *Natural Law and Natural Rights* (Repr with corr, Clarendon Press 2002) 199.
[166] The author considers two possible jural relations. The opposites: right-no-right, privilege-duty power-disability, and immunity-liability. The correlatives: right-duty, privilege-no-right, power-liability, and immunity-disability. A relation between the right holder and the duty bearer happens only in the right-duty correlation. Besides, there is always a duty when there is a (claim) right, but conversely, it is not necessarily the case.
[167] Finnis (n 165) 199.
[168] Hohfeld (n 164) 38, 47, 51, 62.
[169] ibid 36.
[170] ibid 38.
[171] ibid.
[172] ibid 39.
[173] ibid 51.
[174] ibid.
[175] ibid 60.
[176] ibid.

and not impositions are the hallmark of rights. At the same time, the relationships that exist between subjects in this theory are noteworthy, for example between the right holder and the duty bearer or between who has immunity and who has the correlative disability.

In the Essays in Jurisprudence and Philosophy, H.L.A. Hart builds a notion of rights[177] when discussing the Bentham's notion of rights ('[w]hat you have a right to have me made do, is that which I am liable according to law upon a requisition made on your behalf to be punished for not doing'[178]). He understands the expression *'a legal right'* as a true statement if the following conditions are satisfied: a subject having a right within a legal system in which, in reason of this right, other subject or subjects are obliged to do or abstain from some action if (and only if) the right holder chooses to 'draw a conclusion of law in a particular case which falls under such rules.'[179] Although the relationship between rights and duties is also evident in this notion, the author emphasizes that such a possible outcome depends on the subject's choice, that is to say, that rights open the possibility to the right holder to act or omit to act:

> 'Instead of characterizing a right in terms of punishment many would do so in terms of the remedy. But I would prefer to show the special position of one who has a right by mentioning not the remedy but the choice which is open to one who has a right as to whether the corresponding duty shall be performed or not. For it is, I think, characteristic of those laws that confer rights (as distinguished from those that only impose obligation) that the obligation to perform the corresponding duty is made by law to depend on the choice of the individual who is said to have the right.' [180]

However, D.N. MacCormick, in his Rights in Legislation's essay in honor of Hart,[181] explains that his *will theory of rights* admitted three classes of rights. The ones that have a correlative duty (if the right holder, who has the power, chooses to claim), the liberty rights and power rights (the law recognizes actions and choices of individuals to achieve changes), and the immunity rights (lack of power of others in front of the own liberties).[182] Highlighting the relationships that exist between the subjects that occupy those possible relationships, MacCormick *asserted* that:

> 'what gives the concept "right" its particular function and utility in legal language is that it draws attention to those relationships in which rules of law confer on one individual special recognition of his will or choice as predominating over that of others in the relationship.'[183]

It also could be the case for Joseph Raz, who gave the following rights' definition: ' "X has a right" if and only if X can have rights, and, other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty.'[184] He comprises that *interests*

[177] Hart considers it *unilluminating* and *misleading* to define legal notions separately (as a word for word) because of their complexity. He prefers understanding the terms in giving phrases and contexts. H.L.A. Hart approximates Bentham's method of paraphrasing as he explains HLA Hart, *Essays in Jurisprudence and Philosophy* (Clarendon Press ; Oxford University Press 1983) ch Essay 1 Definition and Theory in Jurisprudence.
[178] ibid 34.
[179] ibid 35.
[180] ibid.
[181] PMS Hacker and Joseph Raz (eds), 'Rights in Legislation', *Law, morality, and society: essays in honour of H. L. A. Hart* (Clarendon Press 1977) 189–209.
[182] ibid 193–195.
[183] ibid 194–195.
[184] Joseph Raz, *The Morality of Freedom* (Clarendon Press; Oxford University Press 1986) 166. 'The specific role of rights in practical thinking is, therefore, the grounding of duties in the interests of other beings.' ibid 180. However, Raz admits that 'there is much about statements of rights which cannot be learned from my definition alone,' explaining that: 'One needs to distinguish a right to perform an act from a right in an object, and that from

are the basis of the rights,[185] and these, in turn, are the basis of the duties of others. 'The interests are part of the justification of the rights which are part of the justification of the duties.'[186] As a consequence, the author holds as essential that '[r]ights ground duties'[187] (and in some cases 'they may ground many duties not one'[188]), making explicit the existing relation between right holders and duty bearers, and also recognizing that rights entail powers to the right holder to decide to act or not.

Feinberg, in his work *The Nature and Value of Rights* said that to have a right 'is to have a claim against someone whose recognition as valid is called for by some set of governing rules or moral principles.'[189] However, just before reaching such a conclusion, the author accepts, after discussing with H.J. McCloskey,[190] that all rights 'seems to merge entitlements to do, have, omit, or be something with claims against others to act or refrain from acting in certain ways,'[191] i.e., rights encompasses both, *a right to* and a *right against*.[192] The author asserts that both elements could be present to different degrees in individual cases.[193] Although it is possible to argue that both discretion and relationality can be inferred in these two classes of rights, the discretion of the right holder becomes more evident in the case of *rights to,* and the relationship trait is more prominent in the *rights against*.

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a right to an object, and that from a right to a service or a facility, and that again from "a right to…" where the dots stand for an abstract noun. A right to use the highway, for example, is a liberty right to use the highway or a right to have that liberty. A right in a car may be a right of ownership in the car, or some other right in it. Detailed explanations of rights are in part linguistic explanations (a right in a car differs from a right to a car) but in part they depend on political, legal or moral arguments (does a right to free speech include access to the mass media or to private premises?)'ibid 167. Among his examples, the author refers the powers that rights grant (the employer's powers of decision over some actions of his employees) but he concludes that '[t]o simplify I shall not dwell specifically on rights as the grounds of powers.' ibid 168.

[185] When Raz explains core and derivative rights, he explains that '[m]y right to walk on my hands is not directly based on an interest served either by my doing so or by others having duties not to stop me. It is based on my interest in being free to do as I wish, on which my general right to personal liberty is directly based' Raz (n 184) 169.

[186] ibid 181.

[187] ibid 186. Raz continues, '[t]o say this is not to endorse the thesis that all duties derive from rights or that morality is right-based.' ibid. Moreover, when he is explaining the correlativity of rights and duties, he asserts that '[i]t is wrong to translate statements of rights into statements of 'the corresponding' duties. A right of one person is not a duty on another. It is the ground of a duty, ground which, if not counteracted by conflicting considerations, justifies holding that other person to have the duty... there is no closed list of duties which correspond to the right… A change of circumstances may lead to the creation of new duties based on the old right… This dynamic aspect of rights, their ability to create new duties, is fundamental'. ibid 171.

[188] Raz (n 184) 170–171.

[189] Joel Feinberg and Jan Narveson, 'The Nature and Value of Rights' (1970) 4 The Journal of Value Inquiry 243, 257. Feinberg asserts that 'the concept of a right is a "simple, undefinable, unanalyzable primitive" (…) We would better advise, I think, not to attempt a formal definition of either "right" of "claim," but rather to use the idea of a claim in informal elucidation of the idea of a right.' ibid 251.

[190] Feinberg cites H. J. McCloskey, "Rights," *Philosophical Quarterly*, Vol. 15 (1965), p. 118, 'who holds that rights are not essentially claims at all, but rather entitlements (…) My right to life is not a right against anyone. It is my right and by virtue of it, it is normally permissible for me to sustain my life in the face of obstacles. It does give rise to rights against others in the sense that others have or may come to have duties to refrain from killing me, but it is essentially a right of mine, not an infinite list of claims, hypothetical and actual, against an infinite number of actual, potential, and as yet nonexistent human beings ... Similarly, the right of the tennis club member to play on the club courts is a right to play, not a right against some vague group of potential or possible obstructors' Feinberg and Narveson (n 189) 255–256.

[191] ibid 256.

[192] ibid.

[193] 'In some statements of rights the entitlement is perfectly determinate (e.g. to play tennis) and the claim vague (e.g. against "some vague group of potential or possible obstructers"); but in other cases the object of the claim is clear and determinate (e.g. against one's parents), and the entitlement general and indeterminate (e.g. to be given a proper upbringing.) If we mean by "entitlement" that to which one has a right and by "claim" something directed at those against whom the right holds' ibid.

John Finnis asks: 'is there some general explanation of what it is to have a right?'[194] Although he does not respond to it, he presents two possible answers. a) Rights as *benefits* or *advantages* for the right holders: 'being the recipient of other persons' acts … being legally or morally free to act; … being able to secure any or all of the foregoing advantages by action at law, or at least compensation for wrongful denial of any of them.'[195] b) Rights as the recognition and respect of *choices* of the right holder: 'either negatively by not impeding or obstructing it (liberty and immunity) or affirmatively by giving legal or moral effect to it (claim-right and power).' [196] Immediately then, and taking advantage of the words and a concession made by Hart, Finnis explains that when talking about 'certain freedoms and benefits… as essential for the maintenance of the life, the security, the development, and the dignity of the individual'[197] both answers are *inadequate* because 'the core of the notion of rights is neither individual choice nor individual benefit but basic or fundamental individual needs'[198] or 'basic aspects of human flourishing.'[199] Then, Finnis defines *rights* using, to some extent, the notions of Hohfeld,[200] asserting that:

> 'We may safely speak of rights wherever a basic principle or requirement of practical reasonableness, or a rule derived therefrom, gives to A, and to each and every other member of a class to which A belongs, the benefit of (i) a positive or negative requirement (obligation) imposed upon B (including, *inter alia*, any requirement not to interfere with A's activity or with A's enjoyment of some other form of good) or of (ii) the ability to bring it about that B is subject to such a requirement, or of (iii) the immunity from being himself subjected by B to any such requirement.' [201]

Nonetheless, Finnis admits Hohfeld's definition[202] and his application to human rights. The right holder has both a claim right (i and ii) that portrays the relational characteristic of rights and the liberty to act (iii).

To conclude this part, it is emphasized that the rights have a relational nature and that, in consequence, they become relevant in the circumstances in which the right holders and duty bearers have a current relationship. Therefore, the effectiveness of rights also shares this necessary presupposition.

## *An External Function of Rights*

A right holder can claim against others not to interfere or affect her rights. This characteristic of rights is paramount because otherwise, no one could logically say to 'have a *right to'* if it would be possible, at the same time, that someone else could legally affect, limit, or deny it. It is self-evident that such an approach to rights is not only intended when rights are affected because it also serves as a theoretical description and justification for them. The function of rights, in this sense, is *external:* it refers to the

[194] Finnis (n 165) 203.
[195] ibid 204.
[196] ibid.
[197] ibid 205.
[198] ibid.
[199] ibid.
[200] ibid 199–205.
[201] ibid 205.
[202] When Finnis refers to Hohfeld's definition, he asserts that 'in the discussion of human rights … although powers and immunities from the exercise of powers do indeed play a less prominent role in such discussions than claim-rights and liberties, it would be a mistake to overlook them… Still, the most important of the aids to clear thinking provided by Hohfeld's schema is the distinction between A's *claim-right* (which has as its correlative B's duty) and A's *liberty* (which is A's freedom from duty and thus has as its correlative the absence or negation of the claim-right that B would otherwise have).'ibid 200.

duty bearers that must refrain from interfering with the rights and, consequently, providing the right holder with the possibility to claim against them. Perhaps by claiming rights they acquire a tangible presence that daily activity mimicked before. The duties comprise, in general, negative actions related to not interfering with the rights of others.[203] However, they might also include positive actions, for instance, the State that must legislate to implement the right it recognized through an international convention.

This notion of rights leaves a gap as to what is that 'right' that others have a duty not to interfere with or hinder. This gap could be filled with the actions that the right holder may exercise if he chooses to, within a legal system;[204] i.e., Feinberg's entitlements, Hohfeld's privileges and powers; Raz's interests and powers; Finnis' freedoms and benefits; or the choices, liberties, and powers that Hart insinuated. In any case, none of these authors denied such faculties to the right holder. This characteristic of rights is quite fundamental as well because otherwise, no one could logically say to have a right to if the right holder would have, at the same time, the duty to act the right. Moreover, the exercise of rights is related to elections and decisions that could also involve the possibility of not acting them.[205]

In this approach, a right could be defined as a 'situación estructuralmente caracterizada por un *agere licere* que, por el aspecto del contenido, se traduce en una *facultas agendi* para la realización del interés.'[206] In other words, it is an allowed potential act *(agere licere)* that grants an ability to act or not *(facultas agendi)* to fulfill interests or practical purposes.

## *An Internal Function of Rights and a Legal Approach to Rights*

The function of rights in this sense is *internal*: it refers to its content as the faculties and powers endowed to the right holder and the activities that she might choose to exercise. It is highlighted that such an internal approach and freewill logic has the general condition of limits. For instance, 'there are absolute human rights' [207] whose realization could not be left to the choice or waiver of their holders (e.g., the right to live). Hence, the legal framework limits the content and exercise of rights, sometimes basing

[203] 'If a general rule gives me a right of noninterference in a certain respect against everybody, then there are literally hundreds of millions of people who have a duty toward me in that respect; and if the same general rule gives the same right to everyone else, then it imposes on me literally hundreds of millions of duties--or duties towards hundreds of millions of people. I see nothing paradoxical about this, however. The duties, after all, are negative' Feinberg and Narveson (n 189) 256.

[204] For instance, cf. J. Srzednicki, 'Rights and Rules' (1971) Philosophical Quarterly 21, 315, cited by Robert Paul Finch, 'A Theory of Rights' (Duke University 1976) 28., who considers that rights are entitlements that rules guarantee. The author says that a rule, as a formula expressing expected behavior, may have three functions: '(1) … enjoin certain behavior (demanding an expected performance), (2) ... leave one a freedom (by being silent on a given matter), (3) … guarantee one the enjoyment of a certain good.'

[205] For example, when casting a vote, the right concerns the freedom to choose one of the given alternatives or to abstain from voting. It is also conceivable that an interested party refrains from claiming or demanding her rights and achieving her practical ends for any given reason. For instance, she might be indifferent to some particular rights or her rights in general, or is assuming a strategic behavior (benefits and costs, rights bargain, or waiting for a change), or does not want to claim because she tried once before and the outcome was wrong or did not change her reality. '[O]ne might have a claim without ever claiming that to which one is entitled, or without even knowing that one has the claim; for one might simply be ignorant of the fact that one is in a position to claim; or one might be unwilling to exploit that position for one reason or another, including fear that the legal machinery is broken down or corrupt and will not enforce one's claim despite its validity' Feinberg and Narveson (n 189) 253.

[206] Lina Bigliazzi Geri and others (eds), *Diritto civile. 1,2: Fatti e atti giuridici* (UTET 2001) 370 T.I, V.1. The definition given by the author exists in the context of the general law that is possible to apply both to public and private law.

[207] Finnis (n 165) 225.

them on the legitimate interests of others [208] and circumscribing the field of actions and omissions where the right holder may exercise them licitly. Raz explains that '[r]egarded from the opposite perspective, the fact that rights are sufficient to ground duties limits the rights one has.'[209]

Then, rights' effectiveness analysis shall consider that rights imply right holders' freedoms, duty bearers' obligations, and a legal system that limits and defines both.[210] Therefore, within rights' contents and limits, effectiveness shall concern the extent of the satisfaction of the rights holders' interests and the degree to which right holders can impose the performance of duties on their duty bearers to accomplish their purposes. Thus, one should be aware of the specific characteristics, contents, and general scope of the right under evaluation.

As one might notice, this is a legal approach to rights since the legal order defines the rights (their contents and limits) and their correlated duties.[211] This approach, which might be challenged on its justice and morality, is useful regarding the rights' effectiveness. The rights' contents and limits in a legal-based theory are far more evident and recognizable than in a moral-based theory. The former provides certainties when analyzing their effectiveness by contrasting their legal contents and limits with the actions carried out by the subjects to satisfy their interests.[212] Taking the positivist words of H.L.A. Hart:

> 'if there is a dispute as to whether a man has some legal right and what its scope is, this is an issue about an objective ascertainable fact which can be rationally resolved by reference to the terms of the relevant positive law, or failing that, by reference to a court of law. No such rational resolution or objective decision-making procedure is available to settle the question whether a man has a natural non-legal right.'[213]

However, assessing the effectiveness of legal rights allows one to construe, analyze, and criticize a particular legal order when legitimate interests and expectations are not met.[214] Taking the non-positivist

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[208] Bigliazzi Geri and others (n 206) 373. Besides, Article 32.2 of the American Convention on Human Rights "Pact of San José, Costa Rica" limits each person's rights "by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society." Such a general limitation to rights is not included in the European Convention and the International Covenant on Civil and Political Rights. Robert E Norris and Paula Desio Reiton, 'The Suspension of Guarantees: A Comparative Analysis of the American Convention on Human Rights and the Constitutions of the States Parties Symposium: The American Convention on Human Rights' (1980–1981) 30 American University Law Review 189, 193.

[209] Raz (n 184) 183. 'The definition requires that the right is a sufficient reason for a duty … where the conflicting considerations altogether defeat the interests of the would-be right-holder, or when they weaken their force and no one could justifiably be held to be obligated on account of those interests, then there is no right. Where the conflicting considerations override those on which the right is based on some but not on all occasions, the general core right exists but the conflicting considerations may show that some of its possible derivations do not.' ibid 183–184.

[210] Although rights impose duties, not all duties are grounded in the rights of others. Cf. Feinberg and Narveson (n 189); Finnis (n 165); Hohfeld (n 164); Raz (n 184).

[211] 'Legal rights are those following from a correct interpretation of the legal system' would tell Dwight Newman when discussing the moral justification of rights in Dwight G Newman, *Community and Collective Rights: A Theoretical Framework for Rights Held by Groups* (Hart Pub 2011) 11.

[212] Thus, *prima facie* and under the point of view that rights are conferred to accomplish lawful ends within their limits, it would be as futile to deem ineffective a right by trying to impose duties on others that the law does not impose, as by requiring faculties that the right does not *grant* or that are beyond its limits.

[213] Hart (n 177) 185.

[214] '[R]ights are a reason for judging a person to have a duty, and saying that they are reasons for imposing duties on him.' Raz (n 184) 172. A right could be legally admitted (legal right) despite one or more of its correlative duties are not yet legally admitted (they remain as moral duties). If the current reality might require the legal recognition of those duties, it 'is a ground for the authorized institutions (Parliament or the courts) to impose such

words of Dworkin '[i]n practice the Government will have the last word on what an individual's rights are, because its police will do what its official and courts say. But that does not mean that the Government's view is necessarily the correct view'. [215]

Since limits are legal restrictions that define the right holders' legal fields of action, the rights' effectiveness should consider them rather than their freedoms (faculties and powers). Conversely, these rights limits also demark the duty bearers' obligations: the limits of the fields of action of the right holder that they must refrain from interfering. Then, within the right's content and limits, effectiveness may refer to the satisfaction degree of the rights holders' interests and the extent to which they can impose the performance of duties on their duty bearers to achieve their purposes.

The interplay between reality (actions and omissions of right holders and duty bearers) and legality can be resumed in three possible outcomes. First, there could be a coincidence between reality and legality, where the subjects' behavior could be termed as *licit* or within legal limits. Second, the behavior could be construed outside legal limits or *illicit*. Finally, a licit legal area could exist in which reality was indifferent to it. Accordingly, when measuring or evaluating the rights' effectiveness, both the reality (actions and omissions) and the legality must be considered concerning these three outcomes.

## *A General Approach to Rights' Effectiveness Assessment*

A scheme of relationships between a cause (the legally established right) to a planned effect and a real effect is proposed to assess the effectiveness of rights. In this sense, it is argued that the effectiveness of rights contains two legal causality relationships. The first occurs between the given cause and its right holder's planned effect or purpose. The second causal relationship occurs in the practical application of that cause and the actual effects that it produces. These causal relationships remain differentiated since the first is an abstract causal relationship and the second, on the other hand, is a practical legal causal relationship that could happen in reality.

It is worth noting that the cause of both causal relationships is the same right, with the difference that, when it comes to the abstract relationship, the right itself is relevant, that is, in its content, limits, and internal and external functions. On the other hand, in the practical relationship, the actual exercise of this right is relevant. Furthermore, the right must be the same for both relationships since the effectiveness assessment supposes that the effects to be contrasted emerge from the same cause.

### *The Cause*

Identifying rights' limits and the awareness that can be had over them becomes intricate, are usually broad, and are exercised and construed differently. Furthermore, the legal limits of rights are dynamic, there is no necessary clarity in their extent and definition, and they might vary in local, regional, and universal contexts. For example, history eloquently shows the constant changes that legal orders underwent over the years in their quest for legitimacy and rightfulness.[216] Moreover, the differences among local, regional, and universal legal orders, regardless of their sources, extent, or binding nature,

a duty… If and when they do so, they will be making new law. But they will do so on the ground that this is justified and required by existing law.' ibid.

[215] Dworkin (n 129) 184–185.

[216] For example, the end of slavery or the universal recognition of the dignity and equality of all humans. However, it is possible to instantiate many particular cases where the opposite happened, such as the Nazi Germany legal regime (1933-1943).

display that some rights are granted in some contexts and not in others.[217] Language imprecisions and open possibilities to interpret and reinterpret the law may also result in changes in jurisprudential lines. The multiplicity of values, cultures, and legal systems that could exist in a specific context can also be added to this problem, as well as the existing shift in some legal wording from 'granting' to 'recognizing' rights, as realizing they may have an independent existence outside the limits of the positive law and the discretion of the states.[218]

This reality could imply that people interpret their rights in multiple ways and are rarely aware that they are constantly using them to achieve their ends or know which of them they are using. On the contrary, it is common knowledge that people believe in the legality and illegality of their acts for reasons that have more to do with their intuition and common sense than with the precision and completeness of their knowledge about them. Subsequently, even if persons can perceive the effectiveness of their rights to the extent of the accomplishment of their goals or deem them as ineffective if their planned effects are not met or are limited or denied, it does not mean that their rights are effective or not, nor that those are the specific or the only rights at stake.[219]

Then, establishing the cause of effectiveness is a task that requires legal analysis through interpreting reality to identify what would be the right or rights used by people, in the sense of instruments or means, to achieve the practical ends that motivate their actions. It is emphasized that it is about identifying a previously existing right that could cause the expected effect.

Once the right has been identified, its components must be defined in a localized environment since it is about evaluating the effectiveness of that right within its context. As noted, rights' effectiveness varies according to the legal framework of each country and the people involved in their exercise and enforcement. Consequently, it is necessary to describe that right's scope, limits, and duties, as well as who the rights holders and duty bearers are.

Considering all the above, and despite the mentioned drawbacks, a positivist legal approach to rights rather than a moral one could be preferable for certainty when evaluating rights' effectiveness. Rights' contents and delimitations could be more apparent when counting on the objective support of a written

[217] For instance, the American Declaration on the Rights of Indigenous Peoples recognizes in its Article XXIII.2 that 'States shall consult and cooperate in good faith with the indigenous peoples concerned, through their own representative institutions, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.' However, Colombia rejected this wording in construing it as a right to veto and, therefore, limits this indigenous peoples' right through its Constitutional Court understanding that 'it means that following a disagreement "formulas for consensus-building or agreement with the community" must be presented' following the same logic, Colombia claims, of the Convention No. 169 of the International Labour Organization. American Declaration on the Rights of Indigenous Peoples (OASDRIP). Article XXIII.2 and footnote 1.

[218] For instance, 'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant (…)' of the Article 2.1 of the International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

[219] The rights awareness problem is also relevant when different interests and rights of opposing parties come into conflict. Their holders try to prevail against their opponents, although they do not always succeed. If the interested party loses, he will most certainly say that his rights are ineffective and vice versa. However, will it be possible to argue that the rights are effective for the winning party and ineffective for the losing party? What if the result is against the law or the ruling is wrong? What if the result, despite its rightfulness, does not make a change into reality? It cannot be taken for granted that people are aware of their rights or limits, quite the contrary.

formal legal framework, even though a legal translation and assessment would be required.[220] As the following quote from Hart, when explaining Bentham's attack on natural rights, soundly portrays:

> '[I]f there is a dispute as to whether a man has some legal right and what its scope is, this is an issue about an objective ascertainable fact which can be rationally resolved by reference to the terms of the relevant positive law, or failing that, by reference to a court of law. No such rational resolution or objective decision-making procedure is available to settle the question whether a man has a natural non-legal right'.[221]

Consequently, the concept of legal rights proposed by H.L.A. Hart could be applicable to achieve this goal. In his words, he 'tender[s] the following as an elucidation of the expression "a legal right":'

> *'[A] legal right':* (1) A statement of the form 'X has a right' is true if the following conditions are satisfied:
>
> (a) There is in existence a legal system.
>
> (b) Under a rule or rules of the system some other person Y is, in the events which have happened, obliged to do or abstain from some action.
>
> (c) This obligation is made by law dependent on the choice either of X or some other person authorized to act on his behalf so that either Y is bound to do or abstain from some action only if X (or some authorized person) so chooses or alternatively only until X (or such person) chooses otherwise.
>
> (2) A statement of the form 'X has a right' is used to draw a conclusion of law in a particular case which falls under such rules.[222]

Although it could be objected that the choice referred to in (c) could only be such if the right holders were aware of their rights, since it would hardly be a choice if they were not aware of their rights, the practical purpose pursued by them and motivated by their sense of legality would allow arguing that in the facts there is a choice. Indeed, people generally act without consulting the law or a lawyer to act in order to satisfy their interests. In case of causing a dispute, this de facto choice could be verified later in a process in which the contours of that legal right would be defined, i.e., and ex post facto definition. However, one could also consider that the knowledge of rights is not unequivocal and that even among legal scholars, judges, and lawyers, there are different, if not contradictory, interpretations regarding some scope and limits of rights. Thus, not only is the judicial decision that defines the content and limits of a right in a specific case debatable, but it is also possible to conclude that this de facto choice could be, in some cases, the only possible alternative despite being adopted after an overarching and thorough analysis. Therefore, it seems plausible to affirm that people choose to exercise their legal rights and that this choice binds the duty bearers regardless of whether the right holders know the right or rights they are exercising and although some of its scope and limits may be subject to interpretation or discussion, as long as a legal system defines those rights.

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[220] It is also possible to conduct a social study to identify these components in certain contexts. For example, if the aim is to evaluate the effectiveness of the rights defined by the unwritten legal framework of a specific indigenous people, taking its own Law as the basis of analysis (or cause).

[221] Hart (n 177) 185.

[222] ibid 35. In the footnote 15 of the same quoted page, the author maintains that '[t]his deals only with a right in the first sense (correlative to duty) distinguished by Hohfeld. But the same form of elucidation can be used for the cases of 'liberty', 'power', and 'immunity', and will I think show what is usually left unexplained, viz. why these four varieties in spite of differences are referred to as 'rights'.'

## *The Planned Effect*

It is not necessary to resort to laws regarding the other elements of effectiveness. Right holders are entitled and have the legitimacy to set their interests or practical purposes (termed here as planned effects) and, to some extent, the actions and omissions that should be taken to achieve them. Right holders feel and define their necessities and then act to satisfy them according to their commonsense framework.

The planned effect is a central element in this model of analysis of the effectiveness of rights since it focuses on the interest of the right holder and not on the laws' aims. Moreover, this element is not only essential to identify the cause of effectiveness since, as was seen, the right must be inferred from the practical purpose of its holder, but it is also the element that allows linking the abstract and practical causal relationships as explained later.

Due to the distinct possible practical effects that right holders may have and that rights are instrumental in achieving the ends of their holders, the same right could be the cause of a variety of planned effects. As a result, it shall be required to specify the practical purpose for which the effectiveness analysis is conducted. Although the effectiveness of a right could be established for each of its potential purposes, if the required conditions are met, it should be considered that the same right can have different effectiveness depending on the practical purpose for which it is used. For example, the effectiveness of the right to religious freedom used to profess one's faith in a private space will be different from a public space or in the context of an intolerant public of a particular belief.

Considering the above, it is also relevant to limit or expand the scope of the planned effects depending on the case. Thus, if the purpose were so generic that the effectiveness analysis would be scattered and imprecise, the accessory should be abstracted to identify the primary purpose, and conversely.[223]

Furthermore, the purpose must be within the limits of law and possibility, i.e., it must not be illegal, prohibited, or impossible. Otherwise, the right would not be able to cause any effect, and the effectiveness analysis would be meaningless. It could explain how the lack of obtaining a prohibited, illegal, or impossible objective, regardless of having claimed it judicially, would be indifferent to assessing the right's effectiveness of such aims.

Finally, it is worth pointing out the causal relationship to which the planned effect belongs. While it is a practical purpose or objective for rights holders, note that these are purely potential and abstract events that exist as of right holders' expectations. For this reason, the planned effect belongs to the abstract causal relationship as a potentially possible effect of rights.

## *Linking the Abstract and Practical Causal Relations*

The legal causal relationships that have been described as abstract and practical are the two elements of the model proposed to assess the effectiveness of rights through the contrast of the planned effects with the real ones. Both planes shall be closely related to allow a legitimate contrast of the effects.

The first linking element of these causal relationships is the cause since it shall be the same right in both cases. However, having the same right is not enough to specify this relation because, as seen, a right can serve different purposes and vary its effectiveness with each one of them.

[223] Be that as it may, right holders choose and define the planned effect according to their interests, regardless if such election is adopted after careful analysis, is the product of custom, or is inferred from their course of action.

A link with greater rigor could be achieved by adding the concurrence of the planned effect. When right holders choose a purpose and submit to it, according to their interests, that intention grants the same meaning to the abstract and practical causal relationships since it specifies the right's function and its exercise towards the same expected purpose, thereby ensuring that the efforts are driven and united towards the same goal.

Thus, for example, there will be no causality between the abstract and practical causal relationships if the right holders seek to obtain a planned effect and, instead, when they exercise their rights, they pursue other motives or objectives. If different results from those planned are sought and achieved, the right will cease to be effective for the initially expected result and will be effective for the new reason.

## *Causal Link in Each Legal Relationship*

The effectiveness implies causation between the cause and effect, that is, the rights and their actual effects. Unlike the mere normative compliance, in the assessment of effectiveness, there is the intention of exercising and even claiming the rights prompted by the interest of the right holders to achieve their planned effect. Between the cause and the planned effect (abstract relationship), and the first with the actual effect (practical relationship), there is a kind of causation that communicates the consequences of the cause. However, it must be kept in mind that this causality belongs to the dimension of the 'ought to be' that governs the relationships in law and not the factual causality that governs nature's facts. Under this reasoning, it is considered that there is a different causality for each legal relationship identified in the analysis model of the right's effectiveness, as shown in Figure 2 and explained below.

Thus, the abstract relationship presents a logical causality, embodied by the cause aptitude, i.e., the legal right's suitability, of having the potential to achieve, through its scope, the planned effect without having to resort to another right that, in turn, could be considered essential to producing it. Nonetheless, if the concurrence of two or more rights is essential to achieve the planned effect, the cause shall be made up of them.

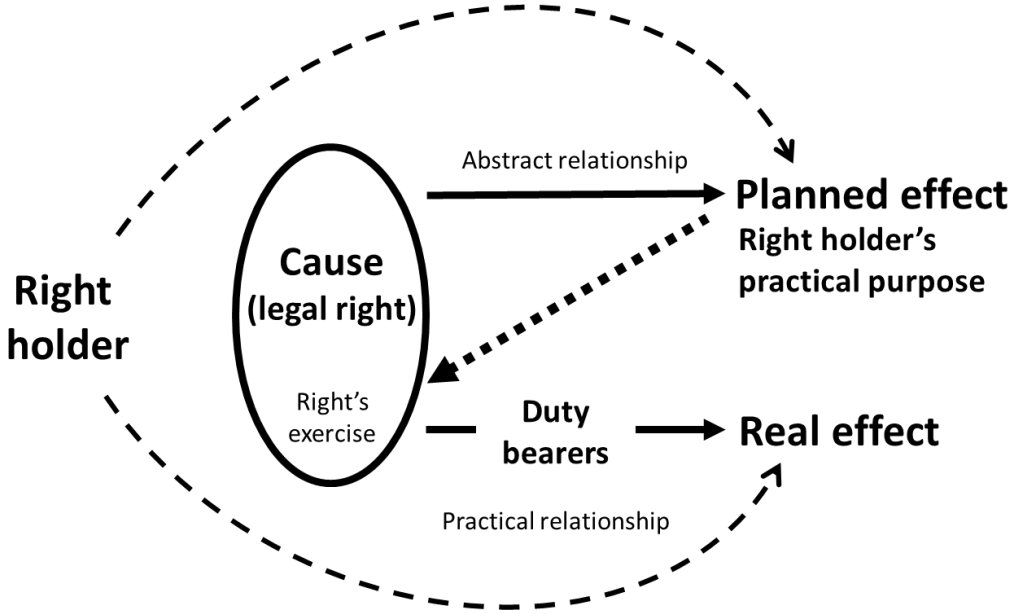
The causation of the practical causal relationship is constituted by how the rights holders exercise their rights in reality. It is possible to establish a correlation when considering rights, on the one hand, and real effects on the other hand, linking the cause (rights) and the effects with the *exercise* of rights (actions and omission of the right holder) with a particular purpose (the pursuit of an interest or planned effect) in a given legal setting.[224] Consequently, causation in this relationship is the interrelation of the intensity of exercise of the internal and external functions of the right, that is, the exercise and claim of rights by their holders and the fulfillment of the duties by those who have them.

Two main aspects stand out in the practical causal relationship. First, cause and causation are two distinct entities. While the cause is the concept of the right's exercise, causation is how the right holders exercise their rights in reality according to the purposes that guide them and considering that each of them can exercise their rights differently. Second, the causal relationship that exists on a practical level is a complex network of various situations, actions, omissions, and interests that can lead to various intermediate and final effects. Consequently, this causal relationship is not a linear relationship between

[224] '[C]uando el derecho "se aplica", se realiza, sucede siempre una mediación de dos mundos: el mundo de la realidad cotidiana con sus circunstancias de vida jurídicamente relevantes y el mundo del derecho con sus normas que contienen un deber ser. A través de la realización del derecho el deber ser y el ser se ponen en contacto; sí, *derecho es la correspondencia entre deber ser y ser.'* Arthur Kaufmann, *Filosofía del derecho* (Universidad Externado de Colombia 2002) 228.'

two elements.[225] However, the causation of the practical relationship can be described and depends, to a large extent, on the regulatory framework, the intensity of the exercise and claim of rights, the degree of fulfillment of duties, and the intermediate and final judicial decisions to be adopted in case of a dispute.[226]

*Figure 2. Causal link in the abstract and practical relationship*




*Source*: Self-made.
*Note*: The segmented lines display the right holder's interest in planning and achieving the effects. On the other hand, the dotted line that connects the planned effect and the right's exercise illustrates the causal relationship between what is intended and the implementation of the means to achieve the ends that are mediated by duty bearers.

## *A Definition of the Effectiveness of the Rights*

Rights' effectiveness resides within reality and law. While the right holders and duty bearers act in reality, the legal framework allows analyzing whether such actions are within the content and limits of their rights.

The right holders establish their practical ends to satisfy their interests and carry out the activities they choose to achieve their purposes in their daily tasks. In doing so, they use their rights as instruments that, within the legal framework of a given reality, ensure that they attain their goals as long as they are legal, possible, and do not affect the rights of others. If, in these circumstances, people carry out their activities independently, without contact with other people, and without affecting them, it does not correspond to rights' effectiveness. Indeed, since rights have a relational nature, as stated, they remain outside these situations, and the achievement of peoples' planned purposes depends entirely on exercising the means they choose to achieve them.[227]

[225] Direct causation regards an object that causes and effect (a-b), while indirect causation refers an object that produces an effect and this effect, in turn, becomes the cause of a second effect (a-b-c), which could continue producing effects and causes conforming a chain of causation. The causation between a and c is indirect.
[226] The intensity of the right's exercise may correlate with the desire to achieve the planned effect, for which the interest of exercising the right by its holder is presupposed. However, other concurrent factors such as knowledge and resources might concur as well.
[227] Thus, for example, the person who lives alone in her house and takes a nap to rest at noon.

However, if the achievement of the right holders' goals depends on the closer passive or active intervention of those who have duties, rights' effectiveness begins to gain relevance. Indeed, the relational nature of rights requires, in certain circumstances, the involvement of duty bearers in achieving the interests of right holders. Effectiveness is therefore concerned with the extent to which this interrelationship between right holders and duty bearers allows the former to achieve their intended goals. Furthermore, if the duty bearers fail to perform their duties, violating the law and affecting right holders, the effectiveness now focuses on the degree to which the right holders can enforce duties within the limits of their rights, escalating even to the initiation of legal actions to resolve their disputes. The effectiveness, in this last scenario, will analyze if the interests of the right holders are intense enough for them to present their claims to the justice systems and, at the same time, if the latter decide the disputes and enforce the fulfillment of the duties within the legal framework, making the right effective or not. Note that the effectiveness of rights concerns, in this case, the decisions of the justice system based on the judicial activity deployed by the right holders to achieve their planned effects. That is, effectiveness encompasses the exercise of rights in their internal and external functions to elucidate to what extent a right is effective in a given context. Finally, if the legal framework recognizes the rights but does not provide their holders with the means to present their claims or assert their rights, the lack of effectiveness of the law is attributable to policy makers.

The rights' effectiveness relationship (right holders-duty bearers) can be portrayed with a border that marks the limits of the content of the rights, or internal effectiveness, with others' duties, or external effectiveness, and a stretched rubber band that matches that border. Thus, the excessive exercise of rights pushes the rubber band outside the border, just as the breach of duties pushes it inside the border. Both scenarios regard illegal actions that stakeholders may or may not claim to make the 'rubber band' return or not to the border. The same would happen with their claims and the corresponding judicial decisions, which may or may not be lawful, except that, concerning judicial decisions, illegality would be sustained and supported by them, shaping the legal rights’ scope as more effective or less effective in the specific cases.

Rights are effective if their holders achieve their practical effects, the exercise occurs within limits, or if, upon claims, sufficient legal protection is granted to the right holder. If rights are exercised in excess, they can be claimed or judged. Meanwhile, the excess is a simple fact that implies greater effectiveness for whoever exercises it. On the contrary, a right is ineffective if it is unfairly limited and if it does not receive sufficient protection in the case of a claim.

The effectiveness of rights explains the current degree of practical realization of a legal system and its causes in the perspective of the coexistence of two legally mediated forces, that is, the fulfillment or frustration of the right holder's empirical goals against the performance of the correlative duty by those who have it. The effectiveness evaluation could also include an analysis of similar cases to allow a counterfactual comparison among them and deepen the contrast between real and planned effects.

Some scenarios of ineffectiveness may concern the following. If rights are unfairly limited, and there are no claims by their holders, rights are ineffective due to the holder's liability. Moreover, rights are ineffective due to the judges' responsibility if, despite claims, insufficient protection is granted. Finally, if a legal framework unreasonably limits rights or there is no means to claim them, rights are ineffective due to the legislator's responsibility. These scenarios would imply breaks in the causality of effectiveness since the corresponding effects do not occur despite being potentially possible.

Taking into consideration what has been said, it is possible to define the *effectiveness of rights as a criterion to measure or evaluate the extent that the limits of rights, regarding their exercise and the*

*duties they ground to others, allow the achievement of the practical purposes intended by the right holders, provided that the condition of causation is met.*

The rights' effectiveness is a possible analysis to evaluate compliance with the Law and the forms and reasons for said compliance through the interrelationships and intensity of the interested parties' efforts. In other words, the realization of the law from people's perspective. It also makes it possible to identify the causes that prevent or facilitate the realization of rights and the legal system in a given reality. Both are relevant to diagnose and enhance the legal position of right holders and duty bearers through the creation, improvement, or adaptation of public policies and existing legal frameworks, the training of stakeholders, or the adoption of other possible measures to that effect.

## Conclusions

The authors have dedicated their analyses to discussing the law's effectiveness without considering the effectiveness of the rights. This section suggested that rights' effectiveness is not the same as the effectiveness of the law, given that the latter fixes its analysis on the norm's aims and prescriptive effects rather than on the right holders' liberty to pursue their objectives within limits imposed by the law. Therefore, in the effectiveness of the rights approach, the purposes of the rights holders matter.

In order to address the rights' effectiveness approach, a general concept of effectiveness was induced through the generalization of the elements identified in the effectiveness of law's notions raised by the reviewed authors. Thus, it is possible to deem the effectiveness in any given legal or juridical phenomenon, as long as there is a cause capable of producing effects, expected or planned effects, and actual effects.

Then, an operational definition was deduced on the effectiveness of the rights through the characteristics of rights, which comprises not only freedoms and limits but also right holders and duty bearers' relations.

The reflections and arguments regarding the rights' effectiveness suggest that this approach could be applied as a model of analysis to explain the degree of the practical realization of a legal system and its causes regarding the perspective of the coexistence of two legally mediated forces, that is, the fulfillment or frustration of the rights holders' empirical goals in front of the correlative duty performance by their bearers. However, this approach to the right's effectiveness is an overarching analysis model. Therefore, it shall be specified in both a legal and real context to be applied to specific cases. In the next section, its practical implementation is proposed through a research design of a case study on the effectiveness of the collective right to exercise indigenous jurisdiction concerning Jach'a Karangas, an indigenous people in the Plurinational State of Bolivia.

# Section 1.2: Research Design

It has previously been established that the objective of this investigation is the effectiveness of the right to exercise indigenous jurisdiction of the Nación Originaria Suyu Jach'a Karangas (JK) in Bolivia. Therefore, the case study has been chosen as the main research strategy to achieve this purpose, and, in addition, the right's effectiveness has been defined, identifying its elements and characteristics.

In this section, it corresponds to tackling the research design that, in Yin's words, consists of the 'logical sequence that connects the empirical data to a study's initial research questions and, ultimately, to its conclusions'[228] and comprises five components: research questions, a proposition (if any), units of analysis, the logic linking the data to the propositions and criteria for interpreting the findings.[229] To design this research on the effectiveness of JK's right to exercise jurisdiction, its cause, planned effect, and real effect will be connected to case study's components. Finally, some considerations about the instruments and ethics of this research will be raised.

## Elements of the Effectiveness of Jach'a Karangas' Right to Exercise Jurisdiction

### *Judicial Function, Jurisdiction, and Competent Authority*

Before defining the elements of the effectiveness, it becomes relevant to digress slightly and provide a notion of the judicial function, jurisdiction, and competency (as competent authority), as these concepts are frequently used in this dissertation. Further, they are keywords to depict the legal boundaries of the collective right to exercise indigenous jurisdiction within the Bolivian legal framework.

States achieve their goals by fulfilling three essential functions: legislative, administrative, and judicial.[230] The *judicial function*, which is the one that concerns this investigation, corresponds to the power to *impart justice*, and it emanates from the Bolivian people.[231] As Masciotra explains, this judges' power comes from the authority conferred by the State to direct the process and rule on controversies.[232] In Bolivia, the judicial function is single and singular, [233] regardless of whether it is exercised by ordinary, agri-environmental, or indigenous jurisdictions. [234] For this reason, if the person who

[228] Yin (n 61) 20.
[229] ibid 21.
[230] Constitución Política del Estado Plurinacional de Bolivia, Article 12.
[231] ibid, Article 178.I.
[232] Mario Masciotra, 'Poderes y deberes de la autoridad judicial', *Curso sobre el Código Procesal Civil* (Primera, Editorial Hebdo 2016) 54.
[233] Article 179.I of the Bolivian Constitution expresses that '[l]a función judicial es única', or '[j]udicial function is singular' in the translation of Zachary Elkins, Tom Ginsburg and James Melton, 'Constitute. The World's Constitutions to Read, Search, and Compare / Constitution of the Plurinational State of Bolivia' (*Constitute*) <https://constituteproject.org/> accessed 3 October 2019.
[234] Nonetheless the Bolivian constitution article 179.I stablishes that 'existirán jurisdicciones especializadas reguladas por la ley' [there shall be specialized jurisdictions regulated by the law]. Constitución Política del Estado Plurinacional de Bolivia.

administers justice is an indigenous authority (from the indigenous jurisdiction), it should be understood that this authority is performing, ultimately, the State's judicial function.[235]

Latin American countries use the term *jurisdiction* with different meanings: as the territorial scope in which a State exercises sovereignty, the territory in which a judge performs his functions, the set of prerogatives of a public power organ, the ability of a judge to know some claims (as the competent authority), or the public function of doing justice (as the judge function).[236] The latter is a more technical reference[237] that involves three crucial elements: a) external form, or the presence of antagonistic parties, a judge or court with imperium powers, and a procedure; b) the content, which accounts for controversy or dispute to be settled by a final decision; and c) the function, or the role to ensure justice, and social peace.[238]

It is argued that jurisdictional functions can be of two kinds that are not mutually exclusive: solving an individual intersubjective problem (private aspect) or realizing the law to achieve peace and justice (public aspect).[239] It is noted that while the public aspect is linked to keeping in force the justice system that is part of the self-determination and culture of peoples, as will be seen later, the private aspect seeks the practical ends of resolving disputes. This public aspect is part of the argument that makes the proposition of this case study.[240]

Alvarado explains that jurisdiction comprises the *notio* (power to hear a question), the *vocatio* (power to compel to appear in the process), the *coertio* (power to use public force), *judicium* (power to resolve the dispute), and *executio* (power to execute judgment).[241] Indigenous jurisdiction also encompasses such jurisdictional powers,[242] as expressly recognized by the Bolivian Constitution.[243] In a more restrictive opinion, Véscovi concludes that jurisdiction comprises the dispute's decision and enforcement.[244] Nonetheless, as referred below, it is the decision or resolution of disputes which is the pivotal jurisdiction's aim, especially if it considers the judicial function as the power to impart justice.

Under such premises, Bolivian Law 25 of the Judicial Organ defines the term jurisdiction as the power of the Plurinational State to administer justice, stating that it is exercised through the jurisdictional authorities of the Judicial Organ.[245] Jurisdiction, consequently, is an overarching concept of the activities developed in the administration of justice from the form, content, and function perspectives mentioned above, and, in a restricted sense, it contemplates the application of the law, the decision of a conflict, and its execution.

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[235] Marco A Mendoza Crespo, 'Hoja de Ruta de La Justicia Plural En Bolivia En Tiempos de Estado Plurinacional Comunitario' in Bernardo Ponce and Diana Soria Galvarro (eds), *Sistemas legales y pluralismo jurídico en América Latina* (Proyecto Participa - Unión Europea/Konrad Adenauer Stiftung 2015) 14.
[236] Eduardo J Couture, *Fundamentos del Derecho Procesal Civil* (Tercera, Roque Depalma 1968) 27; Adolfo Alvarado Velloso, *Introducción al estudio del derecho procesal*, vol I (Rubinzal-Culzoni Editores 1989) 129–130; Carlos J Villarroel Ferrer and Wilson J Villarroel Montaño, *Derecho Procesal Orgánico y Ley del Órgano Judicial* (7ma edición, El Original - San José 2015) 59–57.
[237] Couture (n 236).
[238] ibid.
[239] Enrique Véscovi, *Teoría general del proceso* (Segund, Temis SA 1999) 89–92.
[240] Cf. Research Proposition, page 57.
[241] Alvarado Velloso (n 236) 136.
[242] José Regalado, 'De las sanciones y las penas en la justicia indígena', *Elementos y técnicas de pluralismo jurídico. Manual para operadores de justicia* (Konrad Adenauer Stiftung 2012) 99–100.
[243] *Sentencia Constitucional Plurinacional 1259/2013-L* [2013] Tribunal Constitucional Plurinacional Expediente 2011-24569-50-AAC, Zenón Hugo Bacarreza Morales [III.5].
[244] Véscovi (n 239) 101–102.
[245] Ley 025 del Órgano Judicial [Law of the Judicial Organ] 2010, Article 11.

This research uses the term *jurisdiction* in the four following senses. The first consists of the denomination of the right that indigenous peoples have to exercise their legal systems in accordance with their worldview, as provided by Article 30.II.14 of the Constitution and which this document refers to as the collective right to exercise indigenous jurisdiction. Consequently, this first sense refers to the cause of effectiveness studied.

The second sense in which jurisdiction is applied corresponds to one of the jurisdictional functions, i.e., the possibility to resolve or contribute to resolving indigenous disputes among the members of the indigenous peoples of JK. This sense is identified as the planned effect of the effectiveness under study, as explained below, since it is the closest effect to hearing a dispute between parties (the enforcement of the decision is necessarily subsequent and indirect), and it is feasible from the available information sources.

The third sense in which this dissertation uses jurisdiction refers to the organization that conducts the administration of justice. In this way, jurisdiction corresponds to formal jurisdiction structure (constitutional, ordinary, and agri-environmental courts and judges) and indigenous peoples' jurisdiction structure (indigenous communal decision-making bodies and authorities). The sum of these jurisdictions' exercises is equivalent to the judicial function that emanates from the Bolivian people, which is unique and singular, as referred to earlier.

Finally, the fourth sense this research employs jurisdiction involves which is the competent authority to hear and decide a particular case (for instance, the expression 'the authority has jurisdiction to'). This sense is defined by Law 25 of the Judicial Organ under the words *competency* or *competence* as the power that a magistrate, a judge, or an indigenous authority has to exercise jurisdiction in a certain matter.[246] Couture explains that competency is a fragment of jurisdiction attributed to a judge where, although all the judges have jurisdiction, not all of them have the competence to judge a specific matter, which is why there are judges with and without competence depending on the subject, place, or other characteristics of the dispute.[247] Distribution of competencies is due to practical reasons of location (territory), specialization (subjects or matters), review and challenge of decisions (hierarchical level), qualities of the parties (e.g., indigenous cases), or distribution of work, among others. [248] It is highlighted that, except for what special laws provide, jurisdiction can only be modified when referring to the territorial criterion. Thus, the parties can decide by express or tacit agreements that a judicial authority, incompetent by territory but competent according to other criteria, can legally resolve their dispute. [249]

In conclusion, it should be stated that all the indigenous authorities that administer indigenous justice have jurisdiction in the same way as constitutional, agri-environmental, or ordinary judges of Bolivia. The Bolivian legal framework has differentiated the competence that each of them has, establishing the cases in which they are legally entitled to exercise their jurisdiction.

## *Right Holder and Duty Bearers*

As was manifested in the section on the effectiveness of rights, rights imply the freedoms of the right holders, the duties of the rest (duty bearers) from refraining from interfering with them, and a legal system that imposes such duties and freedoms. Consequently, and in addition to the legal system, the effectiveness of rights comprises internal and external functions. The *internal* one refers to the contents

[246] ibid, Article 12.
[247] Couture (n 236) 29.
[248] Véscovi (n 239); Villarroel Ferrer and Villarroel Montaño (n 236).
[249] Ley 025 del Órgano Judicial [Law of the Judicial Organ], Article 13.

of rights as the faculties and powers endowed to the right holder and the actions that a right holder might choose to exercise. The *external* regards the duty bearers refraining from interfering with the right holders (negative actions) or acting to provide them with the feasibility to take advantage of their rights (positive actions).

According to the approach adopted for the effectiveness of rights, the qualities of right and duty bearers emerge from the applicable normative framework. In this sense, on the one hand, the Bolivian legal framework recognizes collective rights in favor of indigenous peoples, including the right to exercise indigenous jurisdiction. As seen below, since JK is an indigenous people entitled to such rights, JK is comprised as the right holder. On the other hand, the crucial duty bearers are the Bolivian State and the indigenous members of JK. Both are closely related to the exercise of indigenous jurisdiction and its possibility of dispute resolution.

Regarding the Bolivian State, it is worth asking which of its organs are the most linked to the collective right to exercise jurisdiction and what duties they have. According to Bolivia's structural organization, which comprises four organs: Executive, Legislative, Electoral, and Judicial,[250] the legislative and judicial organs are the ones most directly related to the effectiveness of the collective right to exercise indigenous jurisdiction, although at different levels. The Legislative Organ, also known as the Bolivian Plurinational Legislative Assembly, plays a key role in defining the normative context of the right to indigenous jurisdiction *as the cause* on which the planned and real effects are built. Instead, the Judicial Organ admits and processes cases related to indigenous disputes and decides competency conflicts between State jurisdictions, largely determining the implementation and interpretation of laws that concern Bolivia's actual response to the possibility of dispute resolution that JK has through its jurisdictional exercise. Therefore, the Bolivian Legislative Organ belongs to the first question, while the Judicial Organ to the second.

However, one should wonder if the Electoral and the Executive organs are also related to indigenous jurisdiction's exercise. On the one hand, the Constitution defines the former as responsible for organizing, administering, and carrying out the Bolivian electoral processes and proclaiming their results. [251] It is also responsible for organizing and administering the Civil Registry and the Electoral Roll.[252] Therefore, the Electoral Organ functions are unrelated to the exercise of indigenous jurisdiction. On the other hand, the Executive Branch is in charge of issuing supreme decrees and other administrative regulations, deciding on administrative litigation, and applying public force to enforce judicial decisions.[253] Consequently, whenever the Executive Organ establishes norms, its function could be assimilated to the Legislative Organ under the first research question for the sake of this research. However, it is noted that no specific supreme decree, resolution, or administrative norm regulates the exercise of indigenous jurisdiction to the present. In addition, the enforcement of jurisdictional decisions is out of the research scope since such function concerns a posterior moment to the possibility of resolving indigenous disputes, which is the planned effect that limits the present effectiveness assessment. Finally, the Bolivian legal framework excludes indigenous jurisdiction from knowing or resolving administrative disputes.[254]

Regarding the duties of Bolivia, it fulfills a dual role as a duty bearer of indigenous peoples in general and of JK in particular concerning their right to exercise indigenous jurisdiction. On the one hand, it is

[250] Constitución Política del Estado Plurinacional de Bolivia, article 12.I.
[251] ibid, article 208.
[252] ibid, article 208.
[253] ibid, articles 172.8, 172.13, and 175.4.
[254] See Bolivian International and Constitutional Frameworks , page 192.

in charge of legislating this right as imposed by its Constitution. On the other hand, it has to decide on two sensitive aspects regarding this right through its Judicial Branch's formal jurisdictions. Thus, first, they must respect the cases belonging to the indigenous jurisdiction, having the duty to reject them when receiving such claims. In case of infraction of this duty, the indigenous peoples have the power to claim the competence to resolve those unduly processed disputes by formal jurisdictions. Consequently, the Judicial Branch has to decide these claims to re-establish indigenous peoples' right to jurisdictional exercise. According to the proposed analysis framework, while the legislative duty on the right to exercise indigenous jurisdiction pertains to the cause of effectiveness, the ulterior judicial duties correspond to the actual effects.

Regarding JK's indigenous members, who are the other identified duty bearers, the Constitution[255] orders that indigenous jurisdiction shall reach only those disputes that simultaneously meet three conditions (validity areas, names the Constitution). Thus, both parties to the process must belong to the same indigenous people, dispute questions must pertain to those delimited by a special law, and the events that cause them or their effects must occur within the concerned indigenous people's territory. As a consequence of the first condition mentioned, the only individuals who have a duty regarding JK's right to exercise jurisdiction are its indigenous members. To this end, the choice of jurisdiction that they make to resolve their disputes, based on the stated conditions, is the central factor in elucidating the fulfillment of their duties towards JK.

In summary, the duty bearers identified for this case study concerning JK's right to exercise its jurisdiction are the Bolivian State in its Legislative and Judicial Organs and the indigenous members of JK. However, they fulfill a different function in the proposed analysis framework. Thus, the Legislative Organ is mainly considered to describe the scope of the 'cause,' that is, of the right whose effectiveness is analyzed. Instead, the Judicial Organ and JK members are considered to assess the actual effects.

## *The Cause*

Legal pluralism in Bolivia is a fact and the related awareness of individual and collective stakeholders on the matter is a process under construction. Indigenous peoples are gradually becoming aware of the dimensions and possibilities of exercising their indigenous jurisdiction. They are giving it their own meanings through their institutions and culture, acting as they did through their existence, but influenced, as Orellana explains, by the formal jurisdiction.[256] The extent and limits of the right to exercise indigenous jurisdiction and its normative framework may arise from the international, State, and indigenous peoples' environments, conforming a legal pluralism.

Although indigenous peoples enjoyed and exercised their collective rights long before their formal international or local recognitions, and most likely in a broader and freer manner, it is not the effectiveness of such moral rights whose evaluation is intended here, but the effectiveness of a legal right recognized by the State. More specifically, it is the collective right to exercise indigenous jurisdiction, as formally determined and recognized by Bolivia in its egalitarian plural justice system, which is considered the cause of the effectiveness to be assessed in this research. The Bolivian international and local legal frameworks recognize this collective right and also establishes procedures for claiming it.[257] The details and analysis of the contents and limits of the right to exercise indigenous

[255] Article 191.II of the Constitución Política del Estado Plurinacional de Bolivia.
[256] Orellana Halkyer (n 46) 331.
[257] Further reference on constitutional actions on Annex B, page 463.

jurisdiction, as the benchmark evaluation point through the Bolivian legal framework, are described below.[258]

## *The Planned Effect*

### *Limitations and Requirements*

It is possible to explore several planned effects or practical purposes for the right to exercise indigenous jurisdiction, such as the enforcement of the ruling, the community pacification, or its cohesion. It could also be possible to consult the indigenous members of JK about which are their practical purposes. However, some practical, methodological, and theoretical limitations and requirements shall be considered first.

As for the practical limitations, the exercise of indigenous jurisdiction in JK occurs internally, that is to say, through private oral hearings (in Aymara and Spanish) occasionally represented by handwritten and typewritten summarized notes (minutes) kept for the authorities and the opposing parties.[259] These documents, if they still exist in indigenous archives, remain disorganized and non-systematic, and there is no written evidence of the enforcement or application of the indigenous resolutions, making it almost impossible to track their execution objectively.[260]

Regarding the methodological restraints, and as referred to in the previous section, effectiveness presupposes causation between the defined cause and its planned and actual effects. Some of the possible practical purposes listed at the beginning may not be effects of the exercise of indigenous jurisdiction or have other concurrent or preferential causes. For instance, the pacification or the cohesion of the indigenous peoples may well occur because, in general, many favorable factors may produce this result, such as visionary and fair authorities; stable economic, social, and political contexts; adequate education, security, and public health; abundance of resources, among others. In other words, the effects may happen for several reasons and not just because of the indigenous' exercise of jurisdiction.

Finally, regarding the theoretical requirements, one should bear in mind that collective rights concern, as concluded on *a notion of collective rights*,[261] a community's collective interest over an object. This collective interest is not reducible to the sum of the individual interests of community members. Instead, the collectivity should decide such an interest as a moral entity capable of being conscious and acting independently. For this reason, the planned effect of a collective right could not be obtained through interviews or surveys since they would be equivalent to the sum of individual subjective criteria and not to a position adopted collectively and organically.

[258] Cf. chapter 3, Collective Right to Exercise Indigenous Jurisdiction in the Bolivian Perspective, page 151.
[259] Tristan Platt comments on how contradictory it can seem to have a written indigenous archive against the 'oral indigenous' stereotype. However, according to this author, research highlights the writing of Quechua or Aymara-speaking Andean peasants with archives and alphabetic writing in Spanish since the 16th century. Tristán Platt, *Defendiendo El Techo Fiscal, Curacas, Ayllus y Sindicatos En El Gran Ayllu Macha Norte de Potosí, Bolivia, 1930-1994: Catálogo Del Archivo Del Curacazgo de Macha Alasaya, Documentos de La Familia Carbajal* (1.a edición, Vicepresidencia del Estado, Presidencia de la Asamblea Legislativa Plurinacional, Bolivia : BAH-ALP, Biblioteca y Archivo Histórico de la Asamblea Legislativa Plurinacional: University of St Andrews 2018) 41.
[260] Cf. Preservation of its Decisions and Predictability (W13), pages 315 and 316 respectively.
[261] Cf. page 152.

In the present case, since the cause is the right to exercise indigenous jurisdiction and its object is indigenous justice, what could be the planned effect that may address the practical, methodological, and theoretical limitations mentioned above?

## *Administration of Justice*

To answer the previous question, one should resort to the internal norms of JK adopted to determine its organic structure, objectives, and internal relations, among others, since they might represent JK's collective interest, will, and decision. Besides, it is noteworthy that since the collective interest concerns the community's purpose over an object,[262] the collective interest could be considered equivalent to the intended effect of the right's effectiveness model.

Accordingly, on 19 December 2011, as a consequence of the explicit constitutional recognition of indigenous peoples and their collective rights, JK approved and enacted the Organic Statute (Statute) and the Internal Regulation of the Occidental Council of Ayllus Jach'a Karangas through its Resolution 035/2011. [263] This resolution states that the Governing Council of Suyu Jach'a Karangas approved it under its legal personality, self-determination, the Constitution, and the International Labour Organization's Indigenous and Tribal Peoples Convention No. 169 (C169). This resolution also maintains that the 2011 Jisk'a Tantachawi discussed in detail the Organizational Statute, which is a meeting attended by the authorities of the thirteen Markas, the Council Mallkus, Mallkus of Marka, and Apu Mallkus. [264] Therefore, this Statute represents the will and collective interest of JK.[265]

Article 6 of JK's Statute, named 'objectives,' sets that the Statute aims to norm the administrative and political structure of JK, regulate the ancestral territory structures, establish the coordination, organization, operation, and relational mechanisms of the JK's government, promote the forms of election and equitable participation of men and women based on their own procedures, and others. However, two of the eleven points referred to in this article could be construed as JK's objectives (as an indigenous people) rather than Statute's aims. The first is '[t]o exercise indigenous peoples' rights, duties, and obligations,' and the second is '[t]o administrate indigenous justice in coordination with the ordinary justice of the State.' [266] Indeed, the sheer norm cannot exercise rights or administer justice by itself. Then, the possibility of exercising rights belongs to the community, not the Statute.

Considering this interpretation of article 6 of the Statute of JK, the 'administration of indigenous justice' could be deemed the purpose of JK regarding its collective right to exercise indigenous jurisdiction. Said collective interest or planned effect is supported by the duties and responsibilities imposed later in the Organic Statute on JK's authorities at its various levels and hierarchies to conduct indigenous dispute

[262] Cf. a notion of collective rights, page 152.

[263] The complete JK's Statute could be consulted on page 415 (Annex A) in its original version (Spanish) for further reference.

[264] Cf. Annex A on page 415, Consejo de Gobierno del Suyu Jach'a Karangas (n 53). JK's structure, decision bodies, authorities, and government meetings, among others, are explained in Chapter 4: Nación Originaria Suyu Jach'a Karangas, on page 259.

[265] Suppose JK did not have a Statute, and it was impossible to identify its collective interest in this way. In that case, the path to follow to identify it could be, among other possibilities, the approach presented by Ostrom for the study of institutions, in the sense of 'potentially linguistic entities that refer to prescriptions commonly known and used by a set of participants to order repetitive, interdependent relationships.' Elinor Ostrom, 'An Agenda for the Study of Institutions' (1986) 48 Public Choice 3, 5.

[266] Consejo de Gobierno del Suyu Jach'a Karangas (n 53), article 6. It states: 'Artículo 6. (Objetivos).- El presente Estatuto Orgánico de la Nación Originaria Suyu Jach'a Karangas, tiene como objetivos los siguientes… Administrar la justicia originaria en coordinación con la justicia ordinaria.' Cf. Annex A.

resolution. [267] In addition, it should be underlined that the Statute of JK does not manifest other collective interests or objectives regarding indigenous jurisdiction. Hence, the objective established in this article 6 seems to be the only source available to interpret what its planned effect is.

However, what should be understood from the broad meaning of justice administration? Following the general meanings depicted for 'jurisdiction' at the beginning of the section,[268] 'justice administration' may consist of managing, conducting, and performing judicial actions.[269] Likewise, 'administration of justice' could be the general appliance and enforcement of the law in legal proceedings,[270] case management, and court administration,[271] or processing and judging cases,[272] that is to say, resolving disputes.

Nonetheless, the vast conception of 'administration of justice' shall be reduced, considering that the planned effect should be sufficiently precise to assess rights' effectiveness, as explained before. In this sense, 'administration of justice' could be circumscribed to 'resolution of disputes,' as its central and ultimate purpose. Not only does dispute resolution mainly perform States' judicial function,[273] but the various steps that the justice administration may comprise are accessories to it since none of the procedural acts before or after dispute resolution would make sense without it. As a result, 'administration of justice' could be considered, in a strict and functional sense, as the power to decide disputes. In accordance, JK's collective interest to administer justice could be construed and specified as *resolving indigenous disputes*.

## *Resolving Indigenous Disputes*

Having said the above, some clarifications should be made regarding the meaning that 'resolving indigenous disputes' has in this study as the planned effect of the right to indigenous jurisdiction. JK's indigenous justice seeks reconciliation and restoring harmony between parties in conflict through hearings summoned and conducted by their authorities. Even though these hearings are expected to conclude with an agreement between parties, the authorities have the power to rule the case if they cannot reach it.[274] As a consequence, it is understood that JK is actually exercising its right to indigenous jurisdiction when it decides or contributes to resolving indigenous disputes.

The planned effect implies that indigenous justice may act within the competencies established by Bolivian legislation, according to the limits and contents of the right to exercise jurisdiction. In other words, the planned effect shall correspond to the limits and content of the defined cause of this study. Such potential to resolve disputes shall be satisfied whenever JK's indigenous members submit their disputes to the indigenous jurisdiction or, if the contrary happens, whenever the indigenous jurisdiction recovers the competence to resolve the dispute. The latter may occur if JK claims its right and, after the proceedings, the conflict of competencies is legally decided in its favor. Nonetheless, if the justice

[267] Articles 23, 27, 33, 37, and 39 of ibid.
[268] As explained before, Bolivian Law of the Judicial Organ identifies 'administration of justice' with 'jurisdiction' in article 11 of Ley 025 del Órgano Judicial [Law of the Judicial Organ].
[269] Campbell Black, *Black's Law Dictionary* (4th Ed. Rev., West Publishing Co 1968) sv administration.
[270] Roscoe Pound, 'The Administration of Justice in the Modern City' (1913) 26 Harvard Law Review 302, 311.
[271] Charles W Nihan and Russell R Wheeler, 'Using Technology to Improve the Administration of Justice in the Federal Courts Symposium on Judicial Administration' (1981) 1981 Brigham Young University Law Review 659.
[272] Kathleen E Mahoney, 'The Myth of Judicial Neutrality: The Role of Judicial Education in the Fair Administration of Justice Essay' (1996) 32 Willamette Law Review 785.
[273] Alvarado Velloso (n 236) 131.
[274] Cf. Jach'a Karangas' Justice, page 278.

system decides correctly in favor of formal jurisdictions, i.e., respecting the limits established by the Constitution and laws, the effectiveness of the indigenous jurisdiction shall not be affected.

However, to assert the indigenous jurisdiction's exercise effectiveness, would it be necessary to reach an agreement or a final decision? In other words, is it necessary to resolve the indigenous dispute? The answer to this question lies in the finality of the planned effect of the collective right. If the purpose were for the indigenous dispute to be concluded, then it would be necessary to reach a final agreement or decision. It is, nevertheless, more relevant to this study JK's possibility of solving disputes and that this possibility is not illegally taken away by formal jurisdictions than actually solving them since it is about analyzing the effectiveness of the exercise of the right to indigenous jurisdiction rather than its efficacy in resolving disputes. Likewise, and following this same argument, the possibility of solving disputes does not encompass the scrutiny of the content or fairness of the indigenous decisions or agreements to be adopted. Besides, such content of fairness analysis would imply discussing the effectiveness of the procedural parties' individual rights and not the effectiveness of the collective right to exercise indigenous jurisdiction.

For these reasons, 'dispute resolution' is construed as the possibility that the exercise of indigenous jurisdiction has to decide or contribute to resolving indigenous disputes regardless of its fairness and within the jurisdictional limits granted by the Bolivian State.

### *Conclusions on the Planned Effect*

Under the interpretation of the JK Statute and specifying the extent of the original objective set as 'administration of justice' to 'resolving disputes,' the identified planned effect of JK's exercise of jurisdiction is the possibility to resolve or contribute to resolving indigenous disputes within the jurisdictional limits granted by Bolivia.

This planned effect seems to overcome the practical, methodological, and theoretical limitations mentioned above. Regarding the first one, it may be feasible to contrast this planned effect with its corresponding real current effects, given that the possibility of resolving disputes implies the initial stage of the indigenous jurisdiction's exercise, and there is more data available than if it were at a later stage. Regarding the methodological limitations, the relationship between the cause (right to exercise indigenous jurisdiction) and the identified planned effect (possibility of resolving disputes) suggests a direct and necessary causality. Furthermore, such a planned effect responds to a connatural and principal end of indigenous jurisdiction's exercise. Finally, regarding the theoretical requirement, this planned effect has been adopted by JK as a collective moral entity when deciding to govern its aims and internal relationships through its Organic Statute adopted by Resolution 035/2011.

## *The Real Effect*

The Bolivian legal framework recognizes the right to exercise indigenous jurisdiction and establishes its scope, contents, limits, and consequent duties towards third parties. Although the analysis of State laws is a necessary condition to evaluate the effectiveness of the exercise of this right, since it is its cause, it is not sufficient. Following the framework of analysis proposed to assess the effectiveness of rights,[275] it is also necessary to investigate the actual exercise of this right by JK and the fulfillment of duties by the duty bearers. Indeed, the achievement of the planned effect depends on these two factors.

[275] Cf. a meaning of the effectiveness of rights, page 17.

By comprehending the actual interest of JK in exercising and claiming this right (in its internal and external functions) to achieve its planned effect, the effectiveness of the right holder's behavior can be identified. At the same time, by describing the duty bearers' behavior that legally or illegally allows or obstructs JK from its possibility of resolving disputes, it is possible to evaluate the effectiveness of their behavior concerning the exercise of JK's right to achieve its objective. Then, only when the scope of the right (cause), the planned effect, and the actual effects achieved are known is it feasible to evaluate the effectiveness of this right through the contrast of the effects.

It is pertinent to point out that although the legal framework of the right to exercise indigenous jurisdiction in Bolivia is the same for any other indigenous peoples that inhabit the country, each one of them understands it and exercises it in different ways. Therefore, while some indigenous peoples may take better advantage of this right, others may be left behind. For this reason, to evaluate the effectiveness of JK's jurisdiction exercise, not only will its intended effect be contrasted with the real ones, but JK's effects will be compared with the exercise of this right by other indigenous peoples in general. It will make it possible to assess JK's situation in relation to that of its peers in the same legal context to know, with greater precision, if its effectiveness is relatively better, the same, or worse than that of the others.

This research proposes a series of sources and indicators to obtain information on the real effects of JK as a right holder and its duty bearers. Although they are explained in greater detail below in this research design, from the outset, it is clarified that the collection of data on the real effects achieved by the other indigenous peoples is limited to a formal source that has a general scope, which is the Plurinational Constitutional Court's (PCC) case law. This research limitation is justified by the insurmountable difficulty of collecting data from the other indigenous peoples with the same depth and detail as for JK. However, despite this shortcoming, to achieve the purposes of this case study, the information obtained from this court's case law seems sufficient to achieve the comparison between JK and the averages obtained by the other indigenous peoples.

## Research Questions' Content

As stated at the introduction of this dissertation, the main research question is: *What is the effectiveness of JK's right to exercise its jurisdiction in resolving disputes under the legal framework of the Bolivian egalitarian plural justice system?*

Although this question covers the scope of the investigation, it should be divided into questions and sub-questions according to the elements that make up the analysis of the effectiveness of the right to exercise indigenous jurisdiction identified. The first concerns the cause, i.e., the scope of the collective right to exercise indigenous jurisdiction as formally determined and recognized by the Bolivian egalitarian plural justice system.

The second and the third involve the real effects obtained by JK's possibility of resolving disputes and comprise both the behavior of duty bearers that allow or obstruct this exercise and the extent to which JK has the possibility of resolving them. As a result, the real effect comprises the second and third research questions, the first on the duty-bearers and the second on the rights-holder. Although it is counterintuitive to start with the duty bearers and leave the right holder last, the results obtained from duty bearers permit a better perspective to reflect on the right holder. It is especially relevant because, to some extent, the answer to the third research question derives from the previous one and becomes more accessible since it comprises a higher density of sources. Thus, the second research question is

divided into two sub-questions, one for the PCC and the other for the lower-ranking courts. Finally, the third research question is divided into two sub-questions, one for JK's jurisdiction exercise and the other for its claims to assert its right against its duty bearers. On the contrary, the planned effect does not have a particular research question since it has previously been established and serves as a contrasting element with the actual effects.

The content of each of the research questions and sub-questions is explained below.

## *First Research Question*

*What is the scope of the content and limits of the collective right to exercise indigenous jurisdiction through its formal recognition by the Bolivian international and local legal framework?*

The Bolivian Plurinational Legislative Assembly is in charge of developing the legal framework for the right to indigenous jurisdiction's exercise after the Bolivian Constitution of 2009 established the egalitarian plural justice system. Such legislation defines, to a large extent, how the representatives of the Bolivian people understand the significance, scope, faculties, and limits of this collective right. Analyzing, interpreting, and relating this normative framework makes it possible to understand the right to exercise indigenous jurisdiction's scope in Bolivia from a purely normative dimension (regardless of how these texts are interpreted and applied in practice by the courts). The local statutes are complemented by international instruments, especially C169 and the Declarations on the Rights of Indigenous Peoples of the United Nations (UNDRIP) and the Organization of American States (OASDRIP).

As a result, the meaning of this normative narrative will portray the contents and limits of the collective right to exercise indigenous jurisdiction to describe and circumscribe the effectiveness' cause of this case study and will enable a contrast with its implementation.

## *Second Research Question*

*To what extent does the behavior of duty bearers, considering its legal scope and limits, allow JK's jurisdiction the possibility of resolving disputes?*

As explained, the Bolivian State and JK's indigenous members are the primary duty bearers of the right to exercise indigenous jurisdiction. Consequently, the second research question is twofold. The first sub-question involves the decisions made by the Bolivian Judicial Organ and the second one corresponds to JK's indigenous members.

### *Research Sub-question 2a*

*To what extent does the Bolivian Judicial Organ, through its constitutional case law and the behavior of the lesser hierarchy formal courts settled in JK, allows JK's jurisdiction the possibility of resolving disputes?*

Case law allows describing how norms are understood, interpreted, and, consequently, implemented through the resolution of specific cases. In this sense, it was asserted that 'laws do not interpret

themselves. Laws are abstract concepts that require courts to give them life.' [276] Hence, case law is construed as the State's jurisdictional response provided to claimants through the law's interpretation.

From State's perspective, as a duty bearer, the effectiveness of indigenous jurisdiction in resolving disputes implies establishing as the central axes of analysis both the interpretation and application of the collective right to exercise indigenous jurisdiction and the conflicts of competencies between indigenous and formal jurisdictions. However, what case law should be analyzed?

On the one hand, given that the Bolivian egalitarian plural justice system and the collective right to exercise indigenous jurisdiction are recognized by the Bolivian Constitution of 2009,[277] their interpretation and application shall be considered from a constitutional perspective. The Constitution states that the Plurinational Constitutional Court (PCC) is its supreme interpreter, exercising constitutionality control and cautioning respect and enforcing rights and constitutional guarantees.[278] Therefore, examining this court's case law is pertinent to describe the Bolivian authorized response to claims regarding the constitutional right to indigenous jurisdiction as part of the real effect defined for this study.

On the other hand, the PCC is the only Bolivian court that solves inquiries from indigenous authorities regarding the application of their own law to a specific case and has the power to rule on competency conflicts between indigenous, ordinary, and agri-environmental jurisdictions.[279] Thus, knowing the constitutional jurisprudence makes it possible to unveil the limits of the exercise of indigenous justice and the formal jurisdictions of the State. Moreover, although there is a defined legal framework in Bolivia, its constitutional jurisdiction can modify it according to its interpretations and, consequently, broaden or restrict its scope. In other words, since the PCC's decisions are final and binding, they have the potential to mutate the sense and meaning of constitutional and legal prescriptions,[280] defining the right to exercise indigenous jurisdiction's contours.

The latter gains particular relevance and transcendence because the PCC's decisions are final and have binding effects on all persons regarding its judgments' opinions.[281] Indeed, although according to the Constitutional Procedural Code, the PCC's judgments, declarations, and orders are mandatory for the parties involved in a constitutional process, except those issued in actions of unconstitutionality and recourse against taxes that have a general effect,[282] the arguments of the PCC's decisions are mandatory for the procedural parties and third parties. Thus, the same Procedural Code orders that opinion or legal reasons that found all the PCC's decisions constitute jurisprudence and are binding for the Organs of the public power, legislators, authorities, courts, collectivities and individuals.[283] Therefore, the PCC's

[276] Mahoney (n 272) 820.
[277] Articles 30, 179, 190-192 and others of the Constitución Política del Estado Plurinacional de Bolivia. However, the constitution expressly refers jurisdiction and coordination issues to a specific law called *jurisdictional demarcation,* manifesting that '[e]sta jurisdicción conoce los asuntos indígena originario campesinos de conformidad a lo establecido en una Ley de Deslinde Jurisdiccional' in its article 191.II.2 of the ibid.
[278] Article 196.I of the Constitución Política del Estado Plurinacional de Bolivia.
[279] Article 202 paragraphs 2 and 11 of the ibid.
[280] Juan Manuel Goig Martínez, 'La interpretación constitucional y las sentencias del Tribunal Constitucional: de la interpretación evolutiva a la mutación constitucional' (2013) 0 Revista de Derecho de la UNED (RDUNED) ch de la interpretación evolutiva a la mutación constitucional <http://revistas.uned.es/index.php/RDUNED/article/view/11696> accessed 1 July 2020. In this chapter, Goig explains how constitutional norms, objects of interpretation, can vary their semantic meaning over time, and how courts can adapt the constitutional narrative to current reality without changing the constitutional text.
[281] Articles 203 of the Constitución Política del Estado Plurinacional de Bolivia. and 15.II and 132.II of Ley 254 Código Procesal Constitucional [Law 254 Constitutional Procedural Code] 2012.
[282] Article 15.I of Ley 254 Código Procesal Constitucional [Law 254 Constitutional Procedural Code].
[283] Article 15.II of ibid, in accordance with article 203 of the Constitution.

case law on the right to exercise indigenous jurisdiction applies to JK independently of the indigenous peoples involved and vice versa.

These characteristics make the constitutional jurisdiction fit this study's scope. In this sense, the PCC's case law is considered to describe the real effects of the collective right to exercise indigenous jurisdiction. However, it should be noted that despite the PCC's legitimacy to decide on such extremes, it does not imply that its resolutions are inexorably within the legal framework. Therefore, the Bolivian legal framework will be contrasted against the PCC's decisions to discuss their legality.

Apart from the Bolivian constitutional case law, the cases brought to the formal judges settled in JK are also considered. Although these courts are those of a lesser hierarchy, they are the nearest ones to JK's indigenous members, and consequently, their cases become relevant to assess possible conflicts of competence between them. Besides, indigenous jurisdiction is entitled to receive cooperation and coordination from them,[284] which might influence its effectiveness in resolving disputes. Furthermore, through these cases, it may be possible to assess the judges' compliance with the duties derived from the right to exercise indigenous jurisdiction in matters that do not necessarily reach the CCP. Finally, as these judges are in direct contact with JK, it is considered that their perceptions and attitude toward indigenous justice might have high value in understanding and explaining the reasons for their jurisdictional decisions.

## *Research Sub-question 2b*

*To what extent does the behavior of JK's indigenous members allow its jurisdiction the possibility of resolving disputes?*

From the outset, it should be clarified that the role of indigenous authorities does not concern this research sub-question. Whenever these persons exercise their jurisdiction by adopting decisions within particular cases, their actions pertain to the third research question since they represent JK's indigenous people. The acts of the court are attributed to the State, and the acts of the judges are attributed to the court.[285] Notwithstanding the differences between formal and indigenous jurisdictions, it is possible to maintain the same for indigenous authorities when they are exercising and acting in their positions.

Concerning this research sub-question, even though indigenous individuals can fulfill or fail to comply with their duties regarding the collective right to exercise indigenous jurisdiction in different ways, under the planned effect defined for the dissertation, indigenous litigants' requests to initiate processes under indigenous or formal jurisdictions are a crucial factor. Indeed, JK will have the possibility to resolve disputes if the indigenous parties present their disputes to the indigenous jurisdiction. Although JK can claim the competence against formal jurisdictions to resolve those disputes, the possible competence conflicts, if there are any, and their outcomes belong to sub-question 3b. Therefore, this research question is interested in describing whether JK's members perform their duties regarding its right to exercise indigenous jurisdiction or if, on the contrary, they prefer formal jurisdictions under the prescriptions of the Bolivian legal framework.

[284] The Bolivian Law 073 imposes cooperation and coordination between jurisdictions in its articles 13 to 17.
[285] Alejandro Abal Oliú, *Derecho Procesal*, vol II (Segunda, Fundación de Cultura Universitaria 2001) 235.

## *Third Research Question*

*To what extent does JK's jurisdiction exercise and its competence claims, regarding its legal scope and limits, allow it the possibility of resolving disputes?*

Recalling that the identified planned effect is the possibility that JK's indigenous jurisdiction has in resolving indigenous disputes, this research question aims to describe to what extent JK accomplishes such a purpose in reality. Nevertheless, considering that the effectiveness of rights concerns the interplay between duty bearers and right holders, this question also encompasses how JK is grounding duties on its duty bearers, that is, in its indigenous members and the Bolivian State. As a consequence, the third question involves two sub-questions. While the first refers to JK's actual exercise of jurisdiction, the second tackles the extent to which JK asserts duties on its duty bearers.

Following the proposed effectiveness analysis framework, these JK efforts should be considered with respect to the planned effect identified in this case study since the correspondence of purposes between the planned effect and the actual effect is intended to preserve the causation that effectiveness presupposes. Although this correspondence should normally be embedded in the exercise and claims that JK could make of its indigenous jurisdiction, since such endeavors grant it the possibility of resolving disputes (to resolve them), it could also be possible that the purpose pursued through them is diverse. Consequently, it will be necessary to note if the planned purpose or effect is not the one intended by JK because, in such circumstances, there will be a coincidence of results but not effectiveness.[286]

### *Research Sub-question 3a*

*To what extent does JK exercise its indigenous jurisdiction regarding its legal scope and limits?*

Given that the Bolivian Constitution states that indigenous jurisdiction only applies to some legally defined conflicts in which the parties belong to the same indigenous people, [287] JK has a limited field in which it might exercise its right to indigenous jurisdiction. Then, the effectiveness of JK in exercising its jurisdiction is directly related to these limits. Sub-question 3a aims to describe the matters on which JK resolves disputes to establish whether this indigenous people is exercising its right to jurisdiction within or outside its legal limits.[288]

### *Research Sub-question 3b*

*To what extent does JK have the interest to assert the duties of its duty bearers concerning its right to exercise indigenous jurisdiction?*

Research sub-question 3b seeks to unveil if JK is claiming the exercise of its collective right to exercise jurisdiction and, consequently, trying to ground duties on its members and the Bolivian State (as its duty bearers), i.e., the intensity and commitment of JK's interest in enforcing and rendering effective its collective right. This research question concerns JK's claims and not the actions of its duty bearers which correspond to the second research question.

[286] Cf. A General Approach to Rights' Effectiveness Assessment, page 35.
[287] Article 191.II of the Constitución Política del Estado Plurinacional de Bolivia.
[288] While the fulfillment or breach of duties by their holders belongs to question 2, this research question matters the actions of the right holder.

JK may claim according to its strategies and internal decisions as long as it considers that its duty bearers might contravene the limits of its collective right to exercise indigenous jurisdiction. However, it should be considered that although JK demands respect for its right against its duty bearers, this does not mean that its aspirations are necessarily within the legal framework. So then, as was also stated regarding the 2a research question, the Bolivian legal framework will be contrasted against JK's claims to determine its legality.

## Research Proposition

In Yin's words, a proposition 'directs attention to something that should be examined within the scope of the study.' [289] Only then, Yin states, would one have a position and be able to search facts and information. Furthermore, Baxter and Jack express that a proposition 'guide the data collection and discussion … determine direction and scope of the study,' [290] and it 'can be equated with hypotheses in that they both make an educated guess to the possible outcomes of the experiment/research study.'[291] Propositions arise 'from the literature, personal/professional experience, theories and/or generalizations based on empirical data.'[292] A proposition, in other words, provides meaning and sense to a research question among its various possibilities, defining the researcher's position in front of a problem.

However, a proposition should avoid bias in the research, particularly regarding this case study on effectiveness. It would happen if an attempt was made to adopt a position in which a reason (or more) was established beforehand to justify a possible effectiveness outcome or even to anticipate a possible result. Then, which could be a fitting proposition for this case study? Two possible scenarios are presented for this aim. The first is yielded from the identified planned effect, and the second is from the purpose pursued by collective rights recognized in favor of indigenous peoples.

Regarding the first one, and recalling that effectiveness lies in the opposition between the planned effect and the real effects and that in this research the real effect comprises both the actions of duty bearers and the right holders, one should wonder if in such a framework the planned effect may be construed as the research proposition. The planned effect resembles a proposition because the former involves the statement that expresses the objective or finality whose effectiveness wants to be verified. However, this similarity fades when it is observed that the planned effect is, in fact, a given data from which the effectiveness must be inferred; that is to say, it is not a proposition that is intended to be supported by research but a merely required element to assess the effectiveness. Furthermore, in the present case study, the identified planned effect was obtained from JK's Statute, which establishes the administration of indigenous justice as one of the main objectives of its institutional structure.[293]

As for the second scenario, the general planned goals of recognizing collective rights to indigenous peoples is to provide a legal framework for their survival, dignity, and well-being,[294] which includes

[289] Yin (n 61) 22. Yin exemplifies with a research on interorganizational partnership questioning ‘how and why do organizations collaborate with one another to provide joint services?’ arguing that the aim of the question is not clear unless a proposition is made, such as ‘organizations collaborate because they derive mutual benefits.’ ibid.
[290] Baxter and Jack (n 69) 552.
[291] ibid.
[292] ibid 551.
[293] Consejo de Gobierno del Suyu Jach’a Karangas (n 53), article 6.
[294] Article 43 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); Article XLI of the American Declaration on the Rights of Indigenous Peoples (OASDRIP).

avoiding any attempt conducted to destroy their cultures and their external assimilation.[295] The exercise of indigenous jurisdiction is an expression of indigenous self-determination and autonomy that contributes to keeping their indigenous institutions, customs, and identity.[296] The distinctive character of a community is challenged and condemned to disappear by assimilation to a broader community if its ways of life, customs, and institutions are ignored, forgotten, or neglected by the community, and not by cultural interactions and personal mobility among ethnic groups, as Barth explains.[297] As suggested in the introduction, such assimilation would probably occur if indigenous peoples subjected their cultures to the prevailing orders imposed on them, as would happen, in this study's perspective, if JK had submissively accepted the limits that the Bolivian State imposed on its indigenous jurisdiction, especially before the Plurinational Constitution of 2009.[298] Then, it could be said that there is a *healthy margin of legal irreverence* in which indigenous peoples, and JK for that matter, should act to conserve their qualities and, consequently, remain and continue.[299]

Consequently, it is considered that the proposition of this study is given by JK's position, as the right holder, concerning the effectiveness of its collective right to exercise indigenous jurisdiction within the Bolivian framework. Indeed, since the planned effect of JK is the possibility to resolve indigenous disputes, its related collective right shall be effective, less effective, or ineffective to the extent that the Bolivian legal framework and real effects prove that JK achieves such jurisdictional purpose. Furthermore, it shall be more effective in the event that JK has the possibility of resolving disputes outside the legal limits imposed on it by Bolivia. To this end, however, some clarifications should be made. Given that the cause in this study is the collective right to exercise indigenous jurisdiction as formally determined and recognized by the Bolivian legal framework in its egalitarian plural justice system, the eventual cases in which this right could be more effective could be construed as legal or illegal. They would be illegal if they are factual situations that exceed the legal limits of the right to exercise jurisdiction. If this right's exercise is outside the Bolivian law, then it is not a legal exercise but a de facto practice. For example, if indigenous jurisdiction resolves disputes beyond its jurisdictional competence. However, considering the PCC's binding effects in the context of the Bolivian legal system, those situations in which the constitutional jurisprudence 'legalizes' this 'more effective' quality should be construed as legal. It is highlighted that this would not be the situation of the first research question since the norm can provide only the effectiveness baseline.

## Units of Analysis and Units of Observation

The third component of a case study is the unit of analysis which tackles 'the fundamental problem of defining what the "case" is.'[300] In the words of Miles and Huberman, cited by Baxter and Jack, a unit of analysis is 'a phenomenon of some sort occurring in a bounded context.'[301] To define the unit of analysis of a study, Baxter and Jack recommend asking oneself 'do I want to "analyze" the individual? Do I want to "analyze" a program? Do I want to "analyze" the process? Do I want to "analyze" the difference

[295] Article 8 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); Article X of the American Declaration on the Rights of Indigenous Peoples (OASDRIP).
[296] '[T]he degree of autonomy of indigenous peoples within states becomes an indicator of the probability of their survival.' Heintze, cited by Xanthaki (n 5) 165.
[297] Fredrik Barth, 'Introducción' in Lugo Rendón (tr), *Los grupos étnicos y sus fronteras. La organización social de las diferencias culturales.* (Primera edición en español, Fondo de Cultura Económica 1976).
[298] See Bolivia Becomes a Plurinational State, page 167.
[299] Such considerations are better justified in the following chapter.
[300] Yin (n 61) 22.
[301] Baxter and Jack (n 69) 545.

between organizations?'[302] These questions aim to more clearly envision the study's interest to generate consistency between the research question, the proposition, and the analysis unit. The three of them are closely related.[303] Besides, the analysis unit prevents the case from being too broad, and it is suggested to define it through time, place, activity, or context limits,[304] depending on the case. Furthermore, as Yin states, the determination of the unit of analysis covers what is included/excluded from the case study and sets its time boundaries.[305] Then, the unit of analysis not only refers to what the case is but also its scope.

Regarding what this case is and taking into consideration the main research question, the unit of analysis concerns the effectiveness of the indigenous right to exercise jurisdiction within the Plurinational State of Bolivia's egalitarian plural justice, and consequently, it corresponds to: a) JK as the holder of this collective right, and the identified duty bearers who are b) Bolivia and c) JK's indigenous members.[306]

Concerning the case study's boundaries, eight limits are set: context, place, collectivity, definition, time, legal framework, cases, and relevant actors. The context, place, and community are developed in Chapter four when referring to JK. The underlying core definitions of this research are elaborated in three chapters of this study. Thus, the 'rights' effectiveness' is defined in Chapter one, Section 1.1, 'indigenous peoples' in Chapter two, and 'the collective right to exercise indigenous jurisdiction' in Chapter three.

As for the time boundaries of the case study, the analysis period covers from 2009 to 2019. The main reason to choose 2009 refers to the fact that the Plurinational Constitution of Bolivia was promulgated on 7 February 2009, after being approved by referendum on 25 January 2009, inaugurating the egalitarian plural justice system and the collective right to exercise indigenous jurisdiction. This constitutional context comprises the cause of the effectiveness of this research and, by extension, its planned and real effects. On the other hand, the data collection of the cases of the ordinary and agri-environmental lower-ranking judges settled in JK and the indigenous minutes and indigenous documents was concluded in the first quarter of 2020, which allowed the collection of information up to the year 2019, inclusive. Unfortunately, this period coincided with the beginning of the Covid-19 health emergency in Bolivia, which limited subsequent access to these documents. However, the interviews were conducted until December 2020, and the PCC's case law was collected until the first quarter of 2021.[307] With this background and for these reasons, this study has collected data up to the year 2019, with the exception of the interviews and PCC's case law. Consequently, this research covers the analysis period of eleven years between the years 2009 to 2019.

The limits on legal frameworks, cases, and interviewees are established below in the section 'Sources and Methods to Collect Data.' Regarding the limits set for relevant actors, the inclusion criteria refer to individuals related directly or indirectly to JK's indigenous jurisdiction. Accordingly, five groups of people have been chosen:

Group A: Indigenous authorities and ex-authorities who participated in resolving or helping resolve indigenous disputes.

[302] ibid 545–546.
[303] Yin (n 61) 22–24.
[304] Baxter and Jack (n 69) 546.
[305] Yin (n 61) 24–26.
[306] Cf. Right Holder and Duty Bearers, page 45.
[307] It should be noted that, up to that moment, the PCC website only covered relevant information up to the cases prior to 2020, except for four early cases of 2020.

Group B: JK's indigenous members who experienced indigenous processes, whether they have already resolved or are about to solve their disputes and whether they have lost or won.

Group C: Indigenous individuals who experienced formal jurisdictions' processes, whether they have already resolved or are about to solve their disputes, and whether they have lost or won.

Group D: Non-indigenous judges who are or have been judges in JK's territory.

Group E: Indigenous lawyers who rendered legal advice to indigenous people before indigenous and formal jurisdiction.

Following the research design, within the selected sources to collect data to resolve the second and third research questions, the units of observation were the following.

## *Plurinational Constitutional Court Case Law*

226 cases from the Plurinational Constitutional Court (PCC) related to the exercise of indigenous jurisdiction and the possibility of JK to decide disputes of its indigenous members were analyzed. For further reference, Annex B comprises the abstract and analysis of all the PCC cases relevant to this research, ordered by date, and their case number, consisting of a correlative number followed by the decisions' year. All the cases were collected from the PCC's official website.[308]

In two parts, this collection of cases was identified and chosen through PCC's website searches. The first part, corresponding to the identification process, was carried out in four steps within the time frame of 2009 to 2019 defined in the research design. The first step began with searching for all cases related to the Jurisdictional Demarcation Law. Then, the '*snowball'* technique was followed,[309] i.e., the collection of cases was expanded with all the sentences referred to in the first collection obtained with the first step. Then, in the third step, all the remaining cases related to JK were searched. Finally, it was verified that the collection included all the relevant cases through the iconic cases referred to by bibliographic sources.

Through these four steps, a total collection of 489 cases was obtained. In the second part, the 489 resolutions identified were reviewed and reduced to 226 cases through a selection process based on their relevancy to the right to exercise indigenous jurisdiction. After an exhaustive examination of the PCC's jurisprudence, it is conceivable to state that this collection of case law possibly contains all the relevant cases to the investigation within the analysis period. In addition, due to their explanatory value, some excluded cases and others external to this identification process were used in the thesis as referential quotations.

[308] Cf. https://tcpbolivia.bo/

[309] Following the technique used for the literature review, in which a citation network is created 'through a snowball sampling technique that starts with seed articles. Articles that cite the seed article are collected at the first level, then articles that cite the articles that cite the seed are collected at the second level, and so on. This technique produces a network of relevant articles built around the seed and facilitates insights into the broad context of the research instead of the narrow set of publications that are returned in keyword searches.' Jesse D Lecy and Kate E Beatty, 'Representative Literature Reviews Using Constrained Snowball Sampling and Citation Network Analysis' (2012) SSRN Scholarly Paper ID 1992601 5 <https://papers.ssrn.com/abstract=1992601> accessed 6 July 2022.

The dissertation has used the PCC's standard nomenclature so that the cases can be reviewed and contrasted by people interested in their content (cf. Annex B).[310]

Among the identified PCC's case law related to the investigation during the analysis period, 226 of them are suitable for a specific evaluation of the effectiveness of the indigenous collective right to exercise jurisdiction. In turn, 22 of them (or almost 10%) correspond to JK, and 204 regard other indigenous peoples from the rest of Bolivia.[311]

Nonetheless, not all these cases serve all the proposed indicators under the research design,[312] as Table 3 portrays for each cluster of indicators. Thus, 40 cases (two in JK[313] and 38 in the rest of Bolivian indigenous peoples[314]) are irrelevant to the PCC's indicators because although its decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected (i.e., the PCC does not make indigenous jurisdiction effective, less effective, or ineffective). Although the same may occur with lower-ranking courts' indicators, they also exclude the kind of cases in which these courts do not participate, such as 'Consultation of Indigenous Authorities on the Application of their Legal Norms to a Specific Case' or 'Prior Control of the Constitutionality of an Autonomous Statute.' As a result, 75 cases are irrelevant for these indicators (five in JK[315] and 70 in the rest of the Bolivian indigenous peoples[316]). Furthermore, 31[317] and 48[318] cases were excluded from the claimant and defendant's indicators, respectively (parties to the processes), given that in some processes, one of their parties was not a duty bearer of the exercise of the indigenous jurisdiction for

[310] However, an identification code was applied for personal organization and to file the information with greater precision. The identification code is divided by dots and dashes starting with its issuing year, the number and code assigned to it by the PCC, and acronyms for resolution and process kinds. For example, 2018.0093-CAI-DC or 2015.0033.S3-Amp-SC.

[311] For further reference to PCC's case types, see Constitutional Actions, page 463.

[312] See Indicators and Sources for Collecting Research Data, page 71.

[313] Cases 0032/2017 and 0156/2019-CA (cf. Annex B).

[314] Cases 0243/2010-R, 1639/2011-R, 1114/2012, 0414/2013-CA, 0043/2014, 0062/2014-S3, 0764/2014, 1024/2014, 1983/2014, 0082/2015, 200/2015, 246/2015-S1, 0448/2015-S3, 0707/2015-S1, 0917/2015-S1, 0001/2016, 0009/2016, 0020/2016, 0044/2016, 0046/2016, 0056/2016, 1197/2016-S3, 0006/2017-S1, 0018/2017, 0043/2017, 0061/2017, 0090/2017, 0119/2017-CA, 0008/2018, 0014/2018, 0031/2018, 0093/2018, 0303/2018-S3, 0046/2019, 0364/2019-S4, 0371/2019-S4, 0737/2019-S2, and 0433/2020-S3 (cf. Annex B).

[315] Cases 2463/2012, 0009/2013, 0031/2017, 0032/2017, and 0072/2017 (cf. Annex B).

[316] Cases 0243/2010-R, 1639/2011-R, 1114/2012, 0006/2013, 0012/2013, 0028/2013, 0414/2013-CA, 0043/2014, 0062/2014-S3, 0764/2014, 1024/2014, 1754/2014, 1983/2014, 0007/2015, 0057/2015, 0075/2015, 0082/2015, 0098/2015, 0131/2015, 0199/2015, 200/2015, 246/2015-S1, 0448/2015-S3, 0707/2015-S1, 0917/2015-S1, 0001/2016, 0009/2016, 0020/2016, 0025/2016, 0044/2016, 0046/2016, 0056/2016, 0076/2016, 1197/2016-S3, 0006/2017-S1, 0018/2017, 0025/2017, 0043/2017, 0045/2017, 0045/2017, 0047/2017, 0055/2017, 0056/2017-S1, 0061/2017, 0067/2017, 0071/2017, 0077/2017, 0090/2017, 0091/2017-S1, 0100/2017-S1, 0105/2017, 0119/2017-CA, 0691/2017-S3, 0008/2018, 0014/2018, 0031/2018, 0036/2018, 0065/2018, 0073/2018, 0093/2018, 0098/2018, 0303/2018-S3, 0046/2019, 0055/2019, 0064/2019-S4, 0364/2019-S4, 0371/2019-S4, 0737/2019-S2, 0016/2020 and 0433/2020-S3 (cf. Annex B).

[317] Three in JK: 0009/2013, 0032/2017 and 0072/2017; and, 28 in the rest of the indigenous peoples: 0012/2013, 0026/2013, 0764/2014, 0874/2014, 1754/2014, 1810/2014, 1983/2014, 0082/2015, 0098/2015, 0001/2016, 0029/2016, 0046/2016, 0076/2016, 1386/2016-S3, 0006/2017, 0042/2017, 0045/2017, 0055/2017, 0061/2017, 0077/2017, 0105/2017, 0119/2017-CA, 0008/2018, 0031/2018, 0036/2018, 0065/2018, 0098/2018, and 0035/2019 (cf. Annex B).

[318] Two in JK: 0009/2013 and 0072/2017; and, 28 in the rest of the indigenous peoples: 0243/2010-R, 1639/2011-R, 1114/2012, 0006/2013, 0012/2013, 0414/2013-CA, 0043/2014, 0062/2014-S3, 0672/2014, 1024/2014, 246/2015-S1, 0707/2015-S1, 0917/2015-S1, 0001/2016, 0009/2016, 0025/2016, 0056/2016, 0076/2016, 0444/2016-S1, 1197/2016-S3, 1336/2016-S2, 0025/2017, 0045/2017, 0055/2017, 0069/2017, 0071/2017, 0077/2017, 0090/2017, 0105/2017, 0573/2017-S1, 0909/2017-S3, 0065/2018, 0073/2018, 0093/2018, 0098/2018, 0105/2018-S1, 0153/2018-S2, 0303/2018-S3, 0015/2019-S1, 0306/2019-S1, 0364/2019-S4, 0371/2019-S4, 0563/2019-S3, 0985/2019-S1, 0016/2020 and 0433/2020-S3 (cf. Annex B).

not being a community member of the indigenous peoples concerned or the kind of process excluded their participation (e.g., in 'Prior Control of the Constitutionality of an Autonomous Statute'). Interestingly, only seven cases[319] portrayed inter-jurisdictional coordination and cooperation indicators to some extent since most only involved unilateral decisions, actions, or effects.

*Table 3: Number of cases of the Plurinational Constitutional Court applicable to the investigation by indicator (all indigenous peoples and Jach'a Karangas, 2010-2020)*

| Indicators | Dubty bearers | | | | | | | | | | Right holder | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | *PCC* | | *Lower-ranking courts* | | *Coord. & Coop.* | | *Claimants* | | *Defendants* | | *IJ Acce.* | | *IJ claims* | |
| | *Appl.* | *NA* | *Appl.* | *NA* | *Appl.* | *NA* | *Appl.* | *NA* | *Appl.* | *NA* | *Appl.* | *NA* | *Appl.* | *NA* |
| All cases | 186 | 40 | 151 | 75 | 7 | 219 | 195 | 31 | 178 | 48 | 217 | 9 | 116 | 110 |
| JK's cases | 20 | 2 | 17 | 5 | 1 | 21 | 19 | 3 | 20 | 2 | 20 | 2 | 10 | 12 |
| Other IPs (not JK) | 166 | 38 | 134 | 70 | 6 | 198 | 176 | 28 | 158 | 46 | 197 | 7 | 106 | 98 |

*Source:* Self-made.

*Note*: Plurinational Constitutional Court (PCC), indigenous jurisdiction (IJ), indigenous peoples (IPs), Nación Originaria Suyu Jach'a Karangas (JK), applicable (Appl) and non-applicable (NA). Whereas 'all cases' concerns the totality of analyzed cases, JK's cases refer to the ones related to JK, and 'other IPs (not JK)' are the cases that involve the participation of other indigenous peoples from all around Bolivia, excluding JK's cases.

Regarding the right holder, nine cases were excluded from the indicators of indigenous jurisdiction's acceptance to resolve disputes (two from JK[320] and seven from the rest of the indigenous peoples[321]) since seven (one of JK: case 0009/2013) pertained to 'Prior control of the constitutionality of an autonomous statute' (which is a procedure seldom relevant to that matter within the analyzed cases[322]), one in which the formal jurisdictions excluded themselves from resolving a dispute (JK's case 2463/2012), and one that only referred the parties' actions (0153/2018-S4). Finally, 110 cases did not involve indigenous jurisdiction's competence claims[323] being excluded from this indicators' cluster (e.g., 'Consultation of Indigenous Authorities on the Application of their Legal Norms to a Specific Case' or most of the 'Constitutional Amparos').

[319] Cases 0925/2013, 0043/2014, 388/2014, 0778/2014, 0874/2014, 0049/2017 and 0015/2018 (cf. Annex B).
[320] Cases 2463/2012 and 0009/2013 (cf. Annex B).
[321] Cases 0012/2013, 0076/2016, 0055/2017, 0077/2017, 0065/2018, 0098/2018 and 0153/2018-S4 (cf. Annex B).
[322] JK's case 0072/2017 is the only exception when one of the statutes of its Markas illegally included corruption crimes to its jurisdiction's competence.
[323] Twelve in JK: 1586/2010-R, 2036/2010-R, 1574/2012, 2463/2012, 0009/2013, 0152/2014-S3, 0778/2014, 1016/2015-S3, 0150/2016-S1, 1160/2016-S2, 0072/2017 and 0721/2018-S4. Finally, 98 in the rest of the indigenous peoples: 0243/2010-R, 2010/2010-R, 1639/2011-R, 1114/2012, 1422/2012, 1624/2012, 0006/2013, 0012/2013, 0028/2013, 0358/2013, 1127/2013-L, 1248/2013-L, 1259/2013-L, 1956/2013, 2076/2013, 0041/2014, 0043/2014, 0062/2014-S3, 0113/2014-S2, 0323/2014, 0486/2014, 0961/2014, 1024/2014, 1203/2014, 0033/2015-S3, 0057/2015, 0131/2015, 0199/2015, 200/2015, 246/2015-S1, 0448/2015-S3, 0470/2015-S2, 0484/2015-S2, 0607/2015-S3, 0649/2015-S1, 0707/2015-S1, 0917/2015-S1, 0967/2015-S1, 0001/2016, 0009/2016, 0020/2016, 0025/2016, 0056/2016, 0076/2016, 0444/2016-S1, 0924/2016-S1, 1197/2016-S3, 1251/2016-S2, 1254/2016-S1, 1336/2016-S2, 1386/2016-S3, 0006/2017-S1, 0025/2017, 0045/2017, 0055/2017, 0056/2017-S1, 0077/2017, 0090/2017, 0091/2017-S1, 0100/2017-S1, 0105/2017, 0516/2017-S3, 0573/2017-S1, 0691/2017-S3, 0843/2017-S3, 0909/2017-S3, 939/2017-S2, 1048/2017-S2, 1161/2017-S2, 1189/2017-S1, 0065/2018, 0073/2018, 0076/2018-S1, 0093/2018, 0098/2018, 0105/2018-S1, 0153/2018-S2, 0153/2018-S4, 0206/2018-S1, 0303/2018-S3, 0433/2018-S1, 0647/2018-S2, 0677/2018-S1, 0722/2018-S4, 0015/2019-S1, 0055/2019, 0064/2019-S4, 0306/2019-S1, 0364/2019-S4, 0371/2019-S4, 0481/2019-S2, 0518/2019-S4, 0563/2019-S3, 0737/2019-S2, 0985/2019-S1, 0016/2020, 0026/2020-S2 and 0433/2020-S3 (cf. Annex B).

The PCC resolved the relevant matters for this study through six kinds of actions, although only three of them were the most common, with almost 93% of the total.[324] Thus, according to Figure 3, Jurisdictional Competency Disputes (110 cases or roughly 49%) and Constitutional Amparos (76 cases or a little less than 34%) were the most frequent types of actions since they constitute more than 82% of all the cases, followed by Consultation of Indigenous Authorities on the Application of their Legal Norms to a Specific Case (24 cases or almost 11%) in third place. The other five types of actions (Liberty, Popular, Prior Control of the Constitutionality of an Autonomous Statute, and Abstract and Concrete Unconstitutionality) involve only 7% of all the cases. Additionally, the cases studied have essentially dealt[325] with criminal disputes[326] (about 45% or 102 cases), disputes emerging from indigenous sanctions[327] (more than 29% or 66 cases), and agrarian disputes (19% or 43 cases).[328] However, the PCC resolved only 22 relevant cases regarding Jach'a Karangas (one case in each year in 2013 and 2019, two in 2010, 2012, 2014, 2015, three in 2018, four in 2016 and five in 2017), of which

[324] See Annex B for an explanation of the PCC's constitutional actions relevant to the investigation, page 463.

[325] These values consider the main claim or reason for the case and not the various causes that make up the background of each case. Thus, for example, if a 'criminal' case has occurred due to an 'indigenous sanction,' and what is claimed is the jurisdiction to decide the criminal case, the matter is construed as 'criminal' and not 'indigenous sanction.'

[326] The most common criminal offenses reported, considering that many cases regarded concurrent criminal offenses, were robbery (42 cases), injuries (29 cases), land dispossession (22 cases), defamation and slander (20 cases), threats (15), force entry and trespassing (14), criminal association (8 cases), and homicide, murder, attempted homicide, attempted murder, and falsification of documents (with 5 cases each). The rest of the cases are: a) attacks against the freedom of work, domestic violence, instigation to commit a crime, and public instigation to commit a crime, with 4 cases each, b) deprivation of liberty, and intentional alienation of property without ownership [estelionato] with 3 cases each; c) discrimination, disobedience to authority, extortion, fraud, home search, kidnapping, resolutions contrary to the Constitution and the laws, sabotage, use of forged document, and usurpation, with 2 cases each; and d) abortion, breach of contract, breach of trust [abuso de confianza], cattle rustling, corruption, dispossession and disturbance of possession, false accusation, false and reckless accusation, family and domestic violence, force entry with the aggravating circumstance for being public officials, hinder the exercise of functions, incendiarism, land trafficking, mining area trespassing, political harassment, public disorder or disturbance, simple damage, usurpation of water, violence against women, wrongful conduct with one case each.

[327] The most common indigenous sanction, considering that many cases regarded concurrent sanctions, was expulsion of individuals from the community (49 cases). The others concern land dispossession (7 cases), dismissal of authority (4 cases), force communal labor and water supply interruption (3 cases each), seizure of cattle and fines (2 cases each), and lashes and demolition of construction (1 case each).

The reasons for the expulsion are varied and depend largely on the indignation, persistence, and or sum of offenses experienced by the indigenous peoples. However, trying to order the causes of expulsion under the criteria expressed by the indigenous peoples before the PCC in the cases studied, the following are found: *offenses against mother earth* (environmental damage and abuse of mining extraction to non-community members), *against the community* (affecting cultural values and identity, constant disagreements with the community, interruption of water supply, opposition to the exploitation of natural resources, blocking of roads, destruction of community landmarks, documents falsification against the community, failure to fulfill a social function, not performing community contributions, hindering collective land titling, trafficking of community lands, or destructions of sacred places), *against indigenous authority* (disobeying community mandates, supplanting indigenous authority, illegally dressing as an indigenous authority, initiating criminal actions against indigenous authorities, disrespect for indigenous authorities and their decisions, commission of illegal acts as an indigenous authority, and corruption), *against the family or the spouse* (adultery, marrying a married woman, appropriation of assets and spousal abuse), *against community members' life or integrity* (homicide or murder, attempted murder or homicide, physical assaults, abduction, rape, sexual assault on minors, constant violent behavior or obscene acts, and sorcery), and *against community members' goods* (theft, destruction of dwellings, land dispossession or misappropriation, and illicit commercialization of cattle).

[328] The remaining almost 8% regarded civil (3 cases), cooperation and coordination (1 case), freedom of worship (1 case), water supply interruption (1 case), unconstitutionality (3 cases), and prior control of the constitutionality of an autonomous statute (8 cases).

eleven were Jurisdictional Competency Disputes (50%), nine were Constitutional Amparos (almost 41%), and two were Prior Control of the Constitutionality of an Autonomous Statute (about 9%).

It is remarkable that in 2017 a third of all the cases concerned with the research were resolved. According to Figure 3, during 2017, the PCC resolved 66 cases relevant to the effectiveness of rights, equivalent to double the cases of 2018, in which the second largest number was registered (33 cases). Of these 66 cases, 42 were on Jurisdictional Competency Disputes (almost tripled the cases of 2018, which was the second-highest number), and seven were Consultations of Indigenous Authorities (in contrast with the 5 of 2016 and the average of 3 of the other years). Although the reasons for this irregularity are unknown, it is possible that the number of cases increased because new magistrates for the PCC were elected in December 2017, generating uncertainty about their legal leanings and composition.[329] It is noted that it was not a phenomenon of backlogged cases' resolution given that 39% of the resolved cases were from the same 2017, 47% from the previous year, and only 7% from two previous years,[330] compared to the averages for the same time series of the analysis period (2010-2020) of 27%, 41%, and 29% respectively regarding the relevant cases of the research.

## *Agri-Environmental and Ordinary Lower-ranking Courts Cases*

A non-representative sample of twenty cases of the agri-environmental (16) and ordinary (4) lower-ranking judges settled JK was revised. Annex C comprises the abstract and analysis of these cases for further reference.

It is worth mentioning that the agri-environmental cases were physically reviewed at the court and had been those voluntarily authorized and handed over by the agri-environmental judge of Curahuara Marka. These cases concern JK's members claims and disputes. Three of them are requests for indigenous cooperation, two for land mapping, four for land disputes, three for damages, two for land disputes and damages, and two for land division by hereditary succession. It is noted that the available cases are limited to those currently in process since courts deposit all the concluded or abandoned processes.[331] In addition, they are not published online, and only those that are physically available in the offices of the courts are accessible, with the prior authorization of the judges in charge.

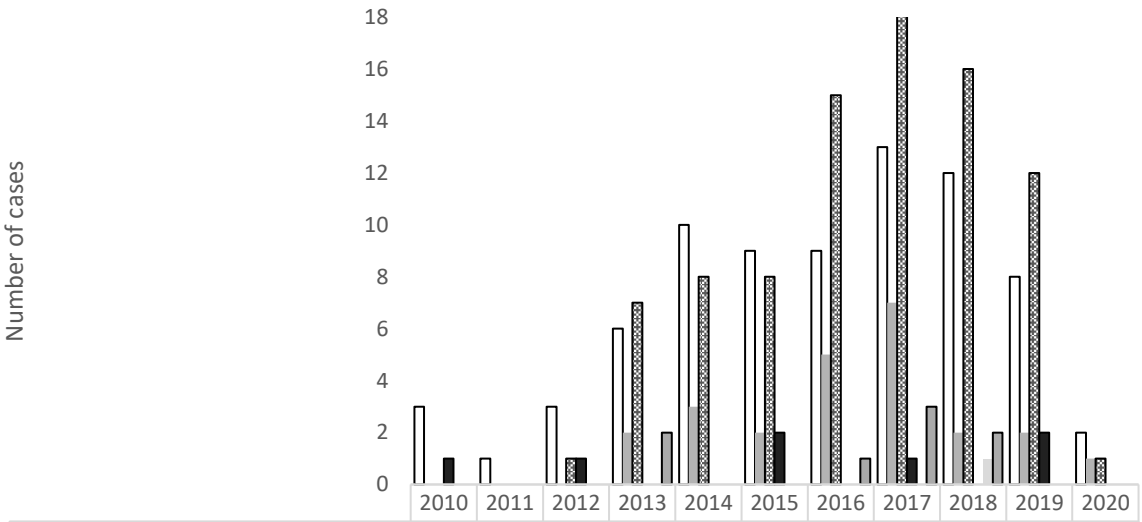
The reviewed criminal cases were voluntarily handed over to the indigenous jurisdiction by the ordinary jurisdiction after the former claimed the competence to resolve those disputes. Consequently, the Apu Mallku of JK exhibited the judicial files for their review in JK offices. Three of these cases are from Curahuara de Carangas (two from San Pedro de Totora and one from the Manasaya community) and one is from Totora Marka. Three correspond to severe and minor injuries, including one of them the complaint about the threat of death, and one regards domestic violence.

The criminal judges and the rest of the agri-environmental judges of Corque Marka, Sabaya, and Huachacalla Marka refused to make their cases public for this study, demanding that the investigator

[329] For more references concerning PCC's magistrate composition, see Context and composition, page 356.
[330] There is a 4% (or 3 cases) of resolved cases from 3 previous years in 2017, a phenomenon that only occurred in 2010 (1 case) and 2016 (1 case), and 2017 is the only year that resolved two cases from four years before (or 3%).
[331] The cases that have concluded or are without movement in the last six months are put on file, and their access is allowed only to interested parties.

be a process party or, on the contrary, obtain a duly justified order from a superior authority. It was not feasible to comply with any of these conditions.[332]

*Figure 3. Types of cases in which the Plurinational Constitutional Court has decided matters of indigenous jurisdiction (all indigenous peoples, 2010-2020)*




| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Constitutional Amparo [Amparo Constitucional] | 3 | 1 | 3 | 6 | 10 | 9 | 9 | 13 | 12 | 8 | 2 |
| Consultation of Indigenous Authorities on the application of their legal norms to a specific case | | | | 2 | 3 | 2 | 5 | 7 | 2 | 2 | 1 |
| Jurisdictional competency dispute | | | 1 | 7 | 8 | 8 | 15 | 42 | 16 | 12 | 1 |
| Liberty action | 1 | | 1 | | | 2 | | 1 | | 2 | |
| Popular Action | | | | | | | | | 1 | | |
| Prior control of the constitutionality of an autonomous statute | | | | 2 | | | 1 | 3 | 2 | | |

*Source:* Self-made.
*Note*: The number of 2017's Jurisdictional competency dispute cases (42) is higher than the graphic portrays for space's sake. At the time of data collection there were only four cases from early 2020, as explained in the research design, which do not represent all the cases existing in that year.

When the 20 files were reviewed in 2019, they were in process or had recently concluded since their last actions were from 2019. Except for one agri-environmental process of 2017, the others started in 2019. On the other hand, the criminal processes started in 2015, 2017, and 2018. Furthermore, one of the indigenous minutes reviewed is related to one of the criminal proceedings, when the Apu Mallku summoned the conflicting parties to start the conciliation process.

Each case has an identification code that starts with the letters LRFJ, then the letters' AE' (agri-environmental) or 'O' (ordinary), followed by the judicial seat, its starting and final year, and correlative number. In some cases, the file is divided into two or more parts (the files are divided every 200 pages). A letter (a, b, and so on) represents each part. For instance, LRFJ.AE.Curahuara de Carangas 2017.2019.012.b.

[332] The Court of Appeals of Oruro, the higher judicial departmental authority, rejected the investigator's verbal request. Although the indigenous authority was willing to request this information, the Covid-19 pandemic and the lockdown in 2020 prevented this task from being achieved.

## *Interviews*

Ninety-four interviews were conducted with indigenous authorities, indigenous members with process experience in indigenous or formal jurisdictions, judges, and lawyers, who are also JK's members. Each interview has an identification code that starts with the letter G, followed by the year it was conducted, and finally has a correlative number of the year's interviews. For instance, interview G-2018-10.

The interviews correspond to a semi-structured questionnaire.[333] As a result, the interviewer expanded, modified, or limited the questionnaire according to the interviewees' answers. Due to its length, Annex D presents Table 34 with the questionnaires prepared for each of the five groups of interviewees during 2018, 2019 and 2020. These questionnaires are of two kinds: a brief exploration of the current indigenous justice in JK through a general questionnaire and specific questionnaires differentiated by relevant actors to collect data regarding research questions 2a, 2b, 3a, and 3b. The questionnaires were addressed to five groups of people related to indigenous justice in JK[334] to explore its right's effectiveness in exercising jurisdiction (cf. Table 35).

Ninety-three interviews were conducted in total: the majority of males (72) and the minority of females (23), concerning indigenous authorities (59), JK's members with indigenous process experience (13) or ordinary or agri-environmental process experience (3), former and current judges settled in Karangas (9), and indigenous lawyers (10) who practice law outside of JK's jurisdiction and sometimes assist JK in bringing its competence claims before formal jurisdictions. In addition, some interviewees were called a second time to deepen the interviews or ask additional questions because of their experiences and knowledge.

Besides the numbers, it is underscored that all the indigenous people interviewed who had a process experience (groups B and C) had experienced both indigenous and formal jurisdictions. Therefore, the criterion for deciding their interview group was their first experience. In addition, it is remarkable that among the interviewees are two former magistrates: one from the Plurinational Constitutional Court and one from the Supreme Court of Justice, who were included in Table 35 according to their role. Furthermore, to protect the identity of the ordinary and agri-environmental judges, who are few, only the jurisdictions to which they belong are mentioned and not the place where they administer justice (*Curahuara Marka*, *Corque Marka*, and *Huachacalla Marka*). Finally, at least one person from each of the twelve *Markas* in JK was interviewed to cover the whole indigenous territory. Thus, Table 35 in Annex D exhibits the code assigned to each interviewee, the *Marka* to which they belong (without mentioning their *Ayllu* or community), when they have decided to communicate it, and their gender.

After presenting the interviewees and making a brief introduction concerning the research and the permission granted by indigenous authorities to conduct it through the JK-UCB interinstitutional agreement,[335] the questions in Table 34 were considered. This Table organizes and presents the questionnaires in the following order and criterion: First, they are classified into the groups to which the questions were asked (A, B, C, D, and E). Second, the table divides each of these groups into the research questions to which each questionnaire refers.[336] Finally, this Table subdivides the research

[333] Semi-structured interview 'is neither an open everyday conversation nor a closed questionnaire. It is conducted according to an interview guide that focuses on certain themes and that may include suggested questions.' Steinar Kvale and Svend Brinkmann, *Interviews: Learning the Craft of Qualitative Research Interviewing* (SAGE 2009) 27.

[334] See 'Units of Analysis and Units of Observation' on page 58.

[335] Cf. Annex A, clause 3.

[336] For greater precision, two specific questions were written for research sub-question 2a.

questions into the years in which they were formulated and answered. The question numbers, in all cases, respond to actual questionnaires conducted on the field.[337]

## *Indigenous Minutes and Documents*

Forty-four indigenous minutes and documents regarding the actual exercise of JK jurisdiction were revised. Annex E comprises the abstract and analysis of these minutes for further reference. Each document has an identification code that starts with the letter A and its date (year.month.day). Minutes that do not have a date include 'nd' in their code and a correlative number.[338] (A.nd.01). Moreover, there are two minutes with the same date; consequently, their codes include letters ‘a’ and ‘b’ to differentiate them.[339]

Each minute book corresponds to legal-size notebooks with hard covers purchased in bookstores. Only some of them (5), on their first page, were opened by a public notary (3) or by an indigenous authority (2), usually stating the date, time, place of opening, the number of pages of the book, and referring that it corresponds to a minutes' book of a specific place. Each contains 200 printed pages with lines and a page number in the upper right corner. Some of these notebooks were covered with paper and plastic to protect them during handling. Minute books are identified in Table 4.

It can be seen in these notebooks that most of their pages were used, presenting handwritten and chronologically ordered minutes, although, on some occasions, a page is missing. At each minute's conclusion appears the signature of those who participated in the acts, and, in the case of indigenous authorities, they also include stamps that essentially refer to their places of origin and positions. The minutes refer to acts of a diverse nature, such as meetings of communities, authorities, or social, consecrations of authorities, and seminars, among others. Among these minutes there are, in a dispersed manner, those of jurisdictional exercise or dispute resolution analyzed for this investigation.

*Table 4: Reviewed indigenous minute books and periods to which they correspond*

| Minute Book | Period covered by the minute book |
|---|---|
| 001 | February 2009 to November 2009 |
| 002 | December 2005 to November 2008 |
| 003 | May 2002 to July 2007 |
| 004 | May 2002 to May 2005 |
| 005 | June 2000 to September 2019 |
| 006 | July 2008 to February 2009 |
| 007 | July 2015 to March 2017 |
| 008 | December 2011 to January 2014 |
| 009 | March 2009 to October 2010 |
| 010 | February 2005 to June 2007 |
| 011 | December 2010 to November 2011 |
| 012 | December 2010 to November 2013 |
| 013 | March 2017 to September 2019 |
| 014 | March 2017 to January 2019 |

*Source*: Self-made.
*Note*: The researcher has done the numbering of the books according to the order they were given to him by the Apu Mallku of Jach'a Karangas.

[337] Greater detail on ethical matters could be found on page 82.
[338] The code of one minute is A.nd.01 because it has no date, while the code of another is A.2016.nd.01 because it only has a year.
[339] A.2019.05.22a and A.2019.05.22b; and, A.2019.09.04a and A.2019.09.04b.

The indigenous documents and minutes analyzed for this case study were obtained after revising 14 indigenous minute books, 8 files, and 6 through loose sheets handed over to the researcher by the Apu Mallku of Jach'a Karangas from the archives of the JK office (cf. Table 5 for identifying these documents and their sources). Most of the documents are handwritten (35), and all of them are in Spanish. These documents are from 2009 (2), 2010 (2), 2011 (2), 2013 (3), 2014 (1), 2015 (8), 2016 (7), 2017 (6), 2018 (1), 2019 (12) and one has no date. Two of them are related between them (A.2011.03.18 with A.2010.03.19), two are related to two PCC cases (A.2013.03.02 to 2014.0152.S3-Amp-SC, and A.2013.08.30 to 2016.0007-CC-SC), and one is related to a criminal process held in the ordinary jurisdiction reviewed for this research (A.2019.09.04b with LRFJ.O.San Pedro de Totora 2018.2019.03). It is noted that these indigenous documents are not accessible to the general public and are kept for JK's authorities and interested parties' consultation.

*Table 5: Identification of the minutes and indigenous documents reviewed*

| Type of document | Identification code |
|---|---|
| Minute book | A.2009.07.21, A.2009.09.10, A.2010.02.27, A.2010.03.19, A.2011.03.18, A.2015.10.23, A.2015.11.12, A.2015.11.15, A.2015.12.14, A.2015.12.15, A.2016.01.12, A.2016.05.11, A.2016.05.30, A.2016.06.13, A.2016.11.30, A.2016.nd.01, A.2017.02.17, A.2017.03.14, A.2017.03.15, A.2017.03.16, A.2019.04.26, A.2019.05.04, A.2019.05.15, A.2019.05.22b, A.2019.06.05, A.2019.07.10, A.2019.07.24, A.2019.09.04a, A.2019.09.04b, and A.2019.09.11. |
| Archives | A.2011.12.02, A.2013.03.02, A.2013.08.30, A.2014.04.30, A.2015.01.28, A.2015.03.20, A.2017.03.21, A.2017.05.17. |
| Loose sheets | A.2013.10.18, A.2016.04.06, A.2018.11.12, A.2019.05.20, A.2019.05.22a, and A.nd.01. |

*Source*: Self-made.

## Linking Data to Research Proposition and Criteria for Interpreting the Findings

According to Yin, the research design accounts for the 'logical sequence that connects the empirical data to a study's initial research questions and, ultimately, to its conclusions.'[340] He advises having a clear objective and an analytical strategy that allows one to understand and interpret it.[341] In this case study, the selected strategy is based on the theoretical propositions that emerged from the section on the effectiveness of rights, which, on the one hand, requires as elements a cause, a planned effect, and a real effect; and on the other hand, operationally, implies contrasting the planned effect with the actual effect obtained. This analysis strategy shaped the research questions, propositions, units of analysis, and data collection. [342]

To this end, Figure 4 illustrates twelve areas where indigenous and formal jurisdictions interact and where the actions of the right holder and duty bearers may occur. Thus, it represents a field of analysis of the interaction between legality and reality around the effectiveness of the collective right to exercise indigenous jurisdiction in terms of the possibility that JK has of conflict resolution. Figure 4 consists of

[340] Yin (n 61) 20.
[341] ibid 110–111.
[342] ibid 112.

two areas that depict the formal and indigenous jurisdictions within which their exercise is possible. An explanation of each of these areas is as follows.

Areas A and B: These are where the indigenous jurisdiction (A) and formal jurisdictions (B) can legally operate since they represent their defined frameworks of competence.

Areas A1 and B1: on the one hand, area A1 represents the area where the exercise of indigenous jurisdiction actually exists, which can be performed within indigenous competence (area A2) or invading the competencies of the formal jurisdictions (A3 and B4). Furthermore, it does not necessarily encompass all indigenous competencies since it is possible that such disputes do not actually occur or that, otherwise, when these disputes exist, the indigenous jurisdiction has no interest or refuses to resolve them (areas A5 and B3). On the other hand, area B1 comprises the exercise of formal jurisdictions within their competencies (B2) and invading indigenous competencies (B3 and A4). Likewise, it is observed that formal jurisdictions' exercise may not necessarily cover all the competencies granted by law (B5 and A3).

Area A2: covers the indigenous jurisdiction's exercise within the limits of its competence (A) and excludes [343] the area in which its competence is disputed (A4).

Area A3: depicts the exercise of indigenous jurisdiction that, although outside of its legal boundaries and invading formal jurisdictions' competencies, is not contested by the parties (if this exercise were challenged, it would be equivalent to area B4). Area A3 also portrays an outcome indicator if the Plurinational Constitutional Court (PCC) would disregard the law by deciding in favor of the indigenous jurisdiction to carry out the dispute resolution process invading the formal jurisdiction's competence.

Area B2: is related to the exercise of formal jurisdictions within the limits of its competence (B) and excludes the area in which its competence is disputed (B4). Therefore, it becomes relevant to assess indigenous individuals' activity when claiming or defending their rights within the competence of formal jurisdictions.

Area B3: depicts the exercise of formal jurisdictions that, although outside of its limits and invading the indigenous jurisdiction's competencies, is not contested by the parties (if this exercise were challenged, it would be equivalent to area A4). Area B3 also portrays an outcome indicator if the PCC would disregard the law by deciding in favor of the formal jurisdiction to carry out the dispute resolution process invading the indigenous jurisdiction's competence.

Area A2&B3: represents the indigenous jurisdiction partially claiming its competence to resolve a case that belongs to it.

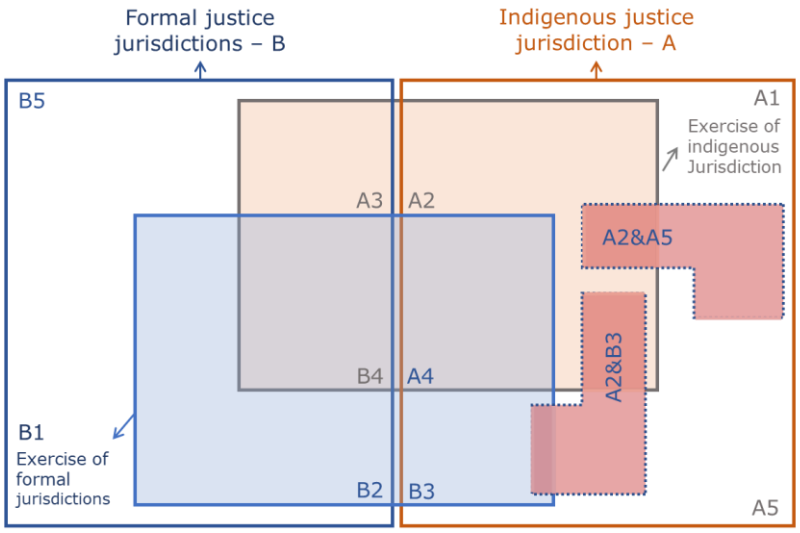
Area A2&A5: portrays JK partially exerting its jurisdiction, i.e., partially rejecting a case that belongs to its competence.

Area A4: refers to the exercise of formal jurisdictions challenged for invading the indigenous jurisdiction's competencies and the exercise of the indigenous jurisdiction challenged despite being exercised within its competence.

Area B4: refers to the exercise of the indigenous jurisdiction challenged for invading formal jurisdictions' competencies and the exercise of the formal jurisdiction challenged despite being exercised within its competence.

[343] The exclusion is justified because it delimits and differentiates each analysis area.

*Figure 4. Framework for analyzing the interaction between indigenous and formal jurisdictions*




*Source:* Self-made.
*Note*: where A and B are the competence frameworks of each jurisdiction; A1–B1 and A5–B5 regard the exercise and non-exercise areas of each jurisdiction, respectively; A2–B2 and A4–B4 comprise the accepted and challenged exercise of jurisdictions, respectively; A3–B3 depict the exercise of jurisdictions invading legal competencies; and A2&B3 and A3&A5 portray indigenous peoples partially exerting its jurisdiction.

Areas A5 and B5: involve competencies that state law recognized to the indigenous or formal jurisdictions, respectively, in which no cases were found, or these jurisdictions have rejected to prosecute. For this case study, B5 is irrelevant.

The definition of these areas, in which the actions of the right holder (JK) and duty bearers (the Plurinational State of Bolivia and JK's indigenous members) occur, is equivalent to an analysis framework to describe the possible interactions between both classes of actors.

The linking of the research proposition with the actors' interplay is established in this study through 31 indicators. For this research and within the framework of this rights' effectiveness analysis model, the indicators can be of three kinds: framework, process, and outcome, as explained below.

On the one hand, framework indicators allow appraising the right's legal scope (content and limits), that is, assessing the magnitude of the cause of the effectiveness under study, which reflects on the right holder's legal powers and restrictions and the duty bearers' duties. The description of the extent of indigenous peoples' legal collective right to exercise indigenous jurisdiction in Bolivia concerns the first research question of this study through framework indicators. They concern areas A and B of Figure 4, defining the limits between the indigenous and formal jurisdictions.

On the other hand, from a methodological perspective, the framework for evaluating the effectiveness of rights proposed in this study can be applied at three different moments. In the first, the right holder (i.e., JK) exercises the collective right through a process directed to obtain its practical purpose or planned effect, that is, having the possibility to resolve disputes between JK's members.

In the second moment, the right holder might claim the exercise of its right in the face of eventual frustrations of not achieving its intended objectives. This claim could be judicial or extrajudicial and is filed against whoever is considered responsible for frustrating the achievement of its objectives. Although the stages that pass between the claim and the event that ends the dispute are purely procedural, they imply the interest of JK to assert its right. Moreover, if these stages are carried through

a judicial process until its conclusion, the right's effectiveness shall be construed through the intermediate decisions and JK's interest in appealing them until reaching a final decision.

Finally, the third moment concerns the conclusion of the dispute, that is, its outcome. It might occur either because JK did not claim when it could not reach its objectives, or because JK did claim, and the duty bearers agreed with it, or it renounced to continue claiming, or it reached a final decision in a judicial process, among other alternatives.

Since the first and second moments refer to a process to achieve the planned effect, the indicators to collect their data are called process indicators. Likewise, since the third moment concerns the final results, its indicators are called outcome indicators. In the framework of analysis synthesized in Figure 4, when JK exercises its right to exercise indigenous jurisdiction, areas A1 (excluding area A4) and A2&A5 account for the first moment. When JK claims the competence to resolve disputes or formal jurisdictions claim it, areas A4, B4, and A2&B3 correspond to the second moment. Finally, when these inter-jurisdictional competence disputes reach a final decision, areas A2, A3, B2, B3, and A2&B3 regard the third moment.

Under the context of this case study, process indicators are related to JK jurisdiction's and lower-ranking jurisdictions' decisions, given the possibility of their revision through the PCC. [344] Besides, lower-ranking courts lack the authority to provide a case law with general binding scope.[345] Process indicators also encompass the claims of competence presented by JK and the lawsuits filed by its members. On the contrary, outcome indicators pertain to PCC's decisions under these definitions since they are construed as final. They constitute the ultimate response that settles the content and limits of the collective right to exercise indigenous jurisdiction in the Bolivian context. As a result, outcome indicators refer to the PCC's decisions in sub-question 2a, and the rest of the second and third research questions regard process indicators.

## *Indicators and Sources for Collecting Research Data*

To better understand the scope of the research questions' indicators, it is relevant to shortly describe four possible scenarios related to the parties of the process and the interplay between formal and JK jurisdictions, noting that these four scenarios may occur within the legal framework or not. Initially, the claimant must choose which jurisdiction to file the claim, whether competent or not. When lawsuits are filed, both formal and JK jurisdictions may accept or reject such claims based on their competencies at the beginning of the process. It is also feasible for the jurisdictions to be compelled to reject proceedings if the supposedly affected party or jurisdiction wins a process that resolves a competence dispute. Finally, possible discussions between the two jurisdictions and their outcomes directly affect litigating parties, which are bounded by jurisdictional decisions and regardless of their will, unless they agree on a solution outside both jurisdictions. Following the research questions' order, whereas the legal framework to define the legality corresponds to the first research question, decisions of formal judicial authorities pertain to research sub-question 2a, the party's claims (as indigenous individuals) belong to

[344] Cf. Annex B, Constitutional Actions, page 463.

[345] Llewellyn regrets the existing narrowness on case law in which '[o]nly upper-court cases are treated; and then, only the relation between decisionmaking and legal rules. Thus, it only deals with the appelate level; with legal doctrine ant the case law system at this appellate level; with the creation, development, handling and effets of legal rules *at this level.*' Karl N Llewellyn, 'The Case Law System in America' (1988) 88 Columbia Law Review 989, 1019–1020.

research sub-question 2b and the indigenous jurisdictional actions correspond to the third research question.

The effectiveness of the exercise of indigenous jurisdiction depends on the different configurations of these scenarios, their legality (respect or disregard the Constitution and the laws), and their favorability to indigenous jurisdiction. Following, some abstract examples are presented to illustrate these possible scenarios, bearing in mind that the planned effect of JK is its possibility to resolve indigenous disputes (cf. Table 6 for a summary of them). Thus, if the indigenous individuals' claims are presented to JK jurisdiction (sub-question 2b) under the legal framework, the defendants accept the indigenous competence (sub-question 2b), and the indigenous jurisdiction accepts the case (sub-question 3a), the exercise of indigenous jurisdiction is deemed 'effective.' Otherwise, if JK has the possibility to resolve this case (sub-question 3a) but outside the legal boundaries of its competence, its exercise is construed as 'more effective.' Suppose there is a conflict of competencies between jurisdictions, and the PCC (sub-question 2a) favors the ordinary or agri-environmental jurisdictions over the indigenous one disregarding the law. In that case, the assessment is 'ineffective' or, alternatively, 'less effective' if it partially favors them. See Figure 5 for a complete flowchart on the matter.

Following the analysis framework, the right holder and duty bearers' actions are also relevant. Thus, if JK claims the competence to resolve a dispute that legally belongs to it (sub-question 3b), its action renders its exercise 'effective' even though a contrary outcome might be decided later. In this case, however, the outcome is construed as 'ineffective' due to the lack of judicial protection (sub-question 2a). Similarly, if JK refrains from claiming its rightful competence (sub-question 3b), the consequence of its ineffectiveness will be its own fault despite that later, the formal jurisdiction chooses to refer the case to it (sub-question 2a). Be that as it may, when the competence of the indigenous jurisdiction to resolve a dispute is challenged, and the justice system decides correctly to favor formal jurisdictions, it is construed that the indigenous jurisdiction's effectiveness is not affected by these decisions, and they are irrelevant for the effectiveness indicators related to judicial decisions adopted by the PCC (sub-question 2a).

Moreover, and despite the outcome of the possible jurisdiction conflict that later may arise (sub-question 2a), any claim of JK's members (sub-question 2b) carried out with formal jurisdictions but legally belonging to indigenous' competence implies opposition to indigenous jurisdiction's exercise, causing it to be 'ineffective.' At the same time, it is interesting to note that such actions could be considered disloyal by indigenous peoples regardless of whether the cases belong to formal jurisdictions or not.[346] The latter is confirmed if one agrees with the traits of indigenous peoples[347] and the research proposition. For this reason, the exercise of indigenous jurisdiction is construed as 'less effective' when indigenous individuals (sub-question 2b) legally claim before formal jurisdictions.

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[346] For example, the testimony collected from an agri-environmental judge maintains:

> 'Many community members… go to court. But they are observed in their community. They say, "you have gone to justice." The indigenous authority says: "he has gone over our authority. We have to punish him" … "we are going to suspend him." This is it. Many community members have come to complain in this regard, and they are afraid. Because of that fear, they do not come to my court. They tell me "they [authorities and community members] have forbidden me to come".' (G-2019-07).

The PCC's case *Sentencia Constitucional Plurinacional 0909/2017-S3* [2017] Plurinational Constitutional Court Expediente 20256-2017-41-AAC, Ruddy José Flores Monterrey also demonstrates this argument. A community member went to the indigenous jurisdiction to resolve a land possession issue after both of his agrarian processes had been declared terminated due to his abandonment. The indigenous jurisdiction decided against the community member, stating that if he had already chosen the agri-environmental jurisdiction, then he should continue in it and not in the indigenous jurisdiction.

[347] See Chapter 2: A Meaning for Indigenous Peoples in the International and Bolivian Context, page 89.

Similar conclusions are reached with cases that involve decisions adopted by the indigenous jurisdiction that end up contested by the losing party through constitutional processes (such as Amparos, Actions for Liberty, or Popular Actions) or concern the Consultations of Indigenous Authorities on their norms' application to a specific case. It is underscored that the latter often encompasses indigenous jurisdiction's decisions already taken and seldom regards inquiries before deciding a case. Although the exercise of indigenous jurisdiction has almost always taken place in these cases and, consequently, its effectiveness has already occurred, the PCC has the prerogative to revoke those indigenous decisions and legally null its exercise. Besides, if the indigenous jurisdiction consults on the applicability of indigenous norms before deciding a case, the PCC may also reject or restrict its exercise based on competency limits and State laws. As a result, the outcome of those cases is also relevant to assessing indigenous jurisdiction's effectiveness.[348]

Then, against this backdrop, the following may occur. When an indigenous member challenges an indigenous jurisdictional decision, the PCC may legally or illegally favor the exercise of indigenous jurisdiction, making it 'effective' in the first case and 'more effective' in the second. However, it could also illegally disfavor the indigenous jurisdiction's exercise rendering it 'ineffective.' On the other hand, if the PCC licitly revokes an indigenous jurisdiction's decision ordering it to issue a new one under the legal framework, the judgment is construed as 'effective' since the indigenous jurisdiction still has the possibility to resolve the dispute. However, it will be 'ineffective' if the PCC resolves the dispute directly and prevents the exercise of indigenous jurisdiction. If a non-indigenous member would challenge an indigenous jurisdictional decision, the PCC may render indigenous jurisdiction 'more effective' by illegally favoring its exercise.[349] Furthermore, if it licitly disfavors indigenous jurisdiction, the right to exercise indigenous jurisdiction is not affected by these decisions, which are construed as irrelevant for the effectiveness indicators related to judicial decisions adopted by the PCC (sub-question 2a). However, the indigenous jurisdiction's decisions are deemed 'more effective' in these cases since they exceed its competence (sub-question 3a).

Finally, but not least, it is noted that the effectiveness of the right to exercise indigenous jurisdiction is closely related to the favorability of the legal framework since it defines the collective right to exercise indigenous jurisdiction’s contents and the limits (cause). For example, if the legal framework renders indigenous jurisdiction ineffective for restricting it too much, then, even if the PCC would decide all the cases respecting the law or indigenous individuals would always choose legally the indigenous jurisdiction (both actions construed as 'effective'), in reality, the right to exercise indigenous jurisdiction should be deemed as 'ineffective.' In this example, indigenous jurisdiction could only be 'effective' to the extent that constitutional judgments, disregarding the law, grant it greater powers than those provided by the legal framework, or indigenous people illegally prefer the indigenous jurisdiction against the formal jurisdictions. The same situation would occur in reverse if the legal framework were too permissive with indigenous jurisdiction.

## *For the First Research Question*

The first research question comprises the Bolivian legislative development on the right to exercise indigenous jurisdiction. The powers and limits that the regulatory framework establishes in favor of the indigenous jurisdiction in this regard, in relation to ordinary and agri-environmental jurisdictions, allow

[348] For more reference, see Annex B, Constitutional Actions, page 463.

[349] Since indigenous jurisdiction has no competence to decide on non-indigenous members (because the personal validity area excludes such possibility), it is noted that logically it is not feasible for the PCC to legally favor or illegally disfavor the indigenous jurisdiction.

describing whether it is a strengthened jurisdiction with decision-making powers over relevant cases or whether, on the contrary, this collective right is a mere legal declaration without real content. Then, this collective right shall be effective to the extent of the powers granted by the Bolivian regulations to the indigenous jurisdiction to resolve conflicts. As a consequence, the effectiveness indicators are as follows:

- *More effective,* if the Bolivian legislation grants broader powers to the indigenous jurisdiction than those granted to formal jurisdictions.
- *Effective,* if the Bolivian legislation grants powers to the indigenous jurisdiction as broad as those granted to formal jurisdictions.
- *Less effective,* if the Bolivian legislation confers fewer powers to the indigenous jurisdiction than those granted to formal jurisdiction.

There is no 'ineffectiveness' indicator within the first research question, given that the legal framework has already defined competencies for the indigenous jurisdiction. The sources are the international and local Bolivian legal frameworks, among which are mainly the ILO Indigenous and Tribal Peoples Convention No. 169, the declarations of the United Nations and the Organization of American States on the rights of indigenous peoples, the Constitution of 2009, the laws of the Judicial Organ of 2010, Jurisdictional Demarcation of 2010, and the related local regulatory development regarding the indigenous jurisdiction.

The method concerns a qualitative legal analysis[350] of each source and comparison concerning the scope of the jurisdictional powers granted to the indigenous jurisdiction. Then, the assessment contrasts the competencies and restrictions of the indigenous, ordinary, and agri-environmental jurisdictions. Although references are made to some regulations of Latin American countries related to indigenous jurisdictional activity to establish a context of appreciation, it is not intended to be a comparative law study under any circumstances.

## *For the Second Research Question*

### *Sub-question 2a*

Regarding Bolivia (sub-question 2a), two essential actors were identified: the Plurinational Constitutional Court (PCC) and the lower-ranking formal courts located in JK.

As for the PCC, both the interpretation and implementation of the collective right to exercise indigenous jurisdiction and conflicts of jurisdiction between formal and indigenous jurisdictions are reviewed through its case law and confronted with the legal framework. Consequently, the right to indigenous jurisdiction shall be:

- *More effective* if the PCC's decisions surpass the legal scope of the right to exercise indigenous jurisdiction in favor of the indigenous jurisdiction.
- *Effective* if the PCC's decisions respect the legal scope of the right to exercise indigenous jurisdiction in favor of the indigenous jurisdiction.
- *Less effective* if the PCC's decisions disregard the legal scope of the right to exercise indigenous jurisdiction against the indigenous jurisdiction.

[350] Ian Dobinson and Francis Johns, 'Legal Reseach as Qualitative Research', *Research Methods for Law* (Second, Edinburgh University Press 2017).

- *Ineffective* if the PCC's decisions nullify the legal right to exercise indigenous jurisdiction against the indigenous jurisdiction.

They are outcome indicators since they involve the formal jurisdictions' ultimate response that settles the content and limits of the collective right to exercise indigenous jurisdiction. They concern areas A2, A3, B2, B3, and A2&B3 of Figure 4 (more effective in A3, effective in A2, less effective in A2&B3, and ineffective in B3). Finally, it is underscored that there is no indicator between more effective and effective since any illegal but more favorable decision to the indigenous jurisdiction is construed as more effective.

*Table 6: Claimant, defendant, formal jurisdiction, and indigenous jurisdiction's interplay concerning the effectiveness of the exercise of the indigenous jurisdiction*

| Criterion | Possible configurations | +E | E | -E | xE |
|---|---|---|---|---|---|
| Presenting the claim | Claimant legally favors IJ (legally disfavors FJ) | | x | | |
| | Claimant illegally favors IJ (illegally disfavors FJ) | x | | | |
| | Claimant legally favors FJ (legally disfavors IJ) | | | x | |
| | Claimant illegally favors FJ (illegally disfavors IJ) | | | | x |
| Jurisdictions accepting the claim | IJ legally accepts the claim | | x | | |
| | IJ illegally accepts the claim | x | | | |
| | FJ legally accepts the claim | -- | -- | -- | -- |
| | FJ illegally accepts the claim | | | | x |
| Jurisdictions rejecting the claim | IJ legally rejects the claim | -- | -- | -- | -- |
| | IJ illegally rejects the claim | | | | x |
| | FJ legally rejects the claim | -- | -- | -- | -- |
| | FJ illegally rejects the claim | -- | -- | -- | -- |
| Defendant accepting claimant's jurisdiction election | Indigenous defendant legally accepts IJ's competence favoring IJ | | x | | |
| | Indigenous defendant illegally accepts IJ's competence favoring IJ | x | | | |
| | Indigenous defendant legally accepts FJ's competence favoring FJ | | | x | |
| | Indigenous defendant illegally accepts FJ's competence favoring FJ | | | | x |
| Defendant disputing claimant's competence election | Indigenous defendant legally disputes IJ's competence favoring FJ | | | x | |
| | Indigenous defendant illegally disputes IJ's competence favoring FJ | | | | x |
| | Indigenous defendant legally disputes FJ's competence favoring IJ | | x | | |
| | Indigenous defendant illegally disputes FJ's competence favoring IJ | x | | | |
| IJ disputing claimant's competence election | IJ legally disputes FJ's competence favoring IJ | | x | | |
| | IJ illegally disputes FJ's competence favoring IJ | x | | | |
| Competence dispute outcome | Competence dispute's resolution legally favors IJ | | x | | |
| | Competence dispute's resolution illegally favors IJ | x | | | |
| | Competence dispute's resolution legally favors FJ | -- | -- | -- | -- |
| | Competence dispute's resolution illegally favors FJ | | | | x |

*Source:* Self-made.
*Note*: More effective (E+), effective (E), less effective (-E), ineffective (xE), formal jurisdiction (FJ), indigenous jurisdiction (IJ), and not applicable or irrelevant for the study (--).

The lower-ranking formal courts located in JK, which are from the ordinary and agri-environmental jurisdictions, replicate the PCC's indicators regarding their jurisdictional decisions. They are process

indicators concerning areas A4 (with possible results in areas A2, B3, and A2&B3) and B4 (with possible results in areas A3 and B2) of Figure 4. The indicators are:

- *More effective* if the decisions of lower-ranking formal courts located in JK surpass the legal scope of the right to exercise indigenous jurisdiction in favor of the indigenous jurisdiction.
- *Effective* if the decisions of lower-ranking formal courts located in JK respect the legal scope of the right to exercise indigenous jurisdiction in favor of the indigenous jurisdiction.
- *Less effective* if the decisions of lower-ranking formal courts located in JK disregard the legal scope of the right to exercise indigenous jurisdiction against the indigenous jurisdiction.
- *Ineffective* if the decisions of lower-ranking formal courts located in JK nullify the legal right to exercise indigenous jurisdiction against the indigenous jurisdiction.

Accessorily, since all formal jurisdictions have to coordinate and cooperate with the indigenous jurisdiction, and these mechanisms may increase JK's possibility to resolve disputes, the indicators are:

- *More effective* if formal jurisdictions exceed the legal framework's coordination and cooperation requirements to favor the indigenous jurisdiction.
- *Effective* if formal jurisdictions are within the legal framework's coordination and cooperation requirements to favor the indigenous jurisdiction.
- *Less effective* if formal jurisdictions disregard the legal framework's coordination and cooperation requirements against the indigenous jurisdiction.
- *Ineffective* if formal jurisdictions nullify the legal framework's coordination and cooperation requirements against the indigenous jurisdiction.

These indicators are irrelevant to Figure 4, given the nature of cooperation and coordination.

On the one hand, the data collection sources are the PCC cases and the lower-ranking formal courts located in JK's territory. These cases shall comply with the following selection criteria. The PCC case law covers all cases that refer to the exercise of indigenous jurisdiction in the analysis period from 2009 to 2019, regardless of the type of constitutional action used and who may be the claimants or the defendants. Since all the PCC's decisions constitute jurisprudence and are binding for the Organs of the public power, legislators, authorities, courts, collectivities and individuals, the considered cases are not limited only to those referred to JK but include other indigenous peoples.[351] On the other hand, the lower-ranking courts' cases located in JK concern a sample of inter-jurisdictional competence conflicts between JK and formal jurisdictions, and general cases between JK's members that these courts hear during the analysis period. [352]

The data collection method comprises the analysis of case law on the jurisdictional powers' scope granted to the indigenous jurisdiction through Bolivian legal framework interpretation and appliance. Besides, given that a better understanding of the phenomenon in local communities implies knowing the local experiences and ideas,[353] groups A, D, and E were interviewed to appreciate their perceptions vis-à-vis indigenous justice and authorities through semi-structured interviews. [354]

[351] Just as the jurisprudential precedents of JK's decisions are applicable in favor or against the other indigenous peoples, the reverse is equally true.
[352] Further reference in 'Units of Analysis and Units of Observation' on page 58.
[353] Bård Andreassen, Hans-Otto Sano and Siobhán McInerney-Lankford (eds), 'The Potential of Ethnographic Methods for Human Rights Research', *Research Methods in Human Rights* (Edward Elgar Publishing 2017) <https://www.elgaronline.com/view/9781785367786.xml> accessed 31 August 2020.
[354] Further reference in 'Units of Analysis and Units of Observation' on page 58.

*Sub-question 2b*

Regarding sub-question 2b, the right to indigenous jurisdiction shall be effective insofar JK's indigenous members prefer to present their disputes before the indigenous jurisdiction and not before formal jurisdictions. Therefore, the indicators in this regard are that indigenous jurisdiction shall be:

- *More effective* if the indigenous claimants of JK prefer to present their disputes to the indigenous jurisdiction and they legally correspond to formal jurisdictions.
- *Effective* if the indigenous claimants of JK prefer to present their disputes to the indigenous jurisdiction and they legally correspond to the indigenous jurisdiction.
- *Less effective* if indigenous claimants of JK prefer to present their disputes before formal jurisdictions and they legally correspond to formal jurisdictions.
- *Ineffective* if indigenous claimants of JK prefer to present their disputes to formal jurisdictions and they legally correspond to the indigenous jurisdiction.

These indicators concern areas A2, A3, B2, and B3 of Figure 4. The indigenous jurisdiction may be 'more effective' in area A3 if the claimant illegally choices to resolve the dispute through indigenous jurisdiction. It would be 'effective' in area A2 if the claimant legally prefers to resolve the dispute through indigenous jurisdiction. It would be 'less effective' in area B2 if the claimant legally selects to resolve the dispute through formal jurisdictions.[355] Finally, indigenous jurisdiction would be 'ineffective' in area B3 if the claimant illegally choices to submit the dispute to formal jurisdictions.

Since they are process indicators, filing the claim and the claimant's choice legality become pertinent. On the contrary, the outcome of the claimant's election, the ulterior actions or decisions of formal judges or indigenous authorities accepting or rejecting the cases, or even the defendants challenging the claimants' election are irrelevant.

As disputes encompass two parties, the claimant and the defendant, it is also relevant to define the effectiveness of the exercise of indigenous jurisdiction by considering the defendant's choices when summoned to appear before a specific jurisdiction. Since the defendant may accept or challenge the claimant's choice of jurisdiction, [356] the legality of the defendant's election determines the effectiveness of the indigenous jurisdiction in strict relation to the previous indicators. Then, the right to exercise indigenous jurisdiction shall be:

- *More effective* if the indigenous defendant of JK accepts the claimant's choice to resolve the dispute through indigenous jurisdiction when it legally corresponds to formal jurisdictions or if the defendant challenges the claimant's choice to resolve the dispute through formal jurisdictions when it legally corresponds to formals jurisdiction.
- *Effective* if the indigenous defendant of JK accepts the claimant's choice to resolve the dispute through the indigenous jurisdiction when it legally corresponds to the indigenous jurisdiction, or if the defendant challenges the claimant's choice to resolve the dispute through formal jurisdictions when it legally corresponds to the indigenous jurisdiction.
- *Less* effective if the indigenous defendant of JK accepts the claimant's choice to resolve the dispute through formal jurisdictions when it legally corresponds to formal jurisdictions or if the defendant challenges the claimant's choice to resolve the dispute through the indigenous jurisdiction when it legally corresponds to formal jurisdictions.

[355] Under the proposition of the research explained above, when indigenous individuals legally resort to ordinary or agri-environmental jurisdictions, it is considered that they are acting against their indigenous peoples.
[356] It should be noted that JK may also challenge its members' formal jurisdiction choices. However, such cases concern research sub-question 3b.

- *Ineffective* if the indigenous defendant of JK accepts the claimant's choice to resolve the dispute through formal jurisdiction when it legally corresponds to indigenous jurisdiction or if the defendant challenges the claimant's choice to resolve the dispute through the indigenous jurisdiction when it legally corresponds to the indigenous jurisdiction.

These indicators concern areas A2, A3, A4, B2, B3, and B4 of Figure 4. The indigenous jurisdiction may be 'more effective' in area A3 if the claimant's illegal choice to resolve the dispute through indigenous justice (A3) is accepted by the defendant or if the claimant's legal choice to resolve the dispute through formal jurisdictions (B2) is challenged by the defendant (B4). It would be 'effective' in area A2 if the claimant's legal preference to resolve the dispute through indigenous justice (A2) is accepted by the defendant or if the claimant's illegal preference to resolve the dispute through formal jurisdictions (B3) is challenged by the defendant (A4). It would be 'less effective' in area B2 if the claimant's legal choice to resolve the dispute through formal justice (B2) is accepted by the defendant or if the claimant's illegal choice to resolve the dispute through indigenous justice (A3) is challenged by the defendant (B4). Finally, indigenous justice would be 'ineffective' in area B3 if the claimant's illegal choice to submit the dispute to formal jurisdictions (B3) is accepted by the defendant or if the claimant's legal choice to submit the dispute to indigenous justice (A2) is challenged by the defendant (A4). As in the previous case, since they are process indicators, the defendant's acceptance or challenge of jurisdictions is relevant, but the corresponding eventual outcomes are not.

The sources to collect data are a) the cases from the PCC and b) the lower-ranking formal courts located in JK territory. Furthermore, PCC cases concerning other indigenous peoples are also considered to contrast JK activity. These cases shall comply with the selection criteria of sub-question 2a and involve JK disputes initiated or challenged by its members. The data collection method regards case law analysis on the scope of the claimants' and defendants' jurisdictional preferences. c) Indigenous documents and minutes. d) Semi-structured interviews with groups A, B, C, D, and E. [357]

## *For the Third Research Question*

### *Sub-question 3a*

The third research question involves two sub-questions: JK's actual exercise of jurisdiction (sub-question 3a) and the extent to which JK is grounding duties on its duty bearers (sub-question 3b). Given that sub-question 3a aims to establish whether JK is exercising its right to jurisdiction under Bolivian legal limits, the indicators are as follows:

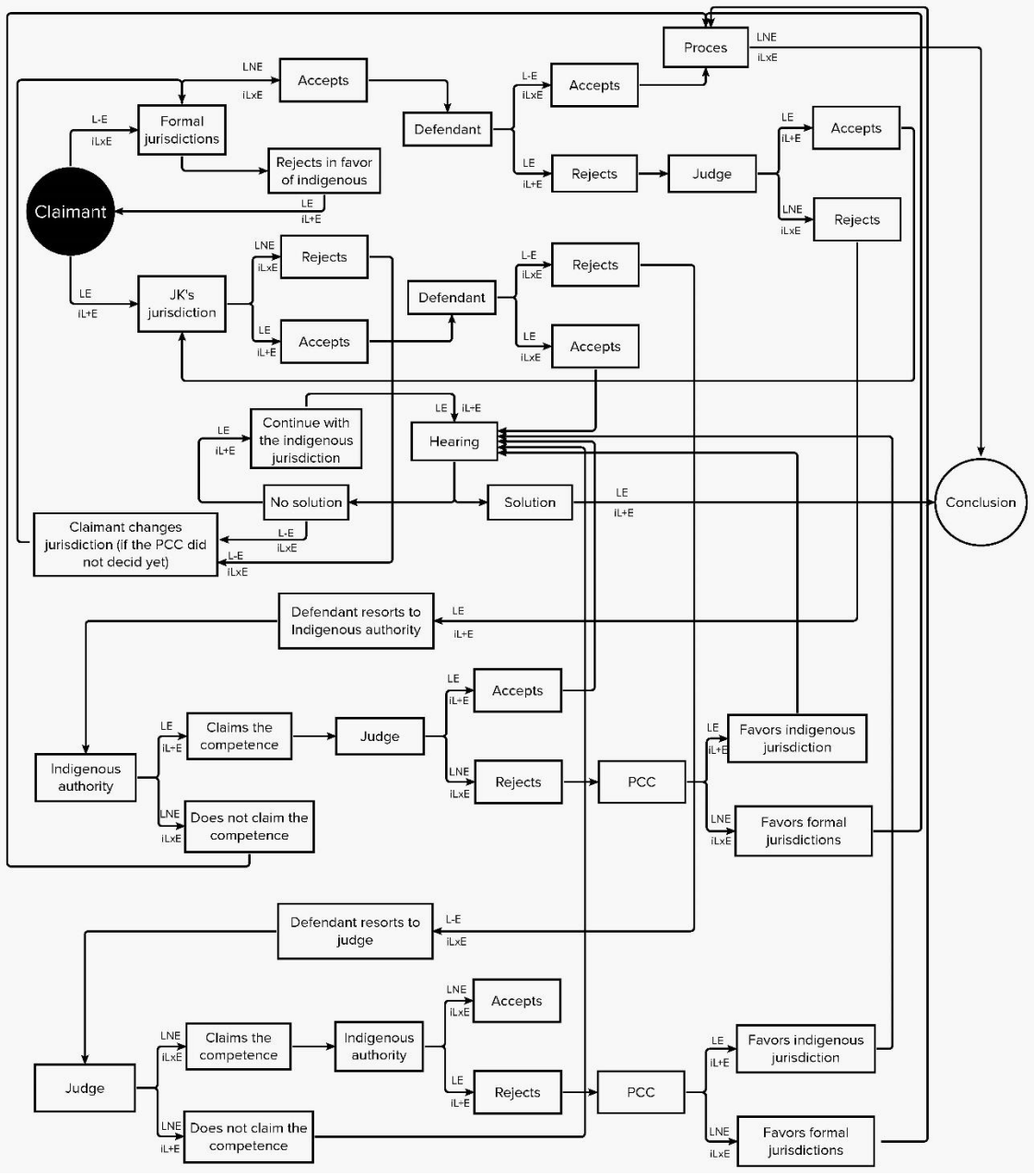
- *More effective* if JK's jurisdiction accepts to resolve indigenous disputes that exceed the jurisdictional limits legally established.
- *Effective* if JK's jurisdiction accepts to resolve indigenous disputes within the jurisdictional limits legally established.
- *Less effective* if JK's jurisdiction partially rejects resolving indigenous disputes even though such disputes exist within the indigenous jurisdictional limits legally established.
- *Ineffective* if JK's jurisdiction rejects to resolve indigenous disputes even though such disputes exist within the indigenous jurisdictional limits legally established.

Regarding 'less effective' and 'ineffective' indicators, the word reject is construed as the indigenous jurisdiction not accepting, totally or partially, to resolve indigenous disputes. Even though 'reject' would

[357] Further reference in ‘Units of Analysis and Units of Observation’ on page 58.

be similar to neglect claiming its jurisdiction against possible competence invasions from other jurisdictions, for analysis reasons defined within the effectiveness of rights section, such an extreme has a different set of indicators which concern sub-question 3b.

*Figure 5. Effectiveness flowchart concerning indigenous and formal jurisdictions*




*Source: Self-made.*
*Note*: Legally – effective (LE), legally – less effective (L-E), illegally – more effective (iL+E), illegally – ineffective (iLxE), and legally – irrelevant for effectiveness (LNE)

These indicators concern areas A2, A3, A2&A5, and A5 of Figure 4. Given that these are process indicators and refer to the indigenous jurisdiction's acceptance or rejection of indigenous cases, their effectiveness does not consider the possible subsequent conflict of jurisdictions as long as the cases were initially accepted or rejected by indigenous justice. Therefore, only the acceptance/rejection is pertinent to these indicators, not possible jurisdictional challenges and future outcomes. Thus, the

'effective' and 'more effective' indicators correspond to areas A2 and A3, respectively. The 'less effective' indicator simultaneously comprises areas A2&A5, and the 'ineffective' indicator only concerns area A5, according to how this area was defined.

The sources to collect data are: a) The cases from the PCC and b) the lower-ranking formal courts located in JK territory that may refer to JK's acceptance/rejection of cases. Furthermore, PCC cases concerning other indigenous peoples are also considered to contrast them with JK activity. The PCC case law covers all cases that refer to the exercise of indigenous jurisdiction in the analysis period from 2009 to 2019, regardless of the type of constitutional action used and who may be the claimants or the defendants. Other sources are the c) indigenous documents and d) semi-structured interviews with groups A, B, C, D, E, and F. [358]

*Sub-question 3b*

Since question 3b addresses the interest of JK in claiming against formal jurisdictions to assert its collective right to exercise indigenous jurisdiction and exclude them as a consequence, the indicators are as follows:

- *More effective* if JK claims the competence to resolve disputes that are being processed by formal jurisdictions and whose competence legally corresponds to the latter.
- *Effective* if JK claims the competence to resolve disputes that are being prosecuted by the formal jurisdictions and whose competence legally corresponds to JK.
- *Less effective* if JK partially claims the competence to resolve disputes that are being processed by the formal jurisdictions and whose competence legally corresponds to JK.
- *Ineffective* if JK does not claim the competence to resolve disputes that are being processed by formal jurisdictions and whose competence legally corresponds to JK.

These indicators concern areas A4 and B4 in relation to B2 and B3 of Figure 4. Given that these are process indicators, their effectiveness considers only the claims themselves and excludes their eventual outcomes. Thus, the 'effective' and 'more effective' indicators correspond to areas A4 (claiming from B3) and B4 (claiming from B2), respectively. The 'less effective' indicator comprises areas A2&B3, and the 'ineffective' indicator concern only area B3.

The sources to collect data are: a) The cases from the PCC and b) the lower-ranking formal courts located in JK territory that may refer to JK claiming the competence to resolve disputes that are being processed by formal jurisdictions. Furthermore, PCC cases concerning other indigenous peoples are also considered to contrast them with JK activity. The PCC case law covers all cases that refer to the exercise of indigenous jurisdiction in the analysis period from 2009 to 2019, regardless of the type of constitutional action used and who may be the claimants or the defendants. Other sources are the c) indigenous documents and d) semi-structured interviews with groups A, B, C, D, E, and F. [359]

## *Method and Instruments to Perform Content Analysis*

This case study is qualitative and quantitative. The qualitative approach corresponds to analyzing all research sources, developed through two instruments. First, the data analysis of the interviews was

[358] Further reference in ‘Units of Analysis and Units of Observation’ on page 58.
[359] Further reference in ‘Units of Analysis and Units of Observation’ on page 58.

implemented through the coding and categorization method[360] by NVivo software.[361] To this end, the respective interview transcripts were introduced to NVivo, and they were ordered by 'characterization,' 'interesting cases,' and 'relevant topics' as parent codes.

For the data analysis of the cases of the PCC, lower-ranking judges, and indigenous documents, a matrix elaborated by the software Microsoft Excel was used.[362] It presents an abstract and a qualitative effectiveness analysis and assessment of each case (micro-analysis). Finally, the sum of all of them becomes the results, leading to a macro-analysis to make sense of the effectiveness of the right to exercise indigenous jurisdiction.

To delve into the qualitative approach and identify the main reasons underlying the effectiveness of JK's right to exercise indigenous jurisdiction, the collected information through all the research sources was used to analyze its strengths, weaknesses, opportunities, and threats (SWOT for its acronym).[363] The SWOT analysis was then supported with quotations and interpretations to make sense of the research data.[364]

The quantitative approach refers only to PCC case law. Since the data collection identified all the PCC cases relevant to the investigation during the analysis period, it is possible to quantify its findings. Indeed, it is a homogeneous source involving the duty bearers and the right holders (JK and the other indigenous peoples) concerning the effectiveness of the right to exercise indigenous jurisdiction and the investigation indicators. Additionally, the PCC case law findings are relevant to this effectiveness study as they are the outcomes of the cases that stakeholders discussed, complained about, and consulted.

Thus, the matrix quantifies the frequency of recurrences related to the effectiveness studied during the analysis period. It portrays a summation of the findings for each indicator group (more effective, effective, less effective, and ineffective) related to the research questions, expressed in numbers or percentages of cases. This quantification is organized by years within the analysis period, which allows for presenting longitudinal results and estimating the trends of the effectiveness studied. The quantification does not require statistical analysis as it is not a statistical sampling of representative cases and does not imply the verification of hypotheses about correlations or explanations.[365] In addition, it is emphasized that this quantitative approach is rooted in the qualitative appraisal elaborated concerning each PCC case.

Due to the particularity that the matrix has been designed to account for this study both in its qualitative and quantitative approaches, it is described below in its development and implementation. A transcript of this matrix adapted to the format of this dissertation appears in its Annexes[366] and it could be revised online in its original format.[367]

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[360] Amanda Coffey and Paul Atkinson, *Encontrar El Sentido a Los Datos Cualitativos. Estrategias Complementarias de Investigación* (Eva Zimmerman tr, Primera edición, Universidad de Antioquía 2003) 31–62.
[361] Release versions 1.5 and 1.6.
[362] Release version: Microsoft® Excel® for Microsoft 365 MSO (Version 2211 Build 16.0.15831.20098) 64-bit
[363] See 'Section 5.1: SWOT Analysis' on page 294 and Table 30.
[364] Cf. 'Section 5.2: Internal Factors' on page 298 and 'Section 5.3: External Factors' on page 318.
[365] Wing Hong Chui, 'Quantitative Legal Research', *Research Methods for Law* (Second, Edinburgh University Press 2017).
[366] See Annexes B, C, and E for PCC, lower-ranking courts, and indigenous documents research sources, respectively.
[367] See https://docs.google.com/spreadsheets/d/1LlelxSDk-HLh9WaHlrebmS6d6WbxHfou/edit?usp=sharing&ouid=114100360408623889983&rtpof=true&sd=true

The vertical axis of the matrix encompasses the research sources, and its horizontal axis displays three information clusters: the first corresponds to the general identification data of each case; the second develops the qualitative assessment of each source, conveying their abstract and analysis; and the third covers the 31 indicators ordered by the research questions. In addition, each indicator shows the area of Figure 4 on which it impacts, the sum of the frequency recurrences that arise from the analysis, and finally, the percentage that this sum represents.

The matrix implementation process concerns two stages. The first was a test stage dedicated to checking the instrument's consistency with each source to be collected and the information it provides, that is, to check the conformity in the instrument application for accuracy and fairness in collecting the data. At this stage, some difficulties were pinpointed, such as improving the identifying criteria of research sources and arranging the matrix's information. The second stage corresponded to applying the instrument to all research sources. The source's characterization data were included in each case, and their abstracts were written. Finally, the analysis was conducted examining and interpreting each source in the analysis column and concluding by inserting each corresponding indicator's assessment. Regarding the latter, the number one was written in each source and indicator's coincidence, a number that expresses in its sum a numerical approximation of the recurrences of each effectiveness indicator. The cells were left blank if the data was not applicable, and two dashes were inserted when data could not be identified or found.

Finally, it is noted that even though interviews and handwritten indigenous minute books were transcribed in Spanish, their quotation in this study has been interpreted and translated into English to maintain their original sense. Consequently, all quotes correspond to a modified content due to their interpretation-translation process. In addition, quotations on PCC and lower-ranking judges' decisions were also translated into English for their better understanding. All personal data was removed during this process, maintaining only general and abstract information, such as claimant, defendant, person, indigenous authority, and indigenous jurisdiction.

## Ethical Considerations About Data Collection

Even though there are no current laws of personal data protection in Bolivia,[368] the Universidad Católica Boliviana "San Pablo" (UCB) has the customary standard to agree in writing with indigenous peoples to obtain free, prior, and informed consent authorization to enter their territories and conduct academic activities with their members. Following this standard, UCB, with which the research is conducted through the financing of VLIR-UOS, has signed an interinstitutional agreement[369] with JK's indigenous authorities to conduct indigenous training and research[370]. Therefore, the research has been conducted

The shortened URL is: https://shorturl.at/bJLPR

[368] Exception made on article 21.2 of the Constitution: 'Bolivians have the following rights: … 2. To privacy, intimacy, honor, their self image and dignity' in translation of Elkins, Ginsburg and Melton (n 233).

[369] Cf. Interinstitutional Agreement Between Nación Originaria Suyu Jach'a Karangas and Universidad Católica Boliviana "San Pablo" of 9 April 2018 on Annex A, page 403.

[370] According to Clause third of Universidad Católica Boliviana 'San Pablo' and Nación Originaria Suyu Jach'a Karangas *Convenio UCB-JK* (n 56). 'incidir en mejorar la aplicación y práctica de los Derechos de los Pueblos Indígenas y los derechos humanos en el marco del proceso de construcción de la Justicia Plural en Bolivia. Para el logro de este objetivo se realizarán… la investigación de campo para identificar obstáculos y buenas prácticas en la relación entre la Jurisdicción estatal Ordinaria y Agroambiental y la Jurisdicción Indígena.' (Annex A). Own translation: 'influence the improvement of the application and practice of the Rights of Indigenous Peoples and human rights within the framework of the process of building Plural Justice in Bolivia. In order to achieve this

and authorized under the framework of the same agreement. Furthermore, the agreement occurred after a meeting with the authorities of JK,[371] in which the main research issues of interest were identified and accepted as a collectivity. Nonetheless, on August 2018, the dean of the Faculty of Law and Political Sciences and the coordinator of the Institute for Democracy (IpD) of UCB sent a letter to JK's Apu Mallkus to attain specific clearance to collect data through indigenous documents and interviews.[372] However, despite the verbal authorization granted by the authorities, the IpD coordinator and the PhD researcher reiterated the request to obtain a written acceptance,[373] which was received later due to JK's 'internal issues and external factors such as the Coronavirus.' [374]

Additionally, the research took into consideration the following ethical safeguards concerning consent, anonymization, handling, and archiving of information:

- According to verbal agreements with the indigenous authorities, document signatures were not authorized for the interviewees' consent. It is culturally problematic for them, and they would refuse to sign a written commitment with people outside their community, and many are uncomfortable being illiterate. For these reasons and to protect community members, it was agreed with the authorities that the interviews would be conducted by a local indigenous field researcher of their trust. Within this framework, the VLIR-UOS project hired this local indigenous field researcher through the UCB for three to four months each year between 2018 and 2020. It is stressed that only adults were interviewed without exposition of emotional or gruesome experiences.

- Each interview begins off the record explaining to interviewees the context and the aim of the research, that the interview is going to be recorded, and giving the possibility to resolve doubts to avoid misrepresentations. Following this, the recording starts with the assumption of the interviewee's consent. Then, within the recording, the interview starts or ends with an explanation of the interinstitutional agreement between JK and UCB to research and strengthen JK's indigenous justice.

- The local indigenous researcher has included personal data related to the interviewees' names, residence, and ages in the recordings, which is why the interviews are not anonymous. However, it has been decided to anonymize the data when making the interview transcripts, erasing the personal data that could lead to the identification of an individual so that the participant's identity can no longer be traced. Consequently, the data analysis and quotations carried out in this study maintain all personal data as confidential. The involved persons are referred to as indigenous authorities, indigenous individuals or JK members, non-indigenous judges, lawyers, claimants, and defendants, among others.

- For the purposes of verifying the veracity of the information on which this investigation has been conducted, a pseudonymization has been carried out using two codes (A and B). The file's name in the recording is key A, and key B is used only in the transcription (in Table 35). Finally, there is a list linking keys A and B (the pseudonymized data file) to ensure that the data and personal data cannot be linked to each other after they have been collected. For this purpose, the transcripts, recordings, and the code list are stored separately. The recordings of the interviews are stored in the Microsoft Office 365 OneDrive provided by UCB, the list of keys (the pseudonymized data file) is stored in the Google Drive provided by UCB, and, finally, the anonymized transcripts are stored in the Dropbox account of the

objective… field research will be carried out to identify obstacles and good practices in the relationship between the Ordinary and Agri-environmental State Jurisdiction and the Indigenous Jurisdiction.'

[371] a) Apu Mallkus and Apu T'allas, and b) Mallkus, T'allas of Markas, and Council Mallkus are the highest-ranking and second-highest-ranking authorities of Jach'a Karangas, respectively.

[372] Letter of 20 August 2018 (IpD-UCB 028/2018) on Annex A, page 404.

[373] Letters of 28 August 2019 and 19 May 2020 on Annex A, page 404.

[374] Letter of 10 August 2020 on Annex A, page 404.

doctoral researcher. Each account where the files are located is protected through passwords managed by the providers. Access to these files is limited to the doctoral researcher and the transcription assistant. Recordings will be preserved only until the verification of the research is completed to guarantee maximum protection of the participants' privacy. In addition, recordings only serve the purpose of their manual transcription and will not be used for different objectives.

- Within the framework of the VLIR-UOS IUC program and its project 4,[375] the study results shall be disseminated to JK's authorities and population to help strengthen their jurisdiction's exercise effectiveness. Consequently, on 18 September 2019, JK's digitalized documents were delivered to its Apu Mallku,[376] and on 12 August 2012, the PhD researcher has begun to present to JK's newly elected authorities the general results of this study to foster a new interinstitutional agreement and organize workshops and virtual courses on the matter.[377] After this presentation, the assembly of authorities showed interest and verbally agreed to continue this academic relationship.

[375] The PhD research is part of IUC Project 4: Rights of indigenous peoples and transformation of social conflicts in Bolivia (P4). As established in P4, the PhD candidate participates in and integrates the results of the fieldwork into the doctoral investigation. Furthermore, as part of the P4, the PhD candidate contributes through his research to strengthen indigenous peoples' developing capabilities to foster the exercise of their own collective rights in the framework of human rights and plural justice (IUC Partner Programme, 2016).
[376] Letter of 18 September 2019 on Annex A, page 404.
[377] Cf. JK's meeting call for 12 August 2022 on Annex A, page 404.

# Part II

# Contextual Framework

After dealing with this case study's methodology, this second part presents a referential framework concerning indigenous peoples, the collective right to exercise indigenous jurisdiction, and the relevant contexts of Nación Suyu Jach'a Karangas (JK). The former aims to envision the indigenous peoples' existence and essential characteristics for which they are considered collective legal entities and holders of collective rights by international and Bolivian legal instruments. Besides, it also justifies the proposition and indicators defined in the research design to conduct this research.[378]

The second referential framework comprises a notion of the collective quality of rights and the content of its principal elements, followed by a rationale for the right to exercise indigenous jurisdiction based on indigenous peoples' rights to self-determination and culture. Then, there is a description of the republic-nation-state of Bolivia becoming a Plurinational State and recognizing the existence of indigenous peoples and a legal pluralism through its egalitarian plural justice system. It also highlights that when Bolivia became a plurinational State, it expressly recognized various collective rights for indigenous peoples, including the right 'to the practice of their political, juridical and economic systems in accord with their world view.' [379] Finally, this second referential framework includes the Bolivian content and limits of the collective right to exercise indigenous jurisdiction from its international and constitutional legal framework.

The last referential framework concerns JK, describing its geographical location and indigenous people's quality through its pre-existence to coloniality, territorial and political organization levels, authorities, decision-making bodies, and its justice system.

[378] Cf. ‘Research Proposition’ on page 57.
[379] Elkins, Ginsburg and Melton (n 233), article 30.14.

# Chapter 2: A Meaning for Indigenous Peoples in the International and Bolivian Context

*There is a certain morality in recognizing the others, who acquired legitimacy with their previous presence and permanence despite alien impositions and injustices.*

*The indigenous peoples have been, are, and shall remain.*

## Introduction

Indigenous peoples (IPs) exist prior to States' boundaries. Possibly for this reason, in some contexts like Canada and the United States, they are also known as first nations.[380] Some of them have remained to the present despite the global changes and phenomena that most experienced first-hand,[381] such as conquest and colonization processes, the subsequently States' foundations, and their public, social and economic policies. 'Remain' does not mean that they did not change through the years or did not take advantage of the advances of the rest of humanity for their benefit. Somehow, they managed to survive and preserve their identity. Throughout their history, IPs have decided and developed their organization as collectivities, facing and resolving their social, cultural, economic, and political aspects.

Although, in some non-indigenous formal settings, there was a growing interest in understanding, naming, and defining them, this effort has been partially frustrated since no definition is acceptable to all IPs or encompasses them. Consequently, there should be a veil of prudence regarding their definition. Nowadays, however, there is a relative consensus on denominating and indicating their general characteristics.

There are several practical and political challenges related to conceptualizing IPs. Even though collective rights are rarely granted to human collectivities, the international community has declared and recognized them to IPs. They empower IPs to have self-determination, autonomy, and territories, among many others. At the same time, some States prefer to deny IPs' existence within their borders for diverse reasons, such as sovereignty matters, potential territorial dismemberment, development,[382] or merely the unavoidable practical complexities of multicultural coexistence.[383] For their part, IPs

[380] Various terms exist to refer to indigenous peoples. For example, ethnic minorities, traditional communities, scheduled tribes, tribal people, and native Americans.

[381] Except for the case of IPs in voluntary isolation or initial contact.

[382] The World Bank stated that '[i]t should be noted that borrower governments frequently show reluctance to recognize project-affected people (PAPs) as Indigenous Peoples.' 'Inspection Panel: Indigenous Peoples' (World Bank Group, 31 October 2016) 5 <https://openknowledge.worldbank.org/handle/10986/25328> accessed 28 October 2018. '[S]everal governments of Asian states argue that the concept of "indigenous peoples" is so integrally a product of the common experience of European colonial settlement as to be fundamentally inapplicable to those parts of Asia that did not experience substantial European settlement.' Benedict Kingsbury, 'Indigenous Peoples in International Law: A Constructivist Approach to the Asian Controversy' (1998) 92 American Journal of International Law 414, 418.

[383] 'In cases brought before the IACtHR [Inter American Court of Human Rights], some states continue to present arguments relating to the non-recognition of indigenous peoples' legal personality. They not only argue a lack of standing, but also call into question the indigenous character of communities as a means to deny rights to cultural identity and collective property. For example, states have argued the lack of ethnic distinctiveness or partial disintegration of indigenous culture through the acceptance of modern developments, through a move away from

yearn to be recognized as collectivities with dignity and rights, avoiding their exclusion from the prerogatives developed in their favor at universal, regional, or local levels. Conversely, it is legitimate for States and IPs to try to prevent any other human group that does not possess the credentials from seeking to be treated as such to benefit from the rights that do not belong to them. In this sense, both broad and narrow IPs' notions would be equally inadequate.

Furthermore, there is a logical dilemma between the aspiration to define IPs and their own legitimacy to self-identify as such. Because of their legitimacy, dignity, and self-determination, they are the peoples who can identify themselves as indigenous.[384] Self-identification will symmetrically lose its relevance to the extent that a theoretical approach is required to establish the criteria that must be taken into account to determine what is an IPs. Then, it will be the sheer notion and not the self-identification that will prevail. Self-identification poses the challenge of forcing a false recognition on those who are not IPs and on the sole basis of a human community's simple statement.

Despite the mentioned controversy and that IPs exist independently from any theory or policy aimed to comprise or define them, this chapter has the purpose of specifying the legal and formal traits that would allow identifying IPs as the holders of collective rights.[385] Then, the following leading question can be formulated: which characteristics should human collectivities meet to be considered as IPs and, consequently, the bearers of the collective rights that are declared and recognized to them?

In the context of this dissertation, and since Jach'a Karangas (JK) is construed as an indigenous people existing within Bolivia's borders, the answer to this question will be attempted from the international and Bolivian legal perspectives. From the international perspective, the analysis is based on the main criteria formulated by ten sources from international human rights law, intergovernmental organizations, and special rapporteurs, as detailed in Table 7.

These sources were selected not only because they are generally quoted by the main literature and applied to identify indigenous peoples or contextualize their situation[386] but also for the following reasons. Bolivia ratified the International Labor Organization Convention Concerning Indigenous and Tribal Populations (ILO C107) on 12 January 1965 and ILO Indigenous and Tribal Peoples Convention

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ancestral territory, through the impossibility to clearly distinguish between different indigenous cultures that have become intertwined, and even the formal non-existence of indigenous persons due to administrative failures in the emission of birth certificates by the state itself.' Marina Brilman, 'Consenting to Dispossession: The Problematic Heritage and Complex Future of Consultation and Consent of Indigenous Peoples' [2017] Columbia Human Rights Law Review 1, 20.

[384] As Corntassel remembers, '[t]he World Council of Indigenous Peoples passed a resolution stating that "only indigenous peoples could define indigenous peoples".' JJ Corntassel, 'Who Is Indigenous? "Peoplehood" and Ethnonationalist Approaches to Rearticulating Indigenous Identity' (2003) 9 Nationalism and Ethnic Politics 75, 75.

[385] The collective rights perspective encompasses their moral, political, or legal dimensions. 'A *moral right* is an entitlement or justified claim whose justification does not depend on whether any legal or political system recognises the right. A *legal right* is an entitlement or justified claim that a legal system recognises according to the correct interpretation of its own rules and principles, though a legal system, or actors within it, may fail to recognise a legal right in particular circumstances. Analogously, a *political right* is an entitlement or justified claim that other governmental systems recognise according to the correct interpretation of the rules and principles governing them (for example, conventions followed in legislative deliberations).' Newman (n 211) 11.

[386] For example, Benedict Kingsbury, 'Reconciling Five Competing Conceptual Structures of Indigenous Peoples' Claims in International and Comparative Law' (2001–2002) 34 New York University Journal of International Law and Politics 189; Corntassel (n 384); Holder (n 21); Charters (n 7); Engle (n 10); Anatoly Kovler, 'International Protection Mechanism of Indigenous Peoples' (2012) 4 Yearbook of Polar Law 205; Barelli, 'Free, Prior and Informed Consent in the Aftermath of the UN Declaration on the Rights of Indigenous Peoples' (n 18); Bebbington (n 23); Hanna and Vanclay (n 17); Tobin (n 19); Ana Filipa Vrdoljak, 'Indigenous Peoples, World Heritage, and Human Rights' (2018) 25 International Journal of Cultural Property 245.

169 (C169) on 11 December 1991. On the other hand, Bolivia made the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) a legally binding norm on 7 November 2007.[387] Regarding the American Declaration on the Rights of Indigenous Peoples (OASDRIP), Bolivia is part of the Organization of American States (OAS) and also accepted it in consensus with the majority of the American States.[388] As for the notions raised by the World Bank's Environmental and Social Framework – Environmental and Social Standard 7 and the United Nations Development Program Standard 6: Indigenous Peoples, both belong to intergovernmental organizations, being the former widely applied for financing projects, and the latter, being from 2017 and belonging to the UN, will allow a contrast with UNDRIP after ten years of its formal adoption. The Martínez Cobo and Erica-Irene A. Daes special rapporteurs' definitions are taken into account because they are widely known and informed the UN Working Group of Indigenous Populations (WGIP). Furthermore, as shown below, they represent a watershed between African indigenous peoples and those of the Americas and Australasia since Martínez requires their indigeneity and Daes, on the contrary, only their traditional lifestyles.[389] In this sense and to have a broader standpoint, the view of the Report of the African Commission's Working Group on Indigenous Populations / Communities adopted by the African Commission on Human and Peoples' Rights (ACHPR) is considered as well.

These ten sources are organized in chronological order to explicit the changes that occurred over time in the definitions and characterizations of IPs. Moreover, to better understand IPs' characteristics, and without any intention of making a detailed description, some nuances among IPs, tribal peoples, minorities, and communities are highlighted in this chapter. After this overview of sources, through the coding and categorization method, ten categories of analysis (or general characteristics) are proposed[390] to analyze IPs' fundamental traits.[391] They were defined after identifying all the elements found in the notions and characteristics of the selected sources and were organized considering the relation criteria they presented through Table 10.

The sources consulted have repeatedly stated that it is not feasible to establish a universal definition that encloses all IPs and their distinct contexts. One proof of this assertion exists in ACHPR's position concerning the African context, in which the aboriginality and colonial traits of the Americas and Australia were disregarded to achieve an IPs' meaningful notion for them. One of the origins of this difficulty might respond to attempting the IPs' characterization over circumstantial events, i.e., by recognizing incidental traits. Then, each category's analysis reflects on its universality, essentiality, and

[387] Law No. 3760 of 7 November 2007 raised the 46 articles of UNDRIP to the rank of Bolivian law, which was 'approved at the 62nd Session of the General Assembly of the United Nations Organization.' Ley 3760 [Law 3760] 2007. Then, by Law No. 3897 of 26 June 2008, the error of Law 3760 was corrected, stating that it was 'approved at the 61st Session of the General Assembly of the United Nations Organization.' Ley 3897 [Law 3897] 2008.

[388] According to OAS, 'OAS - Organization of American States: Democracy for Peace, Security, and Development' (*Press Department E-075/16*, 15 June 2016) <https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-075/16> accessed 11 May 2019. 'The Minister of Foreign Affairs of Bolivia, David Choquehuanca, emphasized that the Declaration recognizes "all rights: not only human rights—which are individual—but also collective rights, such as economic, social, and cultural rights".'

[389] Karin Lehmann, 'To Define or Not to Define - The Definitional Debate Revisited Regional Issues in the International Indigenous Rights Movement' (2006–2007) 31 American Indian Law Review 509, 526–527. The Martínez Cobo definition, 'developed by the WGIP is the most thorough and widely-used. The UN never officially adopted this definition as a prerequisite for participation in the WGIP, mainly due to an adamant insistence by indigenous participants on an unrestricted self-identification policy.' Corntassel (n 384) 88.

[390] Coffey and Atkinson (n 360) 31–62.

[391] See Table 10 and 'Section 2.2: Contrasting Concepts with Categories' on page 128.

flexibility to reconsider such an outcome to some extent.[392] Universality, to avoid excluding IPs, regardless of their context or situation; essentiality (or necessity) to evade incidental traits; and flexibility to underscore their ability to adapt to some particularities.

*Table 7: Selected sources to identify indigenous peoples*

| Source | Year |
|---|---|
| ILO Convention Concerning Indigenous and Tribal Populations No. 107 | 1957 |
| Working definition of Martínez Cobo | 1972 |
| Definition of Martínez Cobo | 1983 |
| ILO Indigenous and Tribal Peoples Convention No. 169 | 1989 |
| Working Paper by Erica-Irene A. Daes on the concept of 'indigenous people' | 1996 |
| Report of the African Commission's Working Group on Indigenous Populations/ Communities adopted by the ACHPR | 2003 |
| United Nations Declaration on the Rights of Indigenous Peoples | 2007 |
| World Bank's Environmental and Social Framework – Environmental and Social Standard 7 (ESS7) | 2016 |
| American Declaration on the Rights of Indigenous Peoples | 2016 |
| United Nations Development Programme Standard 6: Indigenous Peoples | 2017 |

*Source:* Self-made.

From the Bolivian perspective, the conclusions obtained from the analysis made from the international sources will be contrasted with its constitutional IPs' notion. Even though one could contest the exclusion of the Bolivian Constitution within the first analysis; however, making an independent comparison could be helpful for two closely related reasons. First, it is pertinent to differentiate the Bolivian notion from the rest to emphasize this dissertation's purpose of evaluating the effectiveness of a collective right of an existing indigenous people in Bolivia. Second, it allows for a more specific comparison of the findings of the international sources with the one localized for this case study on JK.

[392] 'Indigenous scholars, such as Alfred and S. James Anaya, tend to advocate broad and inclusive definitions of indigenous groups in order to avoid de-emphasizing variation between and within groups' as pointed by Corntassel (n 384). Besides, following Kingsbury, IPs require a definition 'sufficiently flexible to accommodate a range of justifications' Kingsbury (n 382) 418.

# Section 2.1: International Approach

## Definitions, Characteristics, and Perspectives on Indigenous Peoples

### *ILO Convention Concerning Indigenous and Tribal Populations No. 107 of 1957*

The International Labour Organization (ILO) 'was founded in 1919 as a specialized agency of the League of Nations, the predecessor of the United Nations,'[393] as part of the Treaty of Versailles. It 'was the first international body to address indigenous issues in a comprehensive manner. It has been working to protect and promote the rights of indigenous and tribal peoples since the early 1920s.'[394] In 1946, the ILO, together with UNESCO and other UN agencies, 'began the process of writing a convention outlining government obligations to the indigenous peoples under their jurisdictions. Discussions lasted 11 years.'[395] In its Fortieth Session, the ILO General Conference adopted the ILO Convention Concerning Indigenous and Tribal Populations No. 107 (ILO C107) on 26 June 1957 as the 'first international instrument to exclusively address indigenous peoples' rights.' [396] Nowadays, the ILO C107 is no longer open for ratification, but it is still in force for 17 countries, and ten countries have already denounced it (cf. Table 8).

The ILO C107 applies to the members of the tribal and semi-tribal populations. C107's article 1 characterizes IPs within these two classes, understanding that their members 'are at a less advanced stage than the stage reached by the other sections of the national community.'[397] The Preamble to the ILO C107 considers that this 'hinders them from benefiting fully from the rights and advantages enjoyed by other elements of the population.'[398] It determines that such a situation occurs because the national communities have not yet *integrated* the tribal and semi-tribal populations. Therefore, it suggests adopting general international standards to facilitate their progressive integration[399] but excludes artificial assimilation measures.[400]

[393] Fergus MacKay, *A Guide to Indigenous Peoples' Rights in the International Labour Organization* (Forest Peoples Programme 2003) 6 <https://www.forestpeoples.org/en/topics/guides-human-rights-mechanisms/publication/2010/guide-indigenous-peoples-rights-international>.
[394] 'Leaflet No. 8: The ILO and Indigenous and Tribal Peoples' (Economic and Social Rights International Labour Conference - ILO) 2 <https://www.ohchr.org/Documents/Publications/GuideIPleaflet8en.pdf> accessed 16 April 2019.
[395] 'ILO Convention 107' <https://indigenousfoundations.web.arts.ubc.ca/ilo_convention_107/> accessed 17 April 2019.
[396] MacKay (n 393) 7.
[397] Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries.
[398] ibid. Preamble.
[399] ibid. Preamble.
[400] ibid Art. 2.

This assimilationist logic of identity and culture loss by the adoption of another (integration)[401] was evident in some perverse policies, such as the so-called stolen generation policy[402] adopted by the Australian government that lasted until the early seventies. Verkuyten argued that multiculturalism and assimilationism are ideologies in contrast. Whereas the former 'tries to foster understanding and appreciation of ethnic diversity by acknowledging and respecting minority group identities and cultures,' in the latter, he states by citing Fredrickson that 'although the professed goal of assimilation is equality, assimilationist thinking provides intellectual and moral justification for the superiority and unchanging character of the dominant identity and culture.'[403] Multiculturalism has also been criticized as an ideology that leads to conflict and separatism, which contradicts individualism.[404] However, 'cultural diversity is inevitable and valuable[,] is probably the only feasible option for ethnically plural societies.'[405]

The C107 characterizes indigenous populations in its article 1 paras 1-2:

> '1. This Convention applies to
>
> (a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
>
> (b) members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong.
>
> 2. For the purposes of this Convention, the term semi-tribal includes groups and persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community.'[406]

It is noteworthy that ILO C107 refers to indigenous populations as a set of individuals rather than indigenous peoples as a collectivity or corporation.[407] On the other hand, it does not refer to indigenous self-identification. The ILO C107 recognizes the right to private or collective property of the land to

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[401] During the revision of the ILO C107, it was said that 'Although "integration" originally had been proposed "without any malice, to ensure the survival of these communities," added Yllanes Ramos, it came to be associated with "destruction and absorption," or even, in the words of UNESCO's observer, Pierre Condé, "ethnocide [which] is a gross violation of human rights",' as referred in Russel Lawrence Barsh, 'Revision of ILO Convention No. 107' [1987] The American Journal of International Law 756, 759. In their final report, the experts agreed that 'the Convention's integrationist approach is inadequate and no longer reflects current thinking.'

[402] Australian Human Rights Commission, 'RightsED: Bringing Them Home (2010)' (14 December 2012) <https://www.humanrights.gov.au/our-work/education/publications/rightsed-bringing-them-home-2010> accessed 8 July 2018.

[403] M Verkuyten, 'Ethnic Group Identification and Group Evaluation among Minority and Majority Groups: Testing the Multiculturalism Hypothesis' (2005) 88 Journal of Personality and Social Psychology 121, 121.

[404] ibid 122.

[405] ibid 136.

[406] Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries 107 Article 1.

[407] During the revision of the ILO C107 'Indigenous experts maintained that the use of the term "populations" was demeaning and should be replaced with "peoples." Condé pointed out that the term "peoples" was current usage at UNESCO. Freeman argued, however, that the change in terminology would be dangerous since it implied the right to self-determination.' As referred in Russel Lawrence Barsh (n 401) 760.

indigenous populations,[408] prohibiting them from being 'removed without their free consent from their usual territories except in accordance with national laws,' [409] but under adequate compensation.[410] It also recognizes the customs of property transmissions within the local legal framework.[411]

*Table 8: Ratifications and denunciations of ILO C107 - Indigenous and Tribal Populations Convention*

| Country | Date | Status | Note |
|---|---|---|---|
| Angola | 04 Jun 1976 | In Force | |
| Argentina | 18 Jan 1960 | Not in force | Automatic Denunciation on 03 Jul 2001 by C169 |
| Bangladesh | 22 Jun 1972 | In Force | -- |
| Belgium | 19 Nov 1958 | In Force | -- |
| Bolivia (Plurinational State of) | 12 Jan 1965 | Not in force | Automatic Denunciation on 10 Dec 1992 by C169 |
| Brazil | 18 Jun 1965 | Not in force | Automatic Denunciation on 25 Jul 2003 by C169 |
| Colombia | 04 Mar 1969 | Not in force | Automatic Denunciation on 06 Aug 1992 by C169 |
| Costa Rica | 04 May 1959 | Not in force | Automatic Denunciation on 02 Apr 1994 by C169 |
| Cuba | 02 Jun 1958 | In Force | -- |
| Dominican Republic | 23 Jun 1958 | In Force | -- |
| Ecuador | 03 Oct 1969 | Not in force | Automatic Denunciation on 15 May 1999 by C169 |
| Egypt | 14 Jan 1959 | In Force | -- |
| El Salvador | 18 Nov 1958 | In Force | -- |
| Ghana | 15 Dec 1958 | In Force | -- |
| Guinea - Bissau | 21 Feb 1977 | In Force | -- |
| Haiti | 04 Mar 1958 | In Force | -- |
| India | 29 Sep 1958 | In Force | -- |
| Iraq | 16 Jul 1986 | In Force | -- |
| Malawi | 22 Mar 1965 | In Force | -- |
| Mexico | 01 Jun 1959 | Not in force | Automatic Denunciation on 05 Sep 1991 by C169 |
| Pakistan | 15 Feb 1960 | In Force | -- |
| Panama | 04 Jun 1971 | In Force | -- |
| Paraguay | 20 Feb 1969 | Not in force | Automatic Denunciation on 10 Aug 1994 by C169 |
| Peru | 06 Dec 1960 | Not in force | Automatic Denunciation on 02 Feb 1995 by C169 |
| Portugal | 22 Nov 1960 | Not in force | Denounced on 07 Oct 2009 |
| Syrian Arab Rep. | 14 Jan 1959 | In Force | -- |
| Tunisia | 17 Dec 1962 | In Force | -- |

*Source*: International Labour Organization website.[412]

*Notes: The 'automatic denunciation' referred to in this table is a conventional effect defined in C107's article 36.1.a: ratifying a new revising convention 'ipso jure involves the immediate denunciation of this Convention.' Furthermore, C169 revises C107 according to its article 36.*

## *José R. Martínez Cobo's Definitions of 1972 and 1983*

José R. Martínez Cobo, Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission), presented a definition of IPs from the

[408] Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries Article 11.
[409] ibid Article 12.1.
[410] ibid Article 12.
[411] ibid Article 13.
[412] 'Ratifications of ILO Conventions: Ratifications by Convention. Ratifications of C107 - Indigenous and Tribal Populations Convention, 1957 (No. 107)' (*International Labour Organization*) <https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312252> accessed 14 November 2018.

international point of view,[413] in the framework of his Study of the Problem of Discrimination Against Indigenous Populations published by United Nations in 1987.[414] The Sub-Commission recommended the study in 1970 and obtained the final result in 1984.[415]

Matínez Cobo envisaged developing his definition through four stages: to formulate a working definition, 'involving the identification of the definitions employed in each of the 37 countries covered by the study,' to make a comparative study of these definitions, and to formulate a final definition as far as possible.[416]

Martínez Cobo conveyed his working definition in June 1972 through its Preliminary Report. It expressed the following:

> 'Indigenous populations are composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them and, by conquest, settlement or other means, reduced them to a non-dominant or colonial condition; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form part, under a State structure which incorporates mainly the national, social and cultural characteristics of other segments of the population which are predominant.'[417]

Martínez Cobo explained the need to issue this definition to achieve a 'certain degree of comparability in the content of the information collected, since there is no unanimity at the national level regarding the definition of indigenous populations.'[418] Remarkably, Martínez Cobo referred to *populations* rather than peoples, communities, or nations at this stage.

In September 1983, eleven years after his working definition, Martínez Cobo formulated his famous IPs definition in chapter XXII (Proposals and Recommendations) of his Final Report:

> 'Indigenous communities, peoples and nations are those which, having a historical continuity with preinvasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present nondominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic

[413] The definition of Martínez Cobo is in Chapter XXII (Proposals and Recommendations – E/CN.4/Sub.2/1983/21/Add.8) of the Third Part of its Report. The research supporting this definition is in Chapter V (Definition of Indigenous Populations - E/CN.4/Sub.2/1982/2/Add.6) of the Second Part of its Report.
[414] José R Martínez Cobo, *Study of the Problem of Discrimination against Indigenous Populations*, vol V (United Nations 1987). UN Doc E/CN.4/Sub.2/1986/7/Add.4
[415] As recalled in the introduction para a)-b) of the published Final Report, the Sub-Commission recommended on 26 August 1970 (Res. 4 B XXIII), through the Commission on Human Rights, to undertake this study. The Economic and Social Council authorized the Sub-Commission to conduct the study by its resolution 1589 (L), para. 7, and consequently, the Sub-Commission appointed Martínez Cobo as Special Rapporteur for such endeavor (Res. 8 (XXIV) of 18 August 1971). The Sub-Commission had the full report in 1984, after reviewing its progress between 1973 and 1983. The Economic and Social Council decided on 30 May 1985 (decision 1985/137) to request UN Secretary-General to issue the full report regarding the Sub-Commission and the Commission on Human Rights recommendations.
ibid Introduction a)-b).
[416] ibid 362.
[417] José R Martínez Cobo, *Study of the Problem of Discrimination against Indigenous Populations. Preliminary Report.* (1972) para 34. UNCHR (Sub-Commision), 'Preliminary report by Special Rapporteur José R Martínez Cobo 1972/L.566' (1972) UN Doc E/CN.4/Sub.2/L.566
[418] ibid 20.

identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.'[419]

The historical continuity proposed by Martínez Cobo definition has two dimensions. One is purely temporal since he establishes the pre-invasion and pre-colonial periods as the beginning of IPs. The second dimension concerns preserving their ancestral territories and ethnic identities from that period until now. Such IPs' continuity may come from one or more factors, such as occupying their ancestral lands, culture, or language.[420] Their development as peoples and nations occurred in the territories where they settled, with an 'aboriginal title' of land occupation, recognized in agreements and treaties concluded between IPs and States.[421]

In the definition's narrative, the historical continuity suggests the role change of the IPs from a dominant to a non-dominant position because the colonizers and invaders prevailed over them. It also implies the IPs' persistence in their willingness to exist, even though '[t]heir culture and their social and legal institutions and systems have been constantly under attack at all levels.'[422]

Regarding being considered different, Martínez Cobo states that IPs' dignity and historical freedom arise from their self-determination, one of whose possible meanings includes the right to be different and their possibility to choose.[423] 'They consider themselves to be the historical successors of the peoples and nations that existed on their territories before the coming of the invaders' and assume they are different from others.[424]

Being different and demanding to be recognized as such impose on the IPs to preserve, develop and transmit to future generations their ancestral territories and ethnic identity. 'It is also essential to understand the special and profoundly spiritual relationship of indigenous peoples with Mother Earth as basic to their existence and all their beliefs, customs, traditions and culture.'[425] The continuity of their existence as peoples will depend on this. The IPs' rejection of assimilationism and claiming respect for their cultural patterns, social institutions, and legal systems play a predominant role in this matter. Significantly, the author stated, before the formulation of his IPs' definition, that:

'[I]ndigenous populations must be recognized according to their own perception and conception of themselves in relation to other groups; there must be no attempt to define them according to the perception of others through the values of foreign societies or of the dominant sections in such societies.'[426]

## *ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries No. 169 of 1989*

ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries No. 169 (ILO C169) revises ILO C107. One of its purposes was to eliminate the assimilationist orientation of the

[419] José R Martínez Cobo, *Study of the Problem of Discrimination against Indigenous Populations. Final Report (Last Part).* (1983) para 379. UNCHR (Sub-Commision), 'Final Report (last part) by Special Rapporteur José R Martínez Cobo 1983/Ad.8' (1983) UN Doc E/CN.4/Sub.2/1983/21/Add.8
[420] Martínez Cobo, *Study of the Problem of Discrimination against Indigenous Populations* (n 414) para 380.
[421] ibid 214.
[422] ibid 374.
[423] ibid 270–276.
[424] ibid 376.
[425] ibid 509.
[426] ibid 368.

previous Convention.[427] It has been in force since 5 September 1991, twenty-four countries ratified it to the present (15 American, 6 European, 2 Asian, and 1 African country), and none of the countries has denunciated it (cf. Table 9).

Article 1 of C169 states that it applies to tribal and indigenous peoples. The latter are:

> 'Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.'[428]

The ILO argued that it adopted a practical approach, which is why C169 does not define who IPs and tribal peoples are but describes them. Thus, ILO maintains that the elements of the IPs are:

> '[T]raditional life styles; culture and way of life different from the other segments of the national population, e.g. in their ways of making a living, language, customs, etc.; own social organization and political institutions; living in historical continuity in a certain area, or before others 'invaded' or came to the area.'[429]

On the other hand, '[s]elf-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.' [430] Barume states that 'despite the pressure for a formal definition by many Governments, it remains almost unanimously accepted that self-identification should prevail on any other guiding factor.'[431]

C169 differentiates the rights it recognizes to peoples from the ones granted to them by international law: '[t]he use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.' [432] Then, according to C169, the right to self-determination bestowed by article 1 of the International Covenant on Civil and Political Rights[433] (ICCPR) would have no implications regarding IPs. Barelli criticizes C169 for this reason, stating that it does not recognize IPs as peoples.[434]

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[427] 'The need for protection of indigenous cultures, traditions, lands, and right to self-identification, together with the necessity to put in place mechanisms that would let indigenous peoples be consulted on issues that are important to them, can be considered as the leitmotiv behind the main amendments to ILO Convention No. 107 by its successor, ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries' as referred in Albert Kwokwo Barume, *Land Rights of Indigenous Peoples in Africa: With Special Focus on Central, Eastern and Southern Africa* (International Work Group for Indigenous Affairs 2010) 27.

[428] Article 1.b of the Convention Concerning Indigenous and Tribal Peoples in Independent Countries.

[429] ILO, *ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169). A Manual* (Rev Ed, 1989) 7 <http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221134679_EN/lang--en/index.htm> accessed 19 July 2018.

[430] Article 1.2 of the Convention Concerning Indigenous and Tribal Peoples in Independent Countries.

[431] Barume (n 427) 31.

[432] Article 1.3 of the Convention Concerning Indigenous and Tribal Peoples in Independent Countries.

[433] Article 1 of the International Covenant on Civil and Political Rights (ICCPR). '1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.'

[434] Barelli, 'The Role of Soft Law in the International Legal System' (n 8).

*Table 9: Ratifications of ILO C169 - Indigenous and Tribal Peoples Convention*

| Country | Date | Status |
|---|---|---|
| Argentina | 03 Jul 2000 | In Force |
| Bolivia (Plurinational State of) | 11 Dec 1991 | In Force |
| Brazil | 25 Jul 2002 | In Force |
| Central African Republic | 30 Aug 2010 | In Force |
| Chile | 15 Sep 2008 | In Force |
| Colombia | 07 Aug 1991 | In Force |
| Costa Rica | 02 Apr 1993 | In Force |
| Denmark | 22 Feb 1996 | In Force |
| Dominica | 25 Jun 2002 | In Force |
| Ecuador | 15 May 1998 | In Force |
| Fiji | 03 Mar 1998 | In Force |
| Germany | 23 Jun 2021 | In Force |
| Guatemala | 05 Jun 1996 | In Force |
| Honduras | 28 Mar 1995 | In Force |
| Luxembourg | 05 Jun 2018 | In Force |
| Mexico | 05 Sep 1990 | In Force |
| Nepal | 14 Sep 2007 | In Force |
| Netherlands | 02 Feb 1998 | In Force |
| Nicaragua | 25 Aug 2010 | In Force |
| Norway | 19 Jun 1990 | In Force |
| Paraguay | 10 Aug 1993 | In Force |
| Peru | 02 Feb 1994 | In Force |
| Spain | 15 Feb 2007 | In Force |
| Venezuela (Bolivarian Republic of) | 22 May 2002 | In Force |

*Source*: International Labour Organization website.[435]

This particular meaning of 'peoples' was included due to a possible misinterpretation feared by the States regarding a nonexistent power of secession.[436] However, without limiting the right to self-determination, during C169 negotiations, it was decided that the term 'peoples' is the only one suitable to describe indigenous and tribal peoples. '[T]here appears to be a general agreement that the term "peoples" better reflects the distinctive identity that a revised Convention should aim to recognise for these population groups.'[437] It was also argued that the ILO, unlike the UN, had no competence to interpret the political concept of self-determination.[438] In other words, C169 does not grant IPs the right to self-determination,[439] but it does not deny it either.

C169 acknowledges 'the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship,'[440] ordering State's recognition 'over the lands which they traditionally occupy.'[441] It establishes that IPs have the right to 'participate in

[435] 'Ratifications of ILO Conventions: Ratifications by Convention. Ratifications of C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)' (*International Labour Organization*) <https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314> accessed 14 November 2018.
[436] ILO, Multidisciplinary Team, 'Introducción al Convenio 169, Derechos de Los Pueblos Indígenas' (1999) <http://www.ilo.org/public/english/region/ampro/mdtsanjose/indigenous/intro169.htm> accessed 19 July 2018.
[437] International Labour Conference, 75th Session. Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (no. 107). Report VI(2), Geneva 1988, pp 12 – 14, as cited in *Indigenous and Tribal Peoples' Rights in Practice: A Guide to ILO Convention No. 169* (ILO 2009) 25.
[438] MacKay (n 393) 9.
[439] Kovler (n 386) 213.
[440] Convention Concerning Indigenous and Tribal Peoples in Independent Countries Article 13.1.
[441] ibid Article 14.1.

the use, management and conservation of these resources.'[442] ILO C169 declares that the IPs' shall not be removed from the land which they occupy,'[443] unless prior consultation or application of appropriate procedures. The IPs will have the right to return to their traditional lands or receive adequate compensation.[444]

## *Working Paper by Erica-Irene A. Daes on the Concept of 'Indigenous People' of 1996*

Erica-Irene A. Daes, as the Chairperson-Rapporteur of the UN WGPI, presented 'the principal factors which have distinguished "indigenous peoples" from other groups in the practice of the United Nations system and regional intergovernmental organizations' [445] on 10 June 1996. The work was recommended in the thirteenth session of the WGPI.[446] To achieve this result, she reviewed the history of international practices in this regard. [447]

Daes argues that 'indigenous' is a term historically used to designate those who have been dominated by colonization. She exemplifies her assertion with article 6 of the Final Act of the Berlin Conference of 1884-1845, in which the Great Powers committed to the 'protection of indigenous populations' of Africa, differentiating them from the citizens of the Great Powers. Likewise, in article 22 of the Covenant of the League of Nations, its Members accepted to promote the development of the indigenous populations of the colonized territories, unable to stand by themselves in front of the most advanced societies.[448] She affirms that in Americas, since the first half of the twentieth century, the Pan-American Union employed the term indigenous in a group sense rather than individuals. That is, 'to identify marginalized or vulnerable ethnic, cultural, linguistic and racial groups within State borders, rather than the inhabitants of colonial territories that were distinct geographically from the administering Power.'[449]

Erica-Irene understood that the Charter of the United Nations, instead of using the sociological connotation of 'indigenous populations' as the Pan-American Union did, it applied its geographical sense in article 73 to refer to them as 'territories whose peoples have not yet attained a full measure of self-government.' [450]

She commented that in ILO C107, indigenous 'are mainly characterized by social, cultural, economic, legal and institutional distinctiveness. Evidence of actual oppression or discrimination is not a criterion.' [451] Regarding the ILO C169, the Chairperson-Rapporteur argued that its indigenous definition remains

[442] ibid Article 15.1.
[443] ibid Article 16.1.
[444] ibid Article 16.
[445] Erica-Irene A Daes, 'Standard-Setting Activities: Evolution of Standards Concerning the Rights of Indigenous People. Working Paper by the Chairperson-Rapporteur, Mrs. Erica-Irene A. Daes, on the Concept of "Indigenous People"' (1996) E/CN.4/Sub.2/AC.4/1996/2 para 9. UNCHR (Sub-Commission), 'Working Paper by Chairperson-Rapporteur Erica-Irene A Daes 1996/2' (1996) UN Doc E/CN.4/Sub.2/AC.4/1996/2 para 9
[446] The Sub-Commission approved such recommendation (Res. 1995/38 of 24 August 1995) and in consequence 'the preparation of a note on criteria for the definition of indigenous peoples based on the information which might be submitted to her by Governments, intergovernmental organizations and indigenous peoples' organizations' ibid 1. However, the Chairperson-Rapporteur expressed that she 'has received no comments' from the institutions mentioned above. However, on 28 June 1996, she submitted addendum E/CN.4/Sub.2/AC.4/1996/2/Add.1 based on the response received by the Aboriginal and Torres Strait Islander Commission.
[447] ibid 9.
[448] ibid 11–13.
[449] ibid 16.
[450] ibid 17–18.
[451] ibid 22.

'in terms of their distinctiveness, as well as their descent from the inhabitants of their territory "at the time of conquest or colonization or the establishment of present state boundaries".' [452]

Erica-Irene A. Daes also referred to the opinions of indigenous people and governments. Regarding the former, she affirms that:

> '[i]ndigenous representatives on several occasions have expressed the view, before the Working Group that a definition of the concept of "indigenous people" is not necessary or desirable. They have stressed the importance of self-identification as an essential component of any definition.' [453]

As for the governments' point of view, she only echoed the representative of the observer Government of Bangladesh, who expressed that 'self-identification could be self-defeating … if the agenda for indigenous peoples were allowed to be confused with the agenda of other subnational and tribal groups.' [454]

In the Conclusions and Recommendations of her report[455] she identified the following four factors:

> '(a) Priority in time, with respect to the occupation and use of a specific territory;[456]
>
> (b) The voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions;
>
> (c) Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and
>
> (d) An experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist.'[457]

The report's author held that 'the foregoing factors do not, and cannot, constitute an inclusive or comprehensive definition. Rather, they represent factors which may be present, to a greater or lesser degree, in different regions and in different national and local contexts.'[458] On the other hand, the author stressed that she is not

> 'persuaded that there is any distinction between "indigenous" peoples, and "peoples" generally, other than the fact that the groups typically identified as "indigenous" have been unable to exercise the right of self-determination by participating in the construction of a contemporary nation-State.'[459]

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[452] ibid 28.
[453] ibid 35.
[454] ibid 39.
[455] Erica-Irene Daes stressed in her conclusions that '[n]o one has succeeded in devising a definition of 'indigenous' which is precise and internally valid as a philosophical matter, yet satisfies demands to limit its regional application and legal implications. All past attempts to achieve both clarity and restrictiveness in the same definition have in fact resulted in greater ambiguity.' ibid 73.
[456] The author remarket that 'the cultural distinctiveness of indigenous peoples, which is central to the concept of "indigenous" in contemporary international law, is inseparable from "territory".' ibid 43.
[457] ibid 69.
[458] ibid 70.
[459] ibid 72. Gurr considers that '[i]ndigenous peoples who had durable states of their own prior to conquest, such as Tibetans, or who have given sustained support to modern movements aimed at establishing their own state, such as the Kurds, are classified as ethnonationalists, not indigenous peoples.' Ted Robert Gurr, *Peoples versus*

## *The Adoption of the Report of the African Commission's Working Group on Indigenous Populations / Communities by the African Commission on Human and Peoples' Rights of 2003*

The African Commission on Human and Peoples' Rights (ACHPR) adopted in November 2003, at its 34th Ordinary Session in Banjul, the *Report of the African Commission's Working Group on Indigenous Populations/Communities*.[460] This Working Group of experts[461] on the rights of indigenous or ethnic communities in Africa was established in November 2000 by the ACHPR resolution at its 28th Ordinary Session held in Cotonou with the mandate to examine the *concept* of indigenous peoples and communities in Africa among others.[462]

This report supports the following aspects related to IPs:

The African Charter on Human and Peoples' Rights (ACHP), adopted in 1981 and in force since 1986, refers to the rights of individuals and peoples, but not of indigenous peoples. 'The African Charter expressly recognises and protects… 'peoples' in its provisions, including the Preamble. The very name of the instrument is the African Charter on Human and Peoples' Rights… reflecting the African philosophy of law'.[463]

The rights of IPs dwell in the rights of peoples. Among its articles 19 and 24, the ACHP establishes the rights of peoples, which include the rights to equality (Art. 19), to exist, to free determination, to the liberation of colonization and domination, to assistance from the States (Art. 20), to the disposition of their wealth and resources (Art. 21), to their economic, social, and cultural development for their freedom and identity (Art. 22), to peace and security (Art. 23), and to a favorable and satisfactory environment for development (Art. 24).[464]

In Africa, certain groups are in a situation of urgency because of the severe threats they are experiencing, even against their existence. One way they found to face this situation is to link with the term *indigenous peoples* because it allows them to gain notoriety and to protect themselves with the collective rights

*States [Microform] : Minorities at Risk in the New Century / Ted Robert Gurr.* (Washington, DC : United States Institute of Peace Press, 2000 2000) 17 <http://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,url,uid&db=edsgpr&AN=edsgpr.000538319&site=eds-live>.

[460] *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities: Submitted in Accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa'* (African Commission on Human and Peoples' Rights; International Work Group for Indigenous Affairs; Distribution in North America Transaction Publishers 2005) 116–119.

[461] It was 'comprised of three Members of the African Commission, three Experts from indigenous communities in Africa and one Independent Expert' who discussed the first draft of the report in April 2002 (Pretoria, South Africa) and its second draft in January 2003 (Nairobi, Kenya) as recalls the 'Resolution on the Adoption of the "Report of the African Commission's Working Group on Indigenous Populations / Communities" / Resolutions / 34th Ordinary Session / ACHPR (65)' <http://www.achpr.org/sessions/34th/resolutions/65/> accessed 18 April 2019.

[462] 'Resolution on the Rights of Indigenous Peoples' Communities in Africa / Resolutions / 28th Ordinary Session / ACHPR (51)' <http://www.achpr.org/sessions/28th/resolutions/51> accessed 18 April 2019.

[463] *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities: Submitted in Accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa'* (n 460) 72.

[464] African Charter on Human and Peoples' Rights S (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).

recognized for them.[465] The term 'indigenous peoples' (IPs) is also recognized internationally as a mechanism of struggle in favor of the justice of marginalized, discriminated, and despised groups for their distinct cultures and ways of life by the 'dominating mainstream development paradigms.'[466]

> 'those groups of peoples or communities throughout Africa who are identifying themselves as indigenous peoples or communities and who are linking up with the global indigenous rights movement are first and foremost (but not exclusively) different groups of hunter-gatherers or former hunter-gatherers and certain groups of pastoralists.'[467]

The report is aware of the negative connotations of the term IPs that came from European colonialism, the chauvinistic governments' misuse,[468] and its misconceptions. The issue is not about granting 'special rights to some ethnic groups over and above the rights of all others'[469] but the cultural discrimination that some groups suffer. Neither is it discussing if 'the term *indigenous* is not applicable in Africa as "all Africans are indigenous"… in the sense that they were there before the European colonialists arrived and that they have been subject to sub-ordination during colonialism.'[470] The term IPs shall be used in its 'modern analytical form,' which is broader than aboriginality[471] or 'who came first'[472] 'in an attempt to draw attention to and alleviate the particular form of discrimination they suffer.'[473] Such discrimination legitimizes protecting the rights of the discriminated. Besides, ethnic conflicts and tribalism 'do not arise because people demand their rights but because their rights are violated.'[474] 'Giving recognition to all groups, respecting their differences and allowing them all to flourish in a truly democratic spirit does not lead to conflict, it prevents conflict.'[475]

The report does not define IPs since:

> 'there is no global consensus about a single final definition. The global indigenous rights movement and the UN system oppose recurrent attempts to have a single strict definition… [it] is neither necessary nor desirable. It is much more relevant and constructive to try to outline the major characteristics, which can help us identify who the indigenous peoples and communities in Africa are.'[476]

The report expresses that such characteristics may differ from some of those used in the framework of other continents or the initial approaches,[477] like Martínez Cobo's definition. 'Limiting the definition of indigenous peoples to those local peoples still subject to the political domination of the descendants of colonial settlers as in the Americas and in Australia makes it very difficult to meaningfully use the

[465] *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities: Submitted in Accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa'* (n 460) 86.
[466] ibid 87.
[467] ibid 89.
[468] ibid 86.
[469] ibid 88.
[470] ibid.
[471] ibid.
[472] ibid 87.
[473] ibid 88.
[474] ibid.
[475] ibid.
[476] ibid 87.
[477] In the words of Lehmann (n 389) 526. 'In the American and Australasian contexts, the lines between indigenous and non-indigenous are clearer, the differences sharper and the determination simpler. In the African context, the lines are finer, the differences blunter.'

concept in Africa.'[478] Self-identification, 'an experience of subjugation, marginalisation, dispossession, exclusion or discrimination,' and cultural differences are more determining contemporary in Africa than the aboriginality or colonial situation factors.[479]

Besides, '[a]ll Africans are indigenous to Africa as compared to the European colonialists who left all of black Africa in a subordinate position, which was in many respects similar to the situation of indigenous peoples elsewhere.'[480] The ACHPR clarified in greater detail this specific meaning of the term IPs in Africa in its Advisory Opinion in 2007:

> '[It] does not mean "first inhabitants" in reference to aboriginality as opposed to non-African communities or those having come from elsewhere. This peculiarity distinguishes Africa from the other Continents where native communities have been almost annihilated by non-native populations. Therefore, the ACHPR considers that any African can legitimately consider him/herself as indigene to the Continent.'[481]

Therefore, limiting the concept to a colonial situation is unthinkable because domination is perpetuated after independence, now by some dominant African groups over others. It would leave the ACHPR 'without a suitable concept for analysing internal structural relationships of inequality that have persisted after liberation from colonial dominance'[482] and 'it is this sort of present-day internal suppression within African states that the contemporary African indigenous movement seeks to address.'[483]

The report summarizes the overall characteristics of IPs in these terms:

> '[T]heir cultures and ways of life differ considerably from the dominant society and their cultures are under threat, in some cases to the extent of extinction. A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional land and the natural resources thereon. They suffer from discrimination as they are being regarded as less developed and less advanced than other more dominant sectors of society. They often live in inaccessible regions, often geographically isolated and suffer from various forms of marginalisation, both politically and socially. They are subject to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority.'[484]

The 'self-identification' must join these characteristics since the report includes it in the content.

In these terms, it was unsurprising that African States disagreed with the Declaration on the Rights of Indigenous Peoples (UNDRIP) for 'fundamental constitutional and political problems that would prove

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[478] *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities: Submitted in Accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa'* (n 460) 92.
[479] ibid.
[480] *ibid.*
[481] African Commission On Human And Peoples' Rights, 'Advisory Opinion of the African Commission On Human And Peoples' Rights on The United Nations Declaration on the Rights of Indigenous Peoples, Adopted at Its 41st Ordinary Session in Accra, Ghana' (May 2007) para 13 <http://www.achpr.org/mechanisms/indigenous-populations/un-advisory-opinion/> accessed 1 November 2018.
[482] *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities: Submitted in Accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa'* (n 460) 92.
[483] ibid.
[484] ibid 89.

impossible to implement.'[485] Among their claims was the need for an IPs definition to identify the bearers of their collective rights. [486] In general, States have preferred to deny the existence of IPs inside their borders, declaring instead that they were minorities,[487] possibly aiming to avoid being the bearers of the obligations and duties that their recognition entails.

Despite all this, the ACHPR jurisprudence allowed the expansion of the reach of peoples' collective rights protected by the ACHR to IPs while overcoming the common elements of aboriginality and colonialism. In Centre for Minority Rights Development and Minority Rights Group International (on behalf of the Endorois Welfare Council) v. Kenya, the ACHPR recognized the indigenous community Endorois as a people. The claimants argued their rights transgression for 'loss of their property, the disruption of the community's pastoral enterprise and violations of the right to practice their religion and culture, as well as the overall process of development.' [488] The Kenyan government, without consultation or compensation, evicted hundreds of Endorois families from their ancestral lands to create a recreation reserve for tourism in the seventies. [489]

The ACHPR, by accepting the legitimacy of the Endorois to define their representation,[490] declared that:

> 'Endorois are an indigenous community and that they fulfil the criterion of "distinctiveness"… Endorois consider themselves to be a distinct people, sharing a common history, culture and religion. The African Commission is satisfied that Endorois are a "people", a status that entitles them to benefit from the provisions of the African Charter that protect collective rights.'[491]

The ACHPR, making an analogy between the similar vital relationship that IPs and other communities have for their history, traditions, culture, lands, and territories, extended the application of the peoples' rights to these communities, considering the latter as indigenous people for those similar traits. The ACHPR 'was able to bypass the controversy whether indigenous peoples are, as a concept, relevant in an African context. Moreover, its stance has also broadened the scope of application of indigenous peoples' rights beyond the colonial framework.' [492]

## *UN Declaration on the Rights of Indigenous Peoples of 2007*

Historically, '[i]n 1982 the Economic and Social Council (ECOSOC) established the Working Group on Indigenous Populations with the mandate to develop a set of minimum standards that would protect

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[485] 'Draft Aide Memoire on the United Nations Declaration on the Rights of Indigenous Peoples' (African Group, 9 November 2006) para 1.2 <http://www.ipacc.org.za/en/23-human-rights/54-africa-group-2006-aide-memoire-2006.html> accessed 31 October 2018.
[486] ibid 2.1.
[487] 'In particular Asian and African states, who have argued that no Indigenous people exist in their regions and that these groups are actually 'minority groups' Megan Davis, 'The United Nations Declaration on the Rights of Indigenous Peoples Commentary' (2007) 11 Australian Indigenous Law Review 55, 55–56.
[488] *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya* [2009] African Commission on Human and Peoples' Rights Communication 276/2003 27 AAR [1].
[489] ibid 2–3.
[490] '[T]he question of whether certain members of the community may assert certain communal rights on behalf of the group is a question that must be resolved by the Endorois.' ibid 162.
[491] ibid.
[492] Derek Inman, Dorothee Cambou and Stefaan Smis, 'Evolving Legal Protection for Indigenous Peoples in Africa: Some Post-UNDRIP Reflections' [2018] African Journal of International and Comparative Law 339, 363–364. These authors understand that 'To do this, the African Commission relied heavily on jurisprudence from the Inter-American Court of Human Rights (…) most notably Saramaka People v. Suriname', ibid 347.

indigenous peoples.'[493] After 25 years, the General Assembly of the UN adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP) on 13 September 2007 at its 107th plenary meeting.[494]

Although the UNDRIP does not conceptualize IPs,[495] it is possible to extract some of their characteristics from its content and the rights it recognizes. 'While the UNDRIP does not explicitly stipulate the characteristics of those groups to whom it applies, these characteristics nevertheless emerge from both the sources of rights it recognises and the rights which it affirms.'[496]

Its wording places IPs as *victims* of unfair actions committed against them. When UNDRIP refers to IPs' colonization, it suggests, at the same time, their *pre-colonial existence* and presupposes their *permanence and existence* until the present. The UNDRIP preamble also nurtures the IPs' *willingness to remain* by noting that their control 'over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions.'[497]

When the UNDRIP recognizes that IPs have the right to self-determination and to be different, it might consider that IPs not only have the necessary and sufficient means to adopt and execute their decisions through their political, legal, cultural, economic, and social institutions, but they are also *distinct from the rest on ethnic and cultural grounds*.[498] By recognizing the right to 'determine their own identity or membership in accordance with their customs and traditions,'[499] the UNDRIP admits that IPs can *self-identify* as such. The UNDRIP also acknowledges that IPs have a 'distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources,'[500] which is why it recognizes them the right to maintain and strengthen this

[493] 'United Nations Declaration on the Rights of Indigenous Peoples | United Nations For Indigenous Peoples' <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> accessed 11 May 2019.
[494] Resolution adopted by the General Assembly [without reference to a Main Committee (A/61/L.67 and Add.1)] adopted the 61/295. United Nations Declaration on the Rights of Indigenous Peoples.
[495] During the discussions of the UNDRIP, and in consultative status with the UN Economic and Social Council, the Aboriginal and Torres Strait Islander Commission stated in 1996 that a definition of IPs is unnecessary for several reasons. Without it is entirely possible to continue the draft declaration by the WGIP, a hasty definition may provoke exclusions and unwanted rigid applications when in this case self-identification must be sufficient. Besides, international human rights instruments have legitimacy for their international recognition, although they often do not define their central concepts. Aboriginal and Torres Strait Islander Commission, 'Standard-Setting Activities: Evolution of Standards Concerning the Rights of Indigenous People: The Concept of "Indigenous Peoples." Information Received from Indigenous Peoples' Organizations.' (1996) Addendum E/CN.4/Sub.2/AC.4/1996/2/Add.1 paras 2–6.
Cathal Doyle recalls '[t]he pragmatic approach adopted by Daes during her chairmanship, and subsequently maintained as the neutral position, when agreement on a definition proved impossible, was to dismiss the necessity of a definition and use Martínez Cobo's 'working definition' as a guide.' Doyle (n 41) 112.
[496] Doyle (n 41) 112.
[497] United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Preamble.
[498] See, e.g., the preamble and articles 3, 5, 11, 12, 14, 15, 18-20, 23, 30.2, and 32-34 of the UNDRIP. The IPs *distinctiveness* is present in their 'political, legal, economic, social and cultural institutions' (Art. 5), 'cultural values or ethnic identities' (Art. 8), 'cultural traditions and customs,' (Art. 11), 'spiritual and religious traditions, customs and ceremonies' (Art. 12), 'histories, languages, oral traditions, philosophies, writing systems and literatures' (Art. 13), 'educational system' (Art. 14), 'indigenous decision making institutions' (Art. 18), medicines and 'health practices' (Art. 24), 'cultural heritage, traditional knowledge and traditional cultural expressions' (Art. 31), spiritual relationship with their lands, territories, and resources (Art. 25), and 'distinctive customs' (Art. 34).
[499] Article 33.1 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
[500] ibid article 25.

relationship.[501] It also establishes the right to redress for lands, resources, and territories 'which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.' [502]

## *World Bank's Environmental and Social Framework – Environmental and Social Standard 7 (ESS7) of 2016*

The World Bank has established various policies to carry out its mission. Among them is the World Bank Environmental and Social Framework, which seeks to ensure its 'commitment to sustainable development, through a Bank Policy and a set of ten Environmental and Social Standards (ESS) that are designed to support Borrowers' projects, with the aim of ending extreme poverty and promoting shared prosperity.' [503] The ESS 'set out the requirements for Borrowers relating to the identification and assessment of environmental and social risks and impacts associated with projects supported by the Bank through Investment Project Financing' with the aim to support borrowers to fulfill good international practice, and comply with their national and international duties, among others. [504] The current version of this manual is from 2016 and ESS7 (Indigenous Peoples / sub-Saharan African Historically Undeserved Traditional Local Communities) replaces the Operational Policy OP/BP4.11.[505]

The ESS7 underscores that since the terminology to refer to indigenous peoples may vary from country to country,[506] its identification criteria apply to all of them.[507] It characterizes IPs in its paragraphs 8 and 9 with the following wording:

> '8. In this ESS, the term "Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities" (or as they may be referred to in the national context using an alternative terminology) is used in a generic sense to refer exclusively to a distinct social and cultural group possessing the following characteristics in varying degrees:
>
> (a) Self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others; and
>
> (b) Collective attachment to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas; and

[501] In greater detail of this recognition, the preamble and articles 8.2.b, 10, 26-28, and 32 of the UNDRIP can also be confronted.
[502] United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Article 28.1.
[503] 'The World Bank Environmental and Social Framework' (World Bank, Washington, DC, 2016) ix <https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf#page=89&zoom=80> accessed 28 August 2022.
[504] ibid.
[505] ibid x–xi.
[506] The ESS7 exemplifies with the following names: Sub-Saharan African historically underserved traditional local communities, indigenous ethnic minorities, aboriginals, hill tribes, vulnerable and marginalized groups, minority nationalities, scheduled tribes, first nations, or tribal groups. ibid 75.
[507] 'The extension of this ESS to populations in areas of the world where the term 'indigenous peoples' is not normally used is recognised by the Society for American Archaeology as a significant advance in World Bank engagements with marginalized communities.' Scott MacEachern, 'CESFDGN B –IGAC, SAA Concerning ESS7: Indigenous Peoples/Sub-Saharan African Historically Underserved' s Summary <https://policycommons.net/artifacts/1732529/cesfdgn-b-igac-saa-concerning-ess7/2464178/> accessed 29 August 2022.

(c) Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture; and

(d) A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.

9. This ESS also applies to communities or groups of Indigenous Peoples … who, during the lifetime of members of the community or group, have lost collective attachment to distinct habitats or ancestral territories in the project area, because of forced severance, conflict, government resettlement programs, dispossession of their land, natural disasters, or incorporation of such territories into an urban area. This ESS also applies to forest dwellers, hunter-gatherers, pastoralists or other nomadic groups, subject to satisfaction of the criteria in paragraph 8.'[508]

Even though the ESS7 describes IPs as often 'disadvantaged by traditional models of development' and 'the most economically marginalized and vulnerable segments of the population,' its criteria and requirements apply to IPs, whether or not they may have 'discernible economic, political, or social vulnerabilities.'

## *American Declaration on the Rights of Indigenous Peoples of 2016*

'In 1989, the General Assembly of the Organization of American States asked the Inter-American Commission on Human Rights to prepare a legal instrument on the rights of "indigenous populations".'[509] Then, after 27 years, this General Assembly, at its third plenary session held on 15 June 2016, adopted the American Declaration on the Rights of Indigenous Peoples.[510] 'The negotiation proved to be a lengthy process because of the procedural requirement that each provision be adopted by consensus, among other things.'[511]

The OASDRIP does not expressly characterize or conceptualize IPs. However, as in the UNDRIP, extracting some of the IPs' characteristics from OASDRIP content is possible. Although many aspects differentiate both declarations, the IPs' general characteristics in the UNDRIP are also present in the OASDRIP.

The preamble of the OASDRIP literally reaffirms that IP 'have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources.' [512] Thus, IPs are *victims of injustices*, are *pre-existent to the colony,* and *remain until the present*. [513] Nonetheless, article XXVI of the OASDRIP recognizes a new class of IPs that does not necessarily fit into this characterization. These are the IPs in voluntary isolation or initial contact.

[508] 'The World Bank Environmental and Social Framework' (n 503) 77.
[509] OAS, 'OAS - Organization of American States: Democracy for Peace, Security, and Development' (1 August 2009) <http://www.oas.org/en/iachr/indigenous/activities/declaration.asp> accessed 11 May 2019.
[510] The resolution was adopted by consensus AG/RES. 2888 (XLVI-O/16). However, Canada did not take a position, the United States reiterated its persistent objection, and Colombia broke the consensus regarding its Articles XXIII.2, XXIX.4, XXX.5.
[511] Brilman (n 383) 18.
[512] Preamble of the American Declaration on the Rights of Indigenous Peoples (OASDRIP).
[513] It is most likely that the OASDRIP understands the *willingness of the IPs to remain* by saying that: 'Indigenous peoples have the right to maintain and strengthen their distinctive spiritual, cultural, and material relationship with their lands, territories, and resources' ibid. Article XXV.1.

In 2012 the International Work Group for Indigenous Affairs (IWGA) and the Instituto de Promoción Estudios Sociales published 'Indigenous Peoples in Voluntary Isolation and Initial Contact,'[514] which estimates that ten thousand people are living in such conditions in Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. IPs in isolation 'are, in general, indigenous peoples or segments of indigenous peoples who do not maintain or have never had regular contacts with the population outside their own group, and who tend to refuse contact with such outside persons.'[515] They 'can also be groups or part of a group who, after an intermittent contact with the mainstream society, go back to their isolation and break all relations they may have had with society.'[516] The term *voluntary* highlights 'the importance of the right to self-determination, since even if the decision to remain in isolation is a survival strategy resulting in part from outside pressures, it is an expression of the autonomy of these peoples.'[517] Their principal challenges are the invasions they suffer in their territories for several causes and the 'illnesses and epidemics that all this carries with it.'[518] Besides, 'by definition [they] cannot advocate for their own rights before national or international fora.'[519]

The Inter-American Commission on Human Rights understood that:

> 'Peoples in voluntary isolation cannot be considered "uncontacted," strictly speaking, since many of them, or their ancestors, have had contact with persons from outside their peoples. Most of these contacts have been violent and have had serious consequences for the indigenous peoples, which have led them to reject contact and return to a situation of isolation or increase the degree of isolation.'[520]

In this regard, sustaining their status as victims of such injustices (colonization, dispossession of their lands, territories, and resources) is not necessarily possible.

The OASDRIP might consider that IPs are *capable of adopting and executing their decisions* through their political, juridical, cultural, economic, and social systems or institutions,[521] because they have the collective right to *self-determination,*[522] and have *juridical personality*.[523] The OASDRIP expressly declares that '*[s]elf-identification* as indigenous peoples will be a fundamental criterion for determining to whom this Declaration applies' [italics added].[524] The self-identification of the indigenous members is also recognized[525] in terms of IPs composition.

OASDRIP refers that IPs are *distinct* from the rest because of their 'customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs,'[526] and 'their

[514] Dinah Shelton and Alejandro Parellada (eds), *Pueblos Indígenas En Aislamiento Voluntario y Contacto Inicial* (IWGIA , Grupo Internacional de Trabajo sobre Asuntos Indígenas ; IPES, Instituto de Promocíon de Estudios Sociales 2012).
[515] As referred from Beatriz Huertas Castillo in the Introduction of Dinah Shelton in the book ibid 8.
[516] As referred from OHCHR Guidelines in the Introduction of Dinah Shelton in the book ibid.
[517] Organization of American States (ed), *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of Their Human Rights.* (CIDH 2013) 6–5.
[518] Shelton and Parellada (n 514) 9.
[519] ibid.
[520] Organization of American States (n 517) 5.
[521] American Declaration on the Rights of Indigenous Peoples (OASDRIP). e.g., Preamble and articles VI, XXI.2, and XXII.
[522] ibid. articles III, XXI, XXII, XXIII and XXIX.
[523] ibid. Article IX
[524] ibid. Article I.2
[525] ibid.
[526] ibid. Article XXII.

material and spiritual relationship with their lands, territories and resources.'[527] Finally, OASDRIP also recognizes that IPs have particular forms of ownership and 'spiritual, cultural, and material relationship with their lands, territories, and resources.'[528]

## *The United Nations Development Programme Standard 6: Indigenous Peoples of 2017*

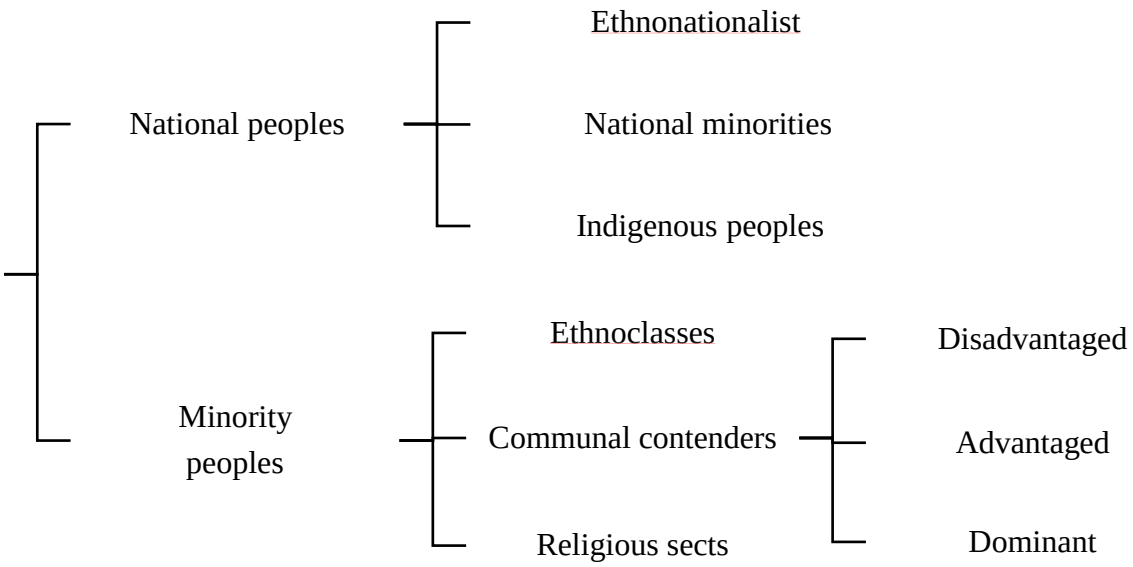
In 2017 the United Nations Development Programme (UNDP) presented its Guidance Notes as 'part of a package of operational guidance material related to the UNDP Social and Environmental Standards (SES)… [to] staff, consultants, stakeholders and partners who are involved developing and implementing projects that invoke UNDP's SES.'[529]

[527] ibid. Article XXV.1. The OASDRIP expresses this *distinctiveness* through different articles and subjects. For instance 'their juridical, social, political, and economic systems or institutions; to their own cultures; to profess and practice their spiritual beliefs; to use their own tongues and languages' (Art. VI), 'cultural heritage, whether tangible or intangible, including historic and ancestral heritage' (Art. XIII.1), 'cultural, intellectual, religious, and spiritual property' (Art. XIII.2), 'ways of life, cosmovisions, spirituality, uses, customs, norms, traditions, forms of social, economic, and political organization; forms of transmission of knowledge, institutions, practices, beliefs, values, dress, and languages' (Art. XIII.3), 'histories, languages, oral traditions, philosophies, systems of knowledge, writing, and literature, and to designate and retain their own names for their communities, individuals, and places' (Art. XIV.1), 'health systems and practices (…) vital medicinal plants, animals and minerals, and other natural resources for medicinal use' (Art. XVIII), 'educational systems' (Art. XV.3), 'sacred sites, including their burial grounds, to use and control their sacred objects and relics' (Art. XVI.3), 'family systems' (Art. XVII.1), 'decision-making institutions,' (Art. XXI.2), 'tangible and intangible cultural heritage and intellectual property, including its collective nature, transmitted over millennia from generation to generation' (Art. XXVIII.1), and '[t]he collective intellectual property of indigenous peoples includes, inter alia, traditional knowledge and traditional cultural expressions, including traditional knowledge associated with genetic resources, ancestral designs and procedures, cultural, artistic, spiritual, technological, and scientific expressions, tangible and intangible cultural heritage, as well as knowledge and developments of their own related to biodiversity and the utility and qualities of seeds, medicinal plants, flora, and fauna' (XXVIII.2).

[528] ibid. Article XXV. Although the OASDRIP does not have a specific redress rule for loss or affectation to the lands, territories and resources of the IPs, it establishes that '[s]tates shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned' (Article XXV.4). However, OASDRIP protects land, territories, and resources of IPs in an indirect and limited way by ordering the restitution or compensation of the means of subsistence of the IPs against damages arising specifically from development projects. XXIX.5: 'Indigenous peoples have the right to effective measures to mitigate adverse ecological, economic, social, cultural, or spiritual impacts of the implementation of development projects that affect their rights. Indigenous peoples who have been deprived of their means of subsistence and development have the right to restitution and, where this is not possible, to fair and equitable compensation. This includes the right to compensation for any harm caused to them by the implementation of plans, programs, or projects of the State, international financial institutions, or private business.'

[529] United Nations Development Programme, 'Standard 6: Indigenous Peoples - UNDP Guidance Notes on the Social and Environmental Standards (SES)' (United Nations Development Programme, January 2017) i <https://info.undp.org/sites/bpps/SES_Toolkit/SitePages/Standard%206.aspx> accessed 19 April 2019.

*Figure 6. Types of Ethnopolitical Groups*




*Source*: Self-made based on Ted Robert Gurr.[530]
*Notes*:
National peoples: originally concentrated groups that have lost their autonomy to states dominated by other groups but still preserve some of their linguistic distinctiveness. Ordinarily, they seek separation from or greater autonomy within the states that govern them.
Ethnonationalists: regionally concentrated peoples with a history of organized political autonomy with their own state, traditional ruler, or regional government who have supported political movements for autonomy since 1945 (e.g., Tibetans in China, Gagauz in Moldova).
National minorities: segments of trans-state people with a history of organized political autonomy whose kindred control and adjacent state but who now constitute a minority in the state in which they reside.
Indigenous peoples: conquered descendants of earlier inhabitants of a region who live mainly in conformity with traditional social, economic, and cultural customs that are sharply distinct from those of dominant groups (e.g., in Ecuador and Bolivia).
Minority peoples: have defined socioeconomic or political status within a larger society based on some combination of their race, ethnicity, immigrant origins, economic roles, and religion and are concerned mainly about protecting or improving that status. They usually seek greater rights, access, or control.
Ethnoclasses: ethnically or culturally distinct peoples, usually descended from enslaved people or immigrants, most of whom occupy a distinct social and economic stratum or niche (e.g., Turks in Germany and Afro-Brazilians).
Communal contenders: culturally distinct peoples, tribes, or clans in heterogeneous societies who hold or seek a share in state power.
Disadvantaged: communal contenders who are subject to some degree of political, economic, or cultural discrimination but lack offsetting advantages (the Kikuyu, Luo, and kindred groups in Kenya, or the Hutus in Burundi).
Advantaged: communal contenders with political advantages over other groups in their society (e.g., the Kalenjin and Maasai in Kenya).
Dominant: communal contenders with a preponderance of both political and economic power (e.g., Tutsis in Burundi or the Sunni Arabs in Iraq).
Religious sects: communal groups that differ from others principally in their religious beliefs and related cultural practices and whose political status and activities are centered on the defense of their beliefs (e.g., Copts in Egypt, Muslims in India).

[530] The figure is self-made based on Ted Robert Gurr, *Peoples versus States: Minorities at Risk in the New Century* (United States Institute of Peace Press 2000) 17–20.

The standard of the indigenous peoples is number six. It acknowledges that '[t]here is no one universally accepted definition of indigenous peoples. It is critical to note that States and indigenous groups might differ regarding official recognition.'[531] Among its 'Key Concepts and Definitions,' it identifies

> 'distinct collectives as "indigenous peoples" if they satisfy any of the more commonly accepted definitions of indigenous peoples, regardless of the local, national and regional terms applied to them. These definitions include, among other factors, consideration of whether the collective:
>
> - self-identifies as indigenous peoples;[532]
> - has pursued its own concept and way of human development in a given socio-economic, political and historical context;
> - has tried to maintain its distinct group identity, languages, traditional beliefs, customs, laws and institutions, worldviews and ways of life;
> - has exercised control and management of the lands, natural resources, and territories that it has historically used and occupied, with which it has a special connection, and upon which its physical and cultural survival as indigenous peoples typically depends; and
> - whether its existence pre-dates those that colonized the lands within which it was originally found or of which it was then dispossessed.'[533]

## Nuances Among Indigenous Peoples and Other Collectivities

To better highlight an approximation regarding some similitudes and differences, the comprehensive distinction of Ted Roberto Gurr is presented in Figure 6. He differentiates national peoples from minority peoples and includes IPs under the former.

### *Indigenous Peoples and Tribal Peoples*

The first article of the ILO C107 differentiated tribes from semi-tribal populations with the idea in mind of an integrationist process. It suggested that tribal populations would not have initiated such a process at all, whereas the semi-tribal ones are on their way to losing their customs and traditions, being its final stage the total assimilation. Their social and economic conditions allegedly would advance in tandem with this process.

[531] United Nations Development Programme (n 529) 5.
[532] 'While self-identification as indigenous or tribal is considered a fundamental criterion in identifying a collective as indigenous, it is not the only criteria to consider. This is especially true where self-identification as indigenous may result in prejudice. Consideration of a collective's classification as indigenous should also not be unduly influenced by local terms or whether the State in question has recognized the collective as an indigenous people, but rather whether the collective satisfies any of the more commonly accepted definitions of indigenous peoples.' ibid.
[533] ibid.

On the other hand, not all tribal and semi-tribal populations are indigenous in C107.[534] Indigenous are only those who meet the characteristics outlined in C107 article 1.b. [535] Otherwise, they are tribal or semi-tribal populations.[536]

Contrary to C107, C169 distinguishes tribal from indigenous. Thus, IPs differ from tribal peoples[537] since the latter lack historical continuity from the time of the conquest, colonization, and States creation concerning their territorial occupations. Besides, when C169 states that IPs' retain some or all of their own social, economic, cultural and political institutions,' [538] it is possible to understand, on the contrary, that tribal peoples were not able to retain their institutions if they had them at all. Despite this distinction, C169 applies equally to both peoples. The UNDRIP and OASDRIP do not include any article that refers to tribal peoples.

The indistinct application of C169 to IPs and tribal peoples might amount to an indirect way of extending the concept of IPs to those who do not have the indigenous character (or aboriginality). Consequently, the IPs' collective rights could also apply to non-indigenous tribal communities. It is possible to find this situation through the progressive interpretation of the jurisprudence of the Inter-American Court of Human Rights (IACtHR).

An example is Saramaka Peoples v. Suriname (2007), in which the IACtHR declared that a non-indigenous community would be considered a tribal people and, therefore, a bearer of collective rights. Saramaka people complained against the State of Suriname because of the negative effects on their traditional territories, sacred sites, and customs for the construction of the Afobaka dam in the 1960s. The submerged lands, the increase of the population, and the lack of adequate compensations, among others, have 'placed a severe stress on the capacity of Saramaka lands and forests to meet [their] basic subsistence needs.'[539] The IACtHR stated that Saramaka people, despite not being indigenous to the territory, because they were brought during the colonization as enslaved Africans, they

> ‘make up a tribal community whose social, cultural and economic characteristics are different from other sections of the national community, particularly because of their special relationship with their ancestral territories, and because they regulate themselves, at least partially, by their own norms, customs, and/or traditions.’[540]

[534] That is, whereas all indigenous could be tribal or semi-tribal, not all tribal or semi-tribal are indigenous.
[535] C107 used the tribal category like those indigenous populations that had not started the assimilation process: ‘(b) members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong.’ Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries 107 Article 1.
[536] During the revision of C107 it was agreed ‘on the need to retain both “indigenous” and “tribal” groups as objects of the Convention, on the ground that they are not necessarily the same. “Indigenous” depends on historical circumstances, explained E. Mompoint of the UN Centre for Human Rights, citing the Martínez Cobo study, while “tribal,” according to Ntonga, refers to a particular kind of social structure.’ Russel Lawrence Barsh (n 401) 760.
[537] Article 1.1.a of the ILO C169 states that tribal peoples are distinguished from other national communities by their social, cultural, and economic conditions and because their status is entirely or partially regulated by their customs, traditions, or by special laws and regulations. This wording is similar to that used in C107 article 1.1.a, but it eliminates assimilationism and that their social and economic conditions are at less advanced stages.
[538] Article 1.1.b of the Convention Concerning Indigenous and Tribal Peoples in Independent Countries.
[539] *Case of the Saramaka People v Suriname* (Inter-American Court of Human Rights) [59].
[540] ibid 84.

The IACtHR argued that article 21 of the American Convention on Human Rights[541] (ACHR) applies to tribal peoples, as the right to communal property, based on the special relationship they have with their territories to ensure their survival.[542] The IACtHR interpreted[543] progressively[544] article 21 of the ACHR in this sense through cases regarding Nicaragua[545] and Paraguay[546] and taking into account the ILO C169.

The Court is aware that Suriname did not ratify C169 and did not recognize communal property in its domestic legislation.[547] However, the IACtHR states that Suriname did ratify the ICCPR and the International Covenant on Economic, Social, and Cultural Rights (ICES), whose common article 1 was interpreted by the Committee on Economic, Social, and Cultural Rights as applicable to IPs, for their self-determination right to freely pursue their development and dispose of their resources.[548] The IACtHR 'considers that the same rationale applies to tribal peoples due to the similar social, cultural, and economic characteristics they share with indigenous peoples.'[549]

The Inter-American Court concluded its argument asserting that:

> 'Similarly, the Human Rights Committee has analyzed the obligations of State Parties to the ICCPR under Art. 27 of such instrument, including Suriname, and observed that "minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, [which] may consist in a way of life which is closely associated with territory and

[541] Article 21 (Right to Property) establishes that '1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. 3. Usury and any other form of exploitation of man by man shall be prohibited by law,' as referred in the American Convention on Human Rights 'Pact of San Jose, Costa Rica' (adopted 22 November 1969, entered into force 18 July 1978) (1978) B.-32. The American Convention was ratified by Bolivia by Ley 1430 [Law 1430] 1993.

[542] American Convention on Human Rights 'Pact of San Jose, Costa Rica' paras 88–91.

[543] According to Art. 29.b of the ACHR 'No provision of this Convention shall be interpreted as: (…) b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;' American Convention on Human Rights 'Pact of San Jose, Costa Rica'.

[544] The IACtHR clarified that Art. 29.b 'prohibits an interpretation of any provision of the Convention in a manner that restricts its enjoyment to a lesser degree than what is recognized in the domestic laws of the State in question or in another treaty to which the State is a party.' *Case of the Saramaka People v. Suriname* (n 539) para 92.

[545] In the case of The Mayagna (Sumo) Awas Tingni Community, paras. 148, 150, and 152-153 the Court considered that 'Article 21 of the Convention protects the right to property which includes, among others, the rights of members of […] indigenous communities within the framework of communal property.'

[546] In the case of the Indigenous Community Sawhoyamaxa, paras. 120 the Court expressed 'that indigenous communities might have a collective understanding of the concepts of property and possession, in the sense that ownership of the land "is not centered on an individual, but rather on the group and its community".' And in the case of the Indigenous Community Yakye Axa, paras. 143 it said that "both the private property of individuals and communal property of the members of […] indigenous communities are protected by Article 21 of the American Convention."

[547] *Case of the Saramaka People v. Suriname* (n 539) paras 93 and 97–107.

[548] ibid 93. The IACtHR quotes to this end the first sentence of Consideration of reports submitted by States Parties Under Articles 16 and 17 of the Covenant. Concluding observations of the Committee on Economic, Social and Cultural Rights. Russian Federation 2003 [E/C.12/1/Add.94] para 11. The whole paragraph 11 expresses: 'The Committee is concerned about the precarious situation of indigenous communities in the State party, affecting their right to self-determination under article 1 of the Covenant. The Committee notes that the Law of 2001 On Territories of Traditional Nature Use of Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation, which provides for the demarcation of indigenous territories and protection of indigenous land rights, has still not been implemented.'

[549] *Case of the Saramaka People v. Suriname* (n 539) para 93.

> use of its resources. This may particularly be true of members of indigenous communities constituting a minority".'[550]

As a result, collective rights were granted to non-indigenous communities, not because they were indigenous peoples but because they were tribal peoples. This would also be true, in the criterion of this jurisprudence, for minorities.

Some criticisms arose because this jurisprudence granted collective rights to minority groups only because it considered them tribal peoples. Dulitzky argues that '[t]hrough a display of specific cultural traits, this process reproduces the phenomenon that has occurred in distinct Latin American countries, which has been designated the "ethnicization" of the Afro-descendants under the model of indigenous ethnicity.'[551] Even though the use of the indigenous model turns their claims effective, they abandon their fundamental issue which is the racial discrimination and inequalities they suffer.[552]

## *Indigenous Peoples and Minorities*

The categories of indigenous peoples and minorities tend to overlap due to their similarities. The scope of this assertion can be deemed through ICCPR Art. 27,[553] and the working definition that Capotorti[554] developed regarding this article as a former Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Both sources aim to guarantee the free exercise and preservation of the culture of minorities as non-dominant groups based on ethnic, religious, or linguistic criteria.

Anatoly Kovler, a former European Court of Human Rights judge, considers that, despite many declarations and conventions that exist to protect IPs, their implementation is inadequate because, among other reasons, IPs are confused with minorities.[555] As a practical example, he raises the decision of the UN Human Rights Committee (UNHRC) in the case Angela Poma Poma v. Peru (2009).[556] In words of Gocke:

> 'The case concerned a dispute over the exploitation of natural resources, more precisely the allocation of water. Due to the building of wells, water had been diverted from the Peruvian highlands to a coastal city as a result of which the indigenous Aymara people traditionally living in the highlands had been deprived of their access to underground springs. Since this water was

[550] ibid 94.
[551] Ariel E Dulitzky, 'When Afro-Descendants Became Tribal Peoples: The Inter-American Human Rights System and Rural Black Communities' (2010) 15 UCLA Journal of International Law and Foreign Affairs 29, 77.
[552] ibid 77–79.
[553] 'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.' International Covenant on Civil and Political Rights (ICCPR). Article 27.
'During the drafting process of the International Covenants it was made clear that minorities are not included in the 'peoples' of Article 1; minority rights are dealt with in Article 27 of the ICCPR, whereas peoples' rights are dealt with in Article 1 of both International Covenants.' Xanthaki (n 5) 133.
[554] 'A group numerically smaller to the rest of the population of a State, in a nondominant position, whose members -being nationals of the State- possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed toward preserving their culture, religion or language.' Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious, and Linguistic Minorities* (United Nations 1979) para 568.
[555] Kovler (n 386).
[556] *Ángela Poma Poma (represented by counsel, Tomás Alarcón) Vs Peru* [2009] Human Rights Committee CCPR/C/95/D/1457/2006 24 Arpil 2009.

> essential for their traditional activity of grazing and raising llamas and alpacas - an activity on which their whole livelihood depended - the lack of water seriously affected their only means of subsistence.'[557]

Kovler founds his criticism since the case was

> 'decided in favour of the complainant, Ms. Poma Poma, a member of the affected Aymara people, as an individual, representing a "minority", using a classification of the complaint under article 27 of the Covenant [ICCPR] ("minorities" rights) instead of treating the case as an indigenous people's right pursuant to Article 1 [of the ICCPR].'[558]

Gocke considers that the UNHRC reinterpreted the claim of Ms. Poma Poma. Possibly with the hope that her claim would prosper, but by doing that, the Committee 'did exactly what Ms. Poma Poma and her lawyer wanted to avoid: it reduced Ms. Poma Poma's people, the Aymara, to a minority and thus deprived the Aymara of their collective rights.'[559] It must be said that the UNHRC, considering the admissibility of the case and recalling its jurisprudence, argued that the first article of the Optional Protocol to the ICCPR gives competence to the UNHRC only for individual rights claims and does 'not include those set out in article 1 of the Covenant.'[560] This situation also occurs in reverse because, in some cases, minorities seek to be treated as IPs for self-preservation. They understood that collective rights and 'the indigenous human rights regime have a more relevant platform than the minority rights arena.'[561]

The literature reviewed discover differences mainly in the field of granted rights to each of these categories and in the purposes that each of them pursues. Regarding the firsts, Castellino proposed differentiating IPs from minorities because of the right to self-determination: '[i]t could be argued in more general terms that indigenous peoples have all the rights that minorities have, but may in addition also have the right to self-determination with all its attendant problems of interpretation and application.'[562]

Koivurova, for his part, argued that the difference between IPs and minorities is that the latter's rights are individual, although, for their exercise, many of them must be carried out in the community with other members. Instead, the IPs 'have a deeply rooted historical connection to their traditional territories… standards for indigenous peoples are built mostly on collective human rights… that in international law can be upheld only by the community.'[563] Kovler understands that minorities are not a subject of international rights, according to Art. 27 of the ICCPR, and that they do not enjoy the right to self-determination.[564] This is why 'the term "indigenous people" may be applied to ethnocultural groups which have sustained a close relationship with a particular territory over many generations, which in part gives expression to their distinctive cultural, linguistic and economic identity.'[565]

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[557] Katja Gocke, 'Case of Angela Poma Poma v. Peru before the Human Rights Committee, The' (2010) 14 Max Planck Yearbook of United Nations Law 337, 339.
[558] Kovler (n 386) 212.
[559] Gocke (n 557) 349.
[560] *Ángela Poma Poma (represented by counsel, Tomás Alarcón) Vs Peru* (n 556) para 6.3.
[561] *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities: Submitted in Accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa'* (n 460) 97.
[562] Castellino (n 11) 396. In the same sense Gocke (n 557) 348.
[563] Timo Koivurova, 'Jurisprudence of the European Court of Human Rights Regarding Indigenous Peoples: Retrospect and Prospects' (2011) 18 International Journal on Minority and Group Rights 1, 30.
[564] Kovler (n 386) 207.
[565] ibid 208.

In a '[w]orking paper on the relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples',[566] Asbjørn Eide noted that there are four types of rights. General human rights; additional rights specific to persons belonging to national or ethnic, religious, or linguistic minorities; the special rights of indigenous peoples, and the rights of peoples.[567] Based on this division, this author differentiated indigenous peoples from minorities. The first two are individual rights, but the last two are collective ones. Minority rights

> 'aim at ensuring a space for pluralism in togetherness… [and] effective participation in the larger society of which the minority is a part', while indigenous rights tend for 'a high degree of autonomous development… [and] allocate authority to these peoples so that they can make their own decisions.'[568]

As individuals, indigenous people can use general human rights and minority rights; nonetheless, the reverse situation is not possible.[569]

Regarding the differences that emerge for the purposes that each of them pursues, Erica-Irene Daes argues that '[o]nly indigenous peoples are currently recognized to possess a right to political identity and self-government as a matter of international law.'[570] For such a reason, they need territory to concentrate their population and actions.[571] However, in reality, the differences are overlapped and do not necessarily manifest. Trying to overcome this difficulty, Daes brings forward 'the ideal types' of each group.

> '[T]he ideal type of an "indigenous people" is a group that is aboriginal (autochthonous) to the territory where it resides today and chooses to perpetuate a distinct cultural identity and distinct collective social and political organization within the territory. The ideal type of a "minority" is a group that has experienced exclusion or discrimination by the State or its citizens because of its ethnic, national, racial, religious or linguistic characteristics or ancestry.'[572]

Given this approach, Daes presents her conclusion. Whereas minorities seek to 'integrate themselves freely into national life to the degree they choose' and without discrimination, the ideal type of IPs 'focuses on aboriginality, territoriality, and the desire to remain collectively distinct, all elements which are tied logically to the exercise of the right to internal self-determination, self-government, or autonomy.'[573] In summary, a possible difference between IPs and minorities might be that whereas IPs are collective rights holders, minorities only have individual rights, because of the different purposes that each of them has.

As long as the conditions are met, especially the number of members, it might be possible to claim that the populations of indigenous peoples considered within the general populations of the states are

[566] 'In resolution 1999/23 (para. 4), the Sub-Commission on the Promotion and Protection of Human Rights decided to entrust Ms. Erika-Irene Daes and Mr. Asbjørn Eide with the preparation of a working paper, without financial implications, on the relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples' in Asbjorn Eide and Erica-Irene A Daes, *Working Paper on the Relationship and Distinction between the Rights of Persons Belonging to Minorities and Those of Indigenous Peoples* (UN 2000) para 1.
[567] ibid 2.
[568] ibid 8.
[569] ibid 18–19.
[570] ibid 44.
[571] ibid 45.
[572] ibid 48.
[573] ibid 49.

minorities as well.[574] However, even though it is likely that most indigenous are minorities, the contrary is not, since not all minorities are indigenous.[575]

## *Indigenous Peoples and Communities*

The scope of 'a community' is relative to the point of view of the specificity taken. Legal doctrine, international standards, and case law refer to communities. Some used the term as a generic IPs synonym,[576] others as a differentiating term,[577] or as a general category that encompasses the 'indigenous peoples' along with other types of communities, [578] or even as a group of individuals or collectivities.[579] Then, the different uses and close relation between 'indigenous peoples' and 'community' poses the question of the meaning of community and how it relates to indigenous peoples?

In 2001 an evidence-based study was conducted to define 'community' concerning public health,[580] depicting the principal elements of a community. The findings, notwithstanding its particular context, not only display the main elements of a community but seemingly might apply to other contexts as well. Five core elements were identified: 'locus, sharing, joint action, social ties, and diversity.'[581] Respondents referred to *locus* as specifics areas or settings, *sharing* as the 'common interest and perspectives.' [582] *Joint action* as 'a source of cohesion and identity.'[583] *Social ties* as 'the interpersonal relationships that formed the foundation for community.'[584] And *diversity* as the 'social complexity within communities… (e.g. communities within communities, stratification, interwoven groups, hidden

[574] This is also true in countries like Bolivia, where each indigenous people's population is a minority concerning the rest of the population. Thus, the Bolivian Census of 2001 recorded 62% of the indigenous population, which diminished for a number of possible reasons to 40.57% in its Census of 2012; however, these percentages are distributed among more than 35 indigenous peoples. Centro de Estudios Jurídicos e Investigación Social - CEJIS, 'Bolivia Censo 2012: Algunas claves para entender la variable indígena | .: Cejis :.' <http://www.cejis.org/bolivia-censo-2012-algunas-claves-para-entender-la-variable-indigena/> accessed 12 May 2019.

[575] 'Indigenous peoples are not mere minorities… indigenous peoples have repeatedly used instruments for the protection of minorities; yet, it is beyond doubt that the indigenous need additional protection in international law to address their particular characteristics that distinguish them from other groups.' Xanthaki (n 5) 133.

[576] The Report of the African Commission's Working Group on Indigenous Populations/Communities ('those groups of peoples or communities throughout Africa who are identifying themselves as indigenous peoples or communities…'). Principle 22 of the Rio Declaration on Environment and Development express: 'Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.' Rio Declaration on Environment and Development (adopted 14 June 1992) A/CONF.151/26 (Vol. I).

[577] The Article 1 of ILO C107 ('2. For the purposes of this Convention, the term semi-tribal includes groups and persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community.').

[578] The case Saramaka Peoples v. Suriname ('[M]ake up a tribal community whose social, cultural and economic characteristics are different from other sections of the national community').

[579] Martínez Cobo ('Indigenous communities, peoples and nations are those which…'), or the case Centre for Minority Rights Development and Minority Rights Group International (on behalf of the Endorois Welfare Council) v. Kenya ('Endorois are an indigenous community …').

[580] 118 participants, members of diverse United States communities, were interviewed. 'Community collaboration in public health programs and research presents many challenges, in part because community has been defined in ambiguous and contradictory ways'. Kathleen M MacQueen and others, 'What Is Community? An Evidence-Based Definition for Participatory Public Health' (2001) 91 American Journal of Public Health 1929, 1929.

[581] ibid 1930.

[582] ibid 1931.

[583] ibid.

[584] ibid.

communities, or multiple levels of community).'[585] In conclusion, the 'study suggests that people largely agree about what community is. The empiric evidence, in turn, is bolstered by established social science theory.'[586] The study defines a community as 'a group of people with diverse characteristics who are linked by social ties, share common perspectives, and engage in joint action in geographical locations or settings.'[587]

In a more precise and sophisticated fashion, but relatively keeping the same elements, a 2004 study of indigenous and local communities regarding the management of protected areas[588] was conducted by The International Union for Conservation of Nature (IUCN)[589] and Cardiff University to explain what a community is. It commences by stating it is 'a human group sharing a territory and involved in different but related aspects of livelihoods—such as managing natural resources, producing knowledge and culture, and developing productive technologies and practices.'[590] Aware of the breadth of its conception, it further specifies

> 'that the members of a "local community" are those people that are likely to have *face-to-face* encounters and/or direct mutual influences in their daily life. In this sense, a rural village, a clan in transhumance or the inhabitants of an urban neighbourhood can be considered a "local community", but not all the inhabitants of a district, a city quarter or even a rural town…
>
> Most communities have developed their identity and cultural characteristics over time by devising and applying a strategy to cope with a given environment and manage its natural resources. They possess a distinctive form of social organization, and their members share in varying degrees political, economic, social and cultural characteristics (in particular language, behavioural norms, values, aspirations and often also health and disease patterns). They also function, or have functioned in the past, as micro-political bodies with specific capacities and authority.'[591]

Furthermore, the authors explained that communities experience social integration and conflicts (e.g., cooperation, clash of needs, sub-groups, and difference in power and status), cultural continuity, and cultural change and develop a social body to cope with these processes.[592]

Gaby Oré Aguilar, from the point of view of human rights, defined *local communities* as 'groups or organisations, inclusive and plural (other than political or religious groups), which are based at the level of a geographic community and are unified by common needs and interests as articulated in human rights terms.' [593] Where the degree of *local* (as the opposite of global) is defined by Oré in terms of the International Forum on Globalisation, as the 'lowest unit appropriate for a particular goal.'[594]

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[585] ibid 1932.
[586] ibid 1936.
[587] ibid.
[588] Grazia Borrini, Ashish Kothari and Gonzalo Oviedo, *Indigenous and Local Communities and Protected Areas: Towards Equity and Enhanced Conservation : Guidance on Policy and Practice for Co-Managed Protected Areas and Community Conserved Areas* (IUCN 2004).
[589] 'Is a membership Union uniquely composed of both government and civil society organisations' created in 1948 as described in 'About The International Union for Conservation of Nature (IUCN)' (*IUCN*, 3 December 2014) <https://www.iucn.org/about> accessed 21 April 2019.
[590] Borrini, Kothari and Oviedo (n 588) 9.
[591] ibid.
[592] ibid.
[593] Gaby Oré Aguilar, *The Local Relevance of Human Rights. a Methodological Approach* (Antwerp, Institute of Development Policy and Management 2008 2008) 11.
[594] ibid.

Koen De Feyter, Revisiting the Declaration on the Right to Development of 1986 after its 25th anniversary,[595] understood local communities as 'sub-state groups that share "particular values": they come together around a concept of common good and are structured in some way, in the sense that they are isolated from other communities that share similar values.'[596]

It is also possible the existence of communities within a community (sub-groups differentiated by several reasons, such as gender). In this sense, the Convention on Wetlands, called the Ramsar Convention,[597] in its handbook 'Participatory Skills. Establishing and Strengthening Local Communities and Indigenous People's Participation in the Management of Wetlands' understood *community* at two levels. Its first level, as in the former definitions, distinguishes a community from other groups based on some traits. It is 'a more or less homogenous group that is most often defined by geographical location (e.g., a village), but possibly by ethnicity. At this level, the community may have very distinct interests compared with other major stakeholders.'[598] However,

> '[o]n another level, it represents a collection of different interest groups such as women and men, young and old, fisherfolk and farmers, wealthy and poor people, and different ethnic groups. Even in relatively unified communities, it is likely that these sub-groups have different interests and perspectives that need to be taken into account in the participatory management process.'[599]

Despite the different wording and relative scope of the definitions mentioned, it is worth noting the existing sameness among them. To some extent, all of them accept (at least not exclude) that a community exists in a particular place and has an organization and finalities. Blending these traits, it could be said that a human group is a community as long as there exists a geographical location, sharing actions or involvement in related aspects, social ties, a structure, relative diversity, common interests, and sharing values. However, the size and characteristics of a community are relative and depend to a great extent on its specifications and particularities.

Although indigenous peoples and communities resemble, they are not the same. Whereas any community exists when it shares traits, from the most general to the most specific, the indigenous peoples require specific ones. The cohesive features to identify a community varies according to its scale (or the intended scope of the term community). Thus, it is possible a) for several communities to exist within the same indigenous people, b) for an indigenous people to be a community, and c) for a group of indigenous peoples to form, in turn, a community. However, not every community is an

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[595] Deeming that 'some of its provisions and concepts deserve to be reinterpreted in light of subsequent legal developments and the actual global context,' Koen De Feyter, 'The Declaration on the Right to Development Revisited' (2013) 1 Journal of National Law University, Delhi 15, 19. He proposes, along with three other contents of the Declaration, an evolutionary interpretation of its definition of peoples (Article 1). He considers that indigenous peoples and local communities shall be included in the definition of peoples of this Declaration.

[596] ibid 21.

[597] 'It is the intergovernmental treaty that provides the framework for the conservation and wise use of wetlands and their resources. The Convention was adopted in the Iranian city of Ramsar in 1971 and came into force in 1975. Since then, almost 90% of UN member states, from all the world's geographic regions, have acceded to become 'Contracting Parties' as referred in 'About the Ramsar Convention | Ramsar' <https://www.ramsar.org/about-the-ramsar-convention> accessed 20 April 2019.

[598] *Participatory Skills. Establishing and Strengthening Local Communities' and Indigenous People's Participation in the Management of Wetlands. Ramsar Handbooks for the Wise Use of Wetlands.*, vol 7 (4th edition, Ramsar Convention Secretariat) 6 <http://www.ramsar.org> accessed 20 April 2019.

[599] *ibid.*

indigenous people. For instance, each tribe, minority, hunter-gatherer, or group of pastoralists[600] could also be considered as a community.

*Table 10: Categories of analysis of the definitions and characteristics of indigenous peoples in the International Law of human rights*

| Cat. of Analysis | ILO C107 1957 | Martínez C. 1972 | Martínez C. 1983 | ILO C169 1989 | Daes 1996 |
|---|---|---|---|---|---|
| Designation as a sum of individualities or a collectivity | indigenous populations (Art. 1)<br>species of tribal and semi-tribal populations (Art. 1) | Indigenous populations | Indigenous communities, peoples and nations | Peoples, indigenous peoples (Title and Art. 1) | Peoples, indigenous peoples |
| Existence within one or more countries | live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong (Art. 1) | present territory of a country<br>of the country of which they now form part | --- | Peoples in independent countries<br>Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and cooperation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields (Art. 32). | --- |
| Relative qualification | are at a less advanced stage than the stage reached by the other sections of the national community (Art. 1)<br>live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong (Art. 1) | who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form part | They form at present nondominant sectors of society | --- | --- |

[600] *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities: Submitted in Accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa'* (n 460) 89.

| Cat. of Analysis | ILO C107 1957 | Martínez C. 1972 | Martínez C. 1983 | ILO C169 1989 | Daes 1996 |
|---|---|---|---|---|---|
| **Negative experiences (persistent or not)** | descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation (Art. 1) | persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them and, by conquest, settlement or other means, reduced them to a nondominant or colonial condition | preinvasion and pre-colonial societies<br>consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them | at the time of conquest or colonisation or the establishment of present State boundaries (Art. 1) | experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist |
| **Aboriginality** | descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation (Art. 1) | at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them and, by conquest, settlement or other means, reduced them to a nondominant or colonial condition | having a historical continuity with preinvasion and pre-colonial societies that developed on their territories | descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries (Art. 1) | Priority in time, with respect to the occupation and use of a specific territory |
| **Land, territory, and resources** | private or collective property of the land and traditionally occupy land (Art. 11) | --- | preinvasion and pre-colonial societies that developed on their territories<br>are determined to preserve, develop and transmit to future generations their ancestral territories | the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories (Art. 13)<br>Recognition of traditionally occupy land (Art. 14) | occupation and use of a specific territory |
| **Distinctiveness** | status is regulated wholly or partially by their own customs or traditions (Art. 1)<br>live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong (Art. 1) | their particular social, economic and cultural customs and traditions | consider themselves distinct from other sectors of the societies<br>in accordance with their own cultural patterns, social institutions and legal systems | retain some or all of their own social, economic, cultural and political institutions (Art. 1)<br>the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories (Art. 13) | cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions |
| **Permanence** | live more in conformity with the social, economic and | who today live more in conformity with their particular | having a historical continuity with preinvasion and | irrespective of their legal status, retain some or all of their own social, | The voluntary perpetuation of cultural distinctiveness |

| Cat. of Analysis | ILO C107 1957 | Martínez C. 1972 | Martínez C. 1983 | ILO C169 1989 | Daes 1996 |
|---|---|---|---|---|---|
| | cultural institutions of that time than with the institutions of the nation to which they belong (Art. 1) | social, economic and cultural customs and traditions than with the institutions of the country of which they now form part | pre-colonial societies<br>are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples | economic, cultural and political institutions (Art. 1) | |
| **Recognition by others** | --- | --- | --- | --- | recognition by other groups, or by State authorities, as a distinct collectivity |
| **Voluntary identification and distinction** | live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong (Art. 1) | who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form part | consider themselves distinct from other sectors of the societies | Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply (Art. 1). | Self-identification |

| Cat. of Analysis | ACHPR 2003 | UNDRIP 2007 | World Bank 2016 | OASDRIP 2016 | UNDP 2017 |
|---|---|---|---|---|---|
| **Designation as a sum of individualities or a collectivity** | Indigenous peoples | Indigenous peoples (Title and in the general content) | Indigenous peoples (social and cultural group) | Indigenous peoples (Title and in the general content) | Indigenous peoples |
| **Existence within one or more countries** | --- | Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as | --- | Indigenous peoples, in particular those who are divided by international borders, have the right to travel and to maintain and develop contacts, relations, and direct cooperation, including activities for spiritual, cultural, political, economic, and | --- |

| Cat. of Analysis | ACHPR 2003 | UNDRIP 2007 | World Bank 2016 | OASDRIP 2016 | UNDP 2017 |
|---|---|---|---|---|---|
| | | other peoples across borders (Art. 36.1). | | social purposes, with their members and other peoples (Art. XX.3). | |
| **Relative qualification** | Their cultures and ways of life differ considerably from the dominant society<br>they are being regarded as less developed and less advanced than other more dominant sectors of society<br>subject to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority | --- | Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture | --- | --- |
| **Negative experiences (persistent or not)** | Subjugation, marginalization, dispossession, exclusion or discrimination<br>their cultures are under threat, in some cases to the extent of extinction<br>They suffer from discrimination as they are being regarded as less developed and less advanced than other more dominant sectors of society<br>live in inaccessible regions, often geographically isolated and suffer from various forms of marginalisation, both politically and socially<br>subject to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority | have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests (Preamble) | often disadvantaged by traditional models of development<br>the most economically marginalized and vulnerable segments of the population | have suffered from historic injustices as a result of, inter alia, their colonization and the dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests (Preamble)<br>Not necessarily regarding with IPs in voluntary isolation or initial contact (Art. XXVI) | --- |

| Cat. of Analysis | ACHPR 2003 | UNDRIP 2007 | World Bank 2016 | OASDRIP 2016 | UNDP 2017 |
|---|---|---|---|---|---|
| **Aboriginality** | --- | have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests (Preamble) | --- | have suffered from historic injustices as a result of, inter alia, their colonization and the dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests (Preamble) | whether its existence predates those that colonized the lands within which it was originally found or of which it was then dispossessed. |
| **Land, territory, and resources** | A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional land and the natural resources thereon | maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources (Art. 25) | Collective attachment to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas<br><br>communities or groups of Indigenous Peoples … who, during the lifetime of members of the community or group, have lost collective attachment to distinct habitats or ancestral territories in the project area, because of forced severance, conflict, government resettlement programs, dispossession of their land, natural disasters, or incorporation of such territories into an urban area… forest dwellers, hunter-gatherers, pastoralists or other nomadic groups | maintain and strengthen their distinctive spiritual, cultural, and material relationship with their lands, territories, and resources (Art. XXV) | has exercised control and management of the lands, natural resources, and territories that it has historically used and occupied, with which it has a special connection, and upon which its physical and cultural survival as indigenous peoples typically depend |

| Cat. of Analysis | ACHPR 2003 | UNDRIP 2007 | World Bank 2016 | OASDRIP 2016 | UNDP 2017 |
|---|---|---|---|---|---|
| **Distinctiveness** | Their cultures and ways of life differ considerably from the dominant society | political, legal, economic, social and cultural institutions,<br>cultural values or ethnic identities<br>spiritual relationship with their lands, territories, and resources<br>distinctive customs<br>(Arts. 5, 8, 25 and 34) | Collective attachment to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas<br>Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture<br>A distinct language or dialect, often different from the official language or languages of the country or region in which they reside | customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs<br>their material and spiritual relationship with their lands, territories and resources<br>(Arts. XXII and XXV.1) | has pursued its own concept and way of human development in a given socioeconomic, political and historical context<br>has tried to maintain its distinct group identity, languages, traditional beliefs, customs, laws and institutions, worldviews and ways of life |
| **Permanence** | --- | Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs (Preamble). | --- | Indigenous peoples have the right to maintain and strengthen their distinctive spiritual, cultural, and material relationship with their lands, territories, and resources and to uphold their responsibilities to preserve them for themselves and for future generations (Art.XXV.1) | has tried to maintain its distinct group identity, languages, traditional beliefs, customs, laws and institutions, worldviews and ways of life; whether its existence predates those that colonized the lands within which it was originally found or of which it was then dispossessed |
| **Recognition by others** | --- | --- | recognition of this identity by others | --- | --- |
| **Voluntary identification and distinction** | Self-identification | Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions (Art. 33). | Self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others | Self-identification as indigenous peoples will be a fundamental criterion for determining to whom this Declaration applies. States | self-identifies as indigenous peoples |

| Cat. of Analysis | ACHPR 2003 | UNDRIP 2007 | World Bank 2016 | OASDRIP 2016 | UNDP 2017 |
|---|---|---|---|---|---|
| | | | | shall respect the right to such self-identification as indigenous, whether individually or collectively, in keeping with the practices and institutions of each indigenous people (Art. I.2). | |

*Source*: Adapted, extracted and inferred from ILO Convention Concerning Indigenous and Tribal Populations No. 107 (ILO C107 1957), Working definition of Martínez Cobo (Martínez C. 1972), Definition of Martínez Cobo (Martínez C. 1983), ILO Indigenous and Tribal Peoples Convention No. 169 (ILO C169 1989), Working Paper by Erica-Irene A. Daes on the concept of 'indigenous people' (Daes 1996), Report of the African Commission's Working Group on Indigenous Populations/ Communities adopted by the ACHPR (ACHPR 2003), United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP 2007), World Bank's Environmental and Social Framework – Environmental and Social Standard 7 (ESS7) (World Bank 2016), American Declaration on the Rights of Indigenous Peoples (OASDRIP 2016), and United Nations Development Programme Standard 6: Indigenous Peoples (UNDRIP 2017).

# Section 2.2: Contrasting Concepts with Categories of Analysis

For the sake of simplicity and the clarity of the analysis, the selected sources will be referred to with or without their years between parenthesis, and as ILO C107, ILO C169, working definition of Martínez Cobo, the definition of Martínez Cobo, Erica-Irene Daes, ACHPR, UNDRIP, OASDRIP, World Bank and UNDP. Furthermore, following Table 10, the categories of analysis are: 1) designation as a sum of individualities or a collectivity, 2) existence within one or more countries, 3) relative qualification, 4) negative experiences (persistent or not), 5) aboriginality, 6) land, territory, and resources, 7) distinctiveness, 8) permanence, 9) recognition by others and 10) voluntary identification and distinction. The last two correspond to subjective elements of identification of IPs, while the others are deemed objective. Each of these categories is discussed below.

## Designation as a Sum of Individualities or a Collectivity

Given that communities are the right holders of collective rights and that they are, in turn, human groups that are formed as moral units different from the simple human aggregation, the designation made of IPs is relevant. It may distinguish if the IPs are regarded as a collectivity or, on the contrary, a mere sum of individuals.

ILO C107 (1957) and the working definition of Martínez Cobo (1972) are the only sources that consider IPs as a sum of individuals by referring to them as populations. The rest of the selected sources construe them as peoples, which might amount to a collectivity, despite the fact that the States have normally expressed their reluctance to that denomination.[601]

Consequently, among the characteristics of IPs, their designation and quality of being a unit capable of holding collective rights should be considered a crucial trait. Following the initial considerations raised in the introduction to this chapter, could this trait be considered universal, essential, and flexible? Given that the designation identifies a collectivity and that the collective rights recognized by the UNDRIP' constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world,' [602] IPs should be universally regarded as collectivities suitable to be holders of these rights since they are essential for their preservation. Characterizing IPs as collectivities is also a flexible criterion since the trait of collectivity has a broad scope that is able to adapt to any context as long as

[601] Afraid of the possible right to independent statehood interpretation, '[s]tate governments have adamantly insisted that the term 'peoples' be eliminated from all international legal instruments involving global indigenous rights (…) Several states have suggested the use of the term 'people' or 'populations' along with a disclaimer (…) In response to these criticisms, indigenous organizations have asserted that the right to self-determination does not necessarily entail a right to secession but rather a right to greater self-rule and autonomy; any compromise of this right is deemed detrimental to indigenous rights.' Corntassel (n 384) 96. Xanthaki considers that '[m]ost indigenous representatives have emphasised that independence is neither a desirable nor a possible option' and cites Anaya to assert that IPs 'are not geographically or economically situated in a way that makes independence particularly attractive. Most, if not all indigenous peoples are consequently seeking democratic reforms and power sharing within existing states' Xanthaki (n 5) 168. These positions seem to be current nowadays.

[602] Article 43 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

its elements of cohesion and moral unity are met. Indeed, IPs are one of the most intelligible examples of entities capable of being collective right holders cited by the specialized literature.[603]

## Existence within one or more Countries

There is an evolution in this criterion, from 'belonging' to 'existence.' ILO C107 of 1957 treated IPs as objects when it stated that they 'belong' to the nations where they live. The working definition of Martínez Cobo (1972) softened the expression at manifesting 'of the country which they now form part.' In his final definition of 1983, he omitted any manifestation in this regard. C169 of 1989 changed the approach to 'Peoples in independent countries who are regarded as indigenous.' Subsequently, this criterion was not explicitly stated until 2007, when the UNDRIP referred to the IPs that are 'divided by international borders' in order to recognize the right of contact and relations with 'their own members as well as other peoples across the borders' in its Art. 36. The OASDRIP of 2016 followed this approach in its Art. XX.3.[604]

IPs necessarily exist in an alien political context. They inhabit one or more States. 'Scholars generally agree that indigenous societies are vastly heterogeneous, but they endure the remarkably similar experience such as lack of statehood.'[605] Perhaps this is because they could not make their own country, as Erica-Irene Daes suggested.[606] If IPs had managed to found their State, their situation and existence would be those of other States in the international community, and more precisely, in this case, an indigenous Nation-state.[607] Therefore, this criterion is quite useful concerning the identity principle despite its obviousness.

Given that the international community is constituted by States, regardless of their class, and that IPs exist within this international community, it is possible to conclude that this characteristic is universal. It is also necessary since the IPs are not States and distinguish them. Finally, this feature is flexible since it comes from the possibility of considering that IPs inhabit one or more countries and also arises from differentiating 'existence' from 'belonging,' as the evolution of this criterion demonstrates.

## Relative Qualification

This category reflects the qualifications made of IPs in relation to others. ILO C169, Erica-Irene Daes, UNDRIP, and OASDRIP did not apply or imply such qualifications. The other selected sources did.

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[603] See 'The Subject of Collective Rights' on page 158.

[604] When referring to the collective right of self-determination, Oliveira Godinho pointed out that the UNDRIP presupposes IPs 'life within the framework of a state'. Fabiana de Oliveira Godinho, 'United Nations Declaration on the Rights of Indigenous Peoples and the Protection of Indigenous Rights in Brazil, The' (2008) 12 Max Planck Yearbook of United Nations Law 247, 257.

[605] Cher Weixia Chen, 'Indigenous Rights in International Law' [2014] Oxford Research Encyclopedia of International Studies 3 <http://oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-77> accessed 17 April 2019.

[606] Daes explains that she is not 'persuaded that there is any distinction between "indigenous" peoples, and "peoples" generally, other than the fact that the groups typically identified as "indigenous" have been unable to exercise the right of self-determination by participating in the construction of a contemporary nation-State.' Daes (n 445) para 72.

[607] For a contrary position, cf. Corntassel (n 384) 80.

Whereas the C107 of 1957 affirms that the IPs 'are at a less advanced stage than the stage reached by the other sections of the national community,'[608] the ACHPR of 2003 only asserts that there would be a perception of a supposed backwardness of the indigenous peoples when compared with 'other more dominant sectors of the society.' [609] Nonetheless, the ACHPR goes further than the rest by considering IPs as dominated and exploited by the national majority. C107 and Martínez Cobo's working definition of 1972, for their part, expressed that indigenous populations live in greater conformity with their institutions than with those of the nation or country to which they belong, a criterion that fitted with the current integrationist conception at that time.

The criterion of being non-dominant is found in these sources but with different connotations. The relationship of domination in the definition of Martínez Cobo denotes that IPs are not part of the dominant sectors of society. In the ACHPR, however, it is said that IPs' culture and ways of life differ considerably from the dominant society, connoting prejudice and domination. Instead, the World Bank stated that the IPs' ' Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture,'[610] connoting marginalization in those areas.

From the utilitarian and pragmatic approaches of the ACHPR and the World Bank, their relative qualifications seem appropriate, at least to the extent of achieving their goals. In the first case, it plays a significant part in the IPs' subsistence within a more relevant legal framework, as expressed by the ACHPR. In the World Bank case, it may justify and contribute to financing projects more appropriately.

However, a relative qualification of one group over another loses consistency in the general perspective. A relative qualification, as termed here, does not seek relations, differences, and similarities for classifications, comparisons, or characterization purposes but specific and diverse utilitarian, strategic, ideological, or historical ends. It is construed that the existing relative qualifications of IPs are pejorative and are considered unmodifiable, i.e., as an inherent and essential quality of the IPs. They assume IPs will remain as victims, dominated, or at the allegedly lower stage. It is almost as if the IPs were to lose their indigeneity status if they might succeed. It demonstrates bias and an arguable denial of possible changes, such as achieving the IPs' 'well-being' declared and pursued internationally, among others, by the UNDRIP and OASDRIP. IPs do not change their very own nature and become something else when they attain their rightful ends. Consequently, this trait is not essential to IPs.

Not all indigenous peoples have experienced the attributed situations that imply these general and relative qualifications. For instance, IPs in voluntary isolation or initial contact, or some African IPs in a dominant position as the ACHPR expressed, or even some examples presented by the literature.[611] Therefore, it is neither a universal or flexible trait. IPs shall be considered in their own uniqueness and situations.

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[608] Article 1 of the Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries.

[609] *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities: Submitted in Accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa'* (n 460) 89.

[610] 'The World Bank Environmental and Social Framework' (n 503) 77.

[611] 'Nor are all indigenous peoples non-dominant, even when they are numerical minorities within the host state, such as the native Fijians in Fiji, the Inuit peoples in the autonomous region of Nunavut (Canada) or the East Timorese peoples who recently realized their goal of statehood.' Corntassel (n 384) 80.

## Negative Experiences (Persistent or not)

Suffering a negative experience, whether persistent or not, is an identifying element of IPs on which there is unanimity, although to varying degrees. There is an evolution in this criterion, from enunciating particular events to understanding the reason that sustains IPs' existence.

C107, the definitions of Martínez Cobo, and C169 associate negative experiences with IPs' conquest and colonization. Then, Erica-Irene Daes (1996) extended the criteria. She proposed 'subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist,' as experiences that may well encompass the conquest, the colony, and other later or current events. These events can be applied even in the African perspective described by the ACHPR.[612]

In the sources, from Erica-Irene Daes in 1996 to the present, 'conquest' is no longer used. Only the UNDRIP and OASDRIP indicate 'colonization' and 'dispossession of lands, territories, and resources' as negative experiences, although never as necessary (when using the term 'inter alia' in its preambles). Although with different wording, the same applies to the UNDP.[613] The main conception of the UNDRIP and OASDRIP in this regard is related to 'injustices' that prevent IPs 'from exercising, in particular, their right to development in accordance with their own needs and interests.'

The ACHPR relies mainly on this category and emphasizes its content with several possible negative experiences. [614] The ACHPR takes advantage of the negative experience factor as one of the pivots to overcome the aboriginality and colonization characteristics in the African context. It might be the reason that justifies such a robust stance in this regard.

However, the negative experience factor may not be universal to all IPs.[615] It may not apply to the context of the OASDRIP's IPs in voluntary isolation or initial contact, who may seldom experience the adverse incidents referred by the sources, even though 'their cultures are under threat' as the ACHPR recognizes. The World Bank's ESS7 becomes interesting in this regard when expressing that IPs are often in a 'vulnerable' situation. Considering the whole narrative of this category and the different particular events that may occur to IPs, the foci of 'negative experience' could be construed as IPs' vulnerability, regardless of the cause, even though it does not necessarily mean having a negative experience. 'Vulnerable' also opens the chance of future events as latent contingencies.

Could the vulnerability be a universal, essential, and flexible characteristic of IPs? Given the breadth of the term vulnerability and the many dimensions it can consider, among others, development, ecology,

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[612] 'Subjugation, marginalization, dispossession, exclusion or discrimination,' 'their cultures are under threat, in some cases to the extent of extinction,' 'discrimination', 'live in inaccessible regions, often geographically isolated and suffer from various forms of marginalization, both politically and socially,' they are 'subject to domination and exploitation within the national political and economic structures that are commonly designed to reflect the interests and activities of the national majority.' All referred to in 4.2 existing approaches to the term 'indigenous peoples' in the *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities: Submitted in Accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa'* (n 460).

[613] '[W]hether its existence pre-dates those that colonized the lands within which it was originally found or of which it was then dispossessed' United Nations Development Programme (n 529) 5.

[614] *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities: Submitted in Accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa'* (n 460) 89.

[615] 'Controversy arises in particular from the implication that distinctive rights of indigenous peoples are justified by the destruction of their previous territorial entitlements and political autonomy wrought by historic circumstances of invasion and colonization. The best possibility of progress is to interpret the concept with sufficient flexibility to make clear that it accommodates a wider range of justifications.' Kingsbury (n 382) 419.

land, territory, food, rights, or culture, it is undoubtedly a flexible trait adaptable to IPs' possible realities. For this same reason, vulnerability is also universal. The causes of vulnerability may arise from the selected source's events (e.g., colonialism, conquest, exploitation, marginalization, and domination) or even others.

The essentiality of this characteristic could be related to the protection granted to IPs by the Law. Galenkamp argued that the Law endows collective rights for protection since rights always aim to protect potentially threatened interests. Then, in her view, to speak of rights, there has to be someone potentially in need of protection.[616] Therefore, the IPs' vulnerability may justify the fulfillment of a possible condition for granting them collective rights.

Despite this, it could be argued that the absence of vulnerability, at least in theoretical terms, would not cause indigenous peoples to lose their quality but the modification of their legal status concerning their rights and duties. Furthermore, since every subject or object could be allegedly vulnerable, vulnerability is not an exclusive trait or a characteristic. These arguments might support construing that vulnerability is an incidental element that does not make up the essence of IPs. However, saying this does not mean denying the advocacy of law or the critical circumstances in which the IPs could be found, which might be legitimate and deserve attention and protection. So then, 'vulnerability' is a universal and flexible criterion, but it is not essential to IPs.

## Aboriginality

Most of the selected sources use the quality of aboriginal, as 'existing previously' or 'from the origin,' as an identification element.[617] Only the ACHPR and the World Bank do not consider it. The ACHPR aims to avoid misunderstandings and discrimination among Africans since it understands that they are all indigenous and originally from Africa concerning the European colonization. It also pursues that the indigenous' collective rights protect not only from the domination of descendants of foreign colonizers, as in South America and Australia, but rather the domination that persisted after the independence between groups of Africans. The World Bank, on the other hand, seems to have a pragmatic approach to the implementation of its projects, preferring to rely on the IPs' self-identification trait.

Despite the ACHPR and World Bank's positions, this characteristic evolved from the necessary pre-colonial existence to 'priority in time.'[618] Until 1983, even with Martínez Cobo's definition, this element was understood as IPs' existence before the colony or the conquest. Starting from ILO C169 in 1989, the comprehension of aboriginality began to take on a greater scope since it also admitted the IPs' existence before the establishment of the current state borders. Erica-Irene Daes extends it by manifesting: 'priority in time, with respect to the occupation and use of a specific territory,' omitting to specify the historical milestone of such precedence. The UNDRIP and OASDRIP only refer to 'colonization' in their preambles as one of the possible adverse events that the IPs could have suffered. The UNDP in 2017 regressed this sense of conceptual evolution since it regarded aboriginality as pre-colonial. The UNDP relates aboriginality to the control, management, possession, and dispossession of

[616] 'The first precondition flows from the generally and essentially protective nature of rights. Since rights always aim at the protection of potentially threatened interests, in order to speak of rights, there has to be someone who is potentially in need of protection.' Galenkamp (n 165) 94.
[617] Indigenous peoples are 'are generally understood as groups that are descended from the original or long-time inhabitants of lands now dominated by others' S James Anaya, *Indigenous Peoples in International Law* (2nd ed, Oxford University Press 2004) s Preface.
[618] This characteristic is adopted by ILO C107, Matínez Cobo, ILO C169, Erica-Irene Daes, UNDRIP, and OASDRIP.

lands, natural resources, and territories that IPs had, 'whether its existence pre-dates those that colonized the lands within which it was originally found or of which it was then dispossessed.'[619]

This characteristic might not be considered universal, at least not as 'aboriginality.' For instance, it was questioned and left aside legitimately by the ACHPR arguing the current African situation. Although aboriginality relates to indigenous, these terms are not necessarily the same. Whereas 'aboriginal' derives from the Latin phrase *'ab origine'* (from the beginning), 'indigenous' comes from '*indi-'* (strengthened form of *in)* and *gen* (beget), [620] meaning '[o]riginating or occurring naturally in a particular place; native.'[621] It is noteworthy that 'indigenous' and not 'aboriginal' is the adjective used in the international human rights law to qualify 'peoples' when assembling the term 'indigenous peoples.'

For these reasons, this so-called 'priority in time' would deserve to be translated into universal terms without limiting it exclusively to those IPs that were the 'first nations.' The passage of time shows the origin, development, and extinction of peoples, so the concept cannot be limited merely to those peoples who existed before the conquest, the colony, or the establishment of State boundaries. A viable way to achieve this purpose lies in the possibility of referring to an *ancestral existence* related to their territories, culture, spirituality, or institutions.

> 'In any case the contemporary anthropologists agree that the question "who came first" is largely meaningless, the term "indigenous people" may be applied to ethnocultural groups which have sustained a close relationship with a particular territory over many generations, which in part gives expression to their distinctive cultural, linguistic and economic identity.'[622]

In this context, should it still be necessary to differentiate tribal peoples from IPs, as the ILO conventions proposed in 1957 and 1989? The indigenous character (perhaps, the aboriginal one), as stated in C169, has allowed distinguishing IPs from tribal peoples. However, it is necessary to remember that its predecessor, C107, used the tribal category differently, like those indigenous populations that had not started the assimilation process. In this legal framework, the UNDRIP and the OASDRIP have omitted to refer to tribal peoples. Likewise, the jurisprudence of the ACHPR and the IACtHR have recognized collective rights to communities that are not aboriginal but have a vital, cultural, and ancestral relationship with their lands.

Then again, it remains the question of how many ancestral generations would require the permanence of a community in a place to acquire the status of indigenous peoples. The possible responses, regardless of how controversial they could be, would fall in the field of arbitrariness. The number of years or generations could perfectly vary from one point of view to another. Besides, if this idea is maintained, at a given time, all the communities that possess solid ethnical roots in a territory should begin to be considered indigenous peoples.[623] Then, one should wonder whether the passage of time is still a plausible criterion or whether eliminating the aboriginality trait, as the ACHPR did, could be better. Do these answers still seem the correct ones?

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[619] United Nations Development Programme (n 529) 5.
[620] CT Onions (ed), 'The Oxford Dictionary of English Etymology' 470.
[621] 'English Dictionary, Thesaurus, & Grammar Help | Oxford Dictionaries' (*Oxford Dictionaries* | *English*) sv Indigenous <https://en.oxforddictionaries.com/> accessed 4 November 2018.
[622] Kovler (n 386) 208.
[623] 'As Maori scholar Manuhuia Barcham explains: Theorists and practitioners alike have created and reified an ahistorical idealization of the indigenous self whereby the constitution of oneself as an 'authentic' indigenous self has been conflated with special ahistorical assumptions concerning the nature of indigeneity, a process intricately linked to the continued subordination of difference to identity' as cited by Corntassel (n 384) 77.

Although required, the simple passage of time should be deemed void or meaningless without a related background.[624] There is an indubitable legitimacy, gained through a remarkable tenacious persistence to linger despite anything else, that encompasses and characterizes IPs, even those in voluntary isolation or initial contact. This quality claims to face not only the passage of time but also the will to survive all the external political, social, and economic layers that later arose and potentially stressed or contradicted their own way of life and institutions, trying to change it or finish it. In this sense, the indigeneity of peoples involves their prior existence to such layers, which could be named as conquer, colonization, the subsequent State foundations, or, for that matter, any possible similar or related scenario.[625] Each of these possible layers endows flexibility to the aboriginality characteristic, due to the diversity of the IPs contexts. For instance, not all IPs experienced the (same) European expansion. Some of them had to face other realities to persist in their existence.[626]

Aboriginality is universal and essential as well. As mentioned, it plays a role in characterizing IPs. Regardless of the current change of circumstances, even African indigenous peoples share this trait.[627] Taking into account the ACHPR stance upon IPs, it should be noted that it is not about excluding other types of communities from collective rights, whose nature remains as a mere recognition or effect of the Law, but differentiating them from one another.[628] Moreover, the UN recently adopted the Declaration on the Rights of Peasants and Other People Working in Rural Areas, which applies to individuals, local communities, and IPs engaged 'in artisanal or small-scale agriculture, crop planting, livestock raising, pastoralism, fishing, forestry, hunting or gathering, and handicrafts related to agriculture or a related occupation in a rural area.'[629] This Declaration might fit better with the strategy of the ACHPR to extend the collective rights of indigenous peoples framework to 'different groups of hunter-gatherers or former hunter-gatherers and certain groups of pastoralists.' [630] However, the names, classifications, and qualifications used to refer to or try to exclude IPs do not mean, in any case, that IPs lose their nature and legal framework. Consequently, the hunter-gatherers, pastoralists, hill-people, nomadic, or semi-nomadic groups could also be IPs.

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[624] Similarly, Gerald R. Alfred and Franke Wilmer, 'Indigenous Peoples, States and Conflict', in, David Carment and Patrick James (eds.), Wars in the Midst of Peace (Pittsburgh: University of Pittsburgh Press, 1997).

[625] In this sense, Katja Gocke says: '[s]ince indigenous peoples have lived on the land, which now makes up their states' territories, for thousands of years as independent peoples, they generally still regard themselves as nations - insofar they still possess a territorial basis - or at least as holders of a right to self-determination, which allows them to resume their pre-colonial position as sovereigns within the community of states.' Gocke (n 557) 348.

[626] As a requirement or as a simple indicator of IPs, Kingsbury understands that the 'historical continuity of prior occupants, (…) would assure the political viability of the international concept of "indigenous peoples" and perhaps open the way for greater normative and institutional development, while avoiding some of the serious policy problems of a potent, but uncircumscribed and open-ended, category.' Kingsbury (n 382) 456–457.

[627] Although there is a certain irony when it is said that '[a]ll Africans are indigenous to Africa as compared to the European colonialists who left all of black Africa in a subordinate position, which was in many respects similar to the situation of indigenous peoples elsewhere.' *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities: Submitted in Accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa'* (n 460) 92.

[628] Lehmann has a different perspective: 'Africa's indigenous peoples are still not accorded the same recognition and treatment that is accorded the indigenous peoples of other parts of the world. Uncertainty and inconsistency at the international level affects the treatment that indigenous peoples receive at the regional and national levels. Indigenous peoples the world over feel marginalized within their nation-states. Africa's peoples are, in general, the most marginalized within the international community.' Lehmann (n 389) 529.

[629] Article 1 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (adopted 28 September 2018) A/HRC/RES/39/12.

[630] *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities: Submitted in Accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa'* (n 460) 89.

## Land, Territory, and Resources

The evolution of this characteristic widened its scope since it started accepting IPs' lands and ended up including indigenous territories and natural resources. It was not until the definition of Martínez Cobo in 1983 that they were recognized as ancestral territories, clarifying the long historical continuity of the IPs through the legacy of their predecessors. Both C107 and C169 referred to the occupation of traditional land. Erica-Irene Daes, in 1996, tenuously admitted them as specific occupation and use territories.

The ACHPR introduced the terms 'resources' and 'territories' as critical elements for the survival of most IPs. The World Bank, for its part, recognized IPs as those who have a Collective attachment to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas.' [631] It also encompasses nomadic groups, provided that they satisfy its identification criteria. [632]

The UNDRIP, OASDRIP, and UNDP differentiated land, territory, and resources as essential elements of the IPs' activity, development, and subsistence.

To determine the universality of this criterion is pertinent to question if all IPs have lands, territories, or resources. Except for the World Bank, none one of the selected sources has considered the situation of the nomadic peoples' land rights.[633] Although 'it seems that several nomadic communities may not qualify as indigenous,'[634] some of them might. The nomadic people have a right to land and territory since they are central to their survival and ways of life:

> 'land rights are not only about ownership but also include rights to access and use the land. For many nomadic peoples this notion of access and right of use is crucial, for most nomadic communities, the possibility of traveling through their traditional territories is central to their survival. Land rights and the right to use of land in a nomadic fashion remain extremely important.'[635]

On the other hand, C107, C169, UNDRIP, and OASDRIP order compensation in case of eviction, which in principle should correspond to another adequate land. Moreover, the World Bank and the UNDP explicitly accept identifying as indigenous peoples those who lost their territory by force or dispossession.

Furthermore, the relationship of the IPs with their land, territory, or resources should be *aborigine*, as argued before. In case the IPs were removed, suffered eviction, or voluntarily decided to move to another site, this character endures in the continuity of the relationship between the IPs and the land, territory, and resources they start to occupy.

This characteristic is essential given that these elements are crucial for IPs' cultural, spiritual, ethnic, economic, or social subsistence. Finally, its flexibility responds to the different ways and degrees of

[631] 'The World Bank Environmental and Social Framework' (n 503) 77.
[632] It was not the case of the World Bank's previous 'Operational Manual BP 4.10 - Indigenous Peoples' (The World Bank, July 2005) <https://www.worldbank.org/> accessed 27 October 2018.
[633] The transhumant, nomadic, semi-nomadic, and landless communities are explicitly referred to in article 1.3 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.
[634] Jérémie Gilbert, *Nomadic Peoples and Human Rights* (Routledge 2016) 116.
[635] ibid.

possessing, using, or disposing of land, territory, and resources that IPs make according to their self-determination, situation, and context.

## Distinctiveness

This feature is present in all definitions and characterizations.[636] Arguably, its common center relates to the IPs' ethnicity.[637] Over time, this trait has been densified and strengthened.

From the mention of customs and traditions foreseen in C107 to the specific elements considered in the UNDRIP and OASDRIP. From considering the territory as a mere space of existence in C107 to recognizing its spiritual relationship with IPs culture by Martínez Cobo's definition and the C169, UNDRIP, OASDRIP, and UNDP characterizations. Cobo's definition of 1983 also introduced the IPs' distinctiveness by legal systems and cultural patterns.

C107 referred to social, economic, and cultural institutions, and C169 included the political ones. Erica-Irene Daes raised the aspects of language,[638] social organization, religion, spiritual values, modes of

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[636] The term *peoples*, according to Xanthaki, 'reveal two sets of requirements for the notion of 'a people': objective ones which encompass factors such as common language, culture, religion, race or ethnicity, territory and history; and subjective requirements, which include consciousness as a distinct people and a collective will to exist as a distinct people.' Xanthaki (n 5) 136.

[637] 'Ethnicity is primarily a sense of belonging to a particular (assumed) ancestry and an ethnic group is thought to exist whenever the belief in common descent is used to bind people together to some degree.' Karmela Liebkind and others, 'Acculturation and Identity' in David L Sam and John W Berry (eds), *The Cambridge Handbook of Acculturation Psychology* (2nd edn, Cambridge University Press 2016) 2 <https://www.cambridge.org/core/product/identifier/9781316219218%23CN-bp-3/type/book_part> accessed 24 April 2019.

Nagel, in 1994, defines ethnicity as 'the result of a dialectical process involving internal and external opinions and processes as well as the individual's self-identification and outsiders' ethnic designations' as cited by JM Henry and CL Bankston III, 'Ethnic Self-Identification and Symbolic Stereotyping: The Portrayal of Louisiana Cajuns' (2001) 24 Ethnic and Racial Studies 1020, 1021.

Pablo Regalsky argues that '[e]thnicity is a complex political process defined by Barth (1998) as the social organisation of cultural difference where self identification is only part of that process. It implies the construction of social boundaries and identifying differentiating cultural markers within interaction structures even if boundaries do not necessarily mean the occupation of exclusive territories.' Pablo Regalsky, 'Fluid Modern Ethnic Spaces: Contesting the Spatial Ordering of the State in Bolivia' [2008] Area 34, 36.

'Ethnicity refers to the identification of a group based on a perceived cultural distinctiveness that makes the group into a "people." This distinctiveness is believed to be expressed in language, music, values, art, styles, literature, family life, religion, ritual, food, naming, public life, and material culture. This cultural comprehensiveness—a unique set of cultural characteristics perceived as expressing themselves in commonly unique ways across the sociocultural life of a population—characterizes the concept of ethnicity. It revolves around not just a "population," a numerical entity, but a "people," a comprehensively unique cultural entity.' As defined in 'Encyclopædia Britannica', , *Encyclopædia Britannica* (Encyclopædia Britannica, inc 2016) sv The study of ethnicity, minority groups, and identity <https://www.britannica.com/topic/laws-of-thought> accessed 4 November 2018.

[638] In a comprehensive study of 'the global spread of language loss over the past two centuries… A major finding is that the current rate of language loss is 9 per year, or one every 40 days' Gary F Simons, 'Two Centuries of Spreading Language Loss' (2019) 4 Proceedings of the Linguistic Society of America 27, 1. This study also asserts that 'indigenous peoples around the world are facing a crisis of language loss on an unprecedented scale.' ibid.

In 2016 the United Nations General Assembly adopted a resolution proclaiming 2019 as the International Year of Indigenous Languages, based on a recommendation by the Permanent Forum on Indigenous Issues. At the time, the Forum said that 40 per cent of the estimated 6,700 languages spoken around the world were in danger of disappearing.' 'About IYIL 2019' (*2019 - International Year of Indigenous Language*) ch Background <https://en.iyil2019.org/about/> accessed 28 April 2019. For its part, '[t]he Permanent Forum welcomes the proclamation of the International Year of Indigenous Languages, beginning on 1 January 2019, to draw attention to the critical loss of indigenous languages and the urgent need to preserve, revitalize and promote indigenous

production, laws, and institutions. The ACHPR proposed the generic 'ways of life' in 2003, and the UNDRIP recognized IPs' cultural values, ethnic identities, and spiritual relationships with their territories, lands, and resources. The OASDRIP mentioned spirituality, procedures, practices, juridical systems, and a material relationship with lands, territories, and resources, in addition to the previously mentioned spiritual relationship. The UNDP added human development, traditions, and worldviews.[639]

The diverse elements that make up this feature called 'distinctiveness' shall be aborigine, as observed in 'aboriginality.' However, distinctiveness should not be construed as IPs' petrification over time since adaptation, change, adjustments, improvements, and others related to the natural human acts are an essential part of IPs' exercise and continuance.[640]

Over time, the densification and specification of these elements reveal their usefulness in identifying and differentiating IPs. While there are tangible differences between the sources, it is worth reiterating that they unanimously considered them. The 'distinctiveness' characteristic is universal since it applies to any IPs regardless of their context and situation. In this sense, and exercising their right of self-identification,[641] the IPs do not require having all the possible qualifications mentioned but only those they possess. The flexibility of this characteristic relies on it.[642] This feature is also essential. Without it, it would not be possible to differentiate the IPs from the rest of the societies and human groups.

## Permanence

This trait implies the will or interest to remain and IPs' previous, continuous, and present existence. There is an evolution in this characteristic, from the stance that considered it a transition to integrationism to the IPs' 'distinctiveness' and 'land' continuity and strengthening. This feature in C107 is built by the interplay between its integrationist approach and the IPs' 'conformity' to remain in their social, economic, and cultural institutions (of conquest or colonization times) instead of those of the country in which they live. [643] Thus, under C107's position, as long as this conformity exists, the IPs will remain as such. C169 changed the integrationist approach and reflected that the IPs 'retain some or all of their own social, economic, cultural and political institutions.'[644]

languages and to take further urgent steps at the national and international levels. The Forum notes with appreciation the commitment made by the United Nations Educational, Scientific and Cultural Organization (UNESCO) to serve as the lead agency for the Year, in collaboration with other relevant agencies.' 'Permanent Forum on Indigenous Issues. Report on the Sixteenth Session (24 April - 5 May 2017)' (2017) E/2017/43-E/C.19/2017/11 para 95.

[639] As Corntassel resumes: a concept of 'peoplehood,' distinct from 'ethnic groups,' arose. Edward H. Spicer began with three factors: relationship to the land, common spiritual bond, and language use. Robert K. Thomas included 'sacred history.' Holm, Pearson and Chavis preferred 'ceremonial cycles' regarding the beliefs factor. It was stressed that all the factors are interdependent and equally important. Corntassel (n 384) 91.

[640] As vividly suggests Sousa Santos (n 26).

[641] Tajfel argued that '[t]he new claims of the minorities are based on their right to decide to be different (preserve their separateness) as defined in their own terms and not in terms implicitly adopted or explicitly dictated by the majorities. . . the wish to preserve their right to take their own decisions and keep their own 'identity.' As cited by Verkuyten (n 403) 122.

[642] Erica-Irene Daes expresses, referring to all the conclusive factors she raises, that 'they represent factors which may be present, to a greater or lesser degree, in different regions and in different national and local contexts.' Daes (n 445) para 70. There is no reason to avoid this criterion here.

[643] Article 1.b of the Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries.

[644] Article 1 of the Convention Concerning Indigenous and Tribal Peoples in Independent Countries.

The definition of Martínez Cobo of 1983 gave a new meaning to this factor and completed it with other elements. Not only did it refer to 'historical continuity,' but it underlined the will of the IPs by saying that they are 'determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples.'[645] Furthermore, it is notorious that it extended the scope of 'permanence' to the ancestral territories and ethnic identity as an addition to the social, cultural, economic, or political institutions.

Erica-Irene Daes outlined the IPs' 'voluntary perpetuation of cultural distinctiveness.'[646] The ACHPR and World Bank did not consider this criterion, but they did not deny it either. They understood the vulnerability of IPs and the need to protect them, i.e., to help their continuity, as demonstrated by the elements referred to in the 'negative experience' factor. While the UNDRIP maintained that the rights it recognizes for IPs will allow them to 'maintain and strengthen' their institutions according to their aspirations and needs,' the OASDRIP transferred the responsibility to the IPs for the preservation of their distinctive features, 'for themselves and for future generations.'[647] The UNDP required the IPs to attempt to maintain their distinctiveness to achieve their permanence ('has tried to').

This characteristic is universal and necessary because it not only complements the traits of 'territory, land, and resources' and 'distinctiveness' regarding its resilience and continuity until the present, but it also remembers that IPs currently exist. Otherwise, if this were not a characteristic, only historians and archaeologists would be interested in studying IPs. It is deemed flexible concerning the degree to which they managed to remain until the present.[648]

## Recognition by Others

Only Erica-Irene Daes and the World Bank have made this element *explicit* as a requirement. Both sources imply the need for internal (self-identification) and external recognition. For the external one, Daes proposed the 'recognition by other groups, or by State authorities, as a distinct collectivity'[649] and the World Bank, instead, generically required the 'recognition of this identity by others.'[650]

However, the attempt of all the selected sources to recognize the IPs implicitly admits this requirement. The flexibility of the PNUD approach in this respect is remarkable. Not only admits 'any of the more commonly accepted definitions' but, aware of any degree of the possible formal unwillingness of such recognition, the PNU concedes it 'regardless of the local, national and regional terms applied to them.'[651]

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[645] Martínez Cobo, *Study of the Problem of Discrimination against Indigenous Populations. Final Report (Last Part).* (n 419) para 379. UNCHR (Sub-Commision), 'Final Report (last part) by Special Rapporteur José R Martínez Cobo 1983/Ad.8' (1983) UN Doc E/CN.4/Sub.2/1983/21/Add.8

[646] Daes (n 445) para 69.

[647] The responsibility foreseen in the OASDRIP is not established in the UNDRIP, which refers it only to lands, territories, and resources: 'Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.' United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Article 25.

[648] 'The kind of ethnic identity or the combination of multiple identities which best fosters different forms of adaptation in the acculturation process is largely dependent on situational and contextual factors of the acculturating groups and the larger society.' Liebkind and others (n 637) 27.

[649] Daes (n 445) para 69.

[650] 'The World Bank Environmental and Social Framework' (n 503) 77.

[651] United Nations Development Programme (n 529) 5.

Despite this explicit or implicit understanding, the category of 'recognition by others' is necessarily external to IPs. It is not an element or a characteristic of them. An eventual recognition made by others is equivalent to examining the merits of a subject or an object to identify it. That is to say, to capture an external reality by the senses and intellect to determine what it is. For instance, the ACHPR and the IACtHR respectively recognized the differentiating features of the Endorois and Saramaka communities to grant them rights.[652]

Therefore, recognition is only an examination to qualify a reality and not, on the contrary, an element for that reality to come into existence. The IPs exist independently of the fact that a third observer, alien to that reality, discovers or understands it. Although this argument is particularly evident with respect to IPs in voluntary isolation and initial contact, it is becoming more challenging to separate the labeling from the reality due to the long processes of relation that IPs have with others. [653]

## Voluntary Identification and Distinction

To some extent, all chosen definitions and characteristics include this subjective element.[654] The evolution of this criterion is notorious, from the individual choice of the indigenous institutions, going through considering themselves different, up to the individual and collective self-identification as indigenous.[655]

C107 and the working definition of Martínez Cobo of 1972 limit this criterion to the 'conformity' that indigenous populations have with their own institutions, customs, and traditions rather than those of the nation or country to which they belong. That is, the voluntariness was restricted to prefer some institutions instead of others. In his definition of 1983, Martínez Cobo understood that IPs' consider

[652] Cf. 'The Adoption of the Report of the African Commission's Working Group on Indigenous Populations / Communities by the African Commission on Human and Peoples' Rights of 2003' on page 102.

[653]'In the past, ethnicity was usually defined by contrast to dominant cultural and linguistic groups… However, the increasing flow of information in modern society means that the subjects of ethnic descriptions not only have access to accounts about themselves, they can also produce accounts. These self-descriptions cannot simply discard the received historical imagery of the outsiders because ethnicity is constructed from relations between insiders and outsiders. As insiders begin to describe themselves, they enter into a dialogue with the portrayals of the outsiders' in Henry and Bankston III (n 637) 1040. This study suggests, based on data on Louisiana Cajuns, 'that the basis for contemporary ethnics' self-identification is rooted in a stereotyped depiction constructed by outsiders over the past two centuries.' ibid 1020–1021. It argues, citing Nagel and Jenkins, that '[t]he use of outsiders' views to assess ethnic self-identification is appropriate for several reasons. It is well established that the extent to which ethnicity is constructed internally is limited by 'compulsory ethnic categories' imposed by others (Nagel 1994, p.156). Noting that 'externally located processes of social categorization are enormously influential in the production and reproduction of social identities,' Jenkins (1994, p.197)' ibid 1023.

[654] 'It could be argued that the emphasis on self-identification and the very absence of a fixed definition, despite the opposition of many States to such an open-ended approach to the determination of the rights holders, constitutes an important element of the indigenous rights framework, as it shifts the locus of control over legitimisation of membership of the 'community of indigenous peoples' to that community itself.' Doyle (n 41) 112.

[655] 'As regards individual membership, indigenous communities usually apply their own criteria, and whereas some States do regulate individual membership, it has become increasingly accepted that the right to decide who is or is not an indigenous person belongs to the indigenous people alone (…) In the design and application of policies regarding indigenous peoples, States must respect the right of self-definition and self-identification of indigenous people.' Rodolfo Stavenhagen, 'Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People' (2002) E/CN.4/2002/97 para 100.

themselves distinct from other sectors of societies.' [656] Hence, the IPs' will was not to identify themselves as such but to differentiate themselves from the others.

The C169 is the first of the selected sources to recognize self-identification, stating that it 'shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.' [657] Erica-Irene Daes, the ACHPR, and UNDP chose self-identification as an IPs' characteristic. On the other hand, the World Bank established only the self-identification of the members of the 'indigenous social and cultural group,' leaving aside the IPs' self-identification. The UNDRIP overcame this position by specifying IPs' power to define the membership and its identification. However, it is worth noting that the term self-identification does not appear in its text. For its part, OASDRIP regained the position of C169 by expressly establishing individual or collective self-identification as a criterion for applying its norms, but it also imposed the duty on States to respect it.

Arguably this feature is one of the most debated by the States to avoid recognizing IPs as such, and symmetrically, one of the most preferred and admitted by IPs as legitimate.[658] However, can it be a universal, necessary and flexible characteristic? The ability to self-identify as indigenous peoples presupposes their existence as a collective organization. IPs require cohesion and the desire to recognize themselves as distinct, autonomous, and capable through their foundations and continuous existences. Their dignity, resilience, and permanence largely depend on their self-identification. If a group loses or never had an identity, and therefore is unable to indicate who or what they are, assigning or describing themselves as 'belonging' together or sharing characteristics, then they cannot self-identify themselves, and subsequently, they are not an indigenous people. For this reason, self-identification is a necessary and universal trait.

However, the ability to self-identify does not pertain exclusively to the IPs. For instance, other types of ethnopolitical groups[659] are capable of it as well. As a consequence, it reflects that simple self-identification is not enough. Self-identification must be based on the factual aspects that will allow the group to differentiate itself from others. That is to say, the IP's self-identification must refer to the presence of their characteristics as indigenous peoples. [660] Therefore, self-identification does not amount to a simple arbitrary act derived from a unilateral whim. Self-identification as IPs must embody the other substantive characteristics mentioned above.[661]

The IPs' self-identification implicitly stems from their continuous existence, evolution, and adaptation to different contexts. Nevertheless, self-identification can also be used explicitly as a manifestation to advocate the protection or recognition of a particular indigenous people at any given moment. The flexibility, therefore, relies on the possible ways to express it.

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[656] Martínez Cobo, *Study of the Problem of Discrimination against Indigenous Populations. Preliminary Report.* (n 417) para 34. UNCHR (Sub-Commision), 'Preliminary report by Special Rapporteur José R Martínez Cobo 1972/L.566' (1972) UN Doc E/CN.4/Sub.2/L.566

[657] Article 1.2 of the Convention Concerning Indigenous and Tribal Peoples in Independent Countries.

[658] 'Despite the accepted practice of unlimited self-identification for indigenous peoples within global forums, states 'hosting' indigenous peoples within their borders have generally contested such an open policy' Corntassel (n 384) 75.

[659] As referred by Gurr (n 530).

[660] Cf. Godinho (n 604) 252.

[661] '[C]urrent conceptual and theoretical research on indigenous groups in the field of ethnonationalism tends to be ahistorical and reified when distinguishing indigenous from ethnonationalist groups (…) such an approach may be ahistorical while prioritizing identity over cultural and political variance between indigenous groups.' Corntassel (n 384) 77.

# Section 2.3: Constitutional Bolivian Approach

The current Bolivian Constitution was approved by referendum on 25 January 2009 and entered into force on 7 February of the same year, after three years of a rough constituent process, social upheaval, and radical division between the government and the opposition.[662] The 2009 Constitution (Constitution) replaces the Republic of Bolivia with the Plurinational State of Bolivia, identifies 36 nations and indigenous peoples' languages (5 of them in the Andean area, 28 in the Amazon area, and 3 in the Chaco area), and establishes two flags: the original red, yellow and green, and the *Whiphala* (consisting of 49 squares with the seven colors of the rainbow), among other changes.[663]

## Coining the Bolivian Term to Designate Indigenous Peoples

The preamble of the Constitution highlights the diversity and plurality of its inhabitants, the racism of the colonial era, the popular and indigenous struggle for liberation, land, and territory.[664] The preamble also proclaims that Bolivia is re-founded as a 'Unified Social State of Pluri-National Communitarian law,' [665] leaving colonialism, republicanism, and neoliberalism in the past.[666]

Article 30.I of the Bolivian constitution defines 'original indigenous-peasants nations and peoples' *[nación y pueblo indígena originario campesino]* as 'a nation and rural native indigenous people consists of every human collective that shares a cultural identity, language, historic tradition, institutions, territory and world view, whose existence predates the Spanish colonial invasion.'[667]

This constitutional denomination, which has been criticized,[668] corresponds to the adapted self-denomination of the Constitutional proposal set by the Pact of Unity *[Pacto de Unidad]* made by six

[662] Carlos D Mesa Gisbert, José de Mesa Figueroa and Teresa Gisbert, *Historia de Bolivia* (Décima, Editorial Gisbert y CIA SA 2017) 720–721.
[663] ibid 722.
[664] The preamble is criticized because it is said that it has a partial, biased, and incomplete reading of Bolivian history, social and political development. For example, the preamble forgets the 1952 Revolution, which granted rights to the excluded, such as universal voting to peasants, and indigenous people, among others. Guillermo Richter Ascimani, 'Análisis crítico de la nueva Constitución Política del Estado', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010). However, the 1952 Revolution led to a redistribution of some material public goods, such as land in the West and the mining surplus, but reinforced the exclusion of indigenous majorities' collective rights and preserved and reinforced the patrimonial use of the State, as explained Álvaro García Linera, 'Del Estado aparente al Estado integral', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010).
[665] Elkins, Ginsburg and Melton (n 233) article 30.
[666] Constitución Política del Estado Plurinacional de Bolivia Preamble.
[667] According to Elkins, Ginsburg and Melton (n 233) article 30. The original wording is: 'Es nación y pueblo indígena originario campesino es toda la colectividad humana que comparta identidad cultural, idioma, tradición histórica, instituciones, territorialidad y cosmovisión, cuya existencia es anterior a la invasión colonial española.'Constitución Política del Estado Plurinacional de Bolivia, article 30.I.
[668] It was referred to because of its writing in Spanish [naciones y pueblos indígena originario campesinos] as a *'curious compound adjective, which hardly keeps the concordances of gender and number'* by HCF Mansilla, 'Una comparación entre dos textos constitucionales', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010) 132.

organizations covering the majority of the indigenous peoples of Bolivia.[669] The plurinational character opened a debate from 2004 to 2007 on designating indigenous peoples in the Constitution; the final formulation was a joint contribution of the Pact of Unity. The self-denominations of each organization implied the need for consensus: 'peoples and ethnic groups' were mostly from the lowlands, 'peasants' from certain unions for territorial management,[670] 'nations' especially from the highlands (Aymara, Quechua, but also Guaraní), and 'originals' by the aboriginal cultures.[671]

The Plurinational Constitutional Court (PCC) has analyzed each of the words of 'original indigenous-peasants nations and peoples' in the case 0388/2014 to identify the collective right holders foreseen in the Constitution and the international human rights instruments.[672] It stated that:

a) *Nation* concerns a group of people having a common historical trajectory, territory, practices, cosmovision, language, and destiny.

b) Since *indigenous* etymologically derives from Latin *'inde'* (from there) and *'gens'* (population), it regards a permanent geographical location or territory. However, the PCC expressed that although the word indigenous has no translation in Aymara or Quechua, it was influenced by international human rights instruments and the adopted name by the lowland peoples' organizations.

c) The term *original* [native] used by the Constitution regards a natural human collectivity of a geographic place.

> In the Aymara language one would say "*paschpä uraqit yuriri*" (born in the same territory or place), in Quechua, "*kaypi paqarisqa*" (born here) and, in the Guarani expression, "*yandeva*" (we are from here); that is, the original term applied to a community or person refers to those who inhabited *Abya Yala* before the Spanish invasion.[673]

d) *Peasant* belongs to a purely occidental construction concerning the activity or work carried out by the person in the rural area. The word 'peasant' was applied in Bolivia to dissolve and define indigenous identities, given that the 1952 National Agrarian Revolution reduced the indigenous people's identity

[669] Consejo Nacional [National Council] of Ayllus y Markas del Qullasuyu (CONAMAQ), Confederación de Pueblos Indígenas de [Confederation of Indigenous Peoples of] Bolivia (CIDOB), Confederación Sindical de Colonizadores [Colonizers Trade Union of] de Bolivia (CSCB), Confederación Sindical Única de Trabajadores Campesinos de [Unique Trade Union Confederation of Peasant Workers of] Bolivia (CSUTCB), Federación Nacional de Mujeres Campesinas Indígenas Originarias de [National Federation of Indigenous Peasant Women of] Bolivia "Bartolina Sisa" (FNMCIOB), Afro descendientes [Afro descendants], Asociación Nacional de Regantes y Sistemas Comunitarios de Agua Potable [National Association of Irrigators and Community Drinking Water Systems] (ANARESCAPYS), and Coordinadora de los Pueblos Étnicos de [Coordinator of Ethnic Peoples of] Santa Cruz (CPESC), in accordance to 'Propuesta Consensuada Del Pacto de Unidad. Constitución Política Del Estado Boliviano' (13 May 2007).

[670] The issue that caused the most significant tension when approached was the permanent claim of CONAMAQ representatives to those of the CSUTCB (see the previous footnote) because of their peasant identity. This tension made visible a constant dispute in many Andean communities and the inter-Andean valleys, between two forms of organization in the same territory, which in many cases represented the same population, the union and the ayllu, according to María del Pilar Valencia and Iván Egido, 'Bolivia: ¿Estado Indio? Reflexiones Sobre El Estado Plurinational En El Debate Constituyente Boliviano' (2009) 42 Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America 55, 61.

[671] Fernando Garcés and others (eds), *El Pacto de Unidad y el Proceso de Construcción de una Propuesta de Constitución Política del Estado. Sistematización de la experiencia.* (Preview Gráfica 2010) 72.

[672] *SCP 0388/2014* (n 28) para III.3.

[673] *ibid.*

to merely peasants. Consequently, the alleged 'peasants' are, first and foremost, Aymara, Quechua, and Guaraní, among others. [674]

Xavier Albó argued that the original indigenous-peasants nations and peoples' constitutional denomination implies unity, despite their diversity, whose differentiating element are their pre-existence to Spanish coloniality. In the end, he concludes, this denomination refers to identity and origin and not to the socioeconomic form with which they earn their livelihood, where peasants of other origins are excluded, but rural inhabitants with that character are included. [675] Moreover, this constitutionalized grammatical construction shall be construed as a denomination that does not refer to nations or peoples, as one or the other could be identified in a strictly differentiated way, nor to indigenous, native, or peasant who may or may not claim such an identity, but rather to the pre-colonial settlers in their various manifestations.[676]

The denomination of 'original indigenous-peasants nations and peoples' is a category and regards the Bolivian indigenous peoples' self-denomination. [677] However, to better understand this category, its syntax comprises two identifiable parts: the nouns that correspond to *'nations'* and *'peoples'* and the adjectives *'indigenous*,' *'native*,' and *'peasant*.' In the following, this constitutional denomination is written in this study simply as 'indigenous peoples' or IPs for clarity in the wording.

## Contrasting the Bolivian Concept with the Categories of Analysis

It corresponds to contrast the indigenous peoples' definition of the Bolivian Constitution with the ten categories identified above, under the plan described at the beginning of this chapter:

a) Designation as a sum of individualities or a collectivity. The Constitution explicitly identifies IPs as human collectivities entitled to collective rights, according to article 30.

b) Existence within Bolivia. Article 3 of the Constitution states that '[t]he Bolivian nation is formed by all Bolivians, the native indigenous nations and peoples, and the inter-cultural and Afro-Bolivian communities that, together, constitute the Bolivian people.' [678] Then, this article incorporates IPs as part of Bolivia, not belonging to it, as the consulted sources did, except for the criticized C107's and Martínez Cobo's definitions.

c) Relative qualification. The Bolivian definition does not presuppose or imply a relative qualification of the IPs. They are not regarded in a better or worse position concerning other(s) group(s), [679]

[674] *ibid.*
[675] Xavier Albó, 'Lo indígena originario campesino en la nueva Constitución', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010) 718.
[676] *Sentencia Constitucional Plurinacional 0925/2013* [2013] Tribunal Constitucional Plurinacional Expediente: 01826-2012-04-CCJ, Efren Choque Capuma [III.8].
[677] *Sentencia Constitucional Plurinacional 1422/2012* [2012] Plurinational Constitutional Court Expediente 00040-2012-01-AL, Ligia Mónica Velásquez Castaños [IV.2].: 'For socio-historical reasons, this term should be understood as a composite and inseparable concept, comprising indigenous populations from highlands, lowlands, and intermediate geographical areas subjected to a process of miscegenation, which is why this concept is composed of the indigenous-native-peasant elements with an indivisible socio-historical semantics.' [Free translation].
[678] According to Elkins, Ginsburg and Melton (n 233).
[679] However, the State has promulgated the law to protect indigenous peoples in situations of high vulnerability to establish mechanisms to prevent, protect, and strengthen the individual and collective life systems of indigenous peoples, whose physical and cultural survival is threatened. Its article 13 establishes fourteen indicators of high

overcoming the criticized stance of C107, Martínez Cobo, ACHPR, and the World Bank; and applying the criterion followed by C169, Erica-Irene Daes, UNDRIP, and OASDRIP.

d) Negative experiences, persistent or not. In contrast to the analysis performed in which the existence of a negative experience is not an essential character, and following the unanimous position of the sources consulted in the international perspective, the Bolivian definition requires that IPs have had a negative experience. Given the history of the territory currently occupied by Bolivia, article 30.I limits the negative experience to only one: the Spanish colonial invasion. The establishment of this negative experience by the Constitution could be considered a vulnerability that justifies special legal protections and the recognition of IPs' collective rights as a historical fact that also underscores their aboriginal character. Supporting this position, article 2 of the Constitution gives grounds for IPs' collective rights and protection in their pre-colonial existence and ancestral control of their territories. [680]

e) Aboriginality. The constitutional definition of article 30 requires aboriginality of IPs, in the sense of existing previously to the Spanish colonial invasion[681] of 12 October 1492[682] and the Bolivian foundation on 6 August 1825.[683] The Constitution employs this characteristic in its preamble,[684] and articles 2 [685] and 270.[686] The international sources reviewed utilized the aboriginal quality, as 'existing previously' or 'from the origin,' as an identification element, except for the ACHPR and the World Bank.

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vulnerability: decreasing demographic trends, endemic diseases, growing disjointed population of its people, increasing waves of external expansion over their territories and natural resources, limitation of access to their food, growing population without access to essential services, weakened intergenerational communication systems, access loss to their territories, weakening of institutions and forms of self-regulation, intolerance, racism and discrimination, voluntary isolation, and forced contact with peoples who have chosen not to contact. Ley 450 de Protección a Naciones y Pueblos Indígena Originarios en situación de alta vulnerabilidad [law to protect indigenous peoples in situations of high vulnerability] 2013.

[680] Article 2. 'Given the pre-colonial existence of nations and rural native indigenous peoples and their ancestral control of their territories, their free determination, consisting of the right to autonomy, self-government, their culture, recognition of their institutions, and the consolidation of their territorial entities, is guaranteed within the framework of the unity of the State, in accordance with this Constitution and the law.' Elkins, Ginsburg and Melton (n 233).

[681] It should be remembered that, according to the Plurinational Constitutional Court (PCC), the term *original [native]* used by the Constitution regards a human collectivity natural of a geographic place. *SCP 0388/2014* (n 28) para III.3. However, the dissertation does not construe aboriginal quality in this sense but as pre-colonial.

[682] The generally accepted date of the Spanish invasion is 12 October 1492, in which Christopher Columbus and his crew touched American land on Guanahani Island (today Walting). 'Apenas conocieron Fernando e Isabel [Reyes de España] la existencia de los nuevos territorios se apresuraron a legalizar su posesión, que ya se había hecho efectiva por la ocupación de Colón y sus compañeros. Para tal efecto solicitaron del Papa, la autoridad máxima terrenal y espiritual de aquel entonces, un título de posesión. El Papa reinante, Alejandro Vl, contestó favorablemente a la petición de los soberanos españoles, dándoles posesión de las nuevas tierras "a perpetuidad para ellos y sus descendientes", a condición de que enviaran hombres instruidos y temerosos de Dios para evangelizar a los naturales. Esta posesión fue concedida por Bula Papal de 3 de mayo de 1493 titulada "lnter Coetera", confirmada por la "Eximias" del 4 de mayo y de las de septiembre y octubre del mismo año. En 1508 se dieron otras Bulalas similares.' Mesa Gisbert, de Mesa Figueroa and Gisbert (n 662) 78.

[683] The Bolivian Declaration of Indipendence expressed "Las provincias del Alto Perú firmes y unánimes en tan justa y magnánima resolución, protestan ante la faz de la tierra entera que su voluntad irrevocable de gobernarse por sí mismas y ser regidas por la constitución, leyes y autoridades que ellas propias se diesen y creyesen más conducente a su futura felicidad" según ibid 285–286.

[684] 'Thus, our peoples were formed, and we never knew racism until we were subjected to it during the terrible times of colonialism', Elkins, Ginsburg and Melton (n 233) preamble.

[685] 'Given the pre-colonial existence of nations and rural native indigenous peoples and their ancestral control of their territories...' ibid article 2.

[686] 'The principles that govern territorial organization and the decentralized and autonomous territorial entities are:… the pre-existence of the nations and rural native indigenous peoples, under the terms established in this Constitution.' ibid article 270.

f) Land, territory, and resources. The Constitution defines IPs using *territoriality*,[687] which could be understood 'as a broader meaning [than territory] that includes a specific relation between indigenous society, politics, and space.' [688] The Plurinational Constitutional Court (PCC) case law understood territoriality on the broader sense of territory, land, and resources established in ILO C169, UNDRIP, and the IACtHR case law.[689] That is, as a single overarching term that comprises any possible relation of IPs with their lands, territories, and resources, such as legal or traditional property, control, possession, and occupation, [690] whether they have or had access to them.[691] Then, the sense in which the Constitution uses the word territoriality corresponds to both the physical place occupied by the IPs and the existing relationship between them and their territories, lands, and sources.

The Constitution recognizes several rights regarding IPs' territories and lands. For instance, article 2 refers to the IPs' 'ancestral control of their territories,' article 30.II.6 states that IPs have the collective ownership of lands and territories, article 30.II.15 recognizes them the right to be consulted regarding 'the exploitation of nonrenewable natural resources in the territory they inhabit,'[692] and article 30.II.17 grants them the exploitation of renewable resources existing in their territory. Therefore, territoriality plays a fundamental role in the constitutional definition of IPs, although it is not expressed as the substantial relationship between indigenous peoples and their territory, lands, and resources, as referred to in the above sources.

g) Distinctiveness. The Constitution declares that IPs 'share cultural identity, language, historical tradition, institutions, territory, and world view.' [693] The sum of all these traits indeed amounts to the distinctiveness category used to define IPs in the sources analyzed before.

In a paradigmatic case decided by the PCC in 2012, a couple and their children were expelled from the community by the Poroma Neighborhood Board in Chuquisaca because their eldest son stole goods from a community member. The expulsion sanction remained even though the family and the victim settled and agreed to return the stolen money. One of the family's arguments to avoid expulsion was that the Neighborhood Board was not an indigenous people (IP). Although the PCC ruled in favor of the family, it held that the Neighborhood Board actually was an IP because it, through cultural-anthropological expertise, demonstrated the elements of cultural cohesion provided by the Constitution.

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[687] Although the English version used translates 'territorialidad' simply as 'territory' in ibid.
[688] Victoria Reyes-García and others, 'Indigenous Land Reconfiguration and Fragmented Institutions: A Historical Political Ecology of Tsimane' Lands (Bolivian Amazon)' (2014) 34 Journal of Rural Studies 282, 283.
[689] *Mayagna (Sumo) Awas Tingni Community v Nicaragua* (Inter-American Court of Human Rights).
[690] *Sentencia Constitucional Plurinacional 0487/2014* [2014] Plurinational Constitutional Court Expediente 04751-2013-10-AAC, Gualberto Cusi Mamani [III.4]. As a complement, the *Sentencia Constitucional Plurinacional 0036/2019-S4* [2019] Plurinational Constitutional Court Expediente 26714-2018-54-AP, René Yván Espada Navía [III.5]. states that 'el territorio, comprende la casa grande donde todas las cosas pertenecen a todos y a nadie en particular, en el que se desarrolla su cosmovisión y es fundamental para su supervivencia y continuidad, al estar vinculado con su derecho a existir libremente, por lo que debe ser preservado y respetado' [a free translation is: the territory, includes the big house where all things belong to everyone and no one in particular, in which their worldview is developed and it is fundamental for their survival and continuity, being linked to their right to exist freely, so it must be preserved and respected].
[691] *SCP 0388/2014* (n 28) para III.3.2. states 'que la colectividad sea anterior a la invasión colonial española y que por ende, haya tenido posesión de un determinado espacio geográfico, sin que sea requisito que actualmente lo tenga, pues, se entiende que, a partir de la invasión española, muchas naciones y pueblos indígenas fueron arbitrariamente despojados de sus territorios ancestrales' [free translation: that the community is prior to the Spanish colonial invasion and therefore, has had possession of a certain geographical space, without being requirements that currently have it, then, it is understood that, from the Spanish invasion, many nations and peoples indigenous people were arbitrarily stripped of their ancestral territories].
[692] Article 30.II.15 of the Bolivian Constitution, according to Elkins, Ginsburg and Melton (n 233).
[693] ibid article 30.

The PCC established that the existence of any of the cohesion elements referred to by article 30 of the Constitution is sufficient to claim that a human community is an IP, [694] disregarding the copulative conjunction 'and' provided for in the constitutional text and, consequently, interpreting it as if it were an alternative conjunction 'or' in which any of the listed elements is sufficient. This interpretation is favorable to expanding the recognition of IPs in Bolivia and demonstrates that the PCC considers that, despite the various forms they can take, human communities that meet some of the characteristics of the Constitution are IPs.

Following this argument, in 2014 the PCC decided on another case[695] in which two parallel and antagonizing organizational structures came into conflict within the same community named *El Ingenio*. Specifically, an agrarian union and an IP, both called *El Ingenio*, disputed control of the community. In this case, the union denounced before the ordinary jurisdiction that the IP's authorities would allegedly forge documents against its interests. To better understand, the union, founded in 1953, tried to ignore and undermine the existence of the IP, which, at the initiative of some union members, was reconstituted in 2009 when they convened a *Jach'a Tantachawi* or an Aymara meeting to this end.

The PCC recognized that both structures are indeed indigenous peoples and that their organization forms do not matter as long as the IPs' identification requirements provided by the Constitution and C169 are met. Furthermore, it held that the organization of unions or syndicates was a State imposition of the 1952 agrarian reform on indigenous peoples. Thus, the old transition made by the IP in 1953 to the union format, as a purely Western and foisted organization, has not necessarily dissolved the IP's ancestral knowledge and culture.[696] This case suggests that both organizations are, in reality, the same indigenous people. Although it could be contended that there is no continuity in *El Ingenio*, the PCC seems to have considered that this is not the case. Indeed, the PCC argued that, despite this collectivity's governing structures and denominations, the material element of distinctiveness and culture has subsisted, demonstrating its continuity. As a result, the reconstitution the PCC refers to would only imply the recovery of formal aspects.

In the context of IPs, their organizational structure for reasons of a socio-historical nature could be composed of peasant organizations, neighborhood boards, or other organizational modalities that reflect a process of miscegenation lived in the country. [697] Based on a cultural-anthropological expert opinion through its Decolonization Unit, the PCC shall analyze each case to recognize indigenous peoples.

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[694] '[E]l reconocimiento de derechos colectivos como naciones y pueblos indígena originario campesinos, responderá a la concurrencia de cualquiera de los elementos de cohesión colectiva descritos supra, es decir a la existencia de identidad cultural; idioma; organización administrativa; organización territorial; territorialidad ancestral; ritualidad y cosmovisión propia, entre otras; por tanto, a pesar de la influencia de elementos organizativos propios de un proceso de mestizaje, en la medida en la cual se identifique cualquiera de los elementos de cohesión colectiva antes señalados, la colectividad será sujeta de derechos colectivos y le será aplicables todos los efectos del art. 30 en sus dos parágrafos de la Constitución, así como los efectos del principio de libre-determinación inherente a los pueblos y naciones indígenas originario y campesinos plasmado en el segundo artículo de la CPE.' [free translation: 'the recognition of collective rights as nations and indigenous peoples originally peasants, will respond to the concurrence of any of the elements of collective cohesion described above, that is to say the existence of cultural identity; language; Administrative organization; Territorial organization; ancestral territoriality; ritual and own worldview, among others; therefore, despite the influence of organizational elements of a miscegenation process, to the extent that any of the elements of collective cohesion identified above is identified, the community will be subject to collective rights and all effects will be applicable of art. 30 in its two paragraphs of the constitution, as well as the effects of the principle of self-determination inherent in the indigenous and peasant indigenous peoples and nations embodied in the second article of the CPE.]' *SCP 1422/2012* (n 677) para IV.2.

[695] *SCP 0388/2014* (n 28).

[696] Further detail in Annex B.

[697] *SCP 1422/2012* (n 677); *SCP 0388/2014* (n 28).

However, not all unions, groups, or organizations in Bolivian rural areas are indigenous peoples. For example, the PCC resolved a case[698] declaring that an agrarian union located in Shinahota - Cochabamba was not an indigenous people and, as a result, it could not exercise indigenous jurisdiction. The case dealt with the fact that the union decided, arguing alleged indigenous justice, to expel a community member and extinguish his land property destined to cultivate coca leaves, even though he won a land possession trial against the union before the agri-environmental jurisdiction. However, it is underlined that this was the only case within the analysis period of this dissertation in which the PCC decided that a peasant union was not an indigenous people.

h) Permanence. The Constitution implies and presupposes IPs' permanence from before the Spanish colonial invasion till the present. Additionally, Bolivia is 'committed to the full development and free determination of the peoples,'[699] to preserve their continuity and distinctiveness.

i) Recognition by others. The Constitution does not expressly require that others recognize IPs for them to exist,[700] as Erica-Irene Daes and the World Bank required.

j) Voluntary identification and distinction. Remarkably, the Bolivian Constitution disregarded C169's voluntary identification of IPs as a fundamental criterion for identifying and recognizing who are indigenous peoples under article 1.2 of the C169, notwithstanding that Bolivia passed bill 1257 on 11 July 1991[701] approving the C169 and ratified it on 11 December of 1991. Furthermore, the Constitution does not consider self-identification at all.[702] Considering both traits, and from the constitutional point of view, IPs are those defined by the Constitution and not those who self-identified as such. However, the PCC declared that C169, [703] as a component of the Constitution [or constitutionality block[704]] imposes the right to self-identification, which is a fundamental criterion for considering human collectivities as IPs.

# Conclusions

The present chapter has attempted to give an analytical meaning to IPs through international sources and the Bolivian Constitution. From the first sources, ten categories of analysis have been identified to characterize IPs which, in turn, portray the evolution of their notion from 1957 to 2017. At the same

[698] *Sentencia Constitucional Plurinacional 1248/2013-L* [2013] Plurinational Constitutional Court Expediente 2011-24856-50-AAC, Carmen Silvana Sandoval Landivar.
[699] Elkins, Ginsburg and Melton (n 233) preamble.
[700] The Argentinian constitution is an example of the recognition of IPs by its Congress as a prerequisite in its article 75.17: 'Corresponde al Congreso:… 17. Reconocer la preexistencia étnica y cultural de los pueblos indígenas argentinos' in Constitución de la Nación Argentina, Ley No. 24.430 2018.
[701] Ley 1257 [Law 1257] 1991.
[702] It does not mean that the Bolivian constitution excludes self-determination or cultural identity. On the contrary, it expressly admits them as collective rights in its article 30 numerals 2, 3, 4, 12, 14, 15, among others.
[703] *SCP 1422/2012* (n 677); *SCP 0388/2014* (n 28); *SCP 0036/2019-S4* (n 690).
[704] The Bolivian Constitution asserts that human rights recognized in international treaties and conventions ratified by the Legislative Assembly shall prevail over internal law. Although constitutional article 410.II acknowledges that the Constitution is the supreme norm of Bolivia, it recognizes 'the international Treaties and Conventions in the matter of human rights and the norms of Communitarian Law, which have been ratified by the country' [following the Constitution translation of Elkins, Ginsburg and Melton (n 233).] as a component of the Constitution [termed by Constitution's article 410.II in Spanish as *'bloque de constitucionalidad'* or 'constitutional block' in its literal translation]. Furthermore, article 256.II imposes that the constitutional rights shall be interpreted according to international human rights treaties when the latter provides more favorable norms. The content of both norms did not exist in previous Bolivian constitutions.

time, it was reflected on whether these ten categories could be universal, essential, and flexible to characterize IPs. The results, synthesized in Table 11, show that the categories of 'relative qualification,' 'negative experiences (persistent or not),' and 'recognition by others' do not meet one or more of these characteristics, while the remaining seven do. As a result, from the analysis of the selected sources, it is possible to conclude that IPs may have the following traits.

- They are collectivities capable of being holders of collective rights and not merely a sum of individuals.
- They exist prior to the conquest, colonization, or States foundation.
- They willingly persist and continue their existence to the present at different degrees within one or more countries.
- They have a relationship with their lands, territories, or resources, which are crucial for their cultural, spiritual, ethnic, economic, or social subsistence.
- They are distinguished through their cultures, institutions, languages, ways of life, ethnicity, spirituality, procedures, practices, traditions, worldviews, or particular relationships with their lands, territories, or resources.
- They self-identify implicitly or explicitly based on the previously referred characteristics.

Since these characteristics emerge from the consulted sources, they are limited to reflecting their contents. In addition, it is understood that the IPs could be identified or recognized if all of them concur. On the other hand, the various internal and external situations in which IPs exist makes it essential that these traits be analyzed with flexibility, since they can have different ways and intensities in each specific case. For instance, not all the diverse elements of distinctiveness should be satisfied, but the ones that each indigenous people may have.

Then, to understand Bolivia's perspective regarding this characterization, its constitutional definition of IPs was contrasted with the ten identified categories of international sources. As a result, the IPs' definition set by the Bolivian Constitution complies with six of the seven characteristics that meet the universal, essential, and flexible criteria, i.e., Bolivian IPs are collectivities that have existed within Bolivia since before the Spanish colonization and share and distinguish themselves from others based on their cultural identity, language, historical tradition, institutions, territoriality, or worldview (cf. Table 11).

However, the Bolivian Constitution also applies two of the three traits that do not meet the universal, essential, and flexible criteria because it requires that IPs had experienced the Spanish colonial invasion and implies that IPs are the ones identified by the Constitution's definition. The Constitution does not use the relative qualification and self-identification characteristics (cf. Table 11).

The PCC's case law interpreted and comprised the constitutional definition of IPs stating two relevant changes and two clarifications. The first and more significant change is the obligation to apply self-identification as a fundamental criterion to identify IPs, taking such criterion from C169 as a component of the Bolivian constitutional law [constitutionality block]. The second change corresponds to modifying the conjunction 'and' by 'or' in the constitutional enumeration of IPs' shared features to identify them (such as language and culture, among others). In other words, the existence of any of these features is sufficient to consider their distinctiveness.

The first clarification, closely related to the latter change, regards that IPs in Bolivia, despite the various forms or names they may have, human communities that meet some of the characteristics of the Constitution are IPs. Finally, the second clarification concerns the meaning of 'territoriality' as any possible relation of IPs with their lands, territories, and resources, such as legal or traditional property,

control, possession, or occupation, whether they have or had access to them. For these reasons, the jurisprudence of the PCC that is analyzed to evaluate the effectiveness of the exercise of indigenous jurisdiction in this case study has the quality of encompassing and widely recognizing diverse classes of communities as indigenous peoples, such as peasant unions, agrarian unions, agricultural producers, or even rural neighborhood boards.[705]

*Table 11: Indigenous peoples characteristics which met (1) or not (0) the universal, essential, and flexible criteria regarding the categories of analysis proposed*

| Category of analysis | Universal | Essential | Flexible | Indigenous peoples' characteristics | Bolivian Constitution |
|---|---|---|---|---|---|
| Designation as a sum of individualities or a collectivity | 1 | 1 | 1 | It is a collectivity | 1 |
| Existence within one or more countries | 1 | 1 | 1 | It exists within one or more countries | 1 |
| Relative qualification | 0 | 0 | 0 | -- | 0 |
| Negative experiences (persistent or not) | 1 | 0 | 1 | -- | 1 |
| Aboriginality | 1 | 1 | 1 | It exists prior to the conquest, colonization or the foundation of states | 1 |
| Land, territory, and resources | 1 | 1 | 1 | It has a relationship with its lands, territories, or resources, which is crucial for its cultural, spiritual, ethnic, economic or social subsistence | 1 |
| Distinctiveness | 1 | 1 | 1 | It distinguishes for its culture, institutions, languages, ways of life, ethnicity, spirituality, procedures, practices, traditions, worldviews, or particular relationship with its lands, territories, or resources | 1 |
| Permanence | 1 | 1 | 1 | It willingly persists and continues its existence to the present at different degrees | 1 |
| Recognition by others | 0 | 0 | 0 | -- | 1 |
| Voluntary identification or distinction | 1 | 1 | 1 | Self-identification based on the existence of the rest of characteristics | 0 (PCC 1) |

*Source:* Self-made.
*Note*: The Bolivian Plurinational Constitutional Court (PCC) through C169 corrected IPs' self-identification characteristic.

Recapitulating, indigenous peoples in the Bolivian perspective consist of a) every human collective that b) self-identifies as such; c) shares cultural identity, language, historical tradition, institutions, or worldview; d) has any possible relationship with their lands, territories, and resources, such as legal or traditional property, control, possession, or occupation, whether they have or had access to them; e) whose existence predates the Spanish colonial invasion; and that f) together with all the Bolivian citizens, intercultural and Afro-Bolivian communities conform the Bolivian people or nation.

[705] Cf. Annex B.

From this collection of characteristics of the indigenous peoples, it is possible to interpret these human communities' fragility and the intensity of their will to remain. To do this, IPs treasure, protect, and assert their own worldviews, institutions, cultures, territories, and other particularities against others, discussing, claiming, and adjusting to a certain extent, through their self-determination, to oppression, colonization,[706] and States regulations impose on them. The resilience of IPs depends on their ability to adapt to various factors[707] and their perseverance in shaping legal, political, social, and economic contexts.[708] In this framework, it is not only expected that IPs periodically negotiate the scope of their prerogatives with the larger societies and States that surround them, but it is also desirable that they force the survival of their distinctiveness over the restrictions and prohibitions that they have historically received. Although, since the middle of the last century, 'the legal status of indigenous peoples around the world has significantly improved... substantial challenges remain, particularly in the areas of enforcement and implementation.'[709]

IPs' survival seems to depend on them exercising their self-determination and having a margin of irreverence to gain recognition of their rights, freedoms, and dignity.[710] How else could they have managed to endure and remain as indigenous peoples? How could they have made their way here if they had only succumbed to the desires, impositions, limitations, prohibitions, and, in general, the ways of being of those who have colonized, subjugated, or defined them? If IPs were strictly obedient and submissive to the various frameworks imposed on them, they would have been irremediably absorbed, their institutions definitively extinct, and their collective rights overlooked. The indigenous peoples who have managed to maintain themselves up to the present have an undeniable power that vehemently pushes their continuity, despite the many concessions they have made.

[706] Elizabeth Fast and Delphine Collin-Vézina, 'Historical Trauma, Race-Based Trauma and Resilience of Indigenous Peoples: A Literature Review' (2010) 5 First Peoples Child & Family Review: An Interdisciplinary Journal Honouring the Voices, Perspectives, and Knowledges of First Peoples through Research, Critical Analyses, Stories, Standpoints and Media Reviews 126.

[707] For instance, in a study in Canada, the authors conclude their resilience may come from 'regulating emotion and supporting adaptation through relational, ecocentric, and cosmocentric concepts of self and personhood; revisioning collective history in ways that valorize collective identity; revitalizing language and culture as resources for narrative self-fashioning, social positioning, and healing; and renewing individual and collective agency through political activism, empowerment, and reconciliation.' Laurence J Kirmayer and others, 'Rethinking Resilience from Indigenous Perspectives' (2011) 56 The Canadian Journal of Psychiatry 84, 84.

[708] Following Ovid's inspiring quote: *'gutta cavat lapidem'* from Publius Ovidius Naso, Epistulae Ex Ponto, IV, x, 5. This quote was translate from Latin to English in 'Ovid (43 BC–17) - Ex Ponto: Book IV' <https://www.poetryintranslation.com/PITBR/Latin/OvidExPontoBkFour.php#anchor_Toc34218029> accessed 23 July 2022. as 'drops of water carve out stone.' However, it is commonly translated as 'dripping water hollows out stone, not through force but through persistence.'

[709] Wiessner (n 7) 138.

[710] As Lauterpacht lucidly argued that 'the vindication of human liberties does not begin with their complete and triumphant assertion at the very outset. It commences with the recognition in *some* matters, to *some* extent, for *some* peoples, against *some* organ of the state.' Hersch Lauterpacht, *An International Bill of the Rights of Man* (Columbia University Press 1945) 56–57.

# Chapter 3: The Collective Right to Exercise Indigenous Jurisdiction from the Bolivian Perspective

*If a collective constituted in an organized and independent unit decides and acts, what legitimacy other than force and violence do others have to deny its rights?*

*Rights are, in the end, a sanction of morality.*

## Introduction

Though some still contest the existence and acceptance of collective rights, nowadays, they have surpassed the law theory threshold and become recognized in international and local legal frameworks. Therefore, while agreeing with collective rights, it is relevant to consider their core foundations to comprehend their nature, elements, and effects. With this purpose in mind, it is proposed as a working premise that collective rights are a species of rights in general, so its elements also include a right holder, an object, and an interest that suffices to ground duties on others, i.e., duty bearers.

These three elements are dissected in this chapter to justify, within the framework of this case study, that the right to exercise indigenous jurisdiction is a collective right whose right holders are the indigenous peoples and whose duty bearers are their members and the State. Furthermore, to gain a greater perspective of the context of this right and its rights holders and duty bearers, this chapter describes some referential aspects of Bolivia's transition to a plurinational State. Finally, it also localizes its scope by depicting the powers, limits, and duties emerging from this right in Bolivia's international and local legal frameworks and identifying the existing legal boundaries between its duty bearers and right holders.

# Section 3.1: A Notion of Collective Rights

## Individualism versus collectivism

There is a relatively small body of literature concerned with collective rights, especially regarding sound theoretical studies on the subject. Marlies Galenkamp's doctoral dissertation, later published as a book in 1993 and 1998,[711] is a profound study in this regard. It gives an 'unusual theoretical interest and potential practical significance' [712] to collective and individual rights. This author states that there are tensions between individualism and collectivism. The individualist approach to human rights, emerging from the aftermath of the Second World War, makes it possible to homogenize human beings: all of them are equal. The author argues that the 1965 United Nations (UN) Convention on the Elimination of All Forms of Racial Discrimination is the evidence of this statement, given that it 'bears an indubitably individualistic outlook' [713] in which everyone should be treated equally, with the same rights, rendering minority rights redundant.

The individualistic perspective causes tensions with collectivities because a collectivity tends and is inclined to be different from other groups, which is particularly true, argues Galenkamp, since the identity of a collectivity depends on it. On the contrary, to hold an individualist approach is equivalent, in the best of cases, to hide the different ones -all are equal- and, at worst, to deny their existence. A radical and purely individualistic approach may produce assimilationism and different cultures' extinction. Conversely, 'the introduction of special provisions for some groups -and thus granting them special treatment- may in some instances negate the validity of universal human rights guarantees.' [714] The collectivist approach concerns the existence of a deep community sense and 'may lead to an exaltation of collective identity.' [715] Moreover, 'this may open the door to discrimination and exclusion,'[716] where the society of equals may discriminate against the different ones.

Galenkamp defines collective rights 'as those non-reducible rights which pertain to collectivities as such in order to protect their potentially threatened collective interests.' [717] That is to say, not in the individualistic perspective or legal fictions, but

> ‘the existence of *de facto,* pre-legally existing collectivities …collective rights must be seen as those rights that cannot be reduced without remainder to an aggregate of individual rights, to a specific kind of individual rights or to the rights of a merely fictitious collective entity.’[718]

[711] Galenkamp (n 165).
[712] J Donnelly, ‘Individualism versus Collectivism. The Concept of Collective Rights’ (1995) 24 Rechtsfilosofie en Rechtstheorie 215, 215.
[713] Galenkamp (n 165) 30.
[714] ibid 135–136.
[715] ibid 138.
[716] ibid 137.
[717] ibid 7.
[718] ibid 5.

More recently and with a theoretical depth analysis as well, Dwight Newman[719] came to a different conclusion, criticizing Galenkamp's approach.[720] He considers that there is not an intrinsic contradiction between individual and collective rights, mainly because there exist similarities in their foundation that 'would actually seem to be an argument *for* collective rights rather than an argument against them,' [721] and that 'the central values of collectivity need not create a "deep" community in order to ground collective responsibilities and …collective rights.' [722] However, he agrees with Galenkamp that the 'collective interest is not simply reducible to, or even an aggregative function of, its members' individual interests.' [723]

Dwight overtly takes Joseph Raz's 'interest theory of rights' [724] and his 'humanistic principle' as a foundation for his approach.[725] In his quest for a general theory of collective rights, the author claims a correlation of dependence of some individual rights on collective rights: 'if we accept certain individual rights, we presuppose certain collective rights.' [726] He argues that '[a]n individual interest necessarily depends on a collective interest if and only if the individual interest either does not meaningfully exist or cannot meaningfully be fulfilled in the absence of a collective interest being fulfilled.' [727] The individual moral right to freedom of religion, for instance, depends on its collective dimension,[728] as it happens with the collective right to cultural heritage regarding the individual interest to enjoy culture in the community.[729]

[719] Dwight Newman's 'Community and Collective Rights. A theoretical Framework for Rights Held by Groups' published in 2011. From a different perspective, the author 'offers a detailed argument in defence of the claim that collectivities hold moral rights. This argument serves as the foundation of his novel theoretical framework, a framework intended to guide attempts to identify those collectivities that are rights holders.' RD Robb, 'Moral Theory, Autonomy, and Collective Rights: A Response to Dwight Newman' (2012) 25 Canadian Journal of Law and Jurisprudence 483, 483.

[720] Dwight Newman argues against Miodrag Jovanovic's book, Collective Rights: A Legal Theory, on the ground that 'a full-fledged adoption of value collectivism is not necessary to provide a justification for irreducibly collective rights and that the unnecessary adoption of such a theoretical construct may, in practical terms, work counter to the ongoing entrenchment of the rights it seeks to justify, thus becoming what it will categorize as a 'self-threatening theory'.' In Dwight G Newman, 'Value Collectivism, Collective Rights, and Self-Threatening Theory†' (2013) 33 Oxford Journal of Legal Studies 197, 197.

[721] Newman (n 211) 50.

[722] ibid.

[723] Newman (n 720) 61.

[724] 'Rights are not ordinary interests but those that, because of their particular weight, ground a duty. In other words, they have a special force distinct from ordinary interests. To argue for the existence of collective rights is to argue that at least some collective claims share this special force.' Newman (n 211) 11.

[725] The author asserts that it is the 'individual well-being that is of "ultimate concern".' The 'ultimate concern' at issue, of course, is that within the realm of what can be understood through philosophical means and bears no anti-theistic implications.' ibid 12.

[726] ibid 77.

[727] ibid.

[728] Dwight cites the case Bessarabian Church v Moldova where the European Court of Human Rights adjudicated that 'the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society' ibid 78.

[729] ibid 80. It was observed that certain individuals acquire additional moral rights for being members of collectivities, and it is against egalitarianism. Dwight responded that 'no all rights are necessarily subject to simplistic independent egalitarian distribution,' ibid 81., then it is not necessary to compensate others with benefits of equal value.

Alongside the humanistic principle, Dwight conditions collective rights to have the moral quality of not having *pervasive conflicts* with individual rights. [730] He concludes that, albeit conflicts of rights almost inevitably exist, there is pervasive compatibility of individual and collective rights. To justify his argument, he resorts to McDonald, who claims that 'collective and individual rights are both grounded by important human interests, there is no principled reason why the interests protected by particular collective rights might not be internally related to interests protected by particular individual rights.' [731] The author asserts that collective and individual rights are internally related because the humanistic principle requires that the collective interest serves the individual interest. In addition, two moral principles link both types of interests as a set of conditions, termed by the author as *service principle* (internal relations with their members) and *mutuality principle* (external relations with non-members and other collectivities). [732] These conditions are what the author refers to as *community conditions*.

> '[T]he service principle, which is a normative requirement that collectivities serve their members' interests in a broad sense to be developed,… derives from the humanistic principle (the proposition that what ultimately matters is the well-being of individual persons) and is a fundamental normative requirement for a collectivity to make any legitimate claims. That is… for a collectivity to legitimately mediate for its members, for the advancement of a collective interest to be consistent with the humanistic principle, it must provide goods morally worth preferring over the goods that could be attained without it.'[733]

On the other hand, the mutuality principle imposes constraints on groups to avoid affecting or damaging other collectivities and their members, i.e., 'collective rights are internally premised on the sort of respect for other collectivities and individuals demanded by the Mutuality Principle.' [734]

Way before, Joseph Raz argued that collective rights correspond to an accumulative sum of individual interests, contradicting Galenkamp's and Dwight's irreducible and non-aggregative posture. Raz claimed that 'collective rights are typically rights to collective goods,'[735] and they exist if three conditions are met. In the author's wording:

> 'First, it exists because an aspect of the interest of human beings justifies holding some person(s) to be subject to a duty. Second, the interests in question are the interests of individuals as members of a group in a public good and the right is a right to that public good because it serves their interest as members of the group. Thirdly, the interest of no single member of that group in that public good is sufficient by itself to justify holding another person to be subject to a duty.'[736]

Raz explained that the first condition regards humanism because, as with all rights, they 'can only be there if they serve the interests of individuals.' [737] However, the individual interests in a public good are not enough to justify a duty. Thus, it is indispensably an aggregate of individual interests, says Raz, to

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[730] 'Classes of rights *pervasively* conflict, one might say, when there is an array of conflicts between rights within these classes such that the duties in conflict are so quantitatively prevalent and/ or qualitatively weighty that one would reasonably question whether the core interests protected by the rights can simultaneously be protected to any meaningful extent.' Newman (n 211) 92.
[731] As cited by ibid 102.
[732] ibid 107.
[733] ibid.
[734] ibid 132.
[735] Raz (n 184) 208.
[736] ibid.
[737] ibid.

constitute a collective right: [738] 'collective or group rights represent the cumulative interests of many individuals who are members of the relevant groups. It follows that there is nothing essentially non-aggregative about rights.' [739]

Will Kymlicka reasoned his theory of group-differentiated rights,[740] rejecting at some extent the existence of collective rights, or at least highlighting the value of individual rights within the framework of liberal democracy, in which 'freedom and equality of individual citizens'[741] are paramount.[742] A little context is provided to understand his position further. He understood that nowadays, one of the most significant challenges facing democracy is the conflicts of ethnic and national groups: 'minorities and majorities clash over such issues as language rights, federalism and regional autonomy, political representation, religious freedom, education curriculum, land claims, immigration and naturalization policy, even national symbols.' [743] On the one hand, there is an assumption that everyone is equal and has to lose her ethnic or national identity to fit into the larger and, allegedly, more advanced group.[744] On the other hand, there are minority groups challenged over their ways of life and fighting for their 'recognition and accommodation of their cultural differences.' [745] Kymlicka cites Van Dyke and Ephraim Nimni to state that liberalism and socialism 'led to a denial of rights of minority cultures.' [746] Furthermore, he stated that even though the assimilationism paradigm of backward minority cultures of the 19th century is currently fading, it still influences reactions regarding minority rights. He also contrasted Jeremy Waldron's[747] view of the modern *kaleidoscope culture* with Avishai Margalit's and Joseph Raz's position as minority rights defenders. While the latter claimed that minorities 'embrace cultural interchange' and simultaneously try to preserve their culture and authenticity,[748] Waldron understood that in the modern world, it is impossible to differentiate cultures given the globalization and cultural interchange processes phenomena. As a result, to preserve authenticity is to deny this reality by adopting inauthentic ways of life.

Kymlicka refers to three broad and leading models of cultural pluralism in the States, although he accepts that each State that experiences pluralism is singular. He cites Nathan Glazer and Michael Walzer to comment on the *non-discrimination principle* and the *group rights* models. In the former, the cultural identity 'should neither be supported nor penalized by public policy… [living its permanence

[738] Raz explains collective rights through the *typical collective good* of self-determination in which the interest of a single group member 'does not justify imposing such far-reaching duties on so many other people.' So then, a single member does not have the collective right to self-determination.
[739] Raz (n 184) 187.
[740] Dwight separates his theory of collective rights from Will Kymlicka. He explains that contrary to his general collective rights theory, 'Kymlicka's main development of the theoretical bases for his approach avoids talk of collective rights, preferring to employ the concept of 'group-differentiated rights' as rights held by members of groups on account of their group membership.' Dwight G Newman, *Community and Collective Rights: A Theoretical Framework for Rights Held by Groups* (Hart Pub 2011) 13–14.
[741] Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford University Press 1996) 34.
[742] To clarify, Kymlicka comprises that many forms of liberal and collectivist (or communitarian) perspectives are harmonious. ibid.
[743] Will Kymlicka, 'Introduction', *The rights of minority cultures* (Oxford University Press 1995) 1.
[744] Kymlicka argues that this assumption is the basis of European assimilationism and colonizing positions.
[745] Kymlicka (n 743) 3.
[746] ibid 5.
[747] Waldron expressed that '[b]y its very nature, a theory of rights is an individualistic theory. Rights purport to secure goods for individuals: that is an elementary consequence of their logical form. A right is always somebody's right, and we never attempt to secure things as a *matter of right* unless there is some individual or individuals whose rights are in question' in Jeremy Waldron, *Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man.* (Methuen 1987) 185.
[748] Kymlicka (n 743) 7–9.

to] the private sphere… the state responds with "salutary neglect"," [749] while the latter 'involves public measures aimed at protecting or promoting an ethnocultural identity.' [750] Kymlicka contends that the non-discrimination principle is a model of group rights in which the State is not neutral because it 'supports the majority's language, history, culture, and calendar;' [751] and that it serves the assimilationism goal in contrast with the model of group rights that allows the differences. The third model, citing Iris Marion Young, is the *relational theory of difference* that proposes creating '[a] "heterogenous public" – one which brings groups together as groups, and which encourages the expression of group differences, but within common institutions and a shared commitment to the larger political order.' [752] A way to achieve the accommodation of multiculturalism and 'some forms of group difference' used by countries is to grant specific constitutional measures and group rights, which Young calls *differentiated citizenship*.[753]

Kymlicka also refers that there exist at least three forms of group-specific rights: *self-government rights, polyethnic rights*, and *special representation rights*, which sometimes overlap.[754] The former concerns political autonomy and territorial jurisdiction and is provided by several mechanisms.[755] Polyethnic rights 'are intended to help ethnic groups and religious minorities express their cultural particularity and pride without hampering their success in the economic and political institutions of the dominant society,'[756] such as religious practices and dress codes. In contrast with self-government, polyethnic rights 'are usually intended to promote integration into the larger society.' [757] Finally, representation rights regard the political representation of national minorities to avoid 'oppression or systemic disadvantage,' although often they are claimed as a 'corollary of self-government.' [758]

In his book *Multicultural Citizenship* Kymlicka discusses the truthfulness of *collective rights* terminology for two main reasons. The first is because it is a heterogeneous category whose alleged different rights have little in common, and the second is because it erroneously allows assuming a conflict of individual and collective rights (as individuals versus collectivities).[759] Some of the arguments of his group-differentiated-citizenship are driven to precise and overcome both aspects. As a result, he proposes to differentiate the possible claims of collectivities (ethnic or national groups) and the kinds of rights that would serve such ends. Regarding claims, Kymlicka distinguishes two possible ones: *internal restrictions* ('the claim of a group against its own members' [760]) and *external protections* ('the claim of a group against the larger society'[761]). While the former seeks to protect from the 'destabilizing impact of internal dissent' (individuals not accepting the collective way), the latter 'is intended to protect the group from the impact of *external decisions*' of other groups or the larger

[749] ibid 9.
[750] ibid 9–10.
[751] ibid 10.
[752] ibid 12.
[753] Kymlicka (n 741) 28. cites Iris Young (1989).
[754] 'An oppressed group, like the disabled, may seek special representation, but have no basis for claiming either self-government or polyethnic rights. Conversely, an economically successful immigrant group may seek polyethnic rights, but have no basis for claiming either special representation or self-government, etc.' ibid 33.
[755] For example, federalism 'divides powers between the central government and regional subunits (provinces/states/cantons). Where national minorities are regionally concentrated, the boundaries of federal subunits can be drawn so that the national minority forms a majority in one of the subunits' (as happens in Canada), but not every country became federal on the basis of cultural diversity (Germany, Australia, USA) ibid 27–28.
[756] ibid 31.
[757] ibid.
[758] ibid 32.
[759] ibid 34–35.
[760] ibid 35.
[761] ibid.

society.[762] The author notes that while external protections may only exist in multinational or polyethnic States, internal restrictions exist in both homogeneous nation-states and heterogeneous states.[763] Likewise, self-government rights, polyethnic rights, and special representation rights, depending on the circumstances, 'can serve both aims… external protections, and… impose internal restrictions.' [764]

According to Kymlicka's point of view, none of those possible claims are necessarily fair or adequate to liberal democracies. The author calls internal restrictions only to those limitations that cause oppression for being against democracy and liberal rights[765] and, on the other hand, understands that external protections are also liable to cause 'unfairness between groups,' [766] although not necessarily. Consequently, he argues that in a liberal democracy, group-differentiated rights are plausible only if they seek fairness and are against oppression.[767]

These group differentiated rights are somewhat different from what is generally or naturally understood as collective rights. In Kymlicka's wording, collective rights are almost always deemed as 'accorded to and exercised by collectivities… [and] are distinct from, and perhaps conflicting with, the rights accorded to the individuals who compose the collectivity.' [768] However, they are exerted and agreed 'to individuals, some to the group, some to a province or territory, and some, where numbers warrant.'[769] Are those rights collective or individual? From the individualist or collectivist perspective, is the interest of individuals or the community preferable? Kymlicka responded that such questions are infertile and irrelevant, as is discussing whether or not the interests of communities are reducible to their members since what matters is that they are group-specific rights.[770]

It is possible to understand Kymlicka's position as a different conceptual framework that allows analyzing the reality of rights related to groups. It is self-evident that the protections and restrictions emerging from multinational or multiethnic States require a collection of certain rights and laws that could be classified and reclassified according to their purposes, nature, or conditions to understand them better. Even so, these ways of understanding them are not inevitably able to delegitimize or legitimize the existence of collective or individual rights. It seems to be the case of Kymlicka's understanding since despite differentiating three kinds of group rights (self-government rights, polyethnic rights, and special representation rights) and two generic purposes they can address (internal restrictions and external protections), he could not deny or prove the existence of collective rights.

On the contrary, he presented practical issues stemming from the political and legal coexistence of minority groups and individuals amid a larger society. The conceptual set applied by Kymlicka to tackle these complex realities, which he designates in a generic unit as 'group-differentiated citizenship,' leads this author to frame collective rights in a different sense as group rights. It should be noted that collectivities are not citizens of a State since, for instance, they do not vote in the election of presidents,

[762] ibid.
[763] ibid 37.
[764] ibid.
[765] 'It is one thing to require people to do jury duty or to vote, and quite another to compel people to attend a particular church or to follow traditional gender roles.' ibid 36.
[766] ibid.
[767] '[M]inority rights are not only consistent with individual freedom, but can actually promote it.' ibid 75.
[768] ibid 45.
[769] ibid. Kymlicka exemplifies that individuals exercise minority language rights, the hunting and fishing rights of indigenous peoples are exercised by the tribe, or the 'right of the Québécois to preserve and promote their culture, affirmed in the existing system of federalism, is yet a fourth case: it is exercised by the province of Quebec, whose citizens are predominantly Québécois, but also include many non-francophones. These are all group-differentiated rights, since they are accorded on the basis of cultural membership.' Ibid.
[770] ibid 45–48.

nor can they be elected as such, so trying to make sense of collective rights from the concept of citizenship implies a partial reading of reality from the individualism logic. Thus, when this author designates 'group-differentiated rights,' he does not refer to rights whose holders are collectivities but to individual rights, i.e., differentiated rights whose holders are citizens who are distinct from the rest (larger society) because they belong to minority groups. Kymlicka is concerned first and foremost with liberal democracies constituted by citizens whose prerogatives depend primarily on the States. For these reasons, it is not possible to share Kymlicka's assertion:

> 'We can now see why the term 'collective rights' is so unhelpful as a label for the various forms of group-differentiated citizenship. The problem is partly that the term is too broad, and partly that it fails to distinguish internal restrictions from external protections. But a deeper problem is that it suggests a false dichotomy with individual rights.' [771]

Collective rights are not a label of the various forms of group-differentiated citizenship and are not necessarily intended to fill such political issues. Instead, collective rights are collective rights, which can conflict with individual rights, which can be classified and reclassified in various ways, and which can fulfill various functions depending on the interest of their holders. The possible legal, political, economic, social, or cultural vicissitudes they may experience do not affect their definition and nature but rather their recognition, implementation, exercise, and effectiveness, among others.

Having established that collective entities may have rights, it is highlighted that, from the reading of the presented authors, collective rights discussions mainly concern the 'collective' adjective and not the 'rights' noun. Then, to tackle the 'collective' scope of rights, the following pages will discuss the structural elements of rights (the subject, interest, and object) in relation to a collectivity. In other words, which entity could be considered the subject of a collective right, what interests might drive this sort of subject, and, finally, on which objects these interests may fall.

## The Subject of Collective Rights

What conditions must fulfill a collectivity to be the bearer of collective rights or, on the contrary, is any given collectivity able to be the holder of such rights? Although this question could indirectly aim at justifying whether a collectivity is a subject, its explicit purpose is to take a position on whether collectivities are holders of rights because they have certain characteristics, such as moral agency, or whether, on the contrary, any set of individuals aggregation could be entitled as a right holder.[772] To answer this question, the positions of Marlies Galenkamp and Dwight Newman are analyzed.

Marlies Galenkamp refers to collective rights as *communitarian rights*, in which community and solidarity are presupposed in a strong sense, i.e., as a constitutive community (*Gemeinschaft*).

[771] ibid 45.

[772] Collectivities as moral right holders is a quality largely disputed among authors. Dwight cites Kymlicka, who argues that: '[g]roups have no moral claim to well-being independently of their members – groups just aren't the right sort of beings to have moral status. They don't feel pain or pleasure. It is individual, sentient beings whose lives go better or worse, who suffer or flourish, and so it is their welfare that is the subject-matter of morality.' W. Kymlicka, *Liberalism, Community and Culture* (Oxford, Clarendon, 1989) as cited by Newman (n 211) 30. Dwight Newman cites Keith Graham who responded that 'such premise conflicts with the reality of moral harms not involving sentience' for example offence and deception; however, he clarifies that it does not respond to the whole Kymlicka's argument which also concerns lives going better or worse, suffering or flourishing. ibid 30–31.

> 'The crucial criterion for distinguishing collective rights from other moral rights is not so much whether the presence of a community and some solidarity is assumed, for this is also presupposed by almost all rights-theorists, but what kind of community and solidarity is presupposed. By speaking of collective rights, the presence of a constitutive community (a *Gemeinschaft*) is presupuposed' [773] [with strong solidarity links].

Galenkamp uses the 'famous terminology of the sociologist Tönnies' regarding *Gemeinschaft* versus *Gesellschaft.*[774] The former describes a 'strong, traditional and closed pre-industrial community in which human relationships are intimate and face-to-face,' the conception of the good is mostly homogenous, and 'individuals as such are not much valued, but they are valued as members of a community… [which is] regarded to be logically and morally prior to the individual, in the sense that it gives people their sense of identity.' [775] In contrast, *Gesellschaft* 'denotes a modern, complex, open and pluralistic society in which instrumental relationships between people prevail,' the conception of the good is mostly heterogeneous, its society is 'no more than the aggregate of interest-seeking individuals,' and the identities of individuals are 'at least partly independent of the community to which he or she happens to belong.' [776] Galenkamp establishes that a collectivity is more than the sum of individuals over a collective interest, as would occur in the case of the interest in a healthy environment: such aggregate neither equals a collectivity nor produces collective rights.[777] Then, under her perspective, the trait of non-reducible collectivity to a mere sum of its members or individuals is the main condition to being a collective right holder.[778]

In the endeavor of answering which collectivities may possess a collective moral agency, Galenkamp argues that *a collectivity must have an intention and, therefore, a structure*[779] to adopt decisions: 'it is only where there is a certain group structure, exceeding the aggregate level, that one may speak of a collective moral agent.' [780] This author requires two additional preconditions: *a potentially disadvantaged group* with a *distinct identity*. Regarding the latter, the criteria followed in the distinctiveness of indigenous peoples can be applied.[781] Instead, the first one

> 'flows from the generally and essentially protective nature of rights. Since rights always aim at the protection of potentially threatened interests, in order to speak of rights, there has to be

[773] Galenkamp (n 165) 84.
[774] ibid 11. *Gemeinschaft* is generally translated as *communitas* or community and *Gesellschaft* as *societas* or society. ibid 67.
Interestingly, the Bolivian Plurinational Constitutional Court held that 'under the conception of the native indigenous peoples, the person, or jaqi, makes sense in the community. This person ... is conceived from the community, which supposes that the very existence of the Aymara, Quechua, Guaraní "being" and other plurinational identities does not exist outside of their communities. The person makes the community while the community makes the person (jaqi).'*Declaración Constitucional Plurinacional 0006/2013* [2013] Tribunal Constitucional Plurinacional Expediente: 01922-2012-04-CAI, Soraida Rosario Chánez Chire [III.7.1].
[775] Galenkamp (n 165) 67.
[776] ibid 68. 'It is commonly accepted that the origin of the human rights doctrine can be traced back to the transformation from a traditional to a modem worldview. This transformation can be most visibly seen in the seventeenth and eighteenth centuries in Western Europe. In Tönnies' terminology, it meant a transformation from a *Gemeinschaft*, a closed community of persons having a common conception of the good, into a *Gesellschaft*, a rather loose and open association of individuals with conflicting interests and ends.' ibid 56.
[777] Galenkamp denies that individuals can exist outside a collective or that a collective exist without individuals since such extremes deny and skew reality. Galenkamp (n 165) 88–90.
[778] ibid 88.
[779] Is does not have to be a formal structure or formally recognized structure, given that 'the traditionally known subjects of collective rights, such as ethnic minorities or indigenous peoples, generally do not fulfil this rather formal condition.' ibid 92.
[780] ibid 94.
[781] Cf. 'Distinctiveness' on page 136.

> someone who is potentially in need of protection… the collectivity must be potentially badly off and in need of protection… as a whole… beyond the merely aggregated identities of the individual members.' [782]

Galenkamp claims that nations, minorities and indigenous peoples 'seem to be qualified *par excellence* as being bearers of collective rights.' [783]

In sum, Galenkamp understands that a collectivity could be the holder of collective rights only when it is 1) a constitutive community (*Gemeinschaft*), 2) consequently has its own distinct identity, 3) can have intention and structure, and 4) it is potentially disadvantaged. Dwight challenges and applies to some extent the preconditions 1, 2, and 3, as described below; however, he does not consider the last one. In this sense, leaving the analysis of the first three preconditions for later, one should wonder whether the *potential-disadvantage-precondition* argued by Galenkamp is indispensable to justify a collectivity as the holder of a collective right.

A right would not be relevant if it were not possible to claim it, and, on the other hand, the interest to claim it arises from being or perceiving oneself in a disadvantaged position. Then, rights are relevant whenever rights holders are or perceive themselves in a disadvantaged position and can claim or use them to improve their circumstances. Although this justifies the exercise of claiming rights, it does not justify why collectivities have collective rights. The subjects are legitimate rights holders independently of their possible disadvantaged position. Since rights are instrumental and aim to secure their holders' claims and interests' satisfaction, it is not consistent that rights cease to accompany their holders who have achieved an advantaged position, nor do their collective holders stop being subjects. That is why even collectivities in a dominant position maintain their rights.[784] Besides, and regarding the particular case of indigenous peoples,[785] the criteria followed in their definition by ILO C169, Erica-Irene Daes, UNDRIP, OASDRIP, and the Bolivian Constitution, do not presuppose or imply their negative qualification, i.e., they are not defined using a possible disadvantage position. Under these considerations, it does not seem acceptable to require as a condition that collectivities should be potentially disadvantaged to endow them with collective rights.

On the other hand, Dwight Newman has a different approach since he considers there is no need for a constitutive community for a collectivity to exist as a moral entity. Nonetheless, like Galenkamp, he does not admit that any collectivity may have collective rights.

A *collectivity must be a single unit differentiated from its members*. In other words, the responsibilities of the community must fall on the community, regardless of whether its members change and vice versa; the responsibilities of the members must fall on them and not on the community. Then, it is possible to sustain that a community might be held accountable when committing a moral wrong even if its members acted rightfully[786] and contrarywise. Such a solution 'may deal better with the problem

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[782] Galenkamp (n 165) 94–95.
[783] ibid 103.
[784] It would be enough to hypothetically consider an indigenous peoples that is not in a disadvantaged position. Could someone argue that it no longer enjoys its rights of territory, self-determination, self-identification, or identity? In fact, removing such rights to this collectivity would be the cause of its new disadvantage position, which, at the same time, would absurdly produce its *reappearance*.
It is also possible to verify its collective subject quality in the parallel situation of duties. Only those who have a moral agency, whether individual or collective, can be duty bearers and held responsible for their actions. This is particularly so in the case of collectivities in an advantageous situation.
[785] Cf. 'Relative Qualification' and 'Contrasting the Bolivian Concept with the Categories of Analysis' on pages 129 and 143 respectively.
[786] Newman (n 211) 42.

of changing membership in the corporation.' [787] What could be more interesting, it shall be the case even if the collectivity does not possess a legal form.[788] Dwight theoretically justifies this effect by stating that, to understand the individuals within the whole, the whole shall remain *ineliminable and irreducible*. It does not mean that collective acts or decisions cannot be dissected down to individual acts or decisions. On the contrary, every collective act can be subjected to that scrutiny; [789] however, those individual acts, understood outside the community, lose meaning since they 'cannot be adequately understood without a reference to the collectivity.' [790] Hence, only when collectivities have a distinct intention and 'are ineliminable, then certain collective intentions and acts may be objects of [a separate] moral judgment.' [791]

This argument, which could be considered intuitive, is enhanced by Dwight through an argument raised by Dworkin called 'deep personification.' [792] It is about the personification of the community through fraternal obligations between its members.[793] Dwight interprets these fraternal obligations as 'values and structure,' which make the community distinct from its members. [794] In Dwight's interpretation, communities should be able to be aware of their actions, that is, be able to choose between different courses of action. [795] If the collectivities can choose, it means that they too can be held responsible for the choice they have made. [796] This ability to be responsible is, at the same time, a minimum condition to be a right holder. [797] This ability to choose implies, in other words, the moral status of a collectivity. If this is so, collectivities differ from the people who compose them since they have their own will.

For communities to act responsibly, with interest towards their members and third parties, they must have values and structure. [798] Values allow it to have purposes and care about the common welfare of its members. [799] The structure, on the other hand, not only allows it to differentiate itself from other collectivities but also implies the degree of voluntariness its members have to belong to it[800] and their expectations when doing so. [801] For this reason, according to this author, it is feasible to have a short-duration community with superficial values, [802] as would happen with the passengers of a hijacked plane, and also a perduring community with deep values. [803] In both cases, according to him, and whenever 'collectivities meet the previously discussed conditions of having responsibilities, we can further

[787] ibid 36.
[788] 'In any event, if a particular indigenous people took control of sacred artefacts not belonging to it but to another indigenous people, its less transparent decision-making structure would not undermine the claim that the collectivity had acted wrongly.' ibid.
[789] The author uses an example of collective members participating in an election to argue his point, where 'individual votes make no sense apart from the larger process, a collective form. Each voter makes a choice on behalf of a people and contributes to the people's choice.' ibid 38.
[790] ibid.
[791] ibid 39.
[792] R. Dworkin cited by ibid 43.
[793] R. Dworkin cited by ibid.
[794] Dwight cites Dworkin pointing four fraternal obligations '(1) special (applying to those within the group); (2) personal (running to each other member and not just to the group); (3) showing concern for the well-being of others in the group; and (4) showing equal concern for all members.' ibid 44.
[795] ibid 54.
[796] ibid 53.
[797] ibid 54.
[798] ibid 52.
[799] ibid 48.
[800] ibid 50.
[801] ibid 51.
[802] ibid 49. Dwight exemplifies with a corporation whose central value is to maximize profits and act legally. Following these conditions, its employees shall expect respect of their rights but not a special treatment for Christmas time, ibid.
[803] Newman (n 211) 52.

conclude that the communities in question have the necessary moral status that includes the capacity to hold a moral right.' [804] It is important to maintain that Dwight raises these arguments to justify a moral status of a collectivity that has not been formally recognized by law and, at the same time, to justify the existence of equally moral rights, that is, those that have not yet been recognized legally. Then, if this is so, all the more for legal rights.

In summary, Dwight Newman does not admit that any collectivity holds collective rights; on the contrary, he justifies some particular requisites. 1) A collectivity has to be a single unit, where the whole must remain ineliminable and irreducible. 2) It should be a deep personification, where its members and the collectivity remain separated and different to some extent on intentions, actions, responsibilities, and rights, among others. A deep personification brings moral quality and moral responsibility to communities, and it exists only if a collectivity has structure and central values. 2a) As for the structure, it concerns the voluntariness of membership of its members (subjective element) and their reasonable expectations as to responsibilities in a particular collectivity (objective element), and 2b) as for its central values (whether deeper or shallower), they define and give purpose to the community and impose obligations amongst its members. 3) Moral status, or the possibility of being aware and choosing a course of action, provide the collectivity with the capacity for responsibilities and rights.

It is appropriate to contrast Newman's and Galenkamp's conclusions to better approximate the required conditions for a collectivity to have collective rights. Then, should it be a constitutive community, with the severe characteristics of the relationship, identity, or cohesion noted by Galenkamp, or, on the other hand, will the deep personification of structure and central values raised by D. Newman suffice? In the end, both are key factors to enclose the distinctive hallmark of collectivities in front of their members and provide them with purpose, intention, structure, and the non-reducible characteristic. From this perspective, the constitutive community *(Gemeinschaft)* of Galenkamp does not seem that different from the deep personification argued by D. Newman. However, both conceptions have different standpoints that could be summarized and simplified in the degree of intensity of community relations. While it is not easy for Galenkamp to identify paradigmatic examples that meet the standards of her *Gemeinshcaft*, for Newman, the instances are quite easy since sometimes he ends up at the other extreme, giving examples that represent purely circumstantial human groups, as with his hijacked plane case. However, it should be borne in mind that the cases that Galenkamp raises are not excluded in the Newman reading.

The discussion, therefore, is to define the least degree of intensity of relationships that would be admissible to establish that a collectivity is entitled to rights. A logical answer implies sustaining that this degree will be that which allows a given group to sufficiently have a moral existence of its own and differentiated from its members. Nevertheless, one must ask whether it is that relational intensity or, instead, that moral quality that shall be considered. The conditions for the emergence of that moral quality in a community can change from group to group for cultural, social, ethnic, educational, or other reasons. Hence, the approach of the collectivities should be, by principle, inductive and not deductive since generalizations usually hide or deny some realities. Will it be fairer to decide the moral quality of a collective by verifying preconditions predetermined in the intensity of relations or, on the contrary, to identify the moral quality of a collective independently of fixed preconceptions? It seems preferable to identify the moral quality without preconceptions and not the degree of intensity it has in its social relations.

[804] ibid 58. The author's illustrative example is 'Calvin's receiving an education makes his life better overall, and he has an interest in going to school, no matter how much he would prefer not to go.' ibid.

On the other hand, one should wonder if being responsible (legally accountable) is a condition for holding collective rights or, on the contrary, is a consequence of already being a subject of law. Contrary to Newman's argument, it is understood that being responsible is, in reality, only a consequence of being subject and not its condition. One must first be a subject to be the bearer of duties and responsibilities. Furthermore, although many are irresponsible, they are still subjects.

Consequently, it seems plausible to conclude that not all communities are subject to collective rights, but only those a) moral entities that b) constitute non-reducible units different from their members. A simple sum or aggregation of individuals is not entitled to be a rights holder.

## Collective Rights' Interest and Object

Newman considers that goods[805] can be the objects of individual interests, individual and collective interests, and collective interests. However, 'there are particular kinds of goods in which collectivities typically have interests.'[806]

A collectivity mediates or serves as an instrumental moral unit for the individual subject, where primary and derivative interests exist. The author exemplifies a hockey team (collectivity) that has the interest that a pond is frozen (object) to play in it (primary interest) and an individual subject that, in turn, has the interest of having a team with which to play and a frozen pond to play on it (derivate interest). The interest in the frozen pond (to play hockey) is both collective and individual. Whereas the player (fundamental moral unit) will not be able to play without a team and a rink, the team (instrumental moral unit which mediates) requires the place to play. Social participation in the production and enjoyment of goods (an individual cannot enjoy them in the fullest sense) 'is important because the individual has only a derivative interest in the collective good, based on the individual's interest in the flourishing of the collectivity that can produce and have an interest in the good.' [807]

The author argues that the primary interest might be purely collective, as in the example, individual (personal ownership of a sports car); or both (an individual wants the frozen pond for skating alone and playing hockey). [808] However, 'there are other situations where individual interests have the same object as a collective interest but where, while the individual interest is not entirely derivative, the collective interest is clearly paramount,' [809] and the individual interest is secondary. He uses an example of secession regarding self-determination, in which an individual person bets on the result of a referendum but shall decide her vote in the interest of the community. It shall be taken into account that there exists the individual pecuniary interest of the bettor concerning money as an object and the collectivity interest, which 'have as their object a well-functioning democratic decision, a collective interest in the well-being of the collectivity.' [810] Then, the author concludes that '[n]ational self-determination is a

[805] On the one hand, the author defines *goods* as 'potential objects of interest that are of value,' and, on the other hand, a *public good* (economic definition) as 'non-exclusionary (meaning that if the good is provided to anyone, no member of society can be excluded from benefitting from it) and non-rival in consumption (meaning that more than one individual can simultaneously benefit from the good without preventing others from also consuming the good)' Newman (n 211) 66.
[806] ibid.
[807] ibid 72.
[808] ibid 71. The author also uses an example against police torture, where individual interest is based on the well-being of the subject and the community to avoid 'undermine democracy by repressing dissenting thought.' ibid 72.
[809] Newman (n 211) 73.
[810] ibid 74.

question about relationships of different collectivities, an inherently non-individualisable matter. The main grounds for the decision will be collective interests. The collective interests are paramount.'[811] Newman concludes that '[c]ollective interests can clearly provide moral reasons against assimilation policies[812] that otherwise might be argued to give individuals opportunities just as valuable.'[813]

Newman affirms that public goods, as possible objects of interest, may be of pure, primary, or paramount interest to the communities. In the case of the latter two, individuals may have derived or secondary interests, respectively. Then, attending to such considerations, in the case of the primary interest of the collectivity, the collectivity serves as a mediator between the derived interest of the individuals and this kind of good to provide its full enjoyment. In the case of the collectivity's paramount interest over the individual interest, it could preserve the collectivity's identity by preferring the latter. When the interest in the good is purely collective, the community will be the only one that can use it without having to discern between the individual and collective interest.

Galenkamp does not have a very different stance than Newman; however, she makes some precisions or differentiations that show a better picture of the collective interest and its object. After rejecting the political-economic view of the collective goods (used by Newman), she applies the legal-ethical notion of non-reducible collective interests to endorse the communitarian approach of the common good as the only one compatible with collectivities. Her analysis is outlined and summarized to understand Galenkamp's position better.

Collective goods or public goods are characterized for being jointness of supply (when supplied to one, they can simultaneously be consumed by others), non-exclusivity of enjoyment (they do not exclude others from consuming them), and they are enjoyed in common. However, this kind of conception of goods is far too extensive to be relevant to Galenkamp's collective-rights-protection-theory: it includes, in her example, streetlights which are evidently out of place when referring to collectivities. Moreover, individuals can also enjoy them, contrary to the non-aggregative trait of collectivities. Collective rights 'seem to concern only those interests which are of prime importance… for the survival of the group as such,'[814] that is to say, collective goods must be non-aggregative, enjoyable only by collectivities, and aimed to protect the collectivity as a whole.

Galenkamp resorts in her *potentially endangered* condition of the collectivity and the need-to-protect-it requirement by arguing that interests are linked to rights. She explains that 'there has to be a subject capable of claiming rights and there has to be an object, that is, there have to be interests which are potentially endangered and in need of protection.'[815] Therefore, to talk about collective rights, there has to be an interest that does not only refers to 'a mere aggregation of the interest of the individual members of a group,'[816] but an interest of the collectivity as a whole.

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[811] ibid.

[812] Newman utilizes this argument to criticize Kymlicka over his concept of 'group-differentiated rights' (held by members of groups on account of their group membership), and his reluctance to talk of collective rights. The author observes that Kimlicka argues over those rights to avoid inequalities regarding aboriginal people collectively. In this sense, Newman presents an example regarding the collective interest in hunting and fishing of an indigenous people to maintain its ancestral relationship with its land, and the parallel individual interest of one of his members to hunt and fish to feed himself. D. Newman understands that the primary interest is the collective one. However, 'Kymlicka's arguments, then, are essentially for legal rights based on a desire to avoid adverse impacts on the situation of some individuals who are in different cultural groups.' ibid 74–75.

[813] ibid 75.

[814] Galenkamp (n 165) 109–110.

[815] ibid 111.

[816] ibid.

The communitarian common good, stresses the author, is the only object that truly fits into the non-individualistic and non-reducible collective rights approach. Galenkamp claims that the common good is 'excludable… not available to non-contributors… essentially non-individualistic… [and] pertain[s] to a collectivity'.[817] Furthermore, Galenkamp argues that 'collective rights must aim at the protection of the common good of a community,' [818] and cites Postema to assert that

> 'the common good not only express what we collectively want, but also expresses a view of who and what we are, that is, our group identity… seems to establish a link between the subject- and the object-side of rights in the sense that it is the object-side of rights which makes the subject the subject that it is.' [819]

Galenkamp makes the case to establish that cultural identity is so closely linked to the collectivities themselves that attacking such an identity is to produce ethnocide and assimilationism. Then, it could be said that cultural identity is a primordial collective interest.[820]

Galenkamp does not diverge from Newman's perspective, at least not in the central point. Although both refer to different kinds of goods, none reject that collectivities and individuals may share their respective interests in the same public or collective object. However, in this case, while Galenkamp lacks an explanation on how to resolve this situation that might create possible tensions or contradictions, Newman differentiates the eventual primary and paramount interests of the collectivity from the individual interests. On the other hand, Galenkamp uses the non-reducible condition of common goods to apply it, together with the non-reducible collective interest, to a collectivity as the exclusive holder of such interest and object, which Newman only refers to them as pure collective interest.

Nonetheless, Newman and Galenkamp seem to differ concerning the protection provided by collective interests. Newman argues it in the case of individual interests competing with collective interests to decide which will prevail. Galenkamp, on the other hand, uses it regarding the pure collective interest to protect the very nature of the collectivity. Instead of considering these positions contradictory, they could be complementary since both belong to two different scenarios: one is relational between the community and individuals (members or not), and the other belongs to a finalist vision in which the community pursues its identity and survival.

## Conclusions

Collective rights are, in effect, rights with the specificity that they concern collectivities as their right holders. Then, this kind of rights receives its peculiarities from the qualities of this subject, i.e., the possible interests it could have concerning the objects over which they may fall. Furthermore, from the literature reviewed, the collective subject is not any set of individuals, nor any community, since it shall

[817] ibid 113.
[818] ibid 114.
[819] ibid.
[820] The rights of identity and culture of Sarayaku, among other rights, were violated by the oil exploration imposed on its territory by Ecuador. After the respective complaints and procedures were made, the Inter American Court of Human Rights (IACrHR) resolved the *Case of the Kichwa Indigenous People of Sarayaku v Ecuador* (Inter-American Court of Human Rights). in 2012 whose 'most notable contribution… is that, for the first time in its history, the IACtHR regarded an indigenous people, collectively, as a holder of rights' Brilman (n 383) 23. The IACtHR also 'consolidated the right to cultural identity in the Sarayaku judgment and established it as a "fundamental right"… furthermore, referred to the right to cultural identity as a "synthesizer right" (derecho transversal), a right whose recognition is a precondition for the enjoyment of other rights.' ibid 26–27.

meet some minimum characteristics to justify it being the subject of rights. First, a collectivity should be a non-reducible unit, different from its members. Second, the collective must be a moral entity, capable of being aware, deciding, acting, and taking responsibility independently of its members. Third, the interest of the collective subject should lie in possible purposes that a collective entity may collectively pursue. Fourth, the interest should fall over an object that, once more, could serve the given purposes a collectivity may have.

As a result, similarly to what happens with the subject, both the interests and the objects should be non-reducible to its individual members' interests but immanent to the community as a whole, reaching their quality when they concern the collectivity's preservation and flowering. However, it is not entirely the case because the object, unlike interest, can have value for communities and individuals. Indeed, the possible objects in which the collective interest may fall are the so-called collective goods (or public goods) and common goods, the former being susceptible to the interests of individuals and collectivities, and the latter only to the collective interest. Therefore, while the interest of collective rights is purely collective, the object on which it falls may be useful both for collective and private interests. That is to say, the object of collective rights is not necessarily non-reducible.

Within the framework of the theory described, it seems possible to affirm that the right to exercise indigenous jurisdiction is collective since its holder, interest, and object are collective. First, indigenous peoples, as holders of this right, are human collectives with a deep personification or *Gemeinschaft*, so they are not a mere summation or aggregation of individuals.[821] Second, the purpose of this right is the administration of justice legitimately applied to indigenous members, which implies knowing and resolving disputes and exercising coercion over the decisions adopted. Even though indigenous peoples exercise jurisdiction to resolve their members' disputes and they are the individual beneficiaries of such exercise (in a non-exclusive and non-rival manner, in Dwight's logic), indigenous justice complies with a purpose that transcends the purely personal benefits. It could be argued that it is actually a communitarian common good that, in Galenkamp's words, is enjoyable only by the community. The latter becomes clearer when indigenous members' individual interests in resolving their disputes are distinguished from the collective interest of the indigenous peoples. Thus, individuals seek to assert their individual rights that are affected by the conflicts they may have. Instead, the indigenous peoples seek to reaffirm their self-determination, autonomy, own rights, institutions, culture, and authority, among others.

Third, the objects over which fall the individual interests are also distinguished from the collective objects of this right. While the members can seek to recover their assets, be compensated, seek to punish those who have caused them harm, and protect the limits of their lands, among others, the indigenous peoples take into consideration the preservation of the community (Galenkamp), the re-establishment of balance and social harmony,[822] to live well,[823] the continuity of their cultures, among others. Furthermore, indigenous peoples' collective interests are paramount (Dwight), given that their exercise of jurisdiction applies even against the individual resistance of its members. [824] In short, the subjects, interests and objects of the right to exercise indigenous jurisdiction are typically collective and distinct from the interests and objects of the individual rights claimed by indigenous members.

[821] As concluded in Section 3.1.
[822] Cf. ‘Collective Burden to Harmony and Balance’ on page 278.
[823] Constitución Política del Estado Plurinacional de Bolivia, Preamble, and Article 8.
[824] Ley 073 de Deslinde Jurisdiccional [Jurisdictional Demarcation Law] 2010, Article 10.III.

# Section 3.2: Bolivia Becomes a Plurinational State with Collective Rights

Although Bolivia has been a country only since 1825 after having declared its independence from Spanish colonialism, it has maintained throughout its history a monocultural trend following the nature of the nation states, in which it was structured and consistently denying the existence of indigenous peoples and subjugating their members. A year after Bolivia's foundation, its first political Constitution of 1826 stated in the final part of its article 11 that 'all those who have been slaves to this day... will be free, in the act of publishing the constitution,' [825] which was endorsed by all subsequent constitutions, although with different texts. Furthermore, in 1874 a Law[826] was enacted to recognize indigenous ownership of the lands they occupied but which, in fact, served as an instrument for the expropriation of community lands[827] and the submission of indigenous people to conditions of servitude [pongueaje] on farms [haciendas],[828] a situation that began to change after the 1952 agrarian reform. In Bolivia, equalities and freedoms existed only in law since slavery remained until the middle of the 20th century.[829] Not all human beings were indeed considered people, and the enjoyment and exercise of rights for many Bolivians depended on their origin, sex, social class, language, and, especially, ethnicity.

One of the vulnerable groups in this regard were peasant and indigenous people in general, given that the first time that Bolivia had an approach to recognize them as subjects of law, it was only 120 years after the founding of Bolivia, starting on 13 May 1945 in the First Indigenous Congress. Despite the hostility of landowners and conservatives, this congress managed to abolish, at least to some extent, the *pongueaje* regime (free and compulsory work service of the colonist in favor of landowners), the *mitanaje* (forced shift labor), and all slave systems. Furthermore, it authorized the free movement of indigenous people and peasants through cities' streets. However, it did not manage to modify the agricultural and peasant farming system and land regime.[830] The 1952 Bolivian revolution was another step toward constructing a State where the peoples' rights were given greater equality. The universal vote, the elimination of big landowners [latifundium], and the integration of the excluded sectors were finally established.[831]

[825] Marcelo Galindo de Ugarte, *Constituciones Bolivianas Comparadas 1826-1967* (Los Amigos del Libro Werner Guttentag 1991) 15.
[826] Ley de exvinculación de tierras de origen [Law of Origin Lands Separation] 1874.
[827] The effect was devastating for the indigenous people: on the one hand, the historical link between these and community lands was broken, and, on the other hand, the process of expropriations in favor of the State was accelerated, which once consolidated went through the auction to private property, generating significant large estates [latifundium] in the highlands and valley, according to Mesa Gisbert, de Mesa Figueroa and Gisbert (n 662) 375.
[828] Pablo Mamani Ramírez, 'Lo indígena en la nueva Constitución Política del Estado "Constitución intermedia"', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010) 703–705.
[829] The cycle of incessant indigenous uprisings throughout the 20th century shows the collective consciousness of Quechuas and Aymara about the exploitation to which they were subjected in the highlands and valleys. Mesa Gisbert, de Mesa Figueroa and Gisbert (n 662) 525.
[830] ibid 520.
[831] ibid 557.

Surprisingly, self-identification in Bolivia was only introduced for the first time in the 2001 National Census. Quiroga portrays that Bolivian indigenous populations were differentiated for the collection of tributes during the colony and the first decades of the republic, that in the 20th century, the aim was to distinguish between indigenous, mestizo, white, and black people, and that the 1950 census sought to divide the population into indigenous and non-native people. Moreover, she emphasizes that intending to make the indigenous population visible, previously hidden under the generic denominative of peasant introduced in 1952, the 2001 census presented two questions: belonging to indigenous peoples and the spoken language, with which 62% of the population older than 15 years declared belonging to indigenous peoples (31% Quechuas, 25% Aymara, and 6% Guaraní, Chiquitanos, Mojeños, and others).[832] The nation state's logic in Bolivia began to change after the 1995 reform to the 1967 Constitution and deepened in the 2009 Constitution, which transformed the Bolivian State into a Plurinational State.

## Constitutional Reform

In the history of the Constitutions in Bolivia, the indigenous peoples were a non-existent part or, in the best of scenarios, something abstract and of little value despite being the majority population.[833] This logic was maintained from the first Constitution of 1826 until the previous Constitution of 1967, which, only with the 1993 and 1994 reforms, introduced the multiethnic, multicultural traits and some indigenous rights. The last Bolivian constitutional reform of 2009 was imposed due to social demands neglected by the State and peaceful and violent protests from social, political, and regional movements. The last Bolivian constitutional reform was born, to a great extent, by indigenous peoples and peasants motivated by their social demands (cultural, social, political, and territorial), their rejection of globalization, their frustration over inequalities in Bolivia, the growing freedoms established since the agrarian reform of 1952, the recovery of democracy in 1982, and the deep crisis of the Republican State and the Nation-State models.[834]

The first indigenous-peasant "March for Land and Territory" of 1990, which was carried out from the lowlands to the city of La Paz, the seat of government located in the Bolivian highlands, is commonly referred to as the milestone of the political, social, cultural, economic, and legal crises of Bolivia in its recent history,[835] and as the first event that legitimately demanded the constitutional reform. Then, there were other turning points: the so-called *Guerra del Agua* (Water War) in Cochabamba in 2000 and the indigenous and peasant's road blockades and mobilizations in 2003 that paralyzed Bolivia and caused three presidential successions and the early calling of elections.

Requests for departmental autonomy were added in the 1990s-2000s, especially from the eastern Bolivian region, against a republican, unitary state, with a centralist economy and government.[836] García Linera, the former vice president of Bolivia (2006-2019), argued that 'there were complaints against the colonial-patrimonial structure of the apparent State (centralist, mono-cultural and exclusive) that never

[832] María Soledad Quiroga, *Las identidades en las grandes regiones de Bolivia* (Fundación UNIR 2009) 5–6.
[833] Mamani Ramírez (n 828) 703.
[834] Carlos Cordero Carraffa, 'Nueva Constitución, nuevo gobierno, nuevo Estado', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010).
[835] ibid.
[836] Bolivia was divided between the West and the East for reasons of autonomy, regionalism, economy, and political opposition to the ruling party of that time, Movement Towards Socialism or MAS), which generated the denomination of "media luna" (half moon), alluding to the eastern departments of Pando, Beni, Santa Cruz, and Tarija.

incorporated the full-civil society and the regions as constitutive forces of its existence.' [837] These social mobilizations initially demanded urgent and profound constitutional reforms and then the convocation of a constituent assembly.

By reform law 1585 of 12 August 1994, applied and put into effect by law 1615 of 6 February 1995,[838] a partial reform of the Constitution of 1967 took place with profound changes regarding the Bolivian State's unitary logic and indigenous peoples' rights. The constitutional reform of 1994 also produced the incorporation of 'cultural diversity' in the Bolivian society's composition and the acceptance of an embryonic legal pluralism.[839] Not only did its first article add to its 'unitarian republic' the 'multiethnic and pluricultural' descriptions, but the constitutional reform in its article 171 recognized the indigenous peoples' social, economic, and cultural rights and legal personality. Article 171 established the recognition, respect, and protection of indigenous peoples' rights to their community lands of origin, guaranteeing their sustainable use and exploitation of natural resources, to their identity, values, languages, customs, and institutions. Article 171 also admitted that the indigenous and peasant communities' natural authorities might exercise functions of administration and application of their own rules as an alternative solution to conflicts, following their customs and procedures, provided that they were not contrary to that Constitution. The reform was deepened about the rights of indigenous peoples through the constitutional reform law of 13 April 2004, which recognized indigenous peoples the right to directly nominate candidates for president, vice president, legislators, constituents, and mayors on equal terms before the law regarding political parties and citizen groups.[840]

The constitutional reforms failed to appease the social demands of establishing a constituent assembly for a total change of the Bolivian Constitution. It could be said that the 2004 reform, in reality, was intended to pave this path. Thus, by law 3664 of 6 March 2006,[841] the Constituent Assembly was convened to reform the Bolivian Constitution as an independent body that exercised sovereignty over the people and was made up of 255 constituent representatives elected by vote, 137 of which were from the ruling party (MAS or Movement Towards Socialism) and the remainder were divided into 15 political parties and citizen groups.[842] The indigenous peoples were one of the leading civil society groups that actively participated in the Constituent Assembly. Through an emblematic agreement called the Pact of Unity, they developed and defended a proposal for a new Constitution, which became the base document for the MAS.[843] Its first version was published on 5 August 2006 and the second final version on 23 May 2007. Although it was not formally presented to the Constituent Assembly (due to the expiration of the deadline for submitting proposals on 20 April 2007), it was vital to the final work of the commissions.[844]

[837] García Linera (n 664) 12. The original Spanish version is: ‘éstas fueron querellas hacia la propia estructura patrimonial-colonial del Estado aparente (centralista, mono-cultural y excluyente) que nunca incorporó a la sociedad civil-plena y a las regiones, como fuerza constitutiva de su existencia.’
[838] Constitución Política del Estado de Bolivia del 6 de febrero de 1995 2014.
[839] Richter Ascimani (n 664). Also *Sentencia Constitucional 1586/2010-R* [2010] Constitutional Court Expediente 2008-17401-35-RAC, Ernesto Félix Mur.
[840] Constitución Política del Estado del 2004 (Ley de 13 de abril de 2004) 2015, articles 222-224.
[841] Ley 3364, Convocatoria a la Asamblea Constituyente [Law 3364, Constituent Assembly Summoning] 2006.
[842] With their respective allies, the MAS reached 62 percent and the opposition 29 percent, leaving 9 percent *hinge*, arithmetic that provoked a sterile struggle that blocked the Assembly's advance for months. In addition, 56 percent of the assembly members defined themselves as members of some indigenous peoples (56 percent Quechua, 17 percent Aymara, and 7 percent of other peoples). Albó (n 675) 714.
[843] del Pilar Valencia and Egido (n 670) 55.
[844] Garcés and others (n 671).

*Table 12: Most important events of the constitutional process 2003-2009*

| Year | Important facts |
|---|---|
| 2003 | October: Constitutional President Gonzalo Sánchez de Lozada resigns due to social pressure, and Vice President Carlos Mesa takes office, who promises to call a referendum for the Constituent Assembly and gas. |
| 2004 | February: Carlos Mesa promulgates the Constitutional Reform Law introducing the Constituent Assembly, the referendum, and the legislative initiative.<br>September: Creation of the Unity Pact in the city of Santa Cruz. The content for presenting the draft Law of Convocation to the Constituent Assembly is agreed upon. |
| 2005 | June: President Carlos Mesa resigns, and Eduardo Rodríguez Veltzé assumes the presidency by constitutional succession (he was president of the Supreme Court of Justice).<br>Second semester: Negotiations on the draft law to call the Constituent Assembly. |
| 2006 | January: Presidential possession of Evo Morales Ayma, known as the first indigenous president in the history of Bolivia. He is part of the Movement Towards Socialism (MAS).<br>February: Political agreements between the government, political forces, and social movements are closed on the text of the law calling for the Constituent Assembly.<br>March: Law to Call the Constituent Assembly.<br>May-August: Systematization of 10 indigenous and peasant proposals for the presentation of a unified proposal of the Pact of Unity on the basic contents for the Constituent Assembly.<br>July: Election of constituents and referendum on departmental autonomies.<br>August: Installation of the Constituent Assembly in Sucre. |
| 2007 | February-March: Finally, the Constituent Assembly approved the regulations for debates and sessions.<br>March-April: Civil society proposals are collected in all departments of the country through territorial Assemblies of the Constituent Assembly.<br>April: Presentation of the lowland indigenous and peasant proposal to the Constitution Assembly (based on the preliminary agreements of the Pact of Unity).<br>May: The Pact of Unity approves its constitution proposal and presents it to the MAS bench.<br>April-July: Deliberations of the 21 commissions of the Constituent Assembly.<br>July-August: Unsuccessful sessions of mixed commissions grouped thematically to approve a text of the Constitution in full.<br>August: Law of Congress to expand the Constituent Assembly and some rules for its debate.<br>Days later, the Constituent Assembly is blocked by Sucre institutions that demand the inclusion of the constitutional discussion of the return of government to that city.<br>August-November: Technical legal commission of the MAS bench and allies, according to reports from the 21 commissions, draft the constitutional text.<br>November: constitutional text approved (in full) at the Sucre Military College.<br>December: The Constitutional text is approved in full and in detail in the city of Oruro. |
| 2008 | October: Negotiation between the government, members of the MAS, former constituents, and political actors, for adjustments to the constitutional text. The Law to Call the Approval Referendum is promulgated, incorporating the political agreements for changes in the constitutional text approved in Oruro. |
| 2009 | January: Referendum approving the new Constitution.<br>February 7: The new Constitution is promulgated and enters into force. |

*Source:* Own translation of María del Pilar Valencia's and Iván Egido's table.[845]

Belatedly and amid social upheavals, which included dead and injured people in the city of Sucre, the seat of the Constituent Assembly, the 411 Articles of the new Constitution were approved on 9 December 2007 in the city of Oruro under heavy police and military custody[846] and the opposition's absence.[847] It is contended that the text approved by the assembly members in the plight and difficulties of the long 15-hour session in Oruro was later adulterated in the final version that was published by the

[845] del Pilar Valencia and Egido (n 670) 62–63.
[846] Franco Gamboa Rocabado, 'La Asamblea Constituyente En Bolivia: Una Evaluación de Su Dinámica' (2009) 16 Frónesis 487.
[847] Richter Ascimani (n 664).

governing party (MAS)[848] to submit it for review to the Bolivian Congress unlawfully, an entity without constituent powers.[849]

Guillermo Richter, who was a constituent contrary to MAS, maintains that Congress inserted in the Constitution, among others: a) the reference to the Bolivian nation without ignoring its pluricultural reality (Art. 3), b) the concept of republic, the non-delegability of sovereignty, and the independence of State bodies (Art. 11), c) that the scope of indigenous justice must be defined by a jurisdictional demarcation law (Art. 192.III), and d) respect for the rights acquired by private owners in properties within indigenous territories (Art. 394.I).[850] He claims that Congress achieved, to some degree, the missing dialog and concertation during the constituent process, [851] in the 21 October 2008 agreement. Notwithstanding, it is also argued that the modifications promoted in a *clandestine table* and under pressure from a peasant siege to the parliament, organized by the government, failed to alter the structure and function of the Plurinational Community State or the position contrary to republicanism and the nation-state.[852] Although this second position seems to receive more reason over time, it should be stated that the Congress' changes did succeed in introducing a degree of ambiguity in the Constitution.

In the 25 January 2009 referendum, the new Constitution was approved with 61.43% of votes in favor and 4.31% of null and blank votes, according to the official data of the Plurinational Electoral Organ.[853] The Constitution was promulgated on 9 February 2009. Despite these figures, the electoral map shows a fracture since the 'no' option won in four of the nine departments and six of the ten main cities.[854] A brief orderly reference of the relevant events of the Constituent Assembly can be reviewed in Table 12.

## Bolivian Sense of Plurinationality

The first article of the 2009 Bolivian Constitution declares that:

> 'Bolivia is constituted as a Unitary Social State of Pluri-National Communitarian Law [Estado Unitario Social de Derecho Plurinacional Comunitario] that is free, independent, sovereign, democratic, inter-cultural, decentralized and with autonomies. Bolivia is founded on plurality and on political, economic, juridical, cultural and linguistic pluralism in the integration process of the country.'[855]

One of the most frequent fears of recognizing indigenous peoples' self-determination is the possibility of the dismemberment of the States, a fear that also existed in Bolivia.[856] However, Boaventura maintains that the nation of the modern neoliberal State highlights everyone's inclusion under the cloak of citizenship, as a set of all individuals that belongs to the same geopolitical space (civic nation) but

[848] Gamboa Rocabado (n 846).
[849] Cordero Carraffa (n 834) s El nuevo texto constitucional.
[850] Richter Ascimani (n 664).
[851] ibid.
[852] José Antonio Quiroga Trigo, 'El Estado Plurinacional y el fin de la República', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010).
[853] 'Atlas Electoral de Bolivia Tomo II' <https://atlaselectoral.oep.org.bo/#/subproceso/69/1/2> accessed 22 September 2020.
[854] Quiroga Trigo (n 852).
[855] First Article of the Bolivian Constitution, in accordance with the translation of Elkins, Ginsburg and Melton (n 233).
[856] Cordero Carraffa (n 834); Richter Ascimani (n 664).

excludes social groups that identify themselves as diverse. This author argues that, although indigenous peoples fought to be considered citizens, they reject that the civic nation is the only concept of 'nation' recognized by the State and demand that ethnic-cultural nations also be recognized as culturally and territorially differentiated human collectives. Consequently, he concludes that the foci of a plurinational State are the recognition and coexistence of different nation concepts in the same State, that is, the Bolivian nationality coexisting with the Quechua, Aymara, Guaraní, and other nationalities.[857]

The definition of the Plurinational State not only refers to the existence of various peoples and cultures in Bolivia where 'pluralism is the condition of democratic interculturality' [858] but, above all, the real possibility of the coexistence of various modes of production, that is, the different economic, political, and legal practices as institutions.[859] In this sense, the 2009 Constitution guarantees indigenous peoples' self-determination within the framework of the State's unity in article 2, holding that the Bolivian nation (and Bolivian people) comprises different nations, indigenous peoples, intercultural and Afro-Bolivian communities with 36 official languages in its articles 3 and 5. Xaviér Albó argues that there is no official list of all Bolivian indigenous peoples (or nations), given that there are always problems in defining them, and he cautiously states that it would be wrong to deduce that the Constitution equates languages with indigenous peoples.[860]

On 24 May 2006, the Constituent Assembly's Technical Commission held that the proposal for a Plurinational State belongs to the indigenous peoples to build a non-separatist State from below, within the framework of Bolivian unity and identity based on local identities, because unity does not mean uniformity. This commission maintained that territorial reconstitution is sought based on each indigenous people's self-recognition and the monocultural State's rupture imposed since the conquest.[861] Furthermore, the indigenous peoples declared in the first version of their proposal (as the Unity Pact) that they face the challenge of re-founding Bolivia based on the peoples as collective subjects and transcending the liberal and monocultural State based on the individual citizen. The proposal also stated that the Plurinational State would be consolidated with indigenous peoples' representation in the State's public powers and recognition of an egalitarian legal pluralism.[862] These aspects are reviewed below in the constitutional norms of the Plurinational State of Bolivia.

## *Bolivian Territorial Organization*

The fight against centralism is not only equivalent to de-centering from the central state, but also de-centering itself from other centers, e.g., from the departmental capitals, where economic powers, ruling classes, and monopolies of financial circuits are established.[863] The spirit and the political and ideological orientation of the entire constitutional text are placed towards creating greater and better participation mechanisms that point to the disorganization of the centrality of power in terms of political

[857] Sousa Santos (n 26) 22–23.
[858] Luis Tapia Mealla, 'El pluralismo político-jurídico en la nueva Constitución de Bolivia', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010).
[859] Félix Patzi Paco, 'Constitución Política del Estado plural', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010).
[860] Albó (n 675) 717–718.
[861] Garcés and others (n 671) 70.
[862] Garcés and others (n 671).
[863] Raúl Prada Alcoreza, 'Horizontes del Estado Plurinacional', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010).

participation and point to its reorganization in the form of fragmented power, distributing its fractions with territorial and political criteria.[864]

Bolivia is territorially organized into departments, provinces, municipalities and indigenous territories.[865] Teresa Morales argues that the territorial organization in departments, provinces, and municipalities, which comes from previous constitutions, was inspired by the colonial logic that ignored the natural unity between populations of common identities dividing, in many cases, communities, nations, or peoples into two or more parts.[866] She claims that the 2009 Constitution seeks a mixed construction between the identities generated by that colonial division and the pre-existing ones, in addition to opening a space for the free construction of territorial units. [867]

Within this organization, the constitution recognizes five autonomies: departmental, regional, municipal and indigenous. They are not subordinate to each other and have the same constitutional rank.[868] That is to say, no autonomous government, nor its executive or legislative authorities are subordinate, in the exercise of their autonomous powers, to any other autonomous government, even though both exercise their functions over the same territory, with which, for example, a municipal government autonomous is not subordinate to the corresponding departmental government.[869] Autonomy implies the direct election of authorities by citizens, the administration of economic resources, and the exercise of legislative, regulatory, oversight and executive powers by its government bodies within the scope of their jurisdiction.[870] The design of autonomous governments have similarities in their constitutional design: the three autonomies have deliberative and executive bodies. Among these autonomies, the Constitution establishes a distribution of authorities in article 297: prerogative, exclusive, concurrent, and shared.[871]

The departmental autonomies are a deepening of the political division of Bolivia by departments that has existed since its foundation and that, at present, are nine: Beni, Chuquisaca, Cochabamba, La Paz, Oruro, Pando, Potosí, Santa Cruz, and Tarija. The departmental executive bodies, whose head is a governor, and the departmental assemblies constitute the departmental autonomies. [872] A part of the

[864] Teresa Morales Olivera, 'Estructura y organización territorial del Estado', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010) 560.
[865] Constitución Política del Estado Plurinacional de Bolivia, Article 269.
[866] Morales Olivera (n 864) 564. In a similar opinion, but in a critical sense, it was said that the state territory is superimposed on the ancestral territories and that the decolonization of the state proclaimed by the new Constitution was expected to also imply the decolonization of the territory through a cartographic revolution, an event that did not happen. Mamani Ramírez (n 828) 709.
[867] The Constitution introduces the necessary elements so that, based on the aggregation of smaller units that are the municipalities and the new indigenous autonomies, territorial units organized by the will of their respective populations can be formed or reconfigured over time, according to Morales Olivera (n 864) 564.
[868] Constitución Política del Estado Plurinacional de Bolivia, article 276.
[869] Morales Olivera (n 864) 562.
[870] Constitución Política del Estado Plurinacional de Bolivia, article 272.
[871] In translation of Elkins, Ginsburg and Melton (n 233), article 297's wording is: 'I. The authorities defined in this Constitution are as follows: 1. Prerogative: those that the legislation, regulation and execution of which cannot be transferred or delegated, and which are reserved to the central level of the State. 2. Exclusive: those which a level of government has legislative, regulatory and executive authority over a determined subject, the latter two of which may be delegated or transferred. 3. Concurrent: those in which the legislation corresponds to the central level of the State, and the other levels exercise simultaneous regulatory and executive authority. 4. Shared: those subject to basic legislation of the Pluri-National Legislative Assembly, the legislative development of which corresponds to the autonomous territorial entities, according to its character and nature. The regulation and execution shall correspond to the autonomous territorial entities. II. Every authority which is not included in this Constitution shall be attributed to the central level of the State, which may transfer or delegate it by law.'
[872] Constitución Política del Estado Plurinacional de Bolivia, articles 277-279.

departmental assembly members is elected by universal vote and another part by the indigenous peoples according to their norms.

Regional autonomies[873] are constituted by referendum of several municipalities or provinces within a department with geographic continuity and cultural unity. Regional assemblies and executive bodies are the government of these regional autonomies, with deliberative, administrative, and supervisory powers, but not legislative ones. Regional autonomy is thought from the perspective of moving to a new territorial order,[874] that is, to allow an aggregation that will make possible the reconstitution of identities once broken by the hand of the State and their arbitrary delimitation, if different communities or peoples with sufficient affinity decide to conform them.[875] In any case, the possible region's existence is not a substitute for the existence of municipalities or indigenous autonomies in their territory.

Municipal autonomies[876] are made up of municipal councils and executive bodies chaired by mayors, who are elected by universal suffrage, and indigenous peoples who did not become indigenous autonomies can directly elect their council representatives by their procedures. A notorious example represents the municipal level in Turco, Totora, and Curahuara de Carangas (Markas of Jach'a Karangas), whose mayors have been elected according to indigenous norms (election by turns between the Aransaya and Urinsaya partialities).[877] Furthermore, in Curahuara, it is possible to observe the municipal authority's subordination to the traditional authorities, to whom he must render accounts, and whose actions are controlled by the community.[878] Besides, Jach'a Karangas is one of the paradigmatic cases in Bolivia in which the traditional political system, the community logic of power, and its legitimacy prevail even despite the entry of municipalities and the Western forms of political organization. [879]

Indigenous autonomies[880] are an expression of the right to self-determination that indigenous peoples have. [881] The indigenous peoples' voluntary decisions create them within the framework of the ancestral territories they occupy,[882] and their government is exercised through their norms and forms of organization. [883] Indigenous territories, municipalities, and regions can constitute indigenous autonomies, [884] and two or more indigenous peoples may create a single indigenous autonomy, which does not imply the dissolution or merger of the indigenous peoples that gave rise to it.[885] Indigenous autonomies require having approved their autonomic statutes[886] and then accrediting their constitutional compatibility through the Plurinational Constitutional Court's revision. In general, the law that governs

[873] ibid, articles 280-282.
[874] Prada Alcoreza (n 863).
[875] Morales Olivera (n 864) 664.
[876] Constitución Política del Estado Plurinacional de Bolivia, articles 283-284.
[877] Mamani Ramírez (n 828) 708. The terms Aransaya and Urinsaya are explained below in the section on Nación Suyu Jach'a Karangas.
[878] Ramiro Molina Barrios and others, *Senderos Del Conflicto. Aproximaciones a La Noción de Conflicto Como Construcción Cultural* (Universidad Católica Boliviana 'San Pablo' - Instituto para la Democracia 2014) 40.
[879] ibid.
[880] Constitución Política del Estado Plurinacional de Bolivia, articles 289-296.
[881] ibid, article 2.
[882] ibid, article 290.
[883] ibid, article 296.
[884] ibid, article 291.
[885] Ley Marco de Autonomías y Descentralización 'Andrés Ibáñez' [Framework Law of Autonomies and Decentralization 'Andrés Ibáñez'] 2010, Article 46.
[886] Constitución Política del Estado Plurinacional de Bolivia, article 292.

autonomies[887] requires a favorable referendum or public consultation, that the Ministry of Autonomies of the central government certifies the quality of ancestral territories occupied by indigenous peoples, the existence of governmental viability (organizational structure and a comprehensive territorial development plan) and a population base (between 1,000 and 10,000 depending on whether they are minority populations and their sustainability is demonstrated). However, the many and complex requirements discourage the generation of indigenous autonomies in Bolivian indigenous peoples.[888] It is remarkable that although Jach'a Karangas has not established an indigenous autonomy yet, one of its Markas, Totora, obtained indigenous autonomy through the 6 December 2009 referendum with 74.5% votes in favor and the Plurinational Constitutional Court's revision,[889] while its Marka Curahuara de Carangas denied its indigenous autonomy with 54.92% votes against in the 6 December 2009 referendum.[890]

## *Bolivian State Model*

The Bolivian state model is declared in article 1 of the Constitution. Apart from being a free, independent, sovereign, and democratic state, it is a Unitary Social State of Pluri-National Communitarian Law, inter-cultural, decentralized, and autonomous. The Plurinational Constitutional Court interpreted this article 1 considering: a) The expression of a Unitary State means that, physically, its population is settled in a certain territory, supported by the principle of popular sovereignty. From this, in turn, emerges the principles of territorial integrity, independence, and the supremacy of the Constitution. b) The Social State of Law, as a component of the Constitutional State of Plurinational Law, prioritizes the design and implementation of social policies, guided by the approach of equal protection to the exercise of fundamental rights, mainly in the fields of education, health and work for the general population, within the framework of respect for constitutional principles and values. c) The word plurinational denotes that the nation comprises all Bolivians, indigenous peoples, and intercultural and Afro-Bolivian communities that constitute the Bolivian people. The legal content of the Plurinational State is the diverse cultural expression of its population that lives within the national territory, maintaining its institutions in the political, cultural, legal, and economic spheres. d) Finally, the term Communitarian expresses the character of the plural society that assumes and promotes the paradigm of living well, based on decolonization, without discrimination or exploitation, with full social justice, to consolidate plurinational identities.[891]

The Bolivian state model is built on plurality and political, economic, juridical, cultural, and linguistic pluralism. The 2009 constitution is the transition[892] from a unitary and social state to a plurinational and

[887] Ley Marco de Autonomías y Descentralización 'Andrés Ibáñez' [Framework Law of Autonomies and Decentralization 'Andrés Ibáñez'], Articles 50, 53, 56 and 58. This law was later modified to simplify and reduce the requirements (for example, with Law 1198 of July 18, 2019).
[888] Miguel Ángel Foronda Calle, 'Caminando por los senderos de la Autonomía Indígena Originario Campesina: diseño y avance de la política de implementación' (2017) año 2 número 3 Democracia en Ejercicio Andamios - Revista del Órgano Electoral Plurinacional de Bolivia 25.
[889] First rejected through *Declaración Constitucional Plurinacional 0009/2013* [2013] Tribunal Constitucional Plurinacional Expediente 01529-2012-04-CEA, Neldy Virginia Andrade Martínez, and finally approved by. *Declaración Constitucional Plurinacional 0029/2013* [2013] Tribunal Constitucional Plurinacional Expediente 01529-2012-04-CEA, Neldy Virginia Andrade Martínez.
[890] Foronda Calle (n 888) 28.
[891] *Sentencia Constitucional Plurinacional 0047/2017-S1* [2017] Tribunal Constitucional Plurinacional Expediente: 17211-2016-35-AAC, Efren Choque Capuma [III.1].
[892] The Constitution was named 'the intermediate constitution' by Pablo Mamani for recognizing the plurinational and community aspects of the State but within the framework of liberal citizenship with a minority presence of

community state, whose plurinational character corresponds both to decolonization, which allows deconstructing the republican, colonial and liberal state, as well as to the recognition of the colonial pre-existence of indigenous peoples.[893] Furthermore, it is a political response tending to overcome the discrimination of indigenous peoples, Euro-centrism, the concealment of the other, the purely representative democracy of an elite, and the monopoly of a State that expropriates the decisions of the community and the individual that, through the vote, loses its decision-making capacity.[894]

Some read the Bolivian Constitution as an imbalance in favor of nations, peoples, and communities against urban citizens,[895] although it intends to include everyone under its words. It is argued that the Bolivian State was not liberal and colonial, that the republic created in 1825 was the greatest act of decolonization that liberated Bolivians from the Spanish crown, and that the republic implied common good, the rule of law, and equilibrium in contrast to the Plurinational that abolished the republic constituted by citizens with equal rights granting greater quotas of representation to indigenous peoples.[896] Despite this last position, which is eminently theoretical, the Republic of Bolivia has been an instrument of denial of the other as a collective under the failed attempt to build a nation-state of citizens. Moreover, the Constitution establishes that the purposes of the State are to institute a just, harmonious, decolonized society with plurinational identities, guarantee security and equal dignity of persons, nations, peoples, and communities, fostering mutual respect and intracultural, intercultural, and plurilingual dialogue, and reaffirm the State unity preserving its plurinational diversity, among others.[897] Then, it is not a question of excluding or discriminating against the Bolivian citizen but instead of embracing and recognizing the other, the collectivities that also make up the Bolivian society.

The Plurinational Constitution combines liberal ways with indigenous peoples' cultural expressions and values.[898] It is a Constitution that aims to incorporate and satisfy all kinds of ideology and practices: the left, the right, and those who claim indigenous rights.[899] However, Fernando Untoja critically holds that although the Bolivian state was founded in 1825 against the Aymara, Quechua, and Guarani nations (who failed to establish their states) and did not manage to forge a nation-state throughout its republican life, the plurinational state has an indigenous mask that tries to hide the continuity of domination, through the substitution of imported constitutional texts.[900] Indeed, just because the nation-state has not

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the indigenous in the Bolivian institutions. He claimed that the new Constitution is a lot, but at the same time, it is insufficient given the magnitude of the indigenous struggle. Mamani Ramírez (n 828).

[893] Prada Alcoreza (n 863).

[894] Patzi Paco (n 859). In any case, article 144 of the new Constitution reduces citizenship to casting a vote, delegating power, and giving up sovereignty, which is the liberal foundation for the expropriation of decisions and the construction of the monopoly of power by the liberal elites, expresses Jorge Viaña Uzieda, 'Construir los fundamentos de una nueva ciudadanía en una coyuntura de transición', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010).

[895] Cordero Carraffa (n 834); Mansilla (n 668); Quiroga Trigo (n 852). Laruta Bustillos, for his part, considers that the Constitution adopts measures of unequal treatment favorable to indigenous peoples to strengthen their participation as a disadvantaged group, through positive discrimination. Carlos Laruta Bustillos, 'Análisis de la Parte Quinta del Texto Constitucional Jerarquía normativa y reforma de la Constitución', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010).

[896] Quiroga Trigo (n 852).

[897] Constitución Política del Estado Plurinacional de Bolivia, Article 9.

[898] Albó (n 675); Mamani Ramírez (n 828); Mansilla (n 668); Patzi Paco (n 859); Prada Alcoreza (n 863); Richter Ascimani (n 664).

[899] Patzi Paco (n 859).

[900] Fernando Untoja Choque, 'Mitificación indigenista del pasado', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010).

been feasible, it became essential to face a change with at least two connotations for this criticism. On the one hand, plurinationality is only one of the possible alternatives currently being tested through its implementation. On the other hand, the 2009 Constitution, with its virtues and defects, is a norm and cannot immediately transform reality customs and practices that have remained rooted. In this sense, the concept of a mask is a pejorative way of understanding the phenomenon that is currently occurring.

Article 11 of the Bolivian Constitution adopts four forms in its democratic government system: direct, participatory, representative, and communal, ordering equivalence of conditions between men and women. It is direct and participatory through the referendum, citizen legislative initiative, revocation of the mandate, assembly, council, and prior consultation. In this sense, it is 'representative' employing the election of authorities by universal, direct, and secret vote. It is communal through the election, designation, or nomination of authorities and representatives through indigenous peoples' norms and procedures.[901] Except for the citizens' legislative initiative and authorities' election through the vote, all the mentioned ones are new features incorporated in the 2009 Constitution.

Félix Patzi states that community democracy proposes a power of the community through joint deliberation, where the representatives, whose positions are mandatory and rotating under penalty of losing access to the community, do not monopolize the right to decide. Instead, they organize the adoption of the shared decision since sovereignty is not delegated, and the representative obeys the community instead of commanding it. Furthermore, this author explains that the communal political practice of duty-service is learned, and the authorities legitimize themselves through the hierarchical course of positions instituted by the communal system that implies expenses and not profits. Community democracy is not done by competitive means but by rotation, in which the people who follow this path of service to the community go up in positions that have increasing responsibilities. [902]

One of the most important rights of indigenous peoples that restructures the entire Constitution and, at the same time, the entire State, is the right that their institutions are part of the State's general structure,[903] recognized by article 30.II.5 of the Constitution. Thus, a multi-civilizing institutionality is installed in power in which, in addition to western institutionality, the forms of the political and social organization of indigenous peoples, their own social and democratic political institutions, fit.[904] According to article 12 of the constitution, the State organizes and structures its public power through four bodies [órganos]:[905] legislative, executive, judicial and electoral. Since indigenous peoples have the right to participate in state bodies, the Constitution imposes their participation in three of these four bodies, excluding the Executive, as Albó maintains, for unknown reasons.[906] Nonetheless, indigenous

[901] In this case, however, the Electoral Body's supervision is imposed, according to Article 26 of the Constitución Política del Estado Plurinacional de Bolivia. As Bolivia recognizes different nations and peoples, it is conceivable that there would also be different norms and procedures for the election of its authorities under the community form, typical of each of the peoples, according to Tapia Mealla (n 858). The existence of multiple and different forms of choice, decision and exercise of authority by communities would have made it preferable to call it 'community democracies' in the plural, in words of José Luis Exeni Rodríguez, 'Un Órgano Electoral para la demo–diversidad', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010) 439.
[902] Tapia Mealla (n 858).
[903] Farit Rojas Tudela, 'Análisis y comentario de la Primera Parte de la CPE', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010).
[904] Morales Olivera (n 864) 561.
[905] The organs refer to the metaphor of a State body in its entirety, compared to the position of the powers that, instead, refers to its balance, according to Prada Alcoreza (n 863).
[906] Albó (n 675) 721.

peoples constitute, together with formal jurisdictions, a single judicial function through their right to exercise indigenous jurisdiction under the egalitarian plural justice system.

The Legislative Organ or Plurinational Legislative Assembly is composed by the chambers of deputies (130 members) and senators (36 members).[907] Proportional participation of the indigenous peoples shall be guaranteed in the election of members of the assembly.[908] For the chamber of deputies, the Constitution creates special indigenous districts [circunscripciones especiales], which are governed by the principle of population density of each of the nine Bolivia departments, provided that they belong to the rural area and are a minority population in the department they inhabit.[909] The Electoral Organ determines the distribution of seats among the departments according to the number of inhabitants obtained by the last official population census.[910] In current practice, seven special constituency seats have been established in the chamber of deputies for indigenous peoples since 2010, until a new law is enacted due to a new population census.[911]

Regarding the Judicial Organ, which is based on the principles of legal pluralism and interculturality, among others,[912] the highest courts' magistrates of the Supreme Court of Justice, Agri-Environmental Court, and Plurinational Constitutional Court (PCC), are elected through universal suffrage. Article 197.I establishes that the PCC is made up of magistrates elected according to plurinational criteria, representing the ordinary system and the indigenous system.[913] This plural representation achieves the interpretation of both systems of justice (the state-western-formal with indigenous justice),[914] although it is well known that indigenous justice is not one system, but a different one for each indigenous people. Whereas there is no mandatory constitutional quota for indigenous people in the formation of the Supreme Court of Justice and the Agri-Environmental Court,[915] the law requires at least one person of indigenous origin on the lists of candidates for these courts.[916]

[907] Constitución Política del Estado Plurinacional de Bolivia, articles 145, 146 and 148.
[908] ibid, article 147.II.
[909] ibid, article 146.VII.
[910] ibid, Article 146.V.
[911] Ley 026 del Régimen Electoral [Law 026 of the Electoral Regime] 2010. Article 57 of this law grants 1 seat for each department of Bolivia, except for Chuquisaca and Potosí, for the following indigenous peoples (by department): Afroboliviano, Mosetén, Leco, Kallawaya, Tacana and Araona (La Paz), Chiquitano, Guaraní, Guarayo, Ayoreo and Yuracaré – Mojeño (Santa Cruz), Yuki and Yuracaré (Cochabamba), Chipaya and Murato (Oruro), Guaraní, Weenayek and Tapiete (Tarija), acana, Pacahuara, Itonama, Joaquiniano, Maropa, Guarasugwe, Mojeño, Sirionó, Baure, Tsimane, Movima, Cayubaba, Moré, Cavineño, Chácobo, Canichana, Mosetén y Yuracaré (Beni), and Yaminagua, Pacahuara, Esse Ejja, Machinerí y Tacana (Pando).
[912] Which are independence, impartiality, legal security, publicity, probity, promptness, gratuity, equity, service to society, citizen participation, social harmony, and respect for rights according to Constitución Política del Estado Plurinacional de Bolivia, Article 178.
[913] Candidates for the Plurinational Constitutional Court may be proposed by organizations of civil society and indigenous peoples, according to Article 199.II of the Constitution. Instead, the Constitutional project aproved by the Constituent Assembly stated paritary representation.Magali Vienca Copa Pabón, 'Dispositivos de ocultamiento en tiempos de pluralismo jurídico en bolivia' (Maestría en Derechos Humanos, Universidad Autónoma de San Luis Potosí 2017) 23 <https://repositorioinstitucional.uaslp.mx/xmlui/handle/i/5594>.
[914] Prada Alcoreza (n 863).
[915] The constitution maintains in its articles 182.VI and 199 that for the qualification of merits of magistrates of the Supreme Court of Justice and the Plurinational Constitutional Court, having exercised the quality of indigenous authority under its justice system shall be taken into account. In article 187, the Constitution orders that the preselection of candidates from the Agri-Environmental Court guarantees plural composition.
[916] The Supreme Court of Justice and the Plurinational Constitutional Court are each composed of 9 magistrates, each is chosen by each of the nine departmental districts. The Plurinational Legislative Assembly will preselect four applicants per department, guaranteeing that at least one person has indigenous origin in each departmental list. The Agri-Environmental Court has five magistrate members, each of whom is chosen by the national constituency. The Plurinational Legislative Assembly preselects fourteen applicants, guaranteeing the inclusion

Finally, the Electoral Body, both in the previous constitutional text and in the current one, concentrates on a single entity that in other countries is separated into two and even three institutions:[917] a) the administration of electoral processes, b) the resolution of contentious electoral matters, and c) the administration of the civil registry. It is composed at the country level (Supreme Electoral Tribunal) of seven members, two of whom must be of indigenous origin, and at the departmental level (Departmental Electoral Tribunal), at least one member is of indigenous origin. [918]

## *Constitutional Recognition of Collective Rights*

According to article 13, the Constitution's rights are equal, inviolable, universal, interdependent, indivisible, progressive, and not exclude other rights not expressed in the constitutional text. It asserts that human rights recognized in international treaties and conventions ratified by the Legislative Assembly shall prevail over internal law.

The Bolivian Constitution asserts that human rights recognized in international treaties and conventions ratified by the Legislative Assembly shall prevail over internal law. Although constitutional article 410.II acknowledges that the Constitution is the supreme norm of Bolivia, it recognizes 'the international Treaties and Conventions in the matter of human rights and the norms of Communitarian Law, which have been ratified by the country' [919] as a component of the Constitution [termed by Constitution's article 410.II in Spanish as *'bloque de constitucionalidad'* or 'constitutional block' in its literal translation]. Furthermore, article 256.II imposes that the constitutional rights shall be interpreted according to international human rights treaties when the latter provides more favorable norms. The content of both norms did not exist in previous Bolivian constitutions. The content of both norms did not exist in previous Bolivian constitutions.

The constitution recognizes individual, social, collective, and environmental rights (Articles 15-108) in a welfare State that incorporates the institutional framework and values of indigenous peoples and democratic principles[920] in Article 8.[921] There are authors, such as Mansilla, who opposes the Bolivian constitutionalization of collective and ecological rights, considering that it is not about rights for all human beings without distinction, but about specific groups and their temporal interests.[922]

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of applicants of indigenous origin, according to Ley 026 del Régimen Electoral [Law 026 of the Electoral Regime], Article 79. Modified by Ley 929 de modificación a las leyes 025 del Órgano Judicial, 26 del Régimen Electoral, y 027 del Tribunal Constitucional Plurinacional [Law 929 modifying laws 025 of the Judicial Organ, 026 of the Electoral Regime, and 027 of the Plurinational Constitutional Court] 2017.

[917] Exeni Rodríguez (n 901) 439.

[918] Constitución Política del Estado Plurinacional de Bolivia, Article 206 II and V.

[919] Following the Constitution translation of Elkins, Ginsburg and Melton (n 233).

[920] Prada Alcoreza (n 863).

[921] In the translation of Elkins, Ginsburg and Melton (n 233) Article 8 of the Constitutions says:

> I. The State adopts and promotes the following as ethical, moral principles of the plural society: ama qhilla, ama llulla, ama suwa (do not be lazy, do not be a liar or a thief), suma qamaña (live well), ñandereko (live harmoniously), teko kavi (good life), ivi maraei (land without evil) and qhapaj ñan (noble path or life).
>
> II. The State is based on the values of unity, equality, inclusion, dignity, liberty, solidarity, reciprocity, respect, interdependence, harmony, transparency, equilibrium, equality of opportunity, social and gender equality in participation, common welfare, responsibility, social justice, distribution and redistribution of the social wealth and assets for well being.

Moreover, Article 6 of the Constitution includes the *Whipala* flag of Aymaras and Quechuas, and the *patujú* flower of lowlands as Bolivian symbols, along with the existing ones: the red, yellow and green tri-color flag, the Bolivian anthem, the code of arms, the cockade and the flower of *kantuta*, according to Tapia Mealla (n 858).

[922] Mansilla (n 668).

The PCC held that collective rights were recognized by the Constitution, with its own structure and content, different from that of classical fundamental rights. The PCC sustains that the Constitution seeks the protection of the rights of indigenous peoples when their violation emerges from the acts of the jurisdictional and administrative authorities and individuals who live outside and within their respective peoples. The Bolivian Constitution of 1826 reproduced the mentality of colonial subjugation and exploitation of the 'Indians,'[923] without legally recognizing their rights. Since the Constitution of 1938, with the beginning of Bolivian constitutional social thinking, the process of constitutionalizing indigenous rights began by recognizing indigenous communities for the first time. The 1994 reforms to the 1967 Constitution introduced the indigenous peoples' social, economic, and cultural rights that inhabit the Bolivian territory but with a liberal approach. The PCC holds that the 2009 Constitution established the rights of indigenous peoples based on their self-determination in four components: a) Rights to land and territory, understood as the 'big house' [Casa Grande] or geographic space, where they develop their own daily and cyclical activities. b) Cultural identity, which encompasses the values, beliefs, traditions, customs, languages, and forms of social, economic, political, legal, and cultural organization, which allow their differentiation from the rest of the country's inhabitants. c) Right to territorial autonomy consists of organizing themselves according to their own cultural principles and values within the framework of respect for the Constitution and the principle of popular sovereignty. d) The right to exercise their own legal systems based on their legitimate way of living. Thus, the fundamental rights of indigenous peoples are those enshrined in the Constitution, protecting their own collective ways of life and their own organizational systems, guaranteeing their enforceability through jurisdictional instances within the framework of respect for the free determination of the peoples. [924] As a corollary of this understanding, the following quote from the Constitutional Court describes the spirit of the recognition of the collective rights of indigenous peoples in Bolivia:

> 'The right to self-determination constrains the State to assume that indigenous peoples are collective subjects and bearers of rights, under equal conditions in relation to other peoples, not by delegation or State recognition, but by their own existence that predates the creation of the State.'[925]

The Constitution explicitly refers to indigenous peoples' collective rights in the eighteen numerals of its article 30.II, clarifying in the introduction of this enumeration that these rights are enjoyed by indigenous peoples within the framework of the unity of the State. They are the following:

> 1. To be free.
>
> 2. To their cultural identity, religious belief, spiritualities, practices and customs, and their own world view.
>
> 3. That the cultural identity of each member, if he or she so desires, be inscribed together with Bolivian citizenship in his identity card, passport and other identification documents that have legal validity.
>
> 4. To self-determination and territoriality.

[923] 'Indian is an English bastardization of two Spanish words, En Dio, which correctly translated means in with God,' part of the speech of Russell Means in the 'Opening Plenary Session' in The Geneva Conference, Official Report by International Indian Treaty Council, 1977, cited by Irene Watson, 'Introduction', *Indigenous Peoples as Subjects of International Law* (Taylor & Francis 2017) 2.
[924] *SCP 0047/2017-S1* (n 891) para III.2.
[925] *Sentencia Constitucional Plurinacional 0052/2017* [2017] Tribunal Constitucional Plurinacional Expediente 04839-2013-10-CCJ, Juan Oswaldo Valencia Alvarado [III.1].

5. That its institutions be part of the general structure of the State.

6. To the collective ownership of land and territories.

7. To the protection of their sacred places.

8. To create and administer their own systems, means and networks of communication.

9. That their traditional teachings and knowledge, their traditional medicine, languages, rituals, symbols and dress be valued, respected and promoted.

10. To live in a healthy environment, with appropriate management and exploitation of the ecosystems.

11. To collective ownership of the intellectual property in their knowledge, sciences and learning, as well as to its evaluation, use, promotion and development.

12. To an inter-cultural, intra-cultural and multi-language education in all educational systems.

13. To universal and free health care that respects their world view and traditional practices.

14. To the practice of their political, juridical and economic systems in accord with their world view.

15. To be consulted by appropriate procedures, in particular through their institutions, each time legislative or administrative measures may be foreseen to affect them. In this framework, the right to prior obligatory consultation by the State with respect to the exploitation of nonrenewable natural resources in the territory they inhabit shall be respected and guaranteed, in good faith and upon agreement.

16. To participate in the benefits of the exploitation of natural resources in their territory.

17. To autonomous indigenous territorial management, and to the exclusive use and exploitation of renewable natural resources existing in their territory without prejudice to the legitimate rights acquired by third parties.

18. To participate in the organs and institutions of the State.[926]

This list of rights was developed before the United Nations finally adopted its Declaration on the Rights of Indigenous Peoples in September 2007 with independent wording; besides, all but one (on self-identification in official identity documents) appear in some way in that Declaration, and seven in the ILO Indigenous and Tribal Peoples Convention No. 169 of 1989.[927]

## *Some Notes on Bolivian Legal Pluralism*

Rodríguez Veltzé, former president of Bolivia and its Supreme Court of Justice, argued that the classical conception defines legal pluralism as the concurrence or coexistence of more than one legal system or set of *rights* in a particular social field, and that emerges from the existence of a system established before the presence of another, via colonization or modernization, many times strange or different from

[926] In translation of Elkins, Ginsburg and Melton (n 233).
[927] Albó (n 675).

the pre-existing one, generating new dominant legal cultures.[928] He claims that the new currents of legal pluralism also focus on the debate on the normative and legal production of other phenomena, such as globalization, reject the assumption that the only right is the one that arises from the State, and conceive the different legal systems, not as separate entities seeking their own identity, but as interrelated and mixed under the universal framework of human rights.[929] Rojas claimed that legal pluralism supposes more than one way of approaching the legal reality and the realization of the legal, arguing that since there is more than one language in the Plurinational State, there is also more than one representation of the legal and that the majority of indigenous peoples have a conception of law that is different from the western one.[930] Furthermore, like Molina, Neri, Tejerina and Layme state, legal pluralism supposes the construction of a legal system from the dogmatic, practical, and institutional spheres, recognizing parity between different communities and languages of law, and accepting different political and social organizations.[931]

Bolivian constitutional indigenous legal pluralism is based on the constitutional reform of 1994 that recognized the authorities of the indigenous and peasant communities 'to exercise functions of administration and application of their own norms as an alternative solution to conflicts under their customs and procedures, provided that they are not contrary to this Constitution and the laws' [932] and then, through the Constitution of 2009, which recognized the right of indigenous peoples to practice their legal systems according to their worldview.[933] These Constitutions were possibly influenced respectively by articles 8 and 9 of the ILO Indigenous and Tribal Peoples Convention No. 169 of 1989, ratified by Bolivia on 11 December 1991, and articles 5, 27, 34, and 40 of the UN Declaration on the Rights of Indigenous Peoples of 2007, adopted as a Bolivian law on 7 November 2007.[934] However, one should wonder what the meaning of legal pluralism in the Constitution of the Plurinational State of Bolivia is. The following paragraphs tend to answer this question.

The proposed Bolivian Constitution of the Pact of Unity, in its first version in 2006, identified legal pluralism as indigenous justice systems, exercised through its authorities and norms, and with the same hierarchy as formal justice to judge crimes and violations without interference (that is, modifications or annulments of the decisions of indigenous justice on the part of justice State) and, besides, with indigenous participation in the judicial instances of the State[935] The second version of the Unity Pact of 2007 included allocating a budget to indigenous justice by the State and claimed that indigenous jurisdiction should be exercised in any matter concerning any of its members and outsiders that may affect its members, territories, natural resources, assets, and interests.[936]

A campaign of discrediting against Bolivian indigenous justice was developed, especially during the Constituent Assembly and in the first years of the Constitution. For example, in Spain, the newspaper El País published on 11 June 2010 the headline that read 'The brutal justice that frightens Bolivia. A series of lynchings protected by indigenous law unleashes a fierce debate in the Andean country about

[928] Eduardo Rodríguez Veltzé, 'Órgano Judicial y Tribunal Constitucional Plurinacional', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010) 425.
[929] ibid 426.
[930] Rojas Tudela (n 903) 287–288.
[931] Molina Barrios and others (n 878) 101–102.
[932] Constitución Política del Estado de Bolivia del 6 de febrero de 1995, Article 171.
[933] Constitución Política del Estado Plurinacional de Bolivia, Article 30.II.14.
[934] *SC 1586/2010-R* (n 839) para III.2.3.
[935] Garcés and others (n 671) 149, paragraph 7.3 Caracterización del Poder Judicial.
[936] ibid 188–189, articles 101-102.

the coexistence of two judicial systems.'[937] The article narrated the case of two lynchings that had occurred recently, in which five people lost their lives, the 57 lynchings that occurred in 2007 according to figures from the ombudsman, and cited testimonies about the lack of limits of indigenous justice and the absence of appeals in it.[938] That same day, David Crispín, former Mallku from Curahuara de Carangas (a Marka of Jach'a Karangas), responded in his former blog that lynchings and self-justice are not part of indigenous justice since it does not recognize the death penalty but instead respects life. Then, he concludes, it must be understood that the brutal publication that tries to frighten its readers, the report of the Spanish newspaper El País on indigenous justice, is very far from the concept of indigenous justice, so it must correct its brutality and undaunted itself.[939] This discussion occurred in the context of the approval of the Law of the Judicial Organ [Ley del Órgano Judicial] of June 2010. In other isolated cases, there was also media noise due to possible excesses in the application of sanctions by indigenous authorities, who have undeservedly received a perverse political amplification on the part of the Bolivian right wing.[940]

Possibly because the Constitution is a transitional one, as mentioned previously, or because the promotion of fear of indigenous jurisdiction has managed to take root in the Constituent Assembly and Congress, it is that the scope of both proposals of the Pact of Unity has been restricted in the final version of the Constitution. As a result, then, the Bolivian indigenous justice not only lacks a state budget, except if it conforms an indigenous autonomy,[941] but also exists only in indigenous territories, among members of indigenous peoples, and on certain matters to be delimited by law,[942] according to the so-called personal, material, and territorial areas of validity defined by article 191 of the Constitution.

In this sense, Félix Patzi, former departmental governor of La Paz, states that community justice has been delimited only to the rural area and hopes that it can also be administered by leaders of neighborhoods and districts in the urban area. Perhaps this yearning is based on his criticism of the liberal State justice, where individuals issue decisions without real collective control, with bureaucratic, corruptible, and delaying tendencies, in a cycle of ineffective hierarchical appeals.[943]

On the contrary, in a critical position to Bolivian indigenous justice, Inti Schubert argued that it is based on a patriarchal order, with strong weaknesses in the face of due process for not respecting the principle of equality before the law (by dictating different solutions to similar cases based on the interests of the community defined by the authorities and harmonious coexistence). [944] Furthermore, he claims that

[937] The headline in Spanish was: La brutal justicia que atemoriza Bolivia. Una serie de linchamientos amparados en el derecho indígena desata en el país andino un fuerte debate sobre la convivencia de dos sistemas judiciales. Mabel Azcui, 'La brutal justicia que atemoriza Bolivia' *El País* (Madrid, 11 June 2010) <https://elpais.com/diario/2010/06/11/internacional/1276207208_850215.html> accessed 7 October 2020.
[938] ibid.
[939] David Crispín, 'Respuesta al Periódico El País de España Sobre Justicia Indígena Originaria' (11 June 2010) <http://jachacarangas.blogspot.com/2010/06/respuesta-al-periodico-el-pais-de.html> accessed 7 October 2020.
[940] Idón Moisés Chivi Vargas, 'El Órgano Judicial', *Miradas: nuevo texto constitucional* (Universidad Mayor de San Andrés: Vicepresidencia del Estado Plurinacional de Bolivia: Instituto Internacional para la Democracia y la Asistencia Electoral (IDEA Internacional) 2010) 420.
[941] In the case of indigenous autonomies, the Constitution includes in its article 304.I.8 the exclusive authority of exercise indigenous jurisdiction for the application of justice and the resolution of conflict through their norms and procedures under the Constitution and the law, stating in its paragraph IV that '[t]he resources necessary for carrying out their responsibilities shall be transferred automatically by the Pluri-National State in accordance with the law', in translation of Elkins, Ginsburg and Melton (n 233).
[942] Constitutionally termed as the Jurisdictional Demarcation Law [Ley de Deslinde Jurisdiccional] in its article 192.III.
[943] Patzi Paco (n 859).
[944] Schubert and Flores Condori (n 54) 22–23.

indigenous justice confuses moral and legal norms (so it can judge for not meeting social expectations), and it can resolve issues within a rural community of acquaintances but is unable to do it in urban areas to strangers.[945]

Despite the limitations imposed in the Constitution, there are authors such as Quiroga Trigo who argue that the *plurinational community rule of law* [Estado de Derecho Plurinacional Comunitario] of article 1 of the Constitution liquidates the rule of law given that it implies that there are citizens governed by the Constitution and the laws and, at the same time, indigenous communities governed by their own norms, creating in its article 179 two parallel systems of justice of equal hierarchy.[946] However, this Constitutional reading is at least incongruous and partial because it omits to mention that indigenous jurisdiction respects the right to life and must be subject to the Constitution's rights and guarantees, according to its article 190. Furthermore, this position is biased when confronting that the decisions of the indigenous jurisdiction can be reviewed and revoked by the PCC through constitutional actions for freedom and protection, a Court that also has the attribution of resolving the consultations of the indigenous authorities on the application of their legal norms and resolving conflicts of jurisdiction between the indigenous, ordinary, and agri-environmental jurisdictions.[947]

Bolivia has made significant progress by recognizing the same hierarchy of indigenous jurisdiction compared to ordinary jurisdiction in the formula of its article 179, which bases its 'unique judicial function' on the ordinary, agri-environmental, and indigenous jurisdictions. Rodríguez Veltzé argues that it is about an order that hierarchizes the indigenous jurisdiction incorporating it into a single function regime and subject to the constitutional preeminence of the new State, in a singular and practical vision of the new legal pluralism, the constitutional foundation of the State.[948] With this recognition, Chivi claims that Bolivia faces the challenge of decolonizing the State of the State and decolonizing the law by nationalizing the justice that was marked by colonialism from the beginning of the republican era.[949] He raises two alternatives in this context: either the judicial powers are held as hostages of the other powers, making pluralism hypocrisy, or they sincerely face their true political independence, assuming the hierarchical equality of the indigenous jurisdiction with the other jurisdictions.[950]

In this context, the PCC has been building its operational understanding of legal pluralism through various decisions. It has demonstrated the real possibility of legal pluralism by establishing limits, content, and criteria for the coexistence of justice systems in Bolivia. The PCC also raised its understanding of legal pluralism based on references to some authors[951] that are referred to below only for an illustrative purpose. Thus, this Court quotes Georges Gurvitch to assert that the legal monism that gave rise to modern European States between the 15th and 19th centuries and identifies law with State law forgets the other sources of infra-State and supra-State law that coexist in plurality. The Court refers to Santi Romano to justify that the legal field goes beyond the limits of the State; to Sánchez-Castañeda to argue that the pluralist conception admits the coexistence of a plurality of legal systems; and, to Bobbio to support a broad definition of law that does not only reach the State. It claims that

[945] ibid.
[946] Quiroga Trigo (n 852).
[947] Constitución Política del Estado Plurinacional de Bolivia, articles 125-134, 2002, and 196.
[948] Rodríguez Veltzé (n 928) 424.
[949] For example, the decree of 15 December 1825 created the Superior Court of Justice of La Paz with the same powers as the old audiences, and the decree of 21 December of the same year imposed that the Law of 9 October 1812 be observed in the Republic and the other decrees of the Spanish courts on the administration of justice, according to Chivi Vargas (n 940) 412.
[950] Chivi Vargas (n 940).
[951] *DCP 0009/2013* (n 889) para III.4.2.5, under analysis of Article 101 of Totota Marka Statute.

Boaventura de Sousa Santos identifies legal discourse as a reflection of a specific culture that can sometimes be hegemonic over other cultures, as occurs with colonialism, which does not imply that the subject cultures have necessarily accepted it. Legal pluralism will be, according to Juan Mejía Coca, the coexistence of several legal systems in a territory, whether or not a State recognizes them; or, it is a theoretical perspective that allows recognizing the coexistence of diverse legal systems in a geopolitical space in the words of Raquel Yrigoyen Fajardo. Finally, the Court argues, citing Inti Schubert and Helen Ahrens, that the Bolivian Constitution admits both a pluralism from below (or internal pluralism) through indigenous legal systems and pluralism from above by incorporating international human rights treaties into its normative scope.[952]

Hoekema distinguishes legal pluralism between socio-juridical and formal legal pluralism, depending on its mere existence in a country or on the State's formal recognition. Further, formal legal pluralism could be unitarian (or weak) and egalitarian (or strong). Whilst the formal unitarian legal pluralism depicts the legal or constitutional recognition by the State of the legitimacy of non-official law, under certain limits, and in a partial fashion, in the formal egalitarian legal pluralism, the State recognizes the non-official law as a whole, and as a substitute of the predominant laws within the social areas where it has a presence. [953] The analysis presented in the following section of this dissertation arguably demonstrates that the egalitarian Bolivian justice system resembles more unitarian pluralism than egalitarian pluralism.

[952] ibid.

[953] André Hoekema, 'Hacia Un Pluralismo Jurídico Formal de Tipo Igualitario' in Armando Guevara Gil and Aníbal Gálvez Rivas (trs), *Pluralismo jurídico e interlegalidad* (Pontificia Universidad Católica del Perú 2014) 356–357.

# Section 3.3: Content of the Collective Right to Exercise Indigenous Jurisdiction from the Bolivian International and Constitutional Legal Framework

## Introduction

Following the research design for this case study, this section reviews and describes the content of the collective right to exercise jurisdiction according to the Bolivian international and local legal frameworks.

To achieve this goal, this section has been divided into an introductory part that contextualizes this right based on the rights to self-determination and culture and then begins with international legal instruments and the Bolivian Constitution. At the moment of describing the content of this right, the standards that favor its exercise will be identified.

### *Exercise of Jurisdiction as Part of Self-Determination and Culture*

In Xanthaki's opinion, the right to self-determination includes, among its many applications, the right of indigenous peoples (IPs) to perform justice.[954] How could the right to self-determination cover this right? Following Xanthaki's work, a brief reference to the evolution of the right to self-determination will allow an understanding of this possible scope.

In 1960, article 2 of the Declaration on the Granting of Independence to Colonial Countries and Peoples stated that '[a]ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.' [955] Self-determination in the context of this declaration 'was equated to decolonization,' [956] given that its preamble considers the freedom and independence movements toward the end of colonialism, and its first article declares that '[t]he subjection of peoples to alien subjugation, domination and exploitation constitute a denial of fundamental human rights.'

In 1970 the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States[957] 'expanded the beneficiaries of the right to "peoples under colonial or racist

[954] 'The right of self-determination would allow for the establishment of… a judiciary with executive authority to decide legal questions on the validity and interpretation of local acts and orders' Xanthaki (n 5) 171.
[955] Declaration on the Granting of Independence to Colonial Countries and Peoples (14 December 1960) A/RES/1514(XV).
[956] Xanthaki (n 5) 136.
[957] 'By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.' Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (24 October 1970) A/RES/2625(XXV).

regimes or other forms of alien domination".'[958] It also included the provision not to construe the declaration as 'authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states.' [959]

In 1976 the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) entered into force. In their article 1.1, both expressed that '[a]ll peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.'[960]

However, the self-determination proclaimed in the referred international documents was not supposed to apply to IPs.[961] Allegedly, it was feared that IPs could exercise the right to self-determination through their secession, affecting the territorial integrity of the states. In the drafting of the ICCPR and the ICESCR, IPs were excluded,[962] although such particularity does not appear in their literal texts. Even article 1.3 of ILO Convention 169 (C169) expressly stated that '[t]he use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.'[963]

Such a legal quality started to change in 1986 when the African Charter on Human and Peoples' Rights recognized self-determination for all peoples in Africa. According to article 20.1 '[a]ll peoples… shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.' [964]

The right to self-determination was recognized in favor of IPs both in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and in the American Declaration on the Rights of Indigenous Peoples (OASDRIP). However, in both cases, there is a clause of restrictive interpretation that limits self-determination not to be construed as an IPs power for secession.[965] The UNDRIP declared in 2007 in its article 3 that '[i]ndigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.' Furthermore, article 4 declares that 'Indigenous peoples, in exercising their right

[958] Xanthaki (n 5) 138.
[959] Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States.
[960] International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3; International Covenant on Civil and Political Rights (ICCPR).
[961] There should be a balance or midpoint between the maximalist (admits all claimants) and minimalist (restricts or limits the right) approaches to the right of self-determination according to Rodolfo Stavenhagen, 'Self-Determination: Right or Demon?' in Donald Clark and Robert Williamson (eds), *Self-Determination: International Perspectives* (Palgrave Macmillan UK 1996) 7 <https://doi.org/10.1007/978-1-349-24918-3_1> accessed 26 October 2019.
[962] 'During the drafting process of the International Covenants it was made clear that minorities are not included in the 'peoples' of Article 1; minority rights are dealt with in Article 27 of the ICCPR,' in the wording of Xanthaki (n 5) 133.
[963] Convention Concerning Indigenous and Tribal Peoples in Independent Countries 169.
[964] African Charter on Human and Peoples' Rights S.
[965] Article 46 of UNDRIP and article IV of OASDRIP. Unlike other peoples subject to colonization or occupied by foreigners, as mentioned in the previous declarations and conventions, IPs have limited self-determination. However, as Doyle expresses 'the normative framework of indigenous peoples' rights is the first articulation of a framework of rights on the basis of the right of peoples to self-determination beyond the traditional decolonisation context.' Doyle (n 41) 113. However, as Barelli says 'the UNDRIP is the first international legal instrument to have explicitly extended the right of (internal) self-determination to a sub-national group.' Mauro Barelli, 'Shaping Indigenous Self-Determination: Promising or Unsatisfactory Solutions?' (2011) 13 International Community Law Review 413, 422.

to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.' [966]

In 2016 article III of the OASDRIP expressed that '[i]ndigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development.'[967] Moreover, in its article XXI the OASDRIP includes 'the right to autonomy or self-government in matters relating to their internal and local affairs' and 'the right to maintain and develop their own decision-making institutions.' [968]

In Bolivia, the right to self-determination is also recognized for indigenous peoples. Article 2 of the Bolivian Constitution, in reference to the country's history states that:

> 'Given the pre-colonial existence of nations and rural native indigenous peoples and their ancestral control of their territories, their free determination, consisting of the right to autonomy, self-government, their culture, recognition of their institutions, and the consolidation of their territorial entities, is guaranteed within the framework of the unity of the State, in accordance with this Constitution and the law.'[969]

The article 289 of the Bolivian Constitution emphasizes that:

> 'Rural native indigenous autonomy consists in self-government as an exercise of free determination of the nations and rural native indigenous peoples, the population of which shares territory, culture, history, languages, and their own juridical, political, social and economic organization or institutions.'[970]

It should be noted that this article also limits the right to self-determination of indigenous peoples vis-à-vis the unity of the Bolivian State.[971]

Regarding the scope of this right to self-determination, there are at least two very recognized positions in the literature. On the one hand, the minimalist approach only poses self-determination as a right of independence. This understanding is too restrictive and useless given that such scope has been consistently denied in international and Bolivian law to IPs. Another, on the other hand, is the maximalist approach which maintains that the right to self-determination is broad as an 'umbrella right'[972] that encompasses, in addition, political, economic, and cultural aspects. This maximalist approach has been used by indigenous in many cases.[973] As Doyle states, the right to self-determination

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[966] United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
[967] American Declaration on the Rights of Indigenous Peoples (OASDRIP).
[968] ibid.
[969] According to article 2 of Elkins, Ginsburg and Melton (n 233).
Article 30.II.4 of the Bolivian Constitution recognizes that 'indigenous peoples enjoy the following rights… 4. To self-determination and territoriality.' Translation of ibid.
[970] According to article 289 of Elkins, Ginsburg and Melton (n 233).
[971] 'The Indigenous Organizations have had as their main demand the right of self-determination and to the territory. Hence, the quest for autonomy is at the core of their existence although it is not framed as the denial of the Bolivian state' Alice Soares Guimarães and Fernanda Wanderley, 'Between Autonomy and Heteronomy: Navigating Peasant and Indigenous Organizations in Contemporary Bolivia' (2022) 22 Journal of Agrarian Change 576, 588.
[972] Xanthaki (n 5) 152.
[973] Xanthaki instances with the preamble of the 1992 Indigenous Peoples Earth Charter, which proclaims that 'We indigenous peoples maintain our inherent right to self-determination. We have always had the right to decide our own forms of government, to use our own ways to raise and educate our children, to our own identity without interference.' Moreover, with the 1987 Declaration of indigenous peoples that stated 'The right of self-determination is fundamental to the enjoyment of all human rights. From the right of self-determination flow the

'serves to inform and condition the constellation of indigenous peoples' rights and associated State obligations.'[974] This is particularly so because 'a radical transformation and expansion of the classical concept'[975] of the right to self-determination happened since the adoption of UNDRIP and the legal framework of IPs. The self-determination of IPs 'is widened to represent an on-going right. The exercise of that right enables indigenous peoples to determine conditions of their existence on the basis of equality with other peoples.'[976]

Xanthaki observes that self-determination is both a principle and a right: the former may ground claims in different rights, but as a right, it shall only regard self-determination linked to political power.[977] Under this scope, the author argues, that self-determination has external[978] and internal aspects, where the latter refers 'to the right to democratic governance and the right to participation in the public affairs of the state.'[979] Barelli defines indigenous right of self-determination 'as the right of indigenous peoples to freely pursue their political, economic, and social developments within the frameworks of their respective States,'[980] and he considers that it not only should be implemented with flexibility given the IPs differences but also related to 'participatory rights' and 'democratic entitlement' in decision-making.[981] Both UNDRIP and OASDRIP recognize these participatory rights under their articles 5[982] and XXI.2,[983] respectively. The Bolivian Constitution refers to participatory rights in the administration of jurisdiction in its articles 197.I[984] and 199.II;[985] and, in general, in its article 30.II.18.[986]

right to permanent sovereignty over land – including aboriginal, ancestral and historic lands – and other natural resources, the right to develop and maintain governing institutions, the right to life and physical integrity, way of life and religion.' ibid 152–153.

[974] Doyle (n 41) 117.

[975] ibid 125.

[976] ibid.

[977] It is so despite ICCPR and ICESCR in their article 1 refer to political, economic, social and cultural development because they pursue development whose main core is of political nature, Xanthaki (n 5) 157–158.

[978] '[T]he external aspect… [is the] establishment of a sovereign and independent state; free association; integration with an independent state; or emergence into any other political status freely determined by a people' ibid 159.

[979] ibid.

[980] Barelli, 'Shaping Indigenous Self-Determination' (n 965) 427.

[981] ibid. Furthermore, Barelli argues that 'more than twenty articles of the Declaration [UNDRIP] can be generally related to the idea of participation in decision making' (articles 18, 19 and others) and this also happens in ILO C169 (the articles 6 and 7 among others) ibid 428–429. He claims that 'participatory rights seems to represent a valuable option within those *realistically* available [of self-determination].' ibid 430.

[982] Article 5: 'Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.' United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

[983] Article XXI.2: '…They also have the right to participate in decision-making in matters which would affect their rights. They may do so directly or through their representatives, and in accordance with their own norms, procedures, and traditions. They also have the right to equal opportunities in accessing and participating fully and effectively as peoples in all national institutions and forums, including deliberative bodies.' American Declaration on the Rights of Indigenous Peoples (OASDRIP).

[984] 'The Pluri-National Constitutional Court shall consist of Judges elected on the basis of pluri-nationality, with representation from the ordinary system and the rural native indigenous system.' Elkins, Ginsburg and Melton (n 233).

[985] 'The candidates for the Pluri-National Constitutional Court shall be proposed by organizations of civil society and the nations and rural native indigenous peoples' ibid.

[986] IPs have the right to 'To participate in the organs and institutions of the State.' ibid.

Xanthaki considers that the internal aspect of the right to self-determination includes autonomy[987] and, among others, 'a judiciary with executive authority to decide legal questions on the validity and interpretation of local acts and orders.'[988] Furthermore, Xanthaki argues that '[i]n recognising the benefits of indigenous systems and institutions more states are gradually allowing for indigenous judicial institutions to coexist with the national judicial systems.' [989]

> 'Judicial systems are indeed part of the culture of indigenous peoples, but the formation of such institutions falls within the political sphere of self-determination. Therefore, such claims are based on the right to self-determination in conjunction with the right to a culture, rather than on a right to cultural self-determination. Claims based on two rights are not uncommon in international human rights. Similar would be the answer of international law to claims for cultural autonomy and the establishment of other indigenous cultural institutions.'[990]

Doyle has a similar opinion when he argues that one of the sources of IPs' rights[991] emerges from the 'cultures, spiritual traditions, histories and philosophies including their traditions, customs and laws.'[992] He understands that '[i]n doing so it embodies their distinctive custom-based relationships and connection with their lands, territories and sources and their legal systems governing this.'[993] Then, Doyle concludes that the core aspects of the sources of IPs' rights 'find expression in indigenous peoples' right to self-determination.'[994]

The Expert Mechanism on the Rights of Indigenous Peoples[995] in a 2014 study called 'Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous

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[987] 'A particular form of participation that "allows minorities claiming a distinct identity to exercise direct control over affairs of special concern to them, while allowing the larger entity to exercise those powers which cover common interests".' Ghai *Public participation, autonomy and minorities,* cited by Xanthaki (n 5) 164.
'Autonomy can take various forms. It ranges from group-based autonomy, when the members of a group are bound by different rules on certain matters, such as cultural or family issues, to territorial autonomy, where all inhabitants of the autonomous region are subject to a particular status, irrespective of their ethnic or linguistic identity; and can reach a 'fully' autonomous regime, when there is a locally elected legislative assembly, local administrative authorities and local independent courts.' ibid 165.
Article 4 of the UNDRIP 'describes autonomy as a specific way of exercising the indigenous right of self-determination.' Barelli, 'Shaping Indigenous Self-Determination' (n 965) 428.
The Bolivian constitution approaches indigenous autonomy in greater detail under its articles 289 to 296. Article 289 defines that 'Rural native indigenous autonomy consists in self-government as an exercise of free determination of the nations and rural native indigenous peoples, the population of which shares territory, culture, history, languages, and their own juridical, political, social and economic organization or institutions.' Elkins, Ginsburg and Melton (n 233) article 289.
[988] Xanthaki (n 5) 171.
[989] ibid. Xanthaki exemplifies, among others, with the aboriginal mechanisms of justice and social control that 'coexist with the Anglo-Australian legal system… in family-related dispute settlement, crime prevention and community development projects in coordination with state agencies… In South Africa, the (2003) Traditional Courts Act authorised and established a hierarchy of customary courts whose jurisdiction extends to criminal and civil cases'. ibid 171–172.
[990] Xanthaki (n 5) 172.
[991] Doyle states that the 'international community, through the UNDRIP, acknowledged a convergence of thinking around four distinct, yet interrelated, sources of indigenous rights, each of which is articulated in the UNDRIP's preamble and reflected throughout the document. These sources are indigenous law and philosophies; treaties, agreements and other constructive arrangements between States and indigenous peoples; historical claims and the related issue of remedial measures; and the principle of equality of all peoples.' Doyle (n 41) 113–114.
[992] ibid 114.
[993] ibid.
[994] ibid 117.
[995] The Human Rights Council decided 'to establish a subsidiary expert mechanism to provide the Council with thematic expertise on the rights of indigenous peoples in the manner and form requested by the Council' in the

juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities'[996] argued and stated some relevant aspects of indigenous justice. Below is a summary of its highlights. IPs 'have always utilized their own framework of juridical systems and laws based on their conceptions of justice and as an inherent right' in accordance with the UNDRIP preamble para. 7, 'creating and managing harmonious relationships among indigenous peoples' through customary law and oral tradition.[997] Indigenous jurisdiction is usually 'ignored, diminished or denied through colonial laws and policies and subordination to the formal justice systems of States;' nonetheless, it is linked to their culture, tradition and lands. [998] It recalls the Expert Mechanism study on the roles of languages and culture (A/HRC/21/53 para. 21 and Annex para. 23[999]), which stresses that 'indigenous justice systems and their practice constitute a key element of the right to culture… and called for the 'recognition of indigenous peoples' governance structures, including their laws and dispute resolution processes[1000] 'as a form of redress.' [1001]

In a criminal proceeding for dispossession and disturbance of possession between siblings, the sister claimed that her brother broke the dividing wall, entered and destroyed her kitchen, and closed her home. The indigenous authorities claimed jurisdiction, declaring they had already resolved the dispute. In these circumstances, the Bolivian Constitution and laws establish a 'jurisdictional competency dispute process'[1002] that must be resolved directly by the Plurinational Constitutional Court (PCC). When the PCC ruled favoring the indigenous jurisdiction, one of its arguments was that

> '[t]his type of conflict [jurisdictional competency disputes] is based on the entity of the indigenous jurisdiction, since this is a vindication of the rights of these peoples [indigenous peoples] to exercise their culture, even in time to resolve their conflicts, and recognize their autonomy to exercise Justice... [it is an] instrument that, in essence, is not only an inter-

Human Rights Council, 'Resolution 6/36. Expert Mechanism on the Rights of Indigenous Peoples' (14 December 2007).

[996] Expert Mechanism on the Rights of Indigenous Peoples, 'Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples: Restorative Justice, Indigenous Juridical Systems and Access to Justice for Indigenous Women, Children and Youth, and Persons with Disabilities, UN Doc A/HRC/27/65, 7 August 2014, United Nations Human Rights Council Twenty-Seventh Session'.

[997] ibid 6–7.

[998] ibid 8.

[999] Paragraph 21: 'The right to culture in the context of indigenous peoples includes their right to selfdetermine their own culture and languages as an internal matter as well as to practise and celebrate their cultures and languages in the wider public domain. Indigenous peoples' cultures include their justice systems and the practice thereof, as well as their "right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State".' Paragraph Annex 23: 'In providing redress to indigenous peoples for the negative impacts of State laws and policies on indigenous peoples, States should prioritize the views of indigenous peoples on the appropriate forms of redress, which can include the return of lands, territories and resources, recognition of indigenous peoples' governance structures, including their laws and dispute resolution processes and the finances necessary to enable indigenous peoples to implement their own techniques to revitalize and protect their languages and cultures. Customs, values and arbitration procedures of indigenous peoples should be recognized and appropriately respected by the courts and legal procedures' both in Expert Mechanism on the Rights of Indigenous Peoples, 'Role of Languages and Culture in the Promotion and Protection of the Rights and Identity of Indigenous Peoples, UN Doc A/HRC/21/53, 16 August 2012, United Nations Human Rights Council Twenty-First Session' paras 21 and Annex 23.

[1000] 'Indigenous cultures include their ways of life, protected by the right to self-determination, and indigenous peoples' relationships, including spiritual connections, with their lands, territories and resources. They include manifestations of cultural practices, including economically driven activity, traditional knowledge, cultural expressions, jurisprudence, cosmovisions, spirituality, philosophies, membership codes, dispute resolution techniques, social values, arts, dress, song and dance.' ibid Annex 3.

[1001] Expert Mechanism on the Rights of Indigenous Peoples (n 996) para 9.

[1002] Further information in 'The Jurisdictional Competency Dispute' on page 463.

jurisdictional conflict but, above all, is a mechanism for the protection of the material exercise of the right of indigenous peoples to self-determination' (own translation).[1003]

As a consequence, the PCC understood, through the 'jurisdictional competency dispute process', that the right to exercise indigenous jurisdiction concerns also the indigenous peoples' right to culture and self-determination.

From these premises, it is possible to maintain that indigenous jurisdiction is a cultural expression of IPs and, at the same time, a part of the exercise of their right to self-determination in its internal facet.

## Bolivian International and Constitutional Frameworks

Indigenous peoples' right to exercise their indigenous jurisdiction is recognized in Bolivia under its Constitution and the international legal framework to which it belongs. That is to say, the Indigenous and Tribal Peoples Convention No. 169 (C169), approved by Bolivian law 1257 on 11 July 1991[1004] and ratified on 11 December 1991, and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) declared as a Bolivian law.[1005] In addition, together with ILO C169 and UNDRIP, the American Declaration on the Rights of Indigenous Peoples (OASDRIP) is part of the Bolivian Constitution [constitutionality block]. Therefore, they are binding norms of direct application due to the express recognition that made its PCC in this regard.[1006] It is noted that Bolivia includes this international legal framework in its Constitution and establishes the primacy of human rights treaties over its Constitution if they are more favorable to right holders. [1007] The criterion for applying the most favorable standard is also upheld in C169, UNDRIP, and OASDRIP.[1008] From this perspective, the legal framework's scope is examined to describe the best international and constitutional standards regarding the collective right to exercise indigenous jurisdiction. Table 13 presents the relevant articles of this international framework.

One of the concerns that many States expressed when discussing the drafting of the articles referring to indigenous peoples' legal systems was to define their lower legal hierarchy vis-à-vis the laws of each State and human rights. It can be seen, for example, in the preparatory works of C169's articles 8 and 9 with expressions such as the need to rationally frame these collective rights in the legal systems of each country (Australia), the impossibility of accepting propositions contrary to national legislation (Venezuela), the possible breach of the principles of legality (Chile and Japan), equal treatment in favor

[1003] *Sentencia Constitucional Plurinacional 0051/2017* [2017] Tribunal Constitucional Plurinacional Expediente 06158-2014-13-CCJ, Juan Oswaldo Valencia Alvarado [III.1].
[1004] Ley 1257 [Law 1257].
[1005] On 7 November 2007 Bolivia raised the 46 articles of UNDRIP to the rank of Bolivian law. However, Bolivia had to issue a second law to correct the number of the United Nations assembly that approved UNDRIP (61 instead of 62). Ley 3760 [Law 3760]; Ley 3897 [Law 3897].
[1006] *Sentencia Constitucional 1662/2003-R* [2003] Constitutional Court Expediente 2003-07400-15-RAC, José Antonio Rivera Santivañez [III.2]. The precedent is constantly applied through many decisions, such as SC0069/2004, and recently through the decisions 0265/2016-S2, 0527/2019-S2, and 310/2020-S4, among others.
[1007] The Bolivian Constitution asserts that human rights recognized in international treaties and conventions ratified by the Legislative Assembly shall prevail over internal law. Although constitutional article 410.II acknowledges that the Constitution is the supreme norm of Bolivia, it recognizes 'the international Treaties and Conventions in the matter of human rights and the norms of Communitarian Law, which have been ratified by the country' [following the Constitution translation of Elkins, Ginsburg and Melton (n 233).] as a component of the Constitution [termed by Constitution's article 410.II in Spanish as *'bloque de constitucionalidad'* or 'constitutional block' in its literal translation]. Furthermore, article 256.II imposes that the constitutional rights shall be interpreted according to international human rights treaties when the latter provides more favorable norms. The content of both norms did not exist in previous Bolivian constitutions.
[1008] Compare articles 35 of ILO C169, 45 of UNDRIP, and XL of OASDRIP.

of all citizens (Japan) if customary law is preferred, or the impossible renunciation of the States to their jurisdiction (Colombia).[1009] However, it is also true that some voices disagreed with these positions, as occurred with the Indigenous Peoples Working Group (IPWG), which argued that subordinating indigenous customs and identity to each State's laws is equivalent to assimilationism and cultural genocide.[1010] These circumstances display the existence of interests that are far from being compatible and that, instead, denote opposition between the collective rights of indigenous peoples and the sovereignty of States.[1011] This natural contradiction is notorious in C169 wording, and its orientation is visibly in favor of the States, as explained below.

*Table 13: Bolivian international legal framework on the right to exercise indigenous jurisdiction*

| | |
|---|---|
| 1989 ILO Indigenous and Tribal Peoples Convention No. 169 (C169) | Article 8<br>1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.<br>2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.<br>3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.<br><br>Article 9<br>1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.<br>2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.<br><br>Article 35<br>The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements. |
| 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) | Article 5<br>Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.<br><br>Article 34<br>Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.<br><br>Article 40<br>Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.<br>Article 46 |

[1009] Marco Antonio Huaco Palomino, *Los trabajos preparatorios del Convenio No. 169 sobre Pueblos Indígenas y Tribales en países independientes* (Fundación Konrad adenauer (Kas) 2015) 168–190.
[1010] ibid 179.
[1011] Anna Barrera, 'Turning Legal Pluralism into State-Sanctioned Law: Assessing the Implications of the New Constitutions and Laws in Bolivia and Ecuador', *New Constitutionalism in Latin America. Promises and Practices* (Routledge 2016) <https://www.taylorfrancis.com/chapters/edit/10.4324/9781315597904-29/turning-legal-pluralism-state-sanctioned-law-assessing-implications-new-constitutions-laws-bolivia-ecuador> accessed 8 October 2021.

| | |
|---|---|
| | 1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.<br>2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.<br>3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.<br><br>Article 45<br>Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future. |
| 2016 OAS American Declaration on the Rights of Indigenous Peoples (OASDRIP) | Article VI. Collective rights<br>Indigenous peoples have collective rights that are indispensable for their existence, wellbeing, and integral development as peoples. In that regard, States recognize and respect the right of indigenous peoples to their collective action; to their juridical, social, political, and economic systems or institutions; to their own cultures; to profess and practice their spiritual beliefs; to use their own tongues and languages; and to their lands, territories and resources. States shall promote, with the full and effective participation of indigenous peoples, the harmonious coexistence of the rights and systems of different population groups and cultures.<br><br>Article XXII. Indigenous law and jurisdiction<br>1. Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.<br>2. Indigenous law and legal systems shall be recognized and respected by national, regional and international legal systems.<br>3. Matters concerning indigenous individuals or their rights or interests in the jurisdiction of each State shall be conducted in such a way as to afford indigenous individuals the right to full representation with dignity and equality before the law. Consequently, they are entitled, without discrimination, to equal protection and benefit of the law, including the use of linguistic and cultural interpreters.<br>4. States shall take effective measures in conjunction with indigenous peoples to ensure the implementation of this article.<br><br>Article XXXIV<br>In the event of conflicts or disputes with indigenous peoples, States shall provide, with the full and effective participation of those peoples, just, equitable and effective mechanisms and procedures for their prompt resolution. For that purpose, due consideration and recognition shall be accorded to the customs, traditions, norms and legal systems of the indigenous peoples concerned.<br><br>Article XXXVI<br>In the exercise of the rights enunciated in the present Declaration, the human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly as required for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling needs of a democratic society.<br>The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and good faith.<br><br>Article XL<br>Nothing in this Declaration shall be construed as diminishing or extinguishing rights that indigenous peoples now have or may acquire in the future. |

*Source:* Articles reproduced from C169, UNDRIP and OASDRIP.[1012]

[1012] Convention Concerning Indigenous and Tribal Peoples in Independent Countries; United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); American Declaration on the Rights of Indigenous Peoples (OASDRIP).

However, it must be acknowledged that the favorable content to indigenous peoples has increased over the years in these international instruments, as their analysis suggests below. Remarkably, ILO C169, UNDRIP, and OASDRIP established their provisions as minimum standards that cannot diminish or negatively affect the rights or freedoms that indigenous peoples may have.[1013] Furthermore, the Declarations have explicit recognition that indigenous peoples' collective rights are indispensable for their survival, dignity, wellbeing, existence, and integral development as peoples. [1014] Since rights are relational, as justified in the section on the effectiveness of rights, an analysis of these three international instruments and the Bolivian Constitution is proposed based on the rights and duties each of them provides concerning indigenous laws and its procedures. When identifying an explicit or implicit right, the correlative duty shall be pinpointed, and vice versa. The object on which the right-duty relation falls and the limits these instruments establish will be specified as well.

# Bolivian International Framework

## *ILO Indigenous and Tribal Peoples Convention No. 169*

Given that the right to exercise indigenous jurisdiction presupposes both a law and a process to administer justice, articles 8 and 9 of Convention 169 (C169) are relevant to this end. The former refers to indigenous peoples' customs, customary laws, institutions, and the latter to their methods customarily practiced for dealing with offenses committed by their members. [1015] By dissecting both articles through their literal sense, it is possible to distinguish four contents of the right to exercise indigenous jurisdiction and its four correlated duties, as shown in Table 14. However, the efficacy of this right and the possibility of claiming its subsequent duties from the State are conditioned, as the wording of articles under study expresses (see Table 14). Henriksen argues that while articles 8 and 9 require that customs and customary methods for dealing with offenses be compatible with national law and the recognized international human rights provisions, article 9 expects this harmony with local justice administration systems. Consequently, this author exemplifies with the 12 to 14 years old Maasai female circumcision or female genital mutilation in Kenya that, under international human rights law is an unacceptable indigenous custom, even though this country is not party to C169.[1016]

However, what do these conditioning factors mean in the field of the coexistence of jurisdictions? Initially, these conditions imply maintaining the hegemony of the justice and jurisdictional systems established by recognized international human rights and by the State over indigenous peoples' self-determination. Although Henriksen's instance may prove the C169 limitations are plausible, it seems at least debatable that the wording of articles 8 and 9 of this Convention suggests that, in the end, what is

[1013] Articles 35 (ILO C169), 43 and 45 (UNDRIP), and VI and XLI (OASDRIP).
[1014] UNDRIP's preamble and Article 43, and OASDRIP's Articles XL-XLI.
[1015] As Henriksen implies, ILO C169 articles 8 and 9 comprises both substantive and administration of indigenous justice, in Henriksen (n 23). Also Raquel Yrigoyen Fajardo, 'Pluralismo jurídico, derecho indígena y jurisdicción especial en los países andinos' (2004) 30 El otro derecho 171, 175.
[1016] Henriksen (n 23) 57 and 62. Yrigoyen Fajardo, on the contrary, argues that indigenous jurisdiction is conditioned only to fundamental and human rights in Yrigoyen Fajardo, 'Pluralismo jurídico, derecho indígena y jurisdicción especial en los países andinos' (n 1015) 187.

established by 'internationally recognised human rights' [1017] and 'national legal system' [1018] is inevitably more appropriate than the so-called customs, customary laws, and institutions of indigenous peoples.

Since indigenous legal systems must subordinate to the legal systems of the States in which they exist and to the international human rights recognized by them, it seems appropriate to ask what is the scope of the duties that the signatory States of C169 actually have with the indigenous peoples that inhabit their territories. A parallel can be made with a lit lamp that projects a light cone to explain the question. The light represents what is allowed to all citizens by a specific State's legal system, the shadow concerns prohibitions. As long as indigenous peoples' legal systems remain in that cone of light, they will be valid for the State, but as soon as they exceed it, they will cease to be valid and will be prohibited. In this logic, the respect that C169 requires of the States towards indigenous peoples' customs, institutions, and legal methods equal what the States previously respected and allowed their citizens. Such restrains show that the States' obligations towards the indigenous peoples that inhabit their territory are dramatically reduced and that, on the other hand, the States are placed in the role of supervisors to force the compatibility of indigenous laws with their formal legal systems.

*Table 14: Content and conditioning factors of the right to exercise indigenous jurisdiction in ILO Convention 169*

| Object | Indigenous peoples' right content | | States' duty content | | Limits to indigenous peoples |
|---|---|---|---|---|---|
| | Explicit | Inferred | Explicit | Inferred | |
| Customs, customary laws, and institutions (Article 8) | -- | Compel observance to indigenous law by States | Have due regard to indigenous law in applying national laws and regulations to indigenous peoples (negative duty) | -- | Not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights<br><br>The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements |
| | To retain their customs, customary laws, and institutions | -- | -- | Negative actions | |
| | -- | Claim procedures to resolve conflicts that may arise in the application of this principle | Procedures shall be established, whenever necessary, to resolve conflicts that may arise in the application of this principle (positive duty) | -- | |
| Methods customarily practiced for dealing with offenses committed by their members (Article 9) | -- | Compel respect to indigenous methods customarily practiced for dealing with offenses committed by their members | Respect indigenous methods customarily practiced for dealing with offenses committed by their members (negative duty) | -- | |

*Source:* Adapted, extracted and inferred from Articles 8 and 9 of ILO C169.
*Note:* The dashes in the cells mean that the content is not expressed or does not require to be inferred.

[1017] For instance, the environment protection approach concerning the anthropocentric international standards and indigenous peoples' biocentric and holistic stance. More on the matter in Leonardo Villafuerte Philippsborn, 'Mother Earth' in Koen De Feyter, Gamze Erdem Türkelli and Stéphanie de Moerloose (eds), *Encyclopedia of Law and Development* (Edward Elgar Publishing Limited 2021).
[1018] On some occasions, it could be debatable which are the best means and ends to deal with crime. For example, punishing the criminal with his imprisonment or forcing the offender to pay a fine, as in most western countries, vis-à-vis the community's expulsion sanction or the restorative justice practiced among some indigenous peoples in similar cases. Nonetheless, such a reflection and analysis are beyond the scope of the present research.

Clause three of article 8 of C169 empowers indigenous peoples' members to choose whether they prefer to submit their disputes to indigenous law or the State law that governs all citizens. This choice implies that indigenous individuals can withdraw from their indigenous peoples in the cases they deem appropriate. From a liberal and individualist democracy perspective, like the one proposed by Kymlicka,[1019] this clause is respectful of individual rights and freedoms. However, from a collectivist perspective and the protection of indigenous peoples in their self-determination and culture, this authorization has the consequence of assimilating individuals into the larger population's structures and institutions. It also means that indigenous people are authorized to exclude themselves from their responsibilities and relationships with their indigenous peoples and assume them in front of the State. Although it does not necessarily mean impunity, it does imply the possibility of uprooting indigenous individuals and indigenous cultural weakening to the extent that these exclusions from their institutions may occur. In any case, the democratic right of people to freely leave their communities presupposes that they have no outstanding duties towards them. Thus, the supposed States' duties to have due regard to indigenous law or respect it are more similar to establishing the supremacy of State law, protecting it, and making it impervious against any sign of indigenous law.

It should be noted that article 8.2 of the C169 orders States to establish procedures to resolve conflicts that may arise regarding the right of peoples 'to retain their own customs and institutions when they are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights.' Under such an obligation, indigenous peoples might claim their collective right to retain their customs and institutions. Furthermore, article 35 of the C169 could be a passage to overcome the pitfalls of the Convention regarding the right to indigenous jurisdiction, given that it unambiguously states that '[t]he application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.' Therefore, the Bolivian Constitution and its constitutionality block have the right to define higher standards for the right to indigenous jurisdiction. As mentioned above, the Bolivian constitutional block related to this collective right concerns UNDRIP and OASDRIP.

## *Declaration on the Rights of Indigenous Peoples (UNDRIP)*

From a general perspective, the right to indigenous jurisdiction is based on self-determination, autonomy, and self-government under articles 3 and 4 of the UNDRIP. The UNDRIP establishes two specific articles to recognize and address indigenous peoples' law (cf. Table 15). Article 5 recognizes their collective right to maintain and strengthen their distinct legal institutions, and article 34 empowers them to promote, develop, and maintain their legal procedures, customs, or systems. The consequence of these articles is, as in C169, that UNDRIP expressly recognizes the existence of legal pluralism in the States.

Faced with these collective rights that indigenous peoples have, the States have essentially negative duties of non-interference in indigenous law. Such would be, for example, respecting indigenous rights by refraining from any action that could weaken or extinguish indigenous institutions and legal systems, as can be interpreted in article 46.2-3 of the UNDRIP. However, it is questionable whether the States also have positive duties toward indigenous peoples to adopt measures to protect and promote those rights. Since these positive actions are not found in the explicit text of UNDRIP, as is the case, for

[1019] Kymlicka (n 741).

example, of cultural rights according to articles 11.2, 12.2, and 13, it is interpreted that positive obligations might not arise. Nevertheless, it is not entirely the case with article 40 of the UNDRIP, which imposes States the positive duty to have due consideration of indigenous law and international human rights when resolving conflicts between them and indigenous peoples or providing remedies for individual rights violations. Moreover, article 40 also requires States to give 'access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights.' Together with these positive duties, article 40 also implies that indigenous peoples can claim their rights before the States where they live.

*Table 15: Content and conditioning factors of the right to exercise indigenous jurisdiction in UNDRIP*

| Object | Indigenous peoples' right content | | States' duty content | | Limits to indigenous peoples |
|---|---|---|---|---|---|
| | Explicit | Inferred | Explicit | Inferred | |
| Distinct legal institutions (Article 5) | To maintain and strengthen | -- | -- | Negative duty | Indigenous customs, procedures and legal systems must be in accordance with international human rights standards (Art. 34).<br><br>Interpret:<br>a) UNDRIP's rights according to Charter of the United Nations or States' territorial integrity and political unity (Art. 46.1).<br>b) UNDRIP's provisions according with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and good faith (Art. 46.3).<br><br>Exercise rights within State laws' limits as long as those limits are not contrary to human rights obligations, are non-discriminatory, strictly necessary to secure recognition and respect of other's rights and freedoms, and the most compelling requirements of a democratic society (Art. 46.2). |
| Institutional structures, distinctive customs, spirituality, traditions, procedures, practices, and juridical systems, or customs (Article 34) | To promote, develop, and maintain | -- | -- | Negative duty | |
| Customs, traditions, rules, and legal systems (Article 40) | -- | Compel the State to give due consideration when deciding a) conflicts and disputes of States and parties, b) remedies for infringements of individual and collective rights. Both under international human rights. | Give due consideration when deciding a) conflicts and disputes of States and parties, b) remedies for infringements of individual and collective rights. Both under international human rights. (Positive duty) | -- | |
| Exercise of UNDRIP rights, human rights, and fundamental freedoms (Art. 46.2). | -- | Compel respect | Respect (Negative duty) | -- | |

*Source:* Adapted, extracted, and inferred from articles 5, 34, 40, and 46 of UNDRIP.
*Note:* The dashes in the cells mean that the content is not expressed or does not require to be inferred.

UNDRIP determines that indigenous peoples' rights in general and their specific rights associated with institutions, procedures, customs, and legal systems have limits. Thus, article 46 establishes a series of general provisions to consider. Its first clause limits any right, obligation, or action of States, indigenous peoples, groups, and individuals (indigenous or not) contrary to the Charter of the United Nations. In the same way but excluding the States because they are the holders of protection, this clause orders not

to construe the UNDRIP as an instrument that affects the States' independence and sovereignty, including their territorial integrity and political unity.[1020] The third clause of this article orders, in a broader sense, the interpretation of the Declaration under 'the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.' Clause 2 of this article empowers the States to limit indigenous peoples' rights by law if they choose to. However, this power is, in turn, limited by States' obligations assumed within the international human rights framework. Therefore, the limitations that the States may impose a) shall be through laws, b) cannot be discriminatory, c) shall be strictly necessary to avoid restricting the rights of others, and d) shall be consistent with democracy.

Apart from these article 46 generic limitations, the final part of article 34 limits indigenous law stating that it shall be in accordance with international human rights standards. However, to reasonably comply with this limitation, the international human rights standards shall be construed in the light of the corresponding cultures and contexts. Yrigoyen and Guachalla argued that within the framework of legal pluralism, the definition and interpretation of human rights could not be left in the hands of a single cultural orientation or a single institutional system. Instead, they propose that rights must be defined and interpreted through intercultural dialogue.[1021]

Compared to C169, the UNDRIP would arguably be more favorable to the interests of indigenous peoples concerning their justice systems since it expands the scope of their application and makes the limits established by the States questionable to some extent, besides using a more overarching wording. Indeed, the recognition of indigenous procedures, 'juridical systems or customs' by UNDRIP extends the reference made by C169 to 'customary laws' and 'the methods customarily practiced by the peoples concerned for dealing with offenses committed by their members.' In other words, indigenous procedures may apply to any dispute resolution situation and are not limited solely to *offenses*. On the other hand, the UNDRIP explicitly impose limits on the limits that the States might establish on indigenous law, which may provide a margin for indigenous peoples to discuss them in local and international arenas. The UNDRIP made this possibility explicit. Finally, UNDRIP recognizes that indigenous peoples may have *indigenous legal systems* in addition to mere customary laws.

## *American Declaration on the Rights of Indigenous Peoples (OASDRIP)*

The OASDRIP establishes two specific articles to recognize and address indigenous peoples' law and jurisdiction (Table 16). On the one hand, article VI not only recognizes their right to collective action, juridical systems, and institutions, but it also implies the general right to compel States to promote, with their full and effective participation, the harmonious coexistence of those rights and systems. On the other hand, article XXII recognizes the right to promote, develop and maintain procedures, juridical

[1020] 'While international law provides that the Declaration is subject to customary international law, to pacify those obstructive states, explicit reference was made in article 46 of the final text of the Declaration to the safeguard clause to confirm the territorial integrity of states. It is worth noting that Indigenous peoples regard secession arguments as implying that they, and their forebears, somehow relinquished or submitted themselves to colonisation and therefore that the right to self-determination in fact constitutes a right to re-stablish sovereignt. In fact, however, a common sentiment shared by Indigenous peoples at the Working Groups was that the right to self-determination, recognised in international covenants, applies to all peoples. Hence, for states to restrict its application solely to Indigenous peoples would actually be a violation of the international peremptory norm prohibiting racial discrimination.' 'Davis (n 487) 57–58.

[1021] Raquel Yrigoyen Fajardo, 'Revista Crea - Centro de Resolución Alternativa de Conflictos' (2003) 4 Revista Crea - Centro de Resolución Alternativa de Conflictos <http://repositoriodigital.uct.cl/handle/10925/888> accessed 6 October 2021; Jennifer Guachalla Escóbar, 'Sistema Jurídico de Los Pueblos Indígenas, Originarios y Comunidades Campesinas En Bolivia' [2008] Revista Derechos Humanos y Acción Defensorial.

systems, or customs for indigenous peoples. Furthermore, it implicitly recognizes the right to compel the State to recognize, respect, and implement indigenous law and jurisdiction, underscoring that the implementation shall be joint with indigenous peoples.

Table 16: Content and conditioning factors of the right to exercise indigenous jurisdiction in OASDRIP

| Object | Indigenous peoples' right content | | States' duty content | | Limits to indigenous peoples |
|---|---|---|---|---|---|
| | Explicit | Inferred | Explicit | Inferred | |
| Collective action, juridical systems, and institutions (Art. VI Collective rights) | Right to | -- | Recognize and respect the right to their (positive and negative duty) | -- | Indigenous peoples shall exercise their rights within State laws' limits as long as those limits are not contrary to international human rights obligations, are non-discriminatory, strictly as required for the purpose of securing due recognition and respect of other's rights and freedoms, and the just and the most compelling needs of a democratic society (Art. XXXVI)<br><br>Interpret OASDRIP's provisions according with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and good faith (Art. XXXVI) |
| Harmonious coexistence of the rights and systems of different populations groups and cultures (Art. VI) | -- | Compel the State to promote and participate with the State | Promote with the full and effective participation of indigenous peoples (positive duty) | -- | |
| Procedures, juridical systems or customs (Art. XXII.1 Indigenous law and jurisdiction) | To promote, develop and maintain | -- | -- | Negative duty | |
| Indigenous law and jurisdiction (Art. XXII.2 Indigenous law and jurisdiction) | -- | Compel the State to recognize and respect | Recognize and respect (positive and negative duty) | -- | |
| Implementation of Art. XXII (Art. XXII.4 Indigenous law and jurisdiction) | -- | Compel the State to take effective measures in conjunction with indigenous peoples to ensure | Take effective measures in conjunction with indigenous peoples to ensure (positive duty) | -- | |
| Just, equitable and effective mechanisms and procedures for their prompt resolution (Art. XXXIV) | -- | Compel the State to provide, with the full and effective participation of indigenous peoples, and accord due consideration and recognition to their customs, traditions, norms, and legal systems | Provide, with the full and effective participation of indigenous peoples, and accord due consideration and recognition to their customs, traditions, norms, and legal systems (positive duty) | -- | |
| Exercise of the rights enunciated in the OASDRIP, human rights and fundamental freedoms (Art. XXXVI) | -- | Compel the State to respect | Respect (negative duty) | -- | |

*Source:* Adapted, extracted and inferred from Articles VI, XXII, XXXIV, and XXXIV of OASDRIP.
*Note:* The dashes in the cells mean that the content is not expressed or does not require to be inferred.

Likewise to C169 and UNDRIP, OASDRIP explicitly recognizes the existence of legal pluralism in the States, imposing respect to indigenous laws and jurisdictions. However, OASDRIP goes further by including the positive duties to the State to implement pluralism and promote its harmonious coexistence, urging that both duties be carried out together with the indigenous peoples. Remarkably, this last aspect goes beyond the mere general provisions that indigenous peoples have to participate and give their prior and informed consent as foreseen in articles 2 and 6 of C169 and 5 and 18 of the UNDRIP. In this sense, and unlike the former international instruments, OASDRIP establishes several

positive duties to States in favor of indigenous peoples over their juridical systems, laws, and jurisdictions.[1022]

Equally to UNDRIP, OASDRIP's article XXXIV declares that 'in the event of conflicts or disputes with indigenous peoples,' States shall 'provide just, equitable, and effective mechanisms and procedures for their prompt resolution.' It entails that indigenous peoples can claim their rights before the States where they live. It is stressed that indigenous peoples shall participate and consent to establish such mechanisms and procedures.

Following the provisions of the UNDRIP, OASDRIP also limits the powers that States have to restrict, through laws, the rights of indigenous peoples provided for in the declaration. [1023] Thus, the limits that the States may impose should be justified in protecting the rights of other people, they should not contradict international human rights and should not be discriminatory. Furthermore, States must interpret the declaration following the general principles of justice, democracy, and good faith, among others.

## Bolivian Constitutional Framework

After reviewing the rights and duties established by C169, UNDRIP, and OASDRIP as part of the Bolivian constitutional block, the provisions established by the Constitution are considered under this subtitle to identify the most favorable standards for indigenous peoples' exercise of jurisdiction and juridical systems between both. The Bolivian Constitution characterizes and defines what Fromherz termed egalitarian juridical pluralism.[1024] Not only the article 115.II of the Bolivian Constitution guarantees the right to plural justice, due process, defense, and others, but its article 178.I states that the power to impart justice stems from the 'Bolivian people' based on legal pluralism, interculturality, and social harmony, among other principles. According to article 3 of the Constitution, 'Bolivian people' accounts for 'Bolivian nation' and encompasses indigenous peoples, intercultural and afro-Bolivian communities, and the rest of the Bolivians that do not belong to any of the referred groups or communities.

Although there is only one judicial function in Bolivia, three different jurisdictions are the base of its plural justice, according to article 179 of the Constitution: the ordinary, the agri-environmental, and the indigenous jurisdiction. [1025] The Plurinational Constitutional Court (PCC), among other powers, controls constitutional disputes regarding the three jurisdictions.[1026] Article 179.II dictates equal status

[1022] Contrary to what has been stated here, Bartolomé Clavero has criticized the OASDRIP for supposedly contradictory, integrationist, and blurring the right to indigenous jurisdiction. Cf. Bartolomé Clavero, 'La Declaración Americana sobre Derechos de los Pueblos Indígenas: el reto de la interpretación de una norma contradictoria' (2016) 21 Pensamiento Constitucional 11.
[1023] The provision is consistent with article 29 of the American Convention on Human Rights 'Pact of San Jose, Costa Rica'.
[1024] Fromherz (n 27).
[1025] The Bolivian constitution article 179.I stablishes that there shall be specialized jurisdictions regulated by the law, such as the military or the one that will be constituted in the future as administrative. However, none of the sources analyzed have referred to a conflict of jurisdiction between the indigenous jurisdiction and other specialized jurisdictions, which is why they are not considered in this investigation.
[1026] Constitución Política del Estado Plurinacional de Bolivia, Articles 196.I and 202. Bolivian jurisdictions are committed to the Constitution, which is why they are subject to the control exercised by the justice of the Constitutional Court, according to *Declaración Constitucional Plurinacional 0016/2013* [2013] Tribunal Constitucional Plurinacional Expediente: 04631-2013-10-CAI, Efren Choque Capuma [III.1].

between indigenous and ordinary jurisdictions, a status not found in other Latin American countries.[1027] Under this legal framework, indigenous peoples have the constitutional rights to their cultural identity, practices, customs, worldview, and juridical systems. Article 30.II.14 states that they enjoy the right to 'the practice of their… juridical systems in accord with their worldview.'[1028] The Bolivian Constitution's particularity rests in granting indigenous peoples the right to *exercise* their legal systems and not only in *recognizing* them, even though it is self-evident that a mere recognition may also encompass their exercise. Furthermore, it is underscored that the Constitution also explicitly states that such an exercise is under their worldview.

*Table 17: Bolivian Constitutional framework on the right to exercise indigenous jurisdiction*

| | |
|---|---|
| Constitution of the Plurinational State of Bolivia | Article 3<br>The Bolivian nation is formed by all Bolivians, the indigenous peoples, and the inter-cultural and Afro-Bolivian communities that, together, constitute the Bolivian people.<br><br>Article 30<br>II. In the framework of the unity of the State, and in accordance with this Constitution, the indigenous peoples enjoy the following rights: …<br>14. To the practice of their political, juridical and economic systems in accord with their world view.<br><br>Article 115<br>II. The State guarantees the right to due process and defense, and to plural, prompt, appropriate, free, and transparent justice without delays.<br><br>Article 178<br>I. The power to impart justice emanates from the Bolivian people and is based on the principles of independence, impartiality, juridical security, publicity, probity, promptness, being free of charge, legal pluralism, being inter-cultural, equity, service to society, citizen participation, social harmony and respect for rights.<br><br>Article 179<br>I. The judicial function is singular. Ordinary jurisdiction is exercised by the Supreme Court of Justice, the departmental courts of justice, the sentencing courts and the judges; the agri-environmental jurisdiction is exercised by the Agri-Environmental Court and judges; and the indigenous jurisdiction is exercised by their own authorities. There shall be specialized jurisdictions regulated by the law.<br>II. Ordinary jurisdiction and indigenous jurisdiction enjoy equal status.<br>III. Constitutional justice is imparted by the Plurinational Constitutional Court.<br>IV. The Council of Judges is part of the Judicial Organ.<br><br>Article 190<br>I. The indigenous peoples shall exercise their jurisdictional functions and competency through their authorities, and shall apply their own principles, cultural values, norms and procedures.<br>II. The indigenous jurisdiction respects the right to life, the right to defense and other rights and guarantees established in this Constitution.<br><br>Article 191<br>I. The indigenous jurisdiction is based on the specific connection between the persons who are members of the respective indigenous peoples.<br>II. The indigenous jurisdiction is exercised in the following areas of personal, material and territorial legal effect [validity areas]:<br>1. Members of the indigenous peoples are subject to this jurisdiction whether they act as plaintiffs or defendants, claimants or accusers, whether they are persons who are denounced or accused, or are appellants or respondents.<br>2. This jurisdiction hears indigenous matters pursuant to that established in a law of Jurisdictional Demarcation.<br>3. This jurisdiction applies to the relations and juridical acts that are carried out, or the effects of which are produced, within the jurisdiction of an indigenous peoples. |

[1027] Barrera (n 1011).

[1028] Article 30.II.14 Elkins, Ginsburg and Melton (n 233). The original version wording is '[derecho] Al ejercicio de sus sistemas políticos, jurídicos y económicos acorde a su cosmovisión.' Constitución Política del Estado Plurinacional de Bolivia.

| |
|---|
| Article 192<br>I. Each public authority or person shall obey the decisions of the indigenous jurisdiction.<br>II. To secure compliance with the decisions of the indigenous jurisdiction, its authorities may request the support of the competent bodies of the State.<br>III. The State shall promote and strengthen indigenous justice. The law of Jurisdictional Demarcation shall determine the mechanisms of coordination and cooperation between indigenous jurisdiction and ordinary jurisdiction and agri-environmental jurisdiction and all the recognized constitutional jurisdictions. |
| Article 304<br>I. The indigenous autonomies shall exercise the following exclusive authorities: …<br>8. Exercise of indigenous jurisdiction for the application of justice and the resolution of conflict through their own norms and procedures in accordance with the Constitution and the law. |

*Source:* Constitute Project's English version of the Bolivian Constitution.[1029] For the sake of clarity and coherence with the Constitutional categories 'native indigenous-peasants nations and peoples' *[nación y pueblo indígena originario campesino]* and 'rural native indigenous jurisdiction' [*jurisdicción indígena originario campesina*] they are termed in this table simply as 'indigenous peoples' and 'indigenous jurisdiction' respectively, adapting the cited content of the articles.

The right to practice indigenous jurisdiction is further developed in constitutional articles 190.I and 304.I.8. The former expresses that indigenous peoples 'shall exercise their jurisdictional functions and competency through their authorities, and shall apply their own principles, cultural values, norms and procedures.'[1030] On the other hand, the latter comprises the indigenous autonomies' jurisdiction '[e]xercise… for the application of justice and the resolution of conflict through their own norms and procedures in accordance with the Constitution and the law.' [1031]

Since article 191 grounds the indigenous jurisdiction on the particular links indigenous peoples' members have, it mandates that the indigenous jurisdiction reaches only those disputes that simultaneously meet three conditions, termed as validity areas by the Constitution.[1032] The parties must belong to the same indigenous peoples, the dispute matters must be those delimited by a special law, and the events that cause them or their effects must occur in their territorial jurisdiction. For further reference, the Bolivian constitutional articles related to the right of indigenous jurisdiction are presented in Table 17.

The Bolivian Constitution emphasizes the verbs to *practice* and *exercise* when referring to indigenous peoples' rights over their legal systems and jurisdiction, prioritizing and giving great importance to its execution or realization. Indeed, the jurisdictional function will only gain its true value when practiced.[1033] This eminently pragmatic approach of the Constitution acquires greater strength when it recognizes indigenous peoples' power to enforce their jurisdictional decisions through the competent organs of the State and by making these decisions fully binding on the State and all the people in Bolivia. Thus, as reflected in Table 18, the Constitution imposes on the State and public authorities the duties to comply with and enforce indigenous decisions; and on people the duty to obey them.

[1029] Elkins, Ginsburg and Melton (n 233).
[1030] In the translation of ibid.
[1031] Translation of ibid.
[1032] On the matter, the PCC commented that 'the constituent preferred to use the term validity, instead of the word competence, in order to avoid the assimilation of the legal system proper to the written law of predominant application in the nation-states, of a monocultural character and a liberal tendency, in contradiction to the philosophical conception of the Plurinational State' in *Sentencia Constitucional Plurinacional 0005/2016* [2016] Tribunal Constitucional Plurinacional Expediente: 10053-2015-21-CCJ, Efren Choque Capuma [III.4].
[1033] The PCC stated, quoting Peces Barba, that fundamental rights only reach their fullness when: a) a positive legal norm (usually with constitutional or ordinary law status) recognizes them; b) a set of faculties or subjective powers is derived from such norm, and c) the right holders can count on the coercive apparatus of the State for the protection of such rights. *SCP 0047/2017-S1* (n 891) para III.1.

Although C169, UNDRIP, and OASDRIP do not deny this pragmatic stance of the Constitution, it is a preferable standard because it encompasses ownership and emphasizes the implementation of the right to exercise indigenous jurisdiction. Nevertheless, it is stressed that although the Constitution recognizes indigenous peoples' rights to exercise their own laws, it does not grant them the exercise of State law.

As in the international sources reviewed, the Constitution also establishes the generic duty of the Bolivian State to promote and strengthen indigenous jurisdiction. However, the Constitution advances in the construction and precision of this general duty by providing that, through a Jurisdictional Demarcation Law (JDL), coordination and cooperation mechanisms between the agri-environmental, indigenous, and ordinary jurisdictions shall be determined. These mechanisms will be described later.[1034] In this same sense, the Constitution has also established specific processes so that indigenous authorities can consult the PCC on applying indigenous legal norms to a specific case and for this Court to resolve conflicts of competence between the jurisdictions.[1035] All these elements make the indigenous jurisdiction operational and allow its strengthening.

*Table 18: Content and conditioning factors of the right to exercise indigenous jurisdiction in the Bolivian Constitution*

| Object | Indigenous peoples' right content | | Bolivian State/person's duty content | | Limits to indigenous peoples |
|---|---|---|---|---|---|
| | Explicit | Inferred | Explicit | Inferred | |
| Indigenous political, juridical and economic systems in accord with indigenous worldview (Art. 30) | To practice | -- | -- | State negative duty | -In the framework of the unity of the State, and in accordance with the Constitution (Art. 30)<br>-Through their authorities, principles, cultural values, norms, and procedures (Art. 190)<br>- The indigenous jurisdiction respects the right to life, the right to defense and other rights and guarantees established in this Constitution (Art. 190)<br>-The indigenous jurisdiction is based on the specific connection between the persons who are members of the respective nation or rural native indigenous people (Art. 191).<br>-The indigenous jurisdiction is exercised in the following areas of personal, material and territorial legal effect [validity areas]:<br>1. Members of the indigenous peoples are subject to this jurisdiction whether they act as plaintiffs or defendants, claimants or accusers, whether they are persons who are denounced or accused, or are appellants or respondents.<br>2. This jurisdiction hears indigenous matters pursuant to that established in a Jurisdictional Demarcation Law.<br>3. This jurisdiction applies to the relations and juridical acts that are carried out, or the effects of which are |
| Indigenous jurisdiction (Art. 179) | To exercise | -- | -- | State negative duty | |
| Jurisdictional functions and competency (Art. 190) | To exercise | -- | -- | State negative duty | |
| Indigenous decisions (Art. 192.I) | -- | Enforce | Public authority or person must (1) obey | -- | |
| To secure compliance with the decisions of indigenous jurisdiction (Art. 192.II) | Indigenous authorities may request | -- | Competent bodies of the State must support | -- | |
| Indigenous justice (Art. 192.III) | -- | Compel the State to promote and strengthen | The State shall Promote and strengthen | -- | |
| Mechanisms of coordination and cooperation between | -- | Compel the State to determine | Through the law of Jurisdictional Demarcation | -- | |

[1034] See "Coordination and cooperation" on page 243.
[1035] For more detail on these processes, consult "Plurinational Constitutional Court's Legal Framework" on page 461.

| Object | Indigenous peoples' right content | | Bolivian State/person's duty content | | Limits to indigenous peoples |
|---|---|---|---|---|---|
| | Explicit | Inferred | Explicit | Inferred | |
| indigenous, ordinary and agri-environmental jurisdictions (Art. 192.III) | | | the State shall determine | | produced, within the indigenous jurisdiction. |
| For the application of justice and the resolution of conflicts (Art. 304.I.8) | -- | -- | -- | -- | Indigenous autonomies shall exercise indigenous jurisdiction through their norms and procedures in accordance with the Constitution and the law. |
| Equal status between indigenous and ordinary jurisdictions (Art. 179) | To enjoy | -- | -- | State negative duty | |

*Source:* Adapted, extracted, and inferred from Articles 30, 179, 190, 192, 304 of Constitute Project's English version of the Bolivian Constitution.[1036] For the sake of clarity and coherence with the Constitutional categories 'native indigenous-peasants nations and peoples' *[nación y pueblo indígena originario campesino]* and 'rural native indigenous jurisdiction' [jurisdicción indígena originario campesina] they are termed in this table simply as 'indigenous peoples' and 'indigenous jurisdiction' respectively.
*Note:* The dashes in the cells mean that the content is not expressed or does not require to be inferred. (1) Although the English source uses the verb shall, the Spanish version uses 'acatará' which implies a strong duty to abide or comply with.

The Constitution has established two jurisdictional layers. First, the PCC is a system of control over all other jurisdictions[1037] and public organs since it resolves the conflicts of jurisdiction between them and decides on the affectation of constitutional rights and guarantees.[1038] The PCC decides on these cases through intercultural dialogue[1039] since it has the representation of both justice systems.[1040] The second layer regards agri-environmental, ordinary, indigenous, and specialized jurisdictions.[1041] Within it, the Constitution establishes that ordinary and indigenous jurisdictions have the same hierarchy,[1042] without defining what 'same hierarchy' means.

According to the PCC, the same hierarchy founds egalitarian legal pluralism based on the coexistence of different legal systems in the Bolivian territory. PCC case law understood that the 'same hierarchy' implies three possible prohibitions between jurisdictions to avoid undermining and depriving them of freely administering justice. These bans are:

[1036] Elkins, Ginsburg and Melton (n 233).
[1037] As the indigenous jurisdiction is a manifestation of the IPs' right to self-determination, it is logical that only the PCC's control of constitutionality has jurisdiction over indigenous justice, according to Bartolomé Clavero, 'Tribunal Constitucional En Estado Plurinacional: El Reto Constituyente de Bolivia' [2012] Revista Española de Derecho Constitucional 29, 58.
[1038] *SCP 0300/2012* (n 31) para III.1.2.
[1039] Termed as 'horizontal interlegality in the composition of the Constitutional Court' by Mendoza Crespo (n 235) 11.
[1040] *SCP 0300/2012* (n 31) para III.1.2. However, human rights must be defined and interpreted based on intercultural dialogue. For example, indigenous peoples cannot be required to respect the guarantee of technical defense (carried out by a professional lawyer) because this is incompatible with the nature of the indigenous legal system. Guachalla Escóbar (n 1021).
[1041] Constitución Política del Estado Plurinacional de Bolivia, Article 179.I.
[1042] 'La jurisdicción ordinaria y la jurisdicción indígena originario campesina gozarán de igual jerarquía.' ibid, Article 179.II.

- Not to review the decisions of one jurisdiction by the others, i.e., the ordinary or the agri-environmental jurisdictions[1043] cannot reconsider or reevaluate the resolutions pronounced by the indigenous jurisdiction and vice versa.[1044]

- Not to subordinate one or more jurisdictions to the others[1045] in the sense of controlling and downplaying them as minor or secondary by restricting their powers or responsibilities. For instance, if one jurisdiction decides to guide and control courses of action and ways of deciding cases.

- Not to superimpose one or more jurisdictions on the others[1046] in the possible sense of invading their legal competencies.

The PCC explained that interjurisdictional coordination could make it possible to overcome these three possibilities.[1047]

The reviewed literature explained the 'same hierarchy' as a) the indigenous authorities' rulings cannot be questioned or subordinated to the other jurisdictions,[1048] b) the lack of subordination or dependency relation between jurisdictions under the equality principle,[1049] c) the lack of revision by the other jurisdiction and the duty to obey indigenous rulings,[1050] d) the access to justices for indigenous members as a human right,[1051] e) the validity and settled character of indigenous decisions without double jeopardy,[1052] or f) a decolonizing approach[1053] for the existence and assertion of the indigenous jurisdiction.

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[1043] Article 3 of the JDL and the PCC case law extended the equal hierarchy between jurisdictions for agri-environmental jurisdiction, as explained below. For instance, *SCP 1422/2012* (n 677) para IV.3; *Sentencia Constitucional Plurinacional CP 0323/2014* [2014] Plurinational Constitutional Court Expediente 03359-2013-07-AAC, Mirtha Camacho Quiroga [III.2].

[1044] *SCP 0300/2012* (n 31) para III.1.2. Equal hierarchy would forbid hearing and deciding once more a case that another jurisdiction has already decided. For example, it is prohibited that one of the jurisdictions becomes a *de facto* court of appeal by accepting the claim of whoever had lost in the other jurisdiction's decision.

[1045] *Sentencia Constitucional Plurinacional 0874/2014* [2014] Plurinational Constitutional Court Expediente 03667-2013-08-CCJ, Gualberto Cusi Mamani [III.1].

[1046] *ibid.*

[1047] Following *SCP 1422/2012* (n 677) para IV.3. However, the boundaries between coordination and cooperation, on the one hand, and superimposition and subordination on the other, are not always clear, nor the interests between jurisdictions are necessarily transparent. For example, when a judge based in Karangas was asked if there are disputes that should not be resolved by indigenous justice, the judge admitted to having advised indigenous authorities to stick to minor issues: *'[t]he vision of my court and my authority is to guide the [indigenous] authorities a little. It is collaboration and cooperation. For example, I have sometimes suggested them to claim jurisdiction because they can solve minor problems.'* (Interview, G-2019-07).

[1048] Ramiro Molina Rivero, 'La Articulación de Dos Sistemas Jurídicos: Propuesta Para Una Ley de Deslinde Jurisdiccional', *Propuestas para la Ley de Deslinde Jurisdiccional* (Compañeros de las Américas y Fundación Construir 2009) 109; Tiina Saaresranta, *Derechos de los pueblos indígena originario campesinos de Cochabamba. Entre la ley y la realidad.* (Primera, PIEB (Programa de Investigación Estratégica en Bolivia) 2009) 54.

[1049] Carlos Alarcón Mondonio, 'La Articulación de Dos Sistemas Jurídicos: Propuesta Para Una Ley de Deslinde Jurisdiccional', *Propuestas para la Ley de Deslinde Jurisdiccional* (Compañeros de las Américas y Fundación Construir 2009) 139.

[1050] Martha Rojas, 'Hacia Una Ley de Deslinde Jurisdiccional. Desafíos y Propuestas', *Propuestas para la Ley de Deslinde Jurisdiccional* (Compañeros de las Américas y Fundación Construir 2009) 156.

[1051] Idón Moisés Chivi Vargas, 'Los Caminos de La Descolonización Por América Latina: Jurisdicción Indígena Originaria Campesina y El Igualitarismo Plurinacional Comunitario', *Propuestas para la Ley de Deslinde Jurisdiccional* (Compañeros de las Américas y Fundación Construir 2009) 82.

[1052] Mendoza Crespo (n 235) 23.

[1053] Tribunal Constitucional Plurinacional, *Sistemas de justicia indígena originario campesina. Estudios de caso: Tierras Altas, Marka Challapata; Tierras Intermedias, comunidad Sicaya; y, Tierras bajas, TIPNIS.* (Secretaría Técnica y Descolonización ed, Tribunal Constitucional Plurinacional 2016) 19.

Be that as it may, and despite the Constitution not determining the meaning of 'same hierarchy,' the term grants the same quality to indigenous and formal jurisdictions.[1054] Moreover, it serves as a baseline to decolonize the approach to legal pluralism and acknowledges indigenous jurisdiction's certainty and mandatory nature. Thus, the egalitarian legal pluralism established by the Bolivian Constitution is the most favorable standard for the indigenous jurisdiction, and it is not provided for by C169, UNDRIP, or OASDRIP.

The limitations defined by the Bolivian Constitution to indigenous jurisdiction are examined and detailed below.

## Recapitulation

Under the premise that the standard that is most favorable to right holders should be preferred, according to C169, UNDRIP, OASDRIP, and the Constitution,[1055] and following the analysis carried out on each of these legal instruments, the following is a summary of the standards that are most advantageous for indigenous peoples regarding their right to exercise indigenous jurisdiction, and of the existing constitutional limits to the exercise of indigenous jurisdiction.

Regarding the terminology, C169 refers to *customs* and *customary laws* as if indigenous law were solely customary. Instead, UNDRIP and OASDRIP overcome this conception with the name of juridical systems, implying that indigenous peoples may also have an ordered set of rules and procedures. With more precision, OASDRIP also refers to indigenous law and jurisdiction. The Bolivian Constitution, for its part, uses different names. Thus, the Constitution uses *juridical systems*, as UNDRIP and OASDRIP do, *indigenous jurisdiction*, as OASDRIP terms, and the generic name of *indigenous justice*. Since C169's customary law only encompasses one possible source of law, the other denominations seem preferable. Hoekema states that the term customary law has negative traits as a subordinated and subsidiary law that requires State's authorization for its acceptance.[1056] In a similar sense, the Bolivian Protocol of Intercultural Action presented by the Supreme Court of Justice affirms that identifying the law of indigenous peoples with the term 'uses and customs' is incorrect since it denotes a colonial background, which reduces the legal norms of indigenous peoples to a set of lower hierarchical norms.[1057] Following, the terms indigenous law, indigenous jurisdiction or indigenous justice will be used.

Although the four legal instruments give indigenous peoples the right to keep their juridical institutions, they differ in their scopes. Whereas C169, UNDRIP, and OASDRIP declare indigenous peoples' rights to conserve their law and jurisdiction, OASDRIP and the Bolivian Constitution impose duties on the State, which fulfill the same purpose. Regarding the former, ILO C169 only comprises the IPs' right to retain their juridical systems. Instead, UNDRIP and OASDRIP go further by recognizing them the right to promote and develop their law. As for the duties, even though OASDRIP compels the States to recognize and respect indigenous juridical institutions, the Bolivian Constitution establishes a higher standard by obliging the State to promote and strengthen indigenous justice. Since the verbs promoting, developing, and strengthening presuppose the verbs retaining, recognizing, and respecting, then both the indigenous peoples' right to promote, develop, and maintain their juridical systems recognized by

[1054] *SCP 0874/2014* (n 1045) para III.2.
[1055] Compare articles 35 of ILO C169, 45 of UNDRIP, XL of OASDRIP and 256.II and 410.II of the Bolivian Constitution.
[1056] Hoekema (n 953) 353–354.
[1057] Tribunal Supremo de Justicia, Órgano Judicial de Bolivia, *Protocolo de actuación intercultural de las juezas y jueces, en el marco del pluralismo jurídico igualitario* (Tribunal Supremo de Justicia 2017) 35.

UNDRIP and OASDRIP, and the correlated State's duty to promote and strengthen indigenous justice imposed by the Constitution are the most favorable provisions to indigenous peoples.

C169, UNDRIP, and OASDRIP establish that States must define mechanisms to resolve possible conflicts between indigenous peoples, the State, or their inhabitants. Furthermore, C169 and UNDRIP determine that States shall take indigenous legal systems into account when resolving potential conflicts related to them. However, OASDRIP raises the protection level by imposing the active participation of the indigenous peoples in creating these conflict-resolution mechanisms and requiring that they be just, equitable and effective for their prompt resolution. Therefore, OASDRIP provisions are more favorable to them. On the other hand, the Bolivian Constitution and its laws have already established the mechanisms and procedures to prevent and resolve these possible disputes due to the exercise of indigenous, ordinary, and agri-environmental jurisdictions. Although the details of these procedures are described later,[1058] it is possible to anticipate that they generally comply with the standards provided by C169 and UNDRIP since they are included in the Bolivian Constitution and laws. Nonetheless, they partially disregard OASDRIP's provision because even though indigenous peoples have participated actively in the constituent process of the current Bolivian Constitution (as described before), and some of their representatives participated in the general legislative process when discussing laws concerning indigenous jurisdiction exercise through their Legislative Assembly's indigenous members, there was only one prior and informed consultation on the JDL scope and none regarding the other related laws. Furthermore, as seen later, this consultation process might be qualified as deceptive.

UNDRIP and OASDRIP have a general provision that constrains States to respect the exercise of indigenous peoples' rights and fundamental freedoms. In contrast, C169 determines such duty by establishing that States must respect indigenous methods customarily practiced for dealing with offenses committed by their members. However, the Bolivian Constitution recognizes the indigenous peoples' right to practice their juridical systems and jurisdiction. It even goes further by creating duties on the State and its authorities to obey and enforce indigenous decisions and the duty of all people to obey them. Not to mention that the ordinary and agri-environmental jurisdictions, in an egalitarian legal pluralism setting, must coordinate and cooperate with the indigenous jurisdiction. As a result, the Bolivian Constitution has a higher standard in favor of the exercise of indigenous jurisdiction.

## Bolivian Limits to the Collective Right to Exercise Indigenous Jurisdiction

The limits to indigenous jurisdiction will be reviewed in two parts by the source that establishes them. The first part covers the limits provided by the Constitution, and the second, the limits provided by law.

### *Constitutional Limits to Indigenous Jurisdiction*

The Constitution establishes certain limits to the exercise of indigenous jurisdiction. Like C169, UNDRIP, and OASDRIP, the Bolivian Constitution provides that indigenous jurisdiction must be exercised in accordance with it, respecting the unity of the State, the rights to life, defense, and other constitutional rights and guarantees. The latter also implies the constitutional components [constitutionality block], that is, international human rights recognized by Bolivia that are more

[1058] Cf. Annex B: Plurinational Constitutional Court's Case Law Analysis on page 461.

favorable than those provided for by its Constitution. The constitutions of the Andean area also define that indigenous legal systems are limited by them and State laws; thus, Colombia (Art. 246[1059]), Ecuador (Arts. 57.10 and 171[1060]), Peru (Art. 149[1061]) and Venezuela (Art. 260[1062]).

When an indigenous autonomy exercises jurisdiction, article 304.I.8 of the Constitution extends this limit by ordering that it also must respect Bolivian laws, an aspect that in practice has not been differentiated by the constitutional jurisprudence. Additionally, and to avoid arbitrariness in the decision and resolution of disputes, the Constitution provides that only indigenous authorities must exercise indigenous jurisdiction according to indigenous peoples' principles, cultural values, norms, and procedures.

The Bolivian Constitution also establishes that indigenous jurisdiction cannot resolve all possible conflicts. Thus, it distinguishes three areas that must concur for the exercise of indigenous jurisdiction to be legally valid:[1063] personal, territorial, and material.[1064] The Constitutions of Colombia (Art. 246), and Peru (Art. 149) share, roughly, the same criteria based on territorial jurisdiction.[1065] The Constitution of Ecuador orders indigenous justice in relation to their internal conflicts within their territory (Art. 171). The Constitution of Venezuela limits indigenous jurisdiction to territorial and personal matters (Art. 260).

Regarding the personal validity area, the Constitution orders that indigenous jurisdiction only reaches people who are members of the same indigenous peoples and cannot be exercised over third parties. Subsequently, the scope of the material validity area establishes the legal matters and the disputes that the indigenous jurisdiction can resolve. Finally, the territorial area establishes that indigenous jurisdiction only applies to acts and legal relationships in the territory (jurisdiction, says the Constitution) of the indigenous peoples concerned or whose effects are produced in it.[1066] Then, the right to exercise indigenous jurisdiction is a collective right that indigenous peoples have as collectivities in applying justice and resolving disputes of their indigenous members, about legally delimited matters that emerge from relations or acts caused in the indigenous jurisdiction and whose effects occur there, and in accordance with the internationally recognized human rights, and the Bolivian Constitution and laws.[1067]

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[1059] Constitución Política de Colombia 1991.
[1060] Constitución de la República del Ecuador 2008.
[1061] Constitución Política del Perú 1993.
[1062] Constitución de la República Bolivariana de Venezuela 1999.
[1063] According to the PCC, the Constituent Assembly 'preferred to use the term validity instead of the word competence to avoid the assimilation of its own legal system to the written law of predominant application in the Nation-States, of a monocultural character and liberal trend, in contradiction to the philosophical conception of the Plurinational State.' *SCP 0005/2016* (n 1032) para III.4.
[1064] The constitutional article 192, in its original version approved by the Constituent Assembly, stated that indigenous jurisdiction was competent to decide on all kinds of legal relationships as well as acts and facts that violate legal rights carried out within the indigenous territorial scope, in accordance with Copa Pabón (n 913) 23.
[1065] Yrigoyen Fajardo, 'Revista Crea - Centro de Resolución Alternativa de Conflictos' (n 1021) 23.
[1066] There are three types of competences: i) spatial or territorial, which refers to the geographical place where a rule is in force and can be applied, ii) personal, referring to the person or persons to whom it may or may not be applied a norm, iii) material, refers to the types of matter or contents that regulate the different areas of law (civil, criminal, family, and so on). Tribunal Supremo de Justicia, Órgano Judicial de Bolivia, *Protocolo de actuación intercultural de las juezas y jueces, en el marco del pluralismo jurídico igualitario* (n 1057) 62.
[1067] Fajardo Yrigoyen proposes as criteria to define and resolve conflicts of jurisdiction between indigenous and state law that indigenous peoples can a) exercise their justice in all matters (material jurisdiction), b) extraterritorially (territorial jurisdiction), c) between indigenous peoples, and with third parties when they have legal relations with indigenous peoples in their territories (personal competence), d) with decisions that cannot be modified later by the State jurisdiction. e) Establish registration mechanisms for indigenous decisions, and f) recognize their intrinsic validity. g) Refer indigenous cases to indigenous peoples to h) strengthen their justice

One of the consequences of limiting the indigenous jurisdiction with personal, territorial and material validity areas is that there are no overlapping competences in Bolivia. Whenever the three validity areas of the indigenous jurisdiction concur, it has the competence to resolve disputes. Conversely, ordinary, agri-environmental, constitutional, or special jurisdictions will have the competence to resolve disputes under the legal definition criteria.

However, one should wonder if the exercise to indigenous jurisdiction's limitations established by the Constitution to indigenous jurisdiction, that are related to the Bolivian justice system, respect the limits established by UNDRIP and OASDRIP. As argued above, even though the non-binding nature of international declarations, Bolivia has declared UNDRIP as a Bolivian law,[1068] and asserted the direct application and binding nature of declarations through its Constitutional Court[1069] if they recognize more favorable human rights.[1070] Then, to the present, UNDRIP and OASDRIP are binding standards in Bolivia. In this context, and recalling Table 15 and Table 16 contents, the State only may limit the exercise of indigenous peoples' rights through laws that a) cannot be discriminatory,[1071] b) shall be strictly necessary to secure due recognition and respect for the rights and freedoms of others, c) shall not violate international human rights obligations, and d) shall be consistent with a democratic society.[1072] In other words, the State may limit indigenous jurisdiction's exercise and shall apply its law and processes through its courts and judges whenever one or more of the four referred conditions are not met. Otherwise, the State has the duty to recognize, promote and strengthen the indigenous peoples' right to practice their juridical systems and jurisdiction. Nonetheless, it is stressed that the State has a margin of sovereignty to pinpoint other limits or faculties to the exercise of indigenous jurisdiction freely, balancing its ends with indigenous peoples' self-determination and under ILO C169, UNDRIP, and OASDRIP limits.

systems, i) define forms of operational cooperation and collaboration between systems, j) and processes to resolve human rights violations by indigenous jurisdiction (as in Colombia is the Constitutional Court). Raquel Yrigoyen Fajardo, *Pautas de Coordinacion Entre El Derecho Indigena y El Derecho Estatal* (Fundación Myrna Mack 1999).

[1068] On 7 November 2007 Bolivia raised the 46 articles of UNDRIP to the rank of Bolivian law. However, Bolivia had to issue a second law to correct the number of the United Nations assembly that approved UNDRIP (61 instead of 62). Ley 3760 [Law 3760]; Ley 3897 [Law 3897].

[1069] The constitutionality block is made up of the text of the Constitution, as well as international treaties, declarations and conventions on human rights, in accordance with *SC 1662/2003-R* (n 1006) para III.2. The precedent is constantly applied until the present through many decisions, such as SC0069/2004, and recently through the decisions 0265/2016-S2, 0527/2019-S2, 310/2020-S4, among others. Furthermore, it was also recognized by the Bolivian Supreme Court of Justice's Tribunal Supremo de Justicia, Órgano Judicial de Bolivia, *Protocolo de actuación intercultural de las juezas y jueces, en el marco del pluralismo jurídico igualitario* (n 1057) 3.

[1070] Article 256.II of the Constitution imposes that the 'rights recognized in the Constitution shall be interpreted in accordance with international human rights treaties when the latter provide more favorable norms.'

[1071] The body of independent experts that constitutes the Committee on the Elimination of Racial Discrimination clarified that discrimination against indigenous peoples is racial discrimination. 'OHCHR | Combating Discrimination against Indigenous Peoples' <https://www.ohchr.org/en/issues/Discrimination/Pages/discrimination_indigenous.aspx> accessed 21 September 2021. Article 1.1 of United Nations, *International Convention on the Elimination of All Forms of Racial Discrimination* A/RES/2106(XX)[A]. defines discrimination as 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.'

[1072] OIT C169's articles 8 and 9, UNDRIP's article 46 and OASDRIP's article XXXVI.

## *Personal Validity Area*

The personal scope defines who the indigenous jurisdiction judges. Article 35 of UNDRIP proclaims that 'indigenous peoples have the right to determine the responsibilities of individuals to their communities.' According with Vintimilla, the prevailing idea is that this jurisdiction can only judge community members, although doubts arise about what happens in those cases where people who belong to the community and are not indigenous request the intervention of indigenous authorities? Or is it feasible to resolve any conflict in the community territory even if those involved are not indigenous?[1073] This author expounds, following the first draft of the Ecuadorian Justice Commission, that the personal scope could apply by a) ethnic belonging, b) the choice of the non-indigenous person to appear before the indigenous or ordinary jurisdictions (in case of being a victim or perpetrator), and c) having a domicile in indigenous territory. [1074]

When establishing the personal validity area, the Constitution safeguards the recognition and respect of the rights and legal security of other people who are not indigenous or who, if they are, belong to other indigenous peoples. Consequently, the lack of compliance with the personal validity area authorizes (more correctly, obliges) the State to limit the exercise of indigenous jurisdiction to protect and respect other's rights, that is, third party rights, under UNDRIP and OASDRIP provisions. Furthermore, the indigenous members and non-members differentiation also resolves competence conflicts when deciding disputes between them since the personal validity area criterion dictates restricting indigenous jurisdiction in favor of ordinary or agri-environmental ones. The Constitution refers to the specific connection among indigenous members[1075] instead of the C169's self-identification criterion to comply with this area. Nonetheless, both criteria should be considered as complementary in Bolivia.[1076] Then, indigenous jurisdiction may decide controversies if they involve members of the same indigenous people; otherwise, ordinary, or agri-environmental jurisdictions shall have the competence to resolve them.

The personal limit does not affect the other conditions related to discrimination, human rights, and democratic society since those who are not indigenous peoples' members are not linked to the particular laws of indigenous peoples but the State's general law. Whereas articles 14.V and 164.II of the Constitution mandates compliance with the Bolivian laws to Bolivian and foreign persons within its territory since the day of their publication in the Official Gazette, the Constitution does not require the same concerning indigenous peoples' laws which,[1077] by the way, are not officially published. Due to this, even though non-indigenous members shall be legitimately dispensed from knowing indigenous people's laws and released from their jurisdictions within the plurinational Bolivian setting, they must submit to State's sovereignty.

Partially contrary to this opinion, Hayes Michel states in her doctoral dissertation that whenever there is a dispute between indigenous members of different indigenous peoples in Bolivia, the authorities from both communities shall decide the dispute or, alternatively, agree on which of them will do so.[1078]

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[1073] Jaime Vintimilla Saldaña, *Ley Orgánica de Cooperación y Coordinación Entre La Justicia Indígena y La Jurisdicción Ordinaria Ecuatoriana: ¿Un Mandato Constitucional Necesario o Una Norma Que Limita a Los Sistemas de Justicia Indígena?*, vol 6 (Cevallos editora jurídica 2012) 77.
[1074] ibid 78.
[1075] Constitución Política del Estado Plurinacional de Bolivia, Article 191.I.
[1076] Rojas (n 1050).
[1077] It goes in tandem with article 14.IV of the Constitution: '[i]n the exercise of rights, no one shall be obligated to do anything that is not mandated by the Constitution or laws, nor be deprived of that which they do not prohibit.' Translation of Elkins, Ginsburg and Melton (n 233).
[1078] María Yamile Hayes Michel, 'Pluralismo jurídico en Bolivia. La coexistencia del Derecho indígena y el Derecho estatal en Bolivia' (Doctoral, Universitat de València 2016) 251.

However, such situation would not be about the exercise of indigenous peoples' jurisdiction, within the framework of its law and juridical system, but resolving disputes between members of two different communities against personal and territorial validity areas. It resembles more to arbitration, in which the communities in conflict and their members voluntarily establish an ad hoc arbitration tribunal that legitimize the conflict resolution by one or both of them, or even by a third party.

In a book chapter released before the Jurisdictional Demarcation Law (JDL), Martha Rojas explained, by interpreting the Constitution, that indigenous peoples should have the competence to decide cases whenever non-community members affect indigenous interests. She argued that having indigenous and ordinary jurisdictions the same hierarchy entails granting them the same competences. Thus, the author asserts that if ordinary jurisdiction may decide cases where indigenous people commit illicit acts outside indigenous territories, conversely indigenous jurisdiction should decide similar cases when they are committed by non-community members against indigenous interests.[1079] Differing from Rojas, it should be recalled that the terms jurisdiction and competence are not synonyms. Whereas jurisdiction regards the application of the law, deciding a conflict, or enforcing a judicial decision, competence is the power that a magistrate, a judge, or an indigenous authority has to exercise jurisdiction in a certain matter.[1080] For this reason, having the same hierarchy between jurisdictions does not imply having the same competencies.

Following the above, in the human rights framework, it is established that people have the right to a fair trial, i.e., a trial conducted independently, impartially, and by a judge or court previously established by law.[1081] Although these conditions are met in the case of members of indigenous peoples concerning their own legal systems in Bolivia, it is not the case for persons who are not indigenous. Indeed, although the personal validity area of the Constitution and the JDL allows members of an indigenous people to expect that their own law will be applied to resolve their disputes, this expectation cannot involve those who are not indigenous members. On the contrary, if this personal validity area is not fulfilled, the people living in a State expect to resolve their disputes according to the previous legal framework applicable to all of them. Furthermore, although there is the right to sue and the duty to respond judicially to the claims presented within the framework of common law to the parties in dispute, there is no right to apply an own indigenous law or the duty to respond according to that particular law for those who are not indigenous. Thus, a democratic society requires that the 'rights of each person are limited by the rights of others, by the security of all.' [1082] If a legal framework other than the one established for the generality of people were used when there was a dispute between indigenous and non-indigenous people, the predictability of application of a previous legal framework would be affected. This situation might result in discriminating against the rights of those who are not indigenous by imposing a different treatment than that which corresponds to them.[1083] Therefore, it could be concluded that the personal limit to indigenous jurisdiction protects non-indigenous people within the framework of international standards.

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[1079] Rojas (n 1050) 165.

[1080] Couture explains that competency is a fragment of jurisdiction attributed to a judge where, although all the judges have jurisdiction, not all of them have the competence to judge a specific matter, which is why there are judges with and without competence depending on the subject, place, or other characteristics of the dispute. Couture (n 236) 29.

[1081] International Covenant on Civil and Political Rights (ICCPR), article 14.1; American Convention on Human Rights 'Pact of San Jose, Costa Rica', article 8.1.

[1082] American Convention on Human Rights 'Pact of San Jose, Costa Rica', article 32.2.

[1083] United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), articles 34 and 36; American Declaration on the Rights of Indigenous Peoples (OASDRIP), article XXXVI; Constitución Política del Estado Plurinacional de Bolivia, article 14.III and IV.

## *Material Validity Area*

The Constitution orders that a special law, called the Jurisdictional Demarcation Law (JDL), shall define the matters on which the indigenous jurisdiction can resolve disputes.[1084] For this reason, the contrast between international law limitations and the JDL's restrictions to indigenous jurisdiction will be analyzed below when examining its content.

## *Territorial Validity Area*

The territorial validity area determines that indigenous jurisdiction applies 'to the relations and juridical acts that are carried out, or the effects of which are produced, within the jurisdiction'[1085] of indigenous peoples. Apparently, defining a territorial validity area for the indigenous jurisdiction exercise might result as a consistent mechanism to organize the coexistence between jurisdictions, defining not just juridical but physical boundaries throughout the State to accommodate the existing legal pluralism.[1086] Contrary to this intuition, it might not be the case in Bolivia since indigenous territorial boundaries in rural areas are inevitably elusive, this validity area may be impractical and, finally, but most importantly, it restricts unreasonably indigenous jurisdiction, as argued below.

Territoriality is the physical space in which the indigenous community develops its productive, spiritual, community, and cultural activities even when shared.[1087] The Bolivian Constitution defines indigenous territories [territorios indígena originario campesinos or TIOCs] as communitarian or collective property that is indivisible, imprescriptible, inalienable, irreversible, and free of taxation agrarian property. [1088] It is also recognized, protected and guaranteed by the State to indigenous peoples, intercultural communities and peasant communities.[1089] Moreover, the Constitution recognizes indigenous territories [to indigenous peoples] as a whole, with land rights, exclusive exploitation of renewable natural resources and the possibility to apply their indigenous norms and administration.[1090] Even though indigenous peoples could be the only right holders of indigenous territories,[1091] they shall comply with requisites and procedures before agrarian authorities to acquire legally the indigenous territories' recognition.[1092] However, the indigenous' rights to territory and land are not conditioned to this formal recognition by the State.[1093] As the Inter American Court of Human Rights declared, and

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[1084] JDL's content on the material validity area regards a list of questions in which indigenous jurisdiction has no competence. Therefore, on the grounds of that list and by exclusion, it is feasible to infer the matters that indigenous jurisdiction has the competence to hear and resolve. Contrary to this position, it was argued that laws that assign specific competence to indigenous authorities, such as the criminal law in the State of Oaxaca, Mexico, or JDL of Bolivia, are contrary to the constitutional spirit that recognizes autonomy for indigenous peoples to define their own regulatory systems by Juan Carlos Martínez, 'Bases para la resolución de los casos', *Elementos y técnicas de pluralismo jurídico. Manual para operadores de justicia* (Konrad Adenauer Stiftung 2012) 38.

[1085] Elkins, Ginsburg and Melton (n 233), Article 191.II.3. To better precise this concept, the term 'jurisdiction' (or 'jurisdicción' in the constitutional original wording) of the quotation's final part is construed as 'territory,' coinciding with the term 'territorial' provided by the Constitution when referring to this area.

[1086] Martínez (n 1084) 38.

[1087] Rosembert Santamaría Ariza, *Coordinación Entre Sistemas Jurídicos y Administración de Justicia Indígena En Colombia* (Instituto Interamericano de Derechos Humanos 2010) 36.

[1088] Constitución Política del Estado Plurinacional de Bolivia, Article 394.III.

[1089] ibid, Article 394.III.

[1090] ibid, Article 403.

[1091] Ley Marco de Autonomías y Descentralización 'Andrés Ibáñez' [Framework Law of Autonomies and Decentralization 'Andrés Ibáñez'], First final Article .

[1092] ibid, Article 6.I.2.

[1093] Saaresranta (n 1048) 23; Tribunal Supremo de Justicia, Órgano Judicial de Bolivia, *Protocolo de actuación intercultural de las juezas y jueces, en el marco del pluralismo jurídico igualitario* (n 1057) 65.

the Plurinational Constitutional Court reaffirmed in its case law,[1094] indigenous peoples' ancestral land possession 'should suffice to obtain official recognition of their communal ownership'[1095] and 'community members may be considered the legitimate owners of their traditional lands; as a consequence, they have the right to the use and enjoyment of that territory.'[1096]

In addition to this juridical context, it should be stressed that as of 2011, only 17% of the rural population had obtained the titling of 190 indigenous lands, which represent 19.4% of the total area of the country, with more than 80% of the area pending titling.[1097] Although surely the number of titled indigenous territories has had to increase to date, the truth is that there is still indigenous territory pending delimitation and titling. Then, the territorial validity area concerns indigenous territories that may not be formally delimited or recognized, not only because indigenous territories are not entirely or legally defined in all the cases but because many indigenous peoples only have possession intertwined with private and public lands.

The territorial validity area is redundant to determine the limits of the competence of the indigenous jurisdiction since personal and material validity areas suffice to achieve this objective. Whenever a non-indigenous peoples' member may have disputes regarding acts or legal relationships carried out in the territory of the indigenous peoples concerned or whose effects are produced in it, those conflicts should be resolved by ordinary or agri-environmental jurisdictions, depending on the scope of their competences, and not by indigenous jurisdiction, under the provisions of personal validity area. Even if there is a real state conflict between indigenous members within indigenous territory, the ordinary or agri-environmental jurisdictions shall decide it. The Constitution guarantees real estates or sole proprietorship that may exist inside or in the vicinity of indigenous territories[1098] by excluding the exercise of indigenous jurisdiction through the material validity area. Thus, article 10.II.b of JDL excludes indigenous jurisdiction from hearing [real] property disputes. Moreover, it is not feasible to assert the overlapping of indigenous territory on the real state given they are contradictory terms: the former is necessarily indigenous' collective property, and the latter is, by definition, private property.[1099] As a consequence, the territorial validity area is irrelevant to define inter-jurisdictional demarcations since personal and material validity areas may suffice to that end.

In contrast, the Constitutional definition of territorial validity area becomes too restrictive whenever a dispute emerges between community members outside the indigenous territory that may concern indigenous interests. By constitutional definition, the territorial validity area is fulfilled if one or both of the following conditions are met: the conflicting relations and juridical acts are carried out inside the indigenous territory, or the effects of such relations and juridical acts are produced within an indigenous territory. Nonetheless, it should be legally feasible that indigenous jurisdiction applies even though if

[1094] For instance, 2013.0026-CC-SC, 2013.0925-CC-SC, 2014.0487-Amp-SC, 2015.0075-CC-SC, 2017.0090-CAI-DC, 2018.0515.S1-AP-SC, 2019.0036.S4-AP-SC and SCP 0036_2019-S4.

[1095] *Moiwana Community v Suriname* [2005] Inter-American Court of Human Rights Series C No. 124 [131]. The Court had already state in 2001 that '[a]s a result of customary practices, possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration' in *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (n 689) para 151.

[1096] *Moiwana Community v. Suriname* (n 1095) para 134. Reasoning followed by the Plurinational Constitutional Court in the case *Sentencia Constitucional Plurinacional 0026/2013* [4 enero 2013] Tribunal Constitucional Plurinacional 00507-2012-02-CCJ, Neldy Virginia Andrade Martínez [III.3].

[1097] Fundación Tierra (ed), *Informe 2010. Territorios Indígena Originario Campesinos En Bolivia. Entre La Loma Santa y La Pachamama* (Fundación Tierra 2011) 26 <www.ftierra.org>.

[1098] Constitución Política del Estado Plurinacional de Bolivia, Article 394.I.

[1099] The category of indigenous territory incorporated in the Constitution has, as the only holders of the collective property right, the peoples who demanded them, the indigenous peoples of the lowlands, or the indigenous peoples of the highlands, as appropriate.Ley Marco de Autonomías y Descentralización 'Andrés Ibáñez' [Framework Law of Autonomies and Decentralization 'Andrés Ibáñez'], article final 1.

both conditions are not met.[1100] For instance, if acts of fraud are committed (or any criminal or legal dispute within indigenous peoples' competence emerges) between two or more community members whose effects occur in an urban area outside their indigenous territory creating profound disagreements between them and their families that affect the community's harmony.[1101] In this case, although the personal and material validity areas concur, and the indigenous peoples' legitimate interest in reestablishing balance and harmony within the community exists, the constitutional definition of the territorial scope would restrict the intervention of the indigenous jurisdiction. Gómez rhetorically questions whether the indigenous to be considered as such must be condemned to live only in their ancestral territories?[1102] Likewise, Félix Patzi also noted that community justice has been delimited only to the rural area.[1103]

Thus, the constitutional wording on the territorial validity area implies limitations to indigenous jurisdiction that do not seem reasonable since they exclude indigenous jurisdiction's exercise in a legitimate setting.[1104] In addition, such territorial limitation affects reciprocity in which indigenous peoples could not decide cases that occurred outside their territories,[1105] whereas, at the same time, the ordinary and agri-environmental jurisdictions can resolve cases that occurred in indigenous territories. Consequently, the restrictive meaning of the territorial validity area affects egalitarian legal pluralism by partially excluding the exercise of indigenous jurisdiction within legitimate settings outside their territories. Indigenous jurisdictions should have the competence to resolve their indigenous members' conflicts extraterritorially.

### *Indigenous Authorities Shall Exercise Indigenous Jurisdiction Under Human Rights Standards*

Article 190.II of the Constitution imposes on indigenous jurisdiction the duty to respect the rights to life, defense, and others recognized by the Constitution[1106] and its constitutionality block. Whatever the procedure used by the indigenous peoples to apply their justice, it must provide the parties with a minimum guarantee that avoids arbitrariness and injustice.[1107] Thus, indigenous justice must respect the primary rights to legality, impartiality, competent judge, publicity, innocence presumption, proportionality, defense, impartiality, and contradiction. [1108] This limit is congruent with C169 (article 8.2), UNDRIP (article 34), and OASDRIP (article XXII.1 and .2) since their content unanimously limits indigenous law and procedures to be compatible with human rights standards and the State's legal

[1100] In this sense, the Bolivarian Republic of Venezuela allows indigenous jurisdiction to resolve disputes that occur outside of the habitat or lands of indigenous peoples, provided that the criteria of material and personal competence are met in Ley Orgánica de Pueblos y Comunidades Indígenas (Venezuela) 27 diciembre 2005, Article 133.2.

[1101] This scenario is most likely to exist in Jacha Karangas, according to the indigenous double residence that indigenous members have in rural and urban areas, explained before.

[1102] Herinaldy Gómez Valencia, 'La Jurisdicción Indígena: Lectura Jurídica y Cultural', *El peritaje antropológico como prueba judicial* (2008) 199.

[1103] Patzi Paco (n 859).

[1104] Guachalla argues that, since ILO Convention 169's article 8.1 orders the States to consider indigenous customs when applying their legislations, it is feasible to admit the exercise of indigenous jurisdiction outside their territories under intercultural parameters. Guachalla Escóbar (n 1021).

[1105] The same argument, but in an egalitarian approach, is in Hayes Michel (n 1078) 249.

[1106] The Plurinational Constitutional Court of Bolivia stated that '[t]he indigenous jurisdiction, like the other jurisdictions, is limited by the respect of the following rights to life, defense, and other rights and guarantees established by the Fundamental Norm (art. 190.II of the CPE), and the rights contained in international human rights treaties that are part of the constitutionality block.' *SCP 0300/2012* (n 31) para III.1.2.

[1107] Gómez Valencia (n 1102) 205.

[1108] ibid.

systems. Nonetheless, within the framework of legal pluralism, the definition and interpretation of human rights should not be unilateral but rather intercultural.[1109]

Article 190.I of the Constitution asseverates that the indigenous peoples shall exercise their jurisdictional functions through their authorities. The Constitution establishes a criterion of order by which not all indigenous members can exercise jurisdiction but exclusively indigenous authorities. Thus, the limit does not nullify the exercise of indigenous jurisdiction and, therefore, is not discriminatory. Additionally, and recalling the political system of Jach'a Karangas explained before, indigenous authorities are periodically elected by communal reunions named *Tantachawis* in accordance with democratic principles.

As a consequence, the constitutional limits on the compatibility of indigenous jurisdiction with human rights and its exercise through indigenous authorities is within the framework of international standards.

### *Indigenous Jurisdiction Shall Apply Indigenous Laws to Indigenous Matters*

Indigenous peoples can resort, based on their self-determination, to different legal spaces, combining international or national norms with local ones, generating what is known as interlegality, without thereby delegitimizing indigenous peoples' rights since these legal spaces are in a permanent relationship.[1110] The legal framework represented by the Constitution and its constitutional block recognizes and asserts that indigenous peoples have the right to have and exercise their law. However, the same legal framework does not grant indigenous peoples the right to exercise State law, but only their laws.[1111] Article 190.I orders that indigenous peoples 'shall exercise their jurisdictional functions and competency through their authorities, and shall apply their own principles, cultural values, norms and procedures.'[1112] Thus, whereas indigenous peoples may have the right to their law and its exercise under the limits defined by the Bolivian and international legal framework, the State has the exclusive authority to apply its law to all Bolivian residents, including indigenous peoples. It is stressed that this limit is not related to material validity area (that responds to which matters indigenous jurisdiction may decide), but to defining which law indigenous peoples could apply to resolve indigenous disputes.

The Plurinational Constitutional Court applied this interpretation when the Ayllu of Hampaturi in La Paz decided to punish one of its members for attacking another by breaking his nose, threatening the community members and its authorities, and not submitting to the indigenous authority and jurisdiction. As a result, the indigenous decision declared the community member guilty of criminal offenses for severe physical assaults, racism, discrimination, trespassing, attempted kidnapping, among others of the Penal Code. Accordingly, the indigenous jurisdiction requested cooperation from the ordinary jurisdiction to approve its decision and apply the sanction of deprivation of liberty. To this aim, the jurisdiction of Hampaturi consulted the applicability of its decision to the Constitutional Court, which, in turn, declared the consultation inadmissible because it considered that the indigenous jurisdiction did not consult on applying indigenous norms and procedures to a specific case but rather applying the State Penal Code and its Procedure. Therefore, the Court considered that the consulting authorities are misrepresenting the consultation process, did not meet the requirement of stating their indigenous law

[1109] Yrigoyen Fajardo, 'Revista Crea - Centro de Resolución Alternativa de Conflictos' (n 1021); Guachalla Escóbar (n 1021).
[1110] Tribunal Supremo de Justicia, Órgano Judicial de Bolivia, *Protocolo de actuación intercultural de las juezas y jueces, en el marco del pluralismo jurídico igualitario* (n 1057) 35.
[1111] Guachalla Escóbar (n 1021); Rojas (n 1050).
[1112] Translation of Elkins, Ginsburg and Melton (n 233), articule 190.I.

and procedures, and that it is not the indigenous but the ordinary jurisdiction responsible for complying with the criminal code and its procedure.[1113]

Secondly, Constitution's article 191.II.2 asserts that indigenous jurisdiction 'hears indigenous matters' in accordance with JDL. In other words, indigenous jurisdiction has the competence to decide on affairs in which indigenous peoples may have legitimate interests, and conversely, they shall not hear matters outside of their interest. In this sense, but regarding criminal offenses, Aragón argues, citing Constitutional Sentence T-496 of 26 September 1996 of the Colombian Constitutional Court, that only to the extent that the indigenous crime does not exceed the indigenous cultural orbit can it be assumed by indigenous jurisdiction.[1114]

The simultaneity of the three validity areas might secure the achievement of this limit. Nevertheless, this differential treatment between State law and indigenous law turns out to be more theoretical than real due to the interlegality existing in the legal fields and the permeability and dynamism that indigenous law demonstrates in practice.[1115] According to Bazurco and Exeni, although indigenous justice is based on traditions, old norms, and ancestral customs, in general, it is a contemporary and dynamic exercise. These authors argue that it is a contemporary exercise to the extent that in each community, the internalization of norms, principles, and procedures of other legal systems is frequent. Moreover, the indigenous peoples give those legal systems their particular application or interpretation, causing a special type of law intertwining traditions, customs, internalizations, and interpretations of other norms, principles, and procedures. Finally, they maintain that it is dynamic because it is in a permanent process of reformulation and transformation, which always occurs concerning other regulations, the most important of which is State law.[1116] Consequently, following these criteria, it seems impractical to differentiate State law when indigenous peoples' laws are analyzed since the latter is constantly inspired by the former.

On the account of the two general constitutional provisions, there are at least three questions to address. The first one concerns whether indigenous peoples may have exclusive interests, in the sense of not sharing or competing with the State's interests, in the issues they are allowed to resolve.[1117] The second one tackles whether it is a requisite to the exercise of indigenous jurisdiction that, if a concurrent legitimate interest exists between the State and the indigenous peoples, the legitimate interest of the indigenous peoples should be more compelling to admit the competence of indigenous jurisdiction. Finally, if indigenous peoples or the State have the power to define who has the interest to resolve a conflict. Below is a reflection of these three aspects.

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[1113] *Declaración Constitucional Plurinacional 0199/2015* [2014] Tribunal Constitucional Plurinacional Expediente: 12511-2015-26-CAI, Macario Lahor Cortez Chavez.

[1114] Miguel Ángel Aragón Burgos, 'La Coordinación y Cooperación Entre La Justicia Indígena Originaria Campesina y Las Otras Jurisdicciones En Bolivia. Un Análisis Desde El Pluralismo Jurídico y La Interculturalidad', *Propuestas para la Ley de Deslinde Jurisdiccional* (Compañeros de las Américas y Fundación Construir 2009) 234.

[1115] Orellana Halkyer (n 46). Furthermore, the interaction and intersection between the different legal spaces are so intense that, at the level of the phenomenology of socio-legal life, one cannot speak of law and legality but interlaw and interlegality. Boaventura de Sousa Santos, 'Una cartografía simbólica de las representaciones sociales. Prolegómenos a una concepción posmoderna del derecho' [1991] Nueva Sociedad 18, s El derecho y la escala.

[1116] Martín Bazurco Osorio and José Luis Exeni Rodríguez, 'Bolivia: Justicia indígena en tiempos de plurinacionalidad', *Justicia indígena, plurinacionalidad e interculturalidad en Bolivia* (Fundación Rosa Luxemburg / AbyaYala 2012) 55 <http://site.ebrary.com/id/10832426> accessed 22 September 2019.

[1117] In a different perspective, some authors have differentiated between relevant-irrelevant or severe-non-severe issues, such as R. Molina Rivero, X. Albó, or L. Tamburini. Others, as J.L. Exeni, have raised the criterion of a national justice-localized residual justice. The constitutional jurisprudential on some occasions proposed to differentiate matters of international-national-indigenous interest, e.g. *SCP 0026/2013* (n 1096).

Within the Bolivian egalitarian legal pluralism, the definition of juridical relevant matters may concern the State and the indigenous peoples.[1118] As a result, there might exist three kinds of interests: the ones that only regard the State or the indigenous peoples, and the ones that concern both. Starting with the ones that concern both, it is not feasible that indigenous peoples may have an exclusive interest to decide on cases that State laws define and in which JDL's accepts the practice of indigenous jurisdictions. On the account that State's sovereignty is closely related to deciding and enforcing its legislation by practicing its jurisdiction,[1119] evidently any juridical relevant conflict defined by the State and existing in its territory[1120] that involves indigenous peoples' interests should be of concurrent interest. For example, all the crimes referred to in Table 22. Following, on the exclusive State's matters of interest, as could be public and international affairs, and crimes entirely against the State, indigenous peoples' lack of legitimate interest should exclude their jurisdiction from hearing and deciding them. Finally, when solely indigenous peoples may have a legitimate interest that emerges from their laws and customs, the State shall have no interest to intervene in the emerging conflicts, if equality (none-discrimination), democratic society principles, and fundamental rights are respected. Thus, for example, when the indigenous peoples decide the disputes over the internal distribution of the land among their members, emphasizing the caveat of respecting the indicated limits. Therefore, indigenous peoples may have an exclusive interest only when deciding indigenous affairs within the matters defined by their laws.

As for the second feature, neither international instruments nor the Constitution limits the exercise of indigenous jurisdiction to the cases in which indigenous peoples demonstrate that their interests are more compelling than the State's interest. On the contrary, as explained before, the Bolivian legal system admittedly accepts the coexistence of concurrent State and indigenous peoples' interests on the legally defined matters in which the exercise of indigenous jurisdiction is allowed.[1121] To this end, the Constitution does not impose, as a criterion to circumscribe the competence of each jurisdiction, defining which of their interests is greater. Nonetheless, such criterion might be implicitly reflected on the JDL's list of exclusions. Remarkably, the Bolivian legal framework does not motivate or justify why some matters are excluded from the exercise of indigenous jurisdiction, neither explicit a set of rules or criteria to that aim, except that it shall only hear indigenous matters. As a result, the intensity of the concurrent interests or even other characteristics of the competing interests could be the underlying reasons for the discrimination of the matters allowed to indigenous jurisdiction.

All things considered, although the exercise of indigenous jurisdiction is limited to resolving indigenous affairs, it might not depend on whether indigenous peoples may have an exclusive interest to resolve a dispute since the indigenous jurisdiction may legally decide a case even if the State has a concurrent interest. In addition, if there is a concurrent interest to decide a case, the Constitution does not demand that indigenous peoples prove to have more compelling interests than the State to exercise their jurisdictions since JDL defines the matters excluded to indigenous jurisdiction. However, JDL does not motivate or make explicit which parameters it uses to decide which matters are within the competence

[1118] ibid.
[1119] Ryngaert (n 38).
[1120] Territory 'is the geographical domain of political or jurisdictional authority. It is a political concept and so distinct from land, which is a geographical notion—the part of the earth's surface that is not covered by water' according to Margaret Moore, 'Working Paper on Territory, Boundaries, and Collective Self-Determination' (2017) EU Borders working paper series 05 with the Centre on Constitutional Change, Institut Barcelona Estudis Internacionals and Leuven Centre for Global Governance Studies <https://www.ibei.org/working-paper-05-euborders_145104.pdf> accessed 24 September 2021.
[1121] Besides, indigenous peoples' interests are presupposed when considering personal and territorial validity areas since the latter will define, after determining the material validity scope, which jurisdiction has the competence to decide each specific dispute whenever the concurrent interests may exist.

of the indigenous jurisdiction and which are not. As a consequence, although there is a list of subjects that are excluded from the jurisdiction of the indigenous jurisdiction, it is not possible to know what are the reasons that justify these exclusions. Therefore, the analysis of these exclusions in the JDL will be carried out, as stated above, by contrasting the frames defined by C169, UNDRIP, OASDRIP, and the Constitution.

Be that as it may, when the Constitution limits indigenous jurisdiction only to hear indigenous affairs and applying indigenous law, it sets practical and justified criteria that balance its functions through the underlying interests of Bolivian individuals and groups. In turn, such limits protect the interests of third parties unrelated to indigenous matters or indigenous legal systems. The recognition of the collective rights of indigenous peoples due to their history, self-determination, culture, values, among others, aims to protect them in their structure, identity, dignity, and existence.[1122] Thus, it is about safeguarding the interests of indigenous peoples and their institutions, allowing them to apply their law through their authorities and not, on the contrary, supporting the existence of a para-state entity that interferes in the interests of others through general laws of the State that do not belong to them. Therefore, the respect that Bolivia owes to the identities and structures of each of the nations that inhabit its territory, the regard they owe each other, and the collective and individual rights of all under a plurinational context may coexist per these limitations. Hence, limiting the exercise of indigenous jurisdiction to their legitimate interests and by exclusively applying their legal systems is within the framework of international standards.

## *Bolivian Statutes*

According to a Ministry of Justice report,[1123] the new Bolivian Constitution established new paradigms that forced the State to carry out legislative development. This document maintains that, after the laws of the Judicial Branch and the Plurinational Constitutional Court entered into force, the Legislative Assembly engaged in 2010 in inter-institutional coordination meetings with the Executive, Judicial, and Electoral Organs to establish a legislative development agenda. In these meetings, the authorities agreed that the legislative development should be carried out between 2011 and 2012 by commissions made up of recognized professional lawyers from Bolivia's institutions and public and private universities. In addition, in 2011, the presidents of the State's bodies decided to prioritize criminal, civil, social, constitutional, and agri-environmental laws.

According to this Report, to facilitate access to prompt justice, it was agreed to prefer procedural laws, starting in 2010 with a Transition Law the New Entities of the Judicial Branch and Public Ministry. As a consequence, this law called for elections of magistrates of the Courts of Justice, Agri-environmental and Constitutional in December 2011 to take office from January 2012.[1124] It is highlighted that, in general, the procedural laws that govern the new highest Bolivian courts of justice established by the 2009 Constitution began their activity since their elected magistrates began their functions.[1125]

[1122] UNDRIP article 43 and OASDRIP article VI.

[1123] Ministerio de Justicia, Estado Plurinacional de Bolivia, *Códigos Morales. Memoria. Tercera era de codificación y legislación sistémica en Bolivia 2009-2013* (2014) 35–45.

[1124] Ley 003 de Necesidad de Transición a los Nuevos Entes del Órgano Judicial y Ministerio Público [Law of Necessity of Transition to the New Entities of the Judicial Organ and Public Ministry] 2010.

[1125] Ley 025 del Órgano Judicial [Law of the Judicial Organ] transitorio Article 1. For more on the matter, see "Context and composition" on page 356.

Table 19 shows a list of the Bolivian statutes that refer to indigenous jurisdiction in Bolivia. However, due to the importance they have for this investigation, the laws of the Judicial Organ and Jurisdictional Demarcation are analyzed separately in detail below.

*Table 19: Bolivian statutes related to indigenous jurisdiction*

| Law | Content |
|---|---|
| Code of Criminal Procedure | Article 28.- (Community Justice). The criminal action will be extinguished when the crime or offense is committed within an indigenous and peasant community by one of its members against another, and their natural authorities have resolved the conflict in accordance with their Indigenous Customary Law, provided that said resolution is not contrary to the fundamental rights and guarantees of the people established by the Political Constitution of the State.<br>The Law will make the application of Indigenous Customary Law compatible. |
| Law to Guarantee Women a Life Free of Violence | Article 41.- (Attention to rural native indigenous communities)<br>...<br>II. All cases of sexual violence, femicide, and similar crimes will be referred to the ordinary jurisdiction, in accordance with the Jurisdictional Demarcation Law. |
| Law of Plurinational Notary | Article 34.- (Coordination)<br>I. The Directorate of the Plurinational Public Notary and the Departmental Directorates will promote coordination with indigenous and Afro-Bolivian authorities to incorporate the notarial service within the scope of indigenous peoples and Afro-Bolivian communities, with prior authorization from their authorities.<br>II. According to the provisions of the previous paragraph, the required notaries may expressly authorize the opening of a special book for the registration of acts of a community, indigenous and Afro-Bolivian peoples, within the framework of their own legal system. The content of the records of the special book will be determined by regulation.<br>Article 35.- (Cooperation) The public notaries will freely grant the documents of the constitution of communities, indigenous peoples, and Afro-Bolivians, as well as authenticated copies, testimonies, or certifications, at the request of their authorities, for the processing of their legal personality or the resolution of a specific case before the competent authorities.<br>Article 36.- (Knowledge of other systems) It is the duty of the public notaries to know the norms and procedures commonly practiced by the communities, indigenous peoples, and Afro-Bolivians in the territorial scope in which they exercise the notarial service.<br>Article 37.- (Acts of communities, indigenous peoples and Afro-Bolivians) The public notaries, at the request of the interested parties, may attend and attest to the acts commonly practiced by the communities, indigenous peoples, and Afro-Bolivians located within their territory scope, and will be written by minutes.<br>Article 38.- (Requirement for registration) The public notaries, when required to register acts of the communities, indigenous peoples, and Afro-Bolivians, must necessarily register the personal, material, and territorial areas of validity inherent to the act. |
| Family and Family Procedural Code | Article 165.- (Voluntary forms of registration)<br>I. Both spouses, by mutual agreement and voluntarily, may request the registration of their union ...<br>b) Before the indigenous authority, according to its uses and customs, who for publicity purposes must notify the Civic Registry Service.<br>Article 221.- (Jurisdictional relationship) The authorities of the ordinary jurisdiction and the indigenous jurisdiction must act within the competencies indicated by the Political Constitution of the State, the Law of Jurisdictional Demarcation, and other related regulations. |

*Source:* Adapted from Code of Criminal Procedure,[1126] Law to Guarantee Women a Life Free of Violence,[1127] Law of Plurinational Notary,[1128] and Family and Family Procedural Code. [1129]

[1126] Ley 1970 Código de Procedimiento Penal [Law 1970 Code of Criminal Procedure] 1999.
[1127] Ley 348 Integral para Garantizar a las Mujeres una Vida Libre de Violencia [Law to Guarantee Women a Life Free of Violence] 2013, article 41.II.
[1128] Ley 483 del notariado plurinacional [Law of Plurinational Notary] 2014.
[1129] Ley 603 del Código de las Familias y del Proceso Familiar [Family and Family Procedural Code] 2014.

## *Law 25: Law of the Judicial Organ of 2010*

The Law of the Judicial Organ[1130] aims to regulate the structure, organization, and operation of the Bolivian Judicial Branch. Among the principles established in its article 1, the following stand out: a) Plurinationality, which implies the existence of indigenous peoples, intercultural and Afro-Bolivian communities that constitute the Bolivian people. b) Legal pluralism, which proclaims the coexistence of several legal systems within the framework of the Plurinational State. c) Interculturality recognizes the expression and coexistence of cultural, institutional, normative, and linguistic diversity and the exercise of individual and collective rights to live well. d) Social harmony, as the basis for social cohesion, tolerance, and respect for differences. e) Culture of peace through the peaceful resolution of controversies.

Like the Constitution, the article 4 of this law identifies four jurisdictions: ordinary, agri-environmental, indigenous, and specialized jurisdictions. When this law refers to the ordinary jurisdiction, it maintains in its article 29 that it will impart justice in civil, commercial, family, childhood and adolescence, tax, administrative, labor, social security, anti-corruption, criminal law, and others that establish special laws. In addition, it determines that the Supreme Court of Justice, with jurisdiction throughout the State of Bolivia, the Departmental Courts of Justice, and the Sentencing Courts and judges exercise the ordinary jurisdiction.[1131] On the other hand, the Agri-environmental jurisdiction performs a specialized function, imparting justice in agrarian, livestock, forestry, environmental, water, and biodiversity law,[1132] through the Agri-environmental Court, which has jurisdiction throughout Bolivia, and the lower ranking agri-environmental judges.[1133] Table 20 outlines the specific competences of ordinary and agri-environmental jurisdictions. Since the Law of the Judicial Organ does not demarcate the competencies between those jurisdictions and the indigenous one, the list in Table 20 may include indigenous competencies as well. On the matter of indigenous jurisdiction, law 25 states that indigenous authorities are in charge of imparting justice through principles, cultural values, norms and procedures of each indigenous peoples concerned under the recognition of the Constitution, C169 and the UNDRIP. [1134] Finally, specialized jurisdictions will be created by law when justified by public interest, specificity, and special treatment of particular cases that concern disputes outside the competences of the ordinary, agri-environmental and indigenous jurisdictions. [1135]

The law of the Judicial Organ maintains without modification the standards of the exercise of indigenous jurisdiction established in the Constitution. In this way, it establishes in its article four that: a) the judicial function is unique in Bolivia and that it is exercised by the four jurisdictions mentioned above, including the indigenous one, and b) that the ordinary and indigenous jurisdictions enjoy the same hierarchy. c) In addition, article five establishes that a Jurisdiction Demarcation Law will determine coordination and cooperation mechanisms between jurisdictions. Furthermore, article 160 reiterates that d) indigenous jurisdiction is exercised in the areas of personal, material, and territorial validity, e) that indigenous jurisdiction is based on a particular bond of the people who are members of the respective indigenous peoples, regardless of whether they are plaintiffs or defendants, claimants or accusers, denounced or accused, or appellants or respondents; f) that indigenous jurisdiction applies to the relations and juridical acts that are carried out, or the effects of which are produced, within the jurisdiction of an indigenous peoples; g) that it respects the right to life, the right to defense and other

[1130] Ley 025 del Órgano Judicial [Law of the Judicial Organ].
[1131] ibid, Article 31.
[1132] ibid, Article 131.II.
[1133] ibid, Article 133.
[1134] ibid, Article 159.
[1135] ibid, Articles 156-158.

rights and guarantees established in the Constitution. Finally, this law also reiterates the duties h) of the State to promote and strengthen indigenous justice (article 161), i) as well as to assist indigenous authorities in complying with their decisions (article 163); and, j) the duty of every public authority and person to abide by the decisions of the indigenous jurisdiction in article 162.

However, even though the law of the Judicial Organ reiterates the powers and limits provided by the Constitution, it should be noted that it incorporates a new duty to the State and indigenous peoples when they exercise jurisdiction. Under the name of complementarity, article 6 states that, in the judicial function's exercise, the different jurisdictions shall not obstruct, usurp competencies, or impede their labor to administer justice. Thus, the complementarity principle[1136] establishes that each jurisdiction must limit its exercise to their competencies and areas of validity (no overlapping competencies) and facilitate one another's functions. As a result, complementarity implies legal protection to the exercise of indigenous jurisdiction since the other jurisdictions should not decide the indigenous peoples' disputes and vice versa. That is, ordinary and agri-environmental jurisdictions accepting and deciding indigenous disputes that legally belong to indigenous jurisdiction.[1137]

Although the validity areas defined by the Constitution implied that there are no overlapping competencies between jurisdictions, the principle of complementarity states explicitly that the competencies of the ordinary, agri-environmental and specialized jurisdictions do not overlap. Furthermore, the complementarity duties surpass the constitutional content about strengthening and protecting indigenous jurisdiction given that it goes beyond by prohibiting inter-jurisdictional obstruction and usurpation of competencies. Therefore, the principle of complementarity provided for in law 25 is more favorable to protect the competence of the indigenous jurisdiction than that provided for in the Constitution.

## *Law 073: Jurisdictional Demarcation Law (JDL)[1138]*

### *Prior and Informed Consent Process*

The preliminary draft of the JDL was taken to a free, prior, and informed consent process by the Vice Ministry of Indigenous Justice under the Ministry of Justice, described in a publication made by this ministry with the support of the Swiss Cooperation in Bolivia (Cosude).[1139] It should be noted that It is the first experience of exercising the right of consultation with indigenous peoples for the preparation of a legislative measure in Bolivia.[1140]

[1136] Villarroel Ferrer and Villarroel Montaño (n 236) 281.
[1137] As can be seen in the emerging results of the constitutional jurisprudence and the cases reviewed from the lower ranking judges settled in Jach'a Karangas, the indigenous jurisdiction has constantly claimed invasions of its competence to the ordinary and agri-environmental jurisdictions.
[1138] Ley 073 de Deslinde Jurisdiccional [Jurisdictional Demarcation Law].
[1139] Ministerio de Justicia de Bolivia, Viceministerio de Justicia Indígena Originario Campesina de Bolivia, and FORDECAPI - Pueblos indígenas y Empoderamiento (EMPODER) (eds), *Sistematización del Proceso de Consulta a los Pueblos Indígenas Originarios Campesinos. Anteproyecto de Ley de Deslinde Jurisdiccional* (2010).
[1140] Eddy Burgoa, 'Cómo se hizo el anteproyecto de la Ley de Deslinde Jurisdiccional', *Memoria II Seminario Bolivia Post-constituyente. derrechos Indígenas en el Estado Plurinacional. La Paz, 18 al 20 de octubre de 2010.* (Fundación Tierra 2011).

*Table 20: Ordinary and Agri-environmental Jurisdictions' competences*

| Jurisdiction | Competences determined by Law 25 of the Judicial Organ |
|---|---|
| Ordinary jurisdiction | Civil, commercial, family, childhood and adolescence, tax, administrative, labor and social security, anti-corruption, and criminal matters (29.II). |
| | The Supreme Court of Justice can decide on extradition processes, exequatur, and trial of Bolivia's president and vice president (38). |
| | Approve or reject conciliations in lawsuits for violation of constitutional rights. |
| | Civil law: eviction proceedings; indicts; signature recognition; and rectification or change of name (69). |
| | Family law: opposition, proof or nullity of marriage; divorce and separation of spouses; filiation, parental authority; custody of minors and the disabled; adoption, childbearing; Familiar patrimony; and family assistance (70-71). |
| | Family violence: demands for physical, psychological, and sexual domestic or public violence (72). |
| | Labor and social security law: deciding individual or collective actions for social rights; conflicts that arise from applying social laws; contribution collection processes; and demands for reinstatement at work (73). |
| | Criminal law: directing the investigation stage in criminal proceedings and deciding on the application of abbreviated processes and criteria of opportunity (74); decide on processes for crimes and reparation of emergent damages (75); and decide the conditional suspension of the sentence (80). |
| | The ordinary jurisdiction can resolve administrative, tax, and fiscal matters until a law establishes specialized jurisdictions for them (transitory article 10). |
| Agri-environmental jurisdiction | Contentious administrative processes on contracts, administrative acts, and administrative resolutions on natural resources, biodiversity, agrarian, forestry, environmental, water, rural property, environmental management, sustainable use of renewable resources, and systems of slavery or semi-slavery relations (144). Nullity of rural property titles (144). |
| | Agrarian, livestock, forestry, environmental, water, and biodiversity law (131.II). |
| | Actions on agricultural properties; disputes between individuals on the exercise of rights of use and exploitation of renewable natural resources, water, forest, and biodiversity; contamination of water, air, soil or damage caused to the environment, biodiversity, public health, or cultural heritage concerning any productive, extractive, or any other activity of human origin; damage repair; use and exploitation of water; the overlap between agrarian rights; measurement and demarcation of agricultural properties; possessory actions (acquire, retain and regain possession); and enforcement of agricultural guarantees (152). |
| | Agrarian real estate, forestry, environmental, water, use and enjoyment of natural renewable resources, hydraulic, forest resources, biodiversity, complaints against practices that endanger ecological systems, conservation of species or animals, rural titles, cases brought against the State resulting from contracts, negotiations, authorizations, licenses, distribution and redistribution of rights of exploitation of natural renewable resources, and other acts and administrative resolutions. (Const. 189). |

*Source:* Adapted from Law 25 of the Judicial Organ[1141] and the Bolivian Constitution (Const).

According to the Ministry's document, the consultation was carried out in the following stages: a) The content of the preliminary project was communicated locally and communally through 32 workshops and the media. b) The following were held: i) 29 forums lasting two days each, ii) 9 departmental events in the capitals of each Bolivian department, iii) 9 regional events in Monteagudo, Riberalta, Camiri, Caraparí, Tocaña, Chayanta and Chapare, iv) one event with the Judicial Organ (for dialogue between jurisdictions and awareness of the ordinary jurisdiction) and, v) a national event to validate the draft with the National Council of Ayllus and Markas del Qullasuyu (CONAMAQ), Trade Union Confederation of Intercultural Communities of Bolivia (CSCIB), Unique Confederation of Peasant Workers of Bolivia (CSUTCB), National Confederation of Indigenous Peasant Women-Bartolina Sisa (CNMIOCB-BS), and Confederation of Indigenous Peoples of Bolivia (CIDOB). c) The forums were held: i) in local languages, ii) explaining the total content of the preliminary draft, iii) opening space for questions and suggestions, iv) organizing four working groups (on the competences and conflicts of

[1141] Ley 025 del Órgano Judicial [Law of the Judicial Organ].

competences, human rights and control of the constitutionality, coordination between ordinary and indigenous jurisdictions, and the strengthening of the indigenous jurisdiction), v) presenting conclusions and the manifestation of acceptance in plenary, vi) signing the minutes of agreement and consent between the State and the consulted peoples. There are 20 minutes in total. d) A Nucleus Technical Commission was organized to modify the draft with the suggestions of indigenous peoples, State Organs, and human rights and civil society organizations. e) A national women's forum was organized to include a gender perspective in the project. f) A final review was done by national experts.[1142]

It is necessary to highlight that the draft bill consulted is different form the JDL approved later by the Bolivian Legislative Assembly on the central issues. Thus, the preliminary draft consulted does not refer to the competence's exclusions of the indigenous jurisdiction provided for in the current article 10 of the JDL, nor does it respect the Constitution's personal and territorial areas of validity. On the contrary, article 8 of the preliminary draft, called 'full, integral and collective competence,'[1143] provides that the indigenous and intercultural jurisdiction has the competence to resolve all the disputes: a) that violate the rights of indigenous peoples and intercultural communities, b) that occur within and outside the indigenous territory, as long as they do not affect the order of the other jurisdictions, c) raised among members of indigenous peoples, and d) raised by persons who do not belong to indigenous peoples as long as the facts have been committed in indigenous territories and harm the respective community.[1144] As can be seen, the content of the draft article 8 is almost entirely contrary to what the Constitution establishes. Together with this, unlike the provisions of the JDL, articles 6 and 7 of the preliminary draft established that intercultural and Afro-Bolivian communities could exercise indigenous jurisdiction. Both ethnic groups participated in the free, prior and informed consultation process.

Additionally, and in this same sense, the preliminary draft consulted established in its articles 13 and 14, called 'jurisdictional coordination' and 'coordination in special cases,' that: a) Agri-environmental, ordinary and indigenous jurisdictions have to decide the cases that correspond to their competences respectively and that each of them must refer to the others the wrongfully filed cases. b) However, those articles admit indigenous jurisdiction to voluntarily refer to the other jurisdictions its cases whenever it prefers, and article 15 of the preliminary draft established that the ordinary or agri-environmental jurisdictions must inform the corresponding results to the indigenous jurisdiction. c) The indigenous jurisdiction can coordinate with the other jurisdictions to hear and resolve cases of corruption that may affect public property, drug trafficking, rape of minors, crimes against State security, customs, tax, international crimes, genocide, crimes against humanity, and war crimes. d) Finally, the indigenous, ordinary, and agri-environmental jurisdictions exercise shared competences. Under these contents, it should be noted that aspects a) and b) do not appear in the JDL, as will be seen later, and c) and d) are contrary to JDL's current article 10, which excludes the competence of indigenous jurisdiction to decide on those matters despite the fact that in general, the communities and peoples consulted further expanded their competencies through their observations to JDL's preliminary draft on these concerns.[1145]

[1142] Ministerio de Justicia de Bolivia, Viceministerio de Justicia Indígena Originario Campesina de Bolivia, and FORDECAPI - Pueblos indígenas y Empoderamiento (EMPODER) (n 1139) 27–31.
[1143] The indigenous authorities supported this denomination and stated that there is no logic to classify conflicts by jurisdiction (material, territorial and personal) or by matter (civil, criminal, labor, among others) in the indigenous jurisdiction. ibid 116.
[1144] ibid 57.
[1145] ibid 77–82.

Notwithstanding the extreme differences between the draft and the current JDL's contents,[1146] the final JDL's version was not presented to indigenous peoples for their consent[1147] and many of the consented articles were removed in the final version sent to the Bolivian Legislative Assembly.[1148] Then, presenting a more favorable preliminary draft to indigenous peoples' rights to obtain their consent and then modifying it to its legislative approval might suggests that the consent of the indigenous peoples was improperly influenced through a deceptive prior and informed consultation process.[1149] The contrast between the content of the preliminary draft of the JDL and its final content explains that indigenous peoples would have agreed at that time with the prior consultation carried out and that, according to their perception, they would have believed that the prior consultation was done properly.[1150]

Notably, the UN Committee on the Elimination of Racial Discrimination recommended the Bolivian State in 2011 the amendment of JDL since it 'does not respond to the actual situation of coexistence between indigenous and non-indigenous persons' and certain personal, territorial and material matters 'are not included within the scope of the indigenous justice system.'[1151] Bolivia responded in 2019[1152] that the second working group of the National Summit on Plural Justice held in 2016 (see below, regarding coordination and cooperation in practice) proposed the amendment of JDL. To this end, continues the State, law 898 created a commission to follow up the summit conclusions.[1153] Unexpectedly, only State's institutions conform law 898's commission (Justice and Government ministries, chamber chairs of the Plurinational Assembly, Attorney General's Office, Public Ministry, among others) and one representative of the academia. Furthermore, considering JDL is not among law 898's topics.

### *Jurisdictional Demarcation Law's content*

The Constitution authorizes in its article 191 the exercise of the indigenous jurisdiction in cases where the indigenous personal, territorial, and material areas concur simultaneously. Thus, these three areas delimit the validity of the exercise of indigenous jurisdiction. In general terms, the personal scope determines which people are subject to indigenous jurisdiction. The territorial criterion defines the

[1146] Without holding debates and complying with decisions adopted by the government, the Bolivian Legislative Assembly almost systematically ignored the numerous contributions of the prior consultation, pruning and castrating the preliminary draft consulted. Xavier Albó, 'Justicia indígena en la Bolivia plurinacional', *Justicia indígena, plurinacionalidad e interculturalidad en Bolivia* (Fundación Rosa Luxemburg / AbyaYala 2012) 244 <http://site.ebrary.com/id/10832426> accessed 22 September 2019. A former PCC indigenous magistrate criticized that 'the original demarcation law was deeper. It empowered indigenous justice more ... In contrast, the current demarcation law does not. It has been a consultancy work imposed by ... [a former minister of justice]. We know that it removes all competencies [from the indigenous jurisdiction] ... as if it were only for theft of chickens ... It has reduced indigenous justice to that status ... Above all, articles 9, 10, and 11 have strongly removed all authority from indigenous justice' (interview G-2019-19).

[1147] Copa Pabón (n 913) 26–27.

[1148] Burgoa (n 1140) 241.

[1149] It is contrary to article 30.II.15 of the Constitution that recognizes to indigenous peoples the right '[t]o be consulted by appropriate procedures, in particular through their institutions, each time legislative or administrative measures may be foreseen to affect them' in translation of Elkins, Ginsburg and Melton (n 233).

[1150] Ministerio de Justicia de Bolivia, Viceministerio de Justicia Indígena Originario Campesina de Bolivia, and FORDECAPI - Pueblos indígenas y Empoderamiento (EMPODER) (n 1139).

[1151] Consideration of reports submitted by States parties under article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination. Bolivia (Plurinational State of) 2011 [CERD/C/BOL/CO/17-20].

[1152] Twenty-first to twenty-sixth combined periodic reports submitted by the Plurinational State of Bolivia under article 9 of the Convention, due in 2013 to Committee on the Elimination of Racial Discrimination 2019 [CERD/C/BOL/21-26].

[1153] Ley 898 de la Comisión de Seguimiento de las conclusiones de la Cumbre de Justicia 2017.

territorial space in which indigenous jurisdiction is possible. Finally, the material area details what matters the State authorizes the indigenous jurisdiction to resolve. The Constitution defines the meaning and scope of personal[1154] and territorial spheres,[1155] and orders that a law, which it expressly names Jurisdictional Demarcation Law (JDL), shall define the material area scope. In compliance with the legislative programmatic development provided by the Constitution, the Bolivian Legislative Assembly prepared the JDL, or Law 073, enacted on 29 December 2010, which is still currently in force.

However, the JDL does not limit itself to establishing the scope of material validity, as the Constitution announced. On the contrary, according to the first article of this law, it aims to regulate the personal, material, and territorial areas of validity and the mechanisms of coordination and cooperation between jurisdictions. Furthermore, the JDL also refers to other additional issues, such as the principles that govern it, hierarchical equality, respect for fundamental rights and constitutional guarantees, and the binding and unchangeable nature of indigenous decisions. Thus, the JDL's content demands a double contrast to evaluate its favorability to indigenous jurisdiction competence. Since the JDL legislates on aspects already provided for by the Constitution, the first manner of comparison concerns JDL with the constitutional standards. Nonetheless, since the JDL has the constitutional mission of developing the scope of material validity that the Constitution does not foresee, the second way of comparison concerns the extent of the competencies between the jurisdictions regarding the scope of matters that they may resolve in relation with C169, UNDRIP, and OASDRIP provisions that frame the State's powers to limit indigenous rights' exercise.[1156] Further, this second contrast also involves that indigenous peoples' jurisdiction exercise is limited to their affairs and the appliance of their laws, under the Constitution's general parameters on the material validity area.

### General provisions

*Article 3 of the JDL* establishes that indigenous, ordinary, agri-environmental and the other legally recognized jurisdictions have the same hierarchy, unlike the Constitution that declares that hierarchical equality only exists between ordinary and indigenous jurisdictions. This quality or state of indigenous jurisdiction coincides with the content of the principles of 'legal pluralism with hierarchical equality' and 'independence' of article 4.e and 4.g of this law that order respect for the coexistence and independence of the various legal systems that exist in Bolivia, meaning by independence that no authority of one jurisdiction may have interference over another. Consequently, article 3 of JDL is a more favorable statutory standard to indigenous jurisdiction by granting it the same hierarchy with ordinary, agri-environmental, and other legally recognized jurisdictions.

The introduction and the first paragraph (5.I) of JDL's *article 5* establishes the general duty for all jurisdictions to respect fundamental rights and guarantees as the Constitution does. Then, this general duty reiterates this limit defined by the Constitution and its constitutionality block. However, after establishing this general duty, the article develops some specific duties and prohibitions: 5.II) It orders jurisdictions to respect and guarantee the exercise of women's rights, their participation, decision, presence, and permanence, both in the fair and egalitarian access to jurisdictional positions as in the control, decision, and participation in the administration of justice. 5.III). It establishes the prohibition of the sanction with loss of land or the expulsion of the elderly or people with disabilities due to non-

[1154] 'Members of the nation or rural native indigenous people are subject to this jurisdiction whether they act as plaintiffs or defendants, claimants or accusers, whether they are persons who are denounced or accused, or are appellants or respondents.' Elkins, Ginsburg and Melton (n 233), Article 191.II.1. [constitute 191.II.1]
[1155] 'This jurisdiction applies to the relations and juridical acts that are carried out, or the effects of which are produced, within the jurisdiction of a rural native indigenous people.' ibid, Article 191.II.3.
[1156] ILO C169's articles 8 and 9, UNDRIP's article 46 and OASDRIP's article XXXVI.

compliance with communal duties, positions, contributions, and communal work. 5.IV) Likewise, the JDL prohibits and sanctions all forms of violence against children, adolescents, and women, declaring any conciliation in this regard illegal. 5.V) Finally, it prohibits lynching punishment. Related to the latter, article six also forbids death penalty, in accordance with the Constitution.

Although the JDL wording directs these prohibitions and duties to all jurisdictions, the review of its content suggests that at least the prohibitions contained in subsections III) and V) would have been written essentially for the indigenous jurisdiction, since in ordinary and agri-environmental jurisdictions, laws do not provide for expulsion or lynching. It should be noted that even though lynching is no longer part of the indigenous peoples' legal systems,[1157] the sanction of expulsion certainly is.[1158] On the other hand, notwithstanding that expropriation and land reversion are also feasible to State's traditional jurisdictions after compliance with due process and the guarantees provided by law, the land loss sanction referred to in article 5.III of the JDL also seems to be directly linked to the indigenous jurisdiction.

JDL authorizes indigenous peoples to expel their members from the community under certain conditions. It implies that the expelled persons must physically leave the indigenous territory and not return unless the community later decides to forgive them. In this regard, it shall be noted that indigenous peoples in Bolivia do not contemplate the punishment of deprivation of liberty[1159] and that the essential purpose of their justice is to recover balance and harmony in the community. Then, indigenous peoples have identified expulsion as the only civilized way to protect the community and achieve those ends.[1160] On the other hand, since land tenure by community members does not amount to private and individual property but rather to a land possession system organized by traditions, indigenous authorities, and the community in the territories that collectively belong to indigenous peoples, the penalty of expulsion also implies losing land possession. In this framework, the sanctions of expulsion and land loss provided in article 5.III of the JDL are closely related to each other and are allowed only to indigenous peoples in the exercise of their jurisdiction. Nevertheless, the JDL limits indigenous peoples from using this sanction only concerning older adults or people with disabilities when they fail to comply with communal duties, contributions, work, or with indigenous positions.[1161]

[1157] Not only Constitution's Art. 190.II determines that indigenous jurisdiction respects the right to live, but not a single case of lynching has been identified in the investigation's sources review.
[1158] Ministerio de Justicia de Bolivia, Viceministerio de Justicia Indígena Originario Campesina de Bolivia, and FORDECAPI - Pueblos indígenas y Empoderamiento (EMPODER) (n 1139). Furthermore, there are several cases of expulsion of members of the indigenous community and of people who are not members of the community.
[1159] The indigenous authorities indicated that the deprivation of liberty violates human rights, that each worldview influences the interpretation of human rights and that the universalist principle of human rights is contrary to the collective rights of indigenous peoples. ibid 126–127.
[1160] The PCC maintained that the administration of indigenous justice 'is based on a return to balance and harmony' and stands out for its preventive nature. In addition, it explained that 'from the [indigenous] worldview, expulsion means departing from the path 'pachatakhi' (path to Pacha), which is the balance with the human community, with the community of nature and with the community of deities. At the same time, it is important to consider the possibility of 'return,' which has a profound meaning because, in the logic of the indigenous peoples, everything returns to its place. Hence, in many cases, the expulsion from the community is not definitive because many community children and grandchildren seek their return. Then, the community evaluates and only demands a communal apology and forgiveness on several occasions. In other cases, it can set conditions (reparation of the damage) or deny the return following the seriousness of wrongdoing.' *DCP 0006/2013* (n 774) para III.7.1.
[1161] On the contrary, JDL allows these sanctions regarding younger or capable people when they fail to comply with communal duties, contributions or work, or indigenous positions. In addition, they are also applicable in other circumstances that may be defined in the legal systems of indigenous punishment, and even against older adults or people with disabilities, when their behavior challenges the balance and harmony of the community.

Hayes believes that there is a contradiction between the expulsion sanction and article 21.7 of the Constitution that recognizes the freedom of residence, permanence, and circulation throughout the territory of Bolivia.[1162] However, the author does not consider that the sanction of imprisonment foreseen by the Penal Code also contradicts this constitutional provision, and that in both cases it is a sanction that temporarily affects people's freedoms. Moreover, following Gómez, exile consists of expelling someone from the country's territory, which is forbidden for indigenous communities or the State. However, the resource of removing someone from the ancestral territory is not exile but rather a form of estrangement or isolating someone from their community, which may be legitimate.[1163] To this end, Gómez cites the Constitutional Judgment T-254 of 1994 of the Constitutional Court of Colombia that maintains that the sanction of estrangement of community members leads to the loss of their cultural identity and physical separation from the rest of their community. It is frequent in social organizations in which the defense of the community prevails over individual rights.[1164] The provision of exile from a country -continues the judgment- is the deprivation of nationality or homeland. It is prohibited by the Universal Declaration of Human Rights (article 9), the International Covenant on Civil and Political Rights (article 12), and the American Convention on Human Rights (article 5). However, the penalty of exile only refers to the expulsion from the territory of the State and not to the exclusion of community members from their indigenous communities. [1165] The Plurinational Constitutional Court has cited the same Colombian judgment.[1166]

Consequently, given that Bolivian legislation does not authorize the ordinary and agri-environmental jurisdictions to sanction with expulsion and land loss and, on the other hand, it does allow it to the indigenous jurisdiction, it is possible to conclude that JDL recognizes a more favorable standard to the competence of indigenous jurisdiction than the ones granted to other jurisdictions.

*Article 12* of JDL has two paragraphs.[1167] The first one underscores the mandatory quality of indigenous decisions to all persons and authorities, emphasizing the effect of articles 192.I of the Constitution and JDL's 10.III (see it below). The second paragraph poses to ordinary, agri-environmental, and other legally recognized jurisdictions the duty not to revise indigenous decisions instituting a specific obligation not previously defined by the Constitution. Albeit Rojas and Mendoza argue that article 12.II underscores the equal hierarchy between ordinary and indigenous jurisdiction,[1168] it is not necessarily the case. This is because the meaning of 'same hierarchy' is undetermined by the Constitution and only covers the ordinary and the indigenous jurisdictions. The Constitution does not impose a specific duty

[1162] Hayes Michel (n 1078) 254.
[1163] Gómez Valencia (n 1102) 203.
[1164] Recalls the famous terminology of the sociologist Tönnies regarding *Gemeinschaft* versus *Gesellschaft* explained above when analyzing collective rights.
[1165] Gómez Valencia (n 1102) 203–204.
[1166] Cases 2015.0057-CAI-DC, 2017.0091.S1-CAI-DC, 2018.0647.S2-Amp-SC and 2019.0055-CAI-DC.
[1167] '(Obligatoriedad). I. Las decisiones de las autoridades de la jurisdicción indígena originaria campesina son de cumplimiento obligatorio y serán acatadas por todas las personas y autoridades. II. Las decisiones de las autoridades de la jurisdicción indígena originaria campesina son irrevisables por la jurisdicción ordinaria, la agroambiental y las otras legalmente reconocidas.' Ley 073 de Deslinde Jurisdiccional [Jurisdictional Demarcation Law], article 12. Own translation: 'I. The authorities' decisions of the indigenous jurisdiction are binding and will be followed by all persons and authorities. II. The decisions of the authorities of the indigenous jurisdiction are irrevisable by the ordinary, agri-environmental, and other legally recognized jurisdictions.'
[1168] M. Rojas and M. Mendoza consider that this obligation is what the egalitarian plural justice of article 179 of the Constitution means. Rojas (n 1050) 156; Mendoza Crespo (n 235) 23.
On the other hand, it is stressed that the duty to respect jurisdictional decisions is unidirectional, i.e., the article only affirms the intangible quality of indigenous decisions by the other jurisdictions and not vice versa or among them. Given that articles 192.I of the Constitution and 12.I of JDL unsurprisingly imply this effect, the wording of article 12.II of JDL might rise a paternalistic sense.

to all Bolivian jurisdictions not to revise the indigenous jurisdiction's judgments. Then, article 12.I of JDL reiterates constitutional provisions regarding the enforcement of the decisions of indigenous jurisdiction. However, article 12.II is more favorable to protect the competence of the indigenous jurisdiction by creating a new specific duty on all Bolivian jurisdictions not to revise the indigenous jurisdiction's judgments than that provided for in the Constitution.

The final provision of JDL orders to promulgate the law by translating, publishing, and disseminating it in all the languages of the indigenous peoples of the Plurinational State of Bolivia.

### Personal, territorial, and material validity areas

As provided in the Constitution, article eight of the JDL authorizes the exercise of indigenous jurisdiction when simultaneously concur the personal, material, and territorial validity areas. Regarding the personal and territorial validity areas, JDL's *articles 9*[1169] *and 11*[1170] reiterate in general the constitutional content, with the consequences explained above.

On the other hand, in compliance with the Constitution's mandate, article 10 of JDL portrays the competence limits of indigenous jurisdiction through the so-called material validity area, that is, the matters in which indigenous peoples may exercise their jurisdictional right. Vintimilla distinguishes three tendencies of material validity area: a) Universalism, in which indigenous authorities have the authority to decide all sorts of disputes. b) Self-regulating, self-regulatory, in which indigenous jurisdiction applies exclusively to those issues that indigenous people consider to be competent because they have the aptitude to do so, or they exercise their right to refer the dispute to other jurisdictions. c) Restrictive or limiting, in the sense that indigenous jurisdiction exclusively resolves small causes. [1171] He considers that Bolivia has the restrictive kind of material validity area by transcribing JDL's article 10.[1172] Furthermore, it could be said that the first draft of JDL presented to indigenous peoples for prior consultation belonged to the self-regulating kind.[1173]

Article 10 of JDL has three paragraphs: I) a general provision, II) matters excluded, and III) the prohibition to all the jurisdictions concerned not to decide the cases that belong to the others.[1174] Copa criticizes that this classification uses as a reference 'matters' that are inherent to the nature of the ordinary jurisdiction (criminal, agrarian, labor, or family) and not the indigenous peoples' criteria.[1175] However, it should be noted that there are a number of indigenous peoples in Bolivia that may have

[1169] '(Ámbito de vigencia personal) Están sujetos a la jurisdicción indígena originaria campesina los miembros de la respectiva nación o pueblo indígena originario campesino.' Ley 073 de Deslinde Jurisdiccional [Jurisdictional Demarcation Law], article 9. Own translation: '(Personal validity area). Members of the indigenous peoples are subject to indigenous jurisdiction.'

[1170] '(Ámbito de vigencia territorial) El ámbito de vigencia territorial se aplica a las relaciones y hechos jurídicos que se realizan o cuyos efectos se producen dentro de la jurisdicción de un pueblo indígena originario campesino, siempre y cuando concurran los otros ámbitos de vigencia establecidos en la Constitución Política del Estado y en la presente Ley.' ibid, article 11. Own translation: '(Territorial validity area). Territorial validity area applies to relations and juridical acts that are carried out or which effects are produced within indigenous jurisdiction, and as long as the other validity areas provided by the Constitution and this law concur.'

[1171] Vintimilla Saldaña (n 1073) 69–70.

[1172] ibid 68–71.

[1173] As seen before, the Constitution and the JDL no longer allow the transfer of cases between jurisdictions by simple will. It should be noted that from the perspective of indigenous justice, in the case of an offender, the transfer of a case to formal justice could sometimes be conceived as a sufficient sanction. Schubert and Flores Condori (n 54) 22.

[1174] Similarly to the State's duty defined through the complementarity principle provided by article 6 of the law 25 of the Judicial Organ.

[1175] Copa Pabón (n 913) 27.

different approaches to organize their juridical matters, resulting to be far more complex and confusing to apply their diverse perspectives instead. Following the order proposed by article 10, an analysis of the indigenous jurisdiction in this regard is presented below.

The first paragraph of this article[1176] limits indigenous jurisdiction to know matters that it traditionally and historically knew. In other words, indigenous peoples may not decide on contemporary matters newly defined or recognized by indigenous or State laws. For instance, discrimination[1177] and land traffic crimes, typified in 2010 and 2013 respectively, would be excluded from the competence of indigenous jurisdiction. Indigenous laws and jurisdictions are evidently contemporary and dynamic since they are flexible and adaptable to constant context changes.[1178] Proof of this, indigenous peoples are currently exercising their jurisdiction over new matters as the data collection of the sources of this dissertation unveils.[1179] Hence, enclosing indigenous jurisdiction only to what it has traditionally and historically decided disregards reality. Furthermore, it should be noted that contrary to JDL's provision, article 191.II.2 of the Bolivian Constitution does not limit indigenous jurisdiction to historical and traditional issues, but only to indigenous matters and laws. Consequently, it is possible to conclude that article 10's first paragraph of the JDL is less favorable to the competence of the indigenous jurisdiction than that provided for in the Constitution. In other words, it is favorable regarding historical and traditional matters and unfavorable regarding new ones.

Article 10's second paragraph[1180] lists the excluded matters from the scope of the indigenous jurisdiction through its four parts: a) criminal law, b) civil law, c) a list of matters, and d) specific legal provisions.

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[1176] 'I. La jurisdicción indígena originaria campesina conoce los asuntos o conflictos que histórica y tradicionalmente conocieron bajo sus normas, procedimientos propios vigentes y saberes, de acuerdo a su libre determinación.'Ley 073 de Deslinde Jurisdiccional [Jurisdictional Demarcation Law], Article 10. Own translation: 'I. According to their self-determination, the indigenous jurisdiction knows the issues or conflicts it historically and traditionally knew under its norms, current procedures, and knowledge.'

[1177] Ley 045 Contra el Racismo y toda forma de Discriminación [Law Against Racism and All Forms of Discrimination] 2010.

[1178] Boaventura de Sousa Santos and Agustín Grijalva Jiménez, *Justicia indígena, plurinacionalidad e interculturalidad en Ecuador* (Fundación Rosa Luxemburg / AbyaYala 2012) <http://site.ebrary.com/id/10820793> accessed 22 September 2019; Tribunal Supremo de Justicia, Órgano Judicial de Bolivia, *Protocolo de actuación intercultural de las juezas y jueces, en el marco del pluralismo jurídico igualitario* (n 1057) 35.

[1179] For example, the indigenous jurisdiction wanted to decide a discrimination case in *Sentencia Constitucional Plurinacional 0071/2017* [2017] Plurinational Constitutional Court Expediente 19190-2017-39-CCJ, Ruddy José Flores Monterrey.

[1180] 'II. El ámbito de vigencia material de la jurisdicción indígena originaria campesina no alcanza a las siguientes materias:
a) En materia penal, los delitos contra el Derecho Internacional, los delitos por crímenes de lesa humanidad, los delitos contra la seguridad interna y externa del Estado, los delitos de terrorismo, los delitos tributarios y aduaneros, los delitos por corrupción o cualquier otro delito cuya víctima sea el Estado, trata y tráfico de personas, tráfico de armas y delitos de narcotráfico. Los delitos cometidos en contra de la integridad corporal de niños, niñas y adolescentes, los delitos de violación, asesinato u homicidio;
b) En materia civil, cualquier proceso en el cual sea parte o tercero interesado el Estado, a través de su administración central, descentralizada, desconcentrada, autonómica y lo relacionado al derecho propietario;
c) Derecho Laboral, Derecho de la Seguridad Social, Derecho Tributario, Derecho Administrativo, Derecho Minero, Derecho de Hidrocarburos, Derecho Forestal, Derecho Informático, Derecho Internacional público y privado, y Derecho Agrario, excepto la distribución interna de tierras en las comunidades que tengan posesión legal o derecho propietario colectivo sobre las mismas;
d) Otras que estén reservadas por la Constitución Política del Estado y la Ley a las jurisdicciones ordinaria, agroambiental y otras reconocidas legalmente.'Ley 073 de Deslinde Jurisdiccional [Jurisdictional Demarcation Law], Article 10.
Own translation:
'II. The material validity area of the indigenous jurisdiction does not reach the following matters:

In 2017, the Bolivian Supreme Court of Justice affirmed, through its 'Protocol of Intercultural Action of Judges, within the Framework of Egalitarian Legal Pluralism,' that article 10.II should be construed under the egalitarian plural justice system, interculturality, self-determination, and the dialogic interplay between jurisdictions.[1181]

*Table 21: Crimes Excluded from Indigenous Jurisdiction According to Jurisdictional Demarcation Law*

| Law 073 | Legal instruments and public offenses referred to by Jurisdictional Demarcation Law 073 |
|---|---|
| Crimes against humanity | Rome Statute of the International Criminal Court: genocide, crimes against humanity, war crimes and crime of aggression (6-8 bis and related).<br>Penal Code: genocide (138). |
| Crimes against international law | Penal Code: crimes against foreign Heads of State (135), violation of immunities (136), violation of treaties, truces, armistices or safe-conduct (137), piracy (139), improper surrender of person (140), outrage to the flag, shield, and anthem of a foreign state (141); illegal possession, carrying, manufacture, trafficking, robbery or theft, storage of weapons, and the attack against public property (141bis-141 *dieciseister)*. |
| Crimes against State's external security | Penal Code: treason (109), total or partial submission of the nation to foreign dominion (110), espionage (111), clandestine introduction and possession of means of espionage (112), crimes committed by foreigners (113), hostile acts (114), disclosure of secrets (115), fault crimes (116), infidelity in-state business (117), sabotage (118), breach of contracts of military interest (119), and crimes against an allied state (120). |
| Crimes against State's internal security | Penal Code: armed uprisings against the security and sovereignty of the State (121), granting of extraordinary powers (122), sedition (123), claim the rights of the people (124), Common provisions to the crimes of rebellion and sedition (125), conspiracy (126), seduction of troops (127), attacks against the President and other dignitaries of State (128), outrage to the National Symbols (129), and separatism (129bis). |
| Customs and tax offenses | Penal Code: legitimation of illicit profits [when linked to customs] (185bis)<br>Article 231 of the Penal Code makes a reference to the Bolivian Tax Code and the General Customs Law (Law 1990), which are special laws, regarding tax crimes.<br>Tax fraud; customs fraud; public instigation not to pay taxes; violation of seals and other tax controls; and smuggling. Bolivian Tax Code, article 175.<br>Smuggling; customs fraud; usurpation of customs functions; theft of customs garments; falsification of customs documents; criminal customs association; customs falsehood; active and passive bribery in customs activity; and influence-peddling in customs activity. General Customs Law, article 165. |
| Corruption offenses | Law 004 on the fight against corruption, illicit enrichment, and investigation of fortunes "Marcelo Quiroga Santa Cruz": improper use of public goods and services, illicit enrichment, illicit enrichment of individuals affecting the State, favoring illicit enrichment, transnational active bribery, transnational passive bribery, obstruction of justice; and falsehood in the affidavit of assets and income (25-33). Law 004 also applies to indigenous authorities.<br>In accordance with law 004, the Penal Code's corruption offenses are: criminal association (132), embezzlement (142), culpable embezzlement (143), misappropriation (144), own passive bribery (145), improper use of influence (146), facilitation of smuggling by reason of the position (146bis), benefits in |

a) In criminal matters, crimes against International Law, crimes against humanity, crimes against the internal and external security of the State, crimes of terrorism, tax and customs crimes, crimes of corruption or any other crime whose victim is the State, human trafficking and smuggling, arms trafficking and drug trafficking crimes. Crimes committed against the bodily integrity of children and adolescents, crimes of rape, murder, or homicide;
b) In civil matters, any process in which the State is a party or an interested third party, through its central, decentralized, deconcentrated, autonomous administration and what is related to proprietary rights;
c) Labor Law, Social Security Law, Tax Law, Administrative Law, Mining Law, Hydrocarbon Law, Forestry Law, Information Technology Law, public and private International Law, and Agrarian Law, except internal community land distribution in which it has legal possession or collective proprietary right over them;
d) Others reserved by the Constitution and the Law to ordinary, agri-environmental, and other legally recognized jurisdictions.'

[1181] Tribunal Supremo de Justicia, Órgano Judicial de Bolivia, *Protocolo de actuación intercultural de las juezas y jueces, en el marco del pluralismo jurídico igualitario* (n 1057) 31.

| Law 073 | Legal instruments and public offenses referred to by Jurisdictional Demarcation Law 073 |
|---|---|
| | reason for the position (147), omission of declaration of assets and income (149), negotiations incompatible with the exercise of public functions (150), negotiations incompatible with the exercise of public functions by individuals (150bis), concussion (151), levies (152), resolutions contrary to the Constitution and laws (153), breach of duties (154), illegal appointments (157), active bribery (158), bribery (170), reception (172), reception from corruption offenses (172bis), prevarication (173), passive bribery of the judge, judge or prosecutor (173bis), consortium of judges, prosecutors, policemen and lawyers (174), legitimation of illicit profits [when linked to corruption offenses] (185bis), harmful contracts to the State (221), breach of contracts (222), uneconomic conduct (224), economic infringement (225), illegitimate contributions and advantages (228), illegitimate contributions and advantages of the servant or public servant (228bis), companies or fictitious associations (229), and illegal franchises, releases or privileges (230). |
| Terrorism | Penal Code: terrorism (133)<br>Law on Terrorism, Separatism, Financing of Terrorism includes to Penal Code: separatism (129bis), terrorist financing (133bis) and legitimation of illicit profits [when linked to terrorism] (185bis). |
| Crimes where the State is the victim | The mentioned crimes against State's external and internal security, customs and tax offenses, terrorism, corruption offenses.<br>Penal Code: crimes against public tranquility (130-134), crimes against public function (142-164), crimes against judicial function (166-175, 178-182, and 184-185ter), legitimation of illicit profits (185bis-185ter), crimes against public faith (186-197), crimes against common defense (208 and 214), crimes against public health (216-220), crimes against industry and commerce (Arts. 232-233), crimes against mining (232bis, ter and quarter), crimes against national economy (221-231), land dispossession [when the State is the victim], responsibility of the civil registry officer (242), Unfaithful patronage (176), refusal or delay of justice (177), delay of justice (177bis), material falsity [of document] (198), ideological falsity [of document] (199), falsification of private document (200), Ideological falsehood in medical certificate (201), suppression or destruction of document (202), use of forged instrument (203), checks without provision of funds and written incorrectly (204-205), forced disappearance of persons (292bis), harassment and torture (295), energy subtraction (330), and land traffic (337bis, 351bis and 351ter).<br>Social security law: document forgery, breach of confidence, and information misuse against Long-Term Social Security. |
| Drug trafficking | Coca and Controlled Substances Regime Law 1008: controlled plants; manufacturing; traffic; consumption and possession for consumption; administration; supply; criminal association and conspiracy; induction; transport; instigation; murder; falsification; import; obligation to denounce by the owner; obligation of professionals; sale in pharmacy; inventories and records; public workers; passive bribery; active bribery; concussion; alteration or substitution of the object of the crime; evasion; release; concealment; complicity; receiving; use of weapons; and apology for crime (46-79).<br>Penal Code: legitimation of illicit profits [when linked to drugs trafficking] (185bis) |
| Bodily integrity of children and adolescents | Abortion (263-269), abandonment of girls or boys (278), rape of an infant, girl, boy or adolescent (308bis), rape of a minor (309), and aggravated corruption [crimes against sexual morality] (319)<br>Bodily integrity crimes when children and adolescents are involved. For example: all types of injuries, homicide, murder. |
| Homicide and murder | Penal Code: homicide (251), murder (252), femicide (252 bis), parricide (253), homicide due to violent emotion (254), homicide in sports practices (255), homicide-Suicide (256), pious homicide (257), infanticide (258), homicide in a fight or as a result of assault (259), wrongful death (260), homicide in traffic accidents (261), abortion followed by injury or death (264), and injury followed by death (273). |
| Rape crime | Penal Code: Crime of rape (308), rape of an infant, girl, boy or adolescent (308bis), rape of a minor (309), and sexual abuse (312). |
| Human trafficking | Penal Code: legitimation of illicit profits [when linked to human trafficking] (185bis) human trafficking (281bis and 321bis) and trafficking of migrants (281ter).<br>According to the Law Against Human Trafficking, Penal Code's crime of pornography (323bis), pimping (321), revealing the identity of victims, witnesses, or complainants (321ter) are also related. |
| Arms trafficking | Penal Code: illicit arms trafficking (141quarter), legitimation of illicit profits [when linked to arms trafficking] (185bis).<br>Law on the control of firearms, ammunition, explosives and other related materials included on Penal Code crimes of: possession, carrying or carrying and use of unconventional weapons (141bis), illicit manufacture (141ter), illicit arms trafficking (141quater), Illegal possession and carrying or carrying (141quinter), theft or robbery of weapons (141sexter) , theft or theft of weapons and ammunition for |

| Law 073 | Legal instruments and public offenses referred to by Jurisdictional Demarcation Law 073 |
|---|---|
| | military or police use (141septer), trademark alteration or deletion (141octer), public ostentation (141noveter), dangerous storage (141deciter), illicit reparation (141onceter), illegal instruction shooting (141duoter), and illegal carrying or carrying in the provision of security and surveillance services (141 thirteen). |
| Environmental Law crimes | Farmland burning (104), crimes against public health through water pollution with biochemical liquids (107), interruption of water supply service (108), harvests forests (109), commercializing dumps or industrial waste (112), and deposit, introduction or transport radioactive toxic wastes (113). |
| Sexual Violence Law crimes | Political harassment against women (148bis), political violence against women (148ter), breach of protection duties for women in situations of violence (154Bis), economic violence (250bis), patrimonial violence (250ter), theft of profits from family economic activities (250quater), femicide (252bis), forced abortion (267bis), forced sterilization [regarding women] (271bis), family or domestic violence [when there is sexual violence] (272bis), rape (308), sexual abuse (312 ), abusive sexual acts (312bis), sexual abuse (312ter), sexual harassment (312quater), abduction for sexual purposes [regarding women] (313), corruption of a girl, boy or adolescent [when female] (318), and pimping (321). |
| Property Crimes (326-363c) | Computer manipulation (363bis), and alteration, access, and improper use of computer data (363ter). |

*Source:* Adapted from Rome Statute of the International Criminal Court,[1182] Compendium of criminal legislation,[1183] Bolivian Penal Code,[1184] Bolivian Tax Code,[1185] General Customs Law,[1186] Law 004 on the fight against corruption, illicit enrichment and investigation of fortunes "Marcelo Quiroga Santa Cruz,"[1187] Coca and Controlled Substances Regime Law,[1188] Law Against Human Trafficking,[1189] Law on Terrorism, Separatism, Financing of Terrorism,[1190] Law on the control of firearms, ammunition, explosives and other related materials,[1191] Social Security Law,[1192] Environmental Law,[1193] Sexual Violence Law,[1194] Félix Peral,[1195] and Ricardo Tola.[1196]

*With regards to criminal law*, article 10.II.a refers generically to groups of criminal offenses that are excluded from indigenous jurisdiction without stating the reasons or the criteria that support the exclusions. Table 21 specifies the JDL's omitted crimes from the exercise of indigenous jurisdiction.[1197]

[1182] Rome Statute of the International Criminal Court 2002 (17 July 1998) A/CONF.183/9.
[1183] Ministerio Público Fiscalía General del Estado (ed), *Compendio legislación penal 2019* (Fiscalía General del Estado 2019).
[1184] Ley 1768 Código Penal [Law 1768 Penal Code] 1997.
[1185] Ley 2492 Código Tributario Boliviano [Law 2492 Bolivian Tax Code] 2003.
[1186] Ley General de Aduanas [General Customs Law] 1999.
[1187] Ley 004 de Lucha contra la Corrupción, Enriquecimiento Ilícito e Investigación de Fortunas 'Marcelo Quiroga Santa Cruz' [Law 004 on the Fight Against Corruption, Illicit Enrichment and Investigation of Fortunes 'Marcelo Quiroga Santa Cruz'] 2010.
[1188] Ley del Régimen de la Coca y Sustancias Controladas [Coca and Controlled Substances Regime Law] 1988.
[1189] Ley 263 Integral Contra la Trata y Tráfico de Personas [Law Against Human Trafficking] 2012.
[1190] Ley 170 Terrorismo, Separatismo, Financiamiento al Terrorismo [Law 170 Terrorism, Separatism, Financing of Terrorism] 2011.
[1191] Ley 400 de Control de Armas de Fuego, Municiones, Explosivos y Otros Materiales Relacionados [Law 400 on the Control of Firearms, Ammunition, Explosives and Other Related Materials] 2013.
[1192] Ley de Pensiones [Pension Law] 10 diciembre 2010.
[1193] Ley del medio ambiente 1992.
[1194] Ley 348 Integral para Garantizar a las Mujeres una Vida Libre de Violencia [Law to Guarantee Women a Life Free of Violence].
[1195] Felix Peralta Peralta, 'La Corte Penal Internacional y Su Implementación En Bolivia' (2018) 7 Revista Jurídica Derecho 135.
[1196] Ricardo Ramiro Tola Fernandez, *Derecho Penal, Parte Especial* (Segunda edición, Librería Jurídica Omeba 2012).
[1197] The Bolivarian Republic of Venezuela has similar wording to the exclusions of criminal offenses: 'Competencia material: [l]as autoridades legítimas tendrán competencia para conocer y decidir sobre cualquier conflicto o solicitud, independientemente de la materia de que se trate. Se exceptúan de esta competencia material, los delitos contra la seguridad e integridad de la Nación, delitos de corrupción o contra el patrimonio público, ilícitos aduaneros, tráfico ilícito de sustancias psicotrópicas y estupefacientes y tráfico ilícito de armas de fuego, delitos cometidos con el concierto o concurrencia de manera organizada de varias personas y los crímenes internacionales: el genocidio, lesa humanidad, crímenes de guerra y crímenes de agresión.' Ley Orgánica de

By exclusion, the indigenous jurisdiction has the competence to resolve all the remaining crimes referred to in Table 22, as long as territorial and personal validity areas concur as well.

Of the 366 crimes identified in current Bolivian legislation, 247 are under the exclusive competence of the ordinary jurisdiction, and indigenous peoples have the competence to know and resolve 120 crimes, which represent nearly the 32.8% of all of them. All things considered, it should be noted that even though these 366 crimes belong by default to the competence of the ordinary jurisdiction, the indigenous jurisdiction might not have a legitimate interest to decide on the 160 crimes in which the Bolivian State is the victim, and on the 22 international law crimes. Besides, the indigenous jurisdiction's personal validity area does not fulfill when the State is the victim. Then, it results that in 182 crimes, or 49.7% of all of them, the exclusion of indigenous jurisdiction could be argued as plausible.

Regarding the remaining 50.3% of crimes, that is 184 crimes, the indigenous jurisdiction may have the competence to hear and solve 120 of them, or 65.2%. Therefore, it implies that the competence of the indigenous jurisdiction would be excluded from hearing 34.8% of the crimes on which it could have a legitimate interest and whose exclusion could be, therefore, debatable. For instance, drug trafficking, bodily integrity of children and adolescents, homicide, and murder,[1198] rape crime, human trafficking, arms trafficking, some environmental crimes, and sexual violence crimes. It should be noted that, even though there are no specific international o Constitutional standards that might oblige the Bolivian State to include or exclude specific criminal matters from the competence of indigenous jurisdiction, the effectiveness of recognizing an egalitarian indigenous jurisdiction may rightfully open a discussion on the grounds of the reasonability of the exclusion of crimes that could fall under the indigenous peoples' legitimate interest and without involving third parties' rights.[1199]

For these reasons and within this framework, on the one hand, the competence of the indigenous jurisdiction is not affected concerning the 160 crimes (49.7%) excluded from its jurisdiction and over which it might have no legitimate interest. On the other hand, regarding the remaining 50.3% of the crimes in which the indigenous jurisdiction could have a legitimate interest, the exercise of its jurisdiction will be favorable in the 120 crimes whose jurisdiction is admissible and unfavorable concerning the remaining 64 crimes in which it has no competence (that is, 65.2% and 34.8% respectively). Hence, it is possible to conclude that JDL's article 10.II.a is less favorable to indigenous jurisdiction's competence, which means it is favorable regarding the 65.2% of crimes admitted to indigenous jurisdiction in which indigenous peoples may have a plausible interest in exercising their jurisdiction, and unfavorable on the remaining 34.8% of the same kind.

In this framework, it becomes relevant to recall article 28 of the current Bolivian Code of Criminal Procedure of 1999.[1200] It orders the end of any criminal action provided that the crime is committed

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Pueblos y Comunidades Indígenas (Venezuela), Article 133.3. Or: 'Material competence: The legitimate authorities shall have the competence to hear and decide on any conflict or request, regardless of the matter in question. Exempt from this material competence are crimes against the security and integrity of the Nation, crimes of corruption or against public property, illicit customs, illicit trafficking in psychotropic substances and narcotics and illicit trafficking in firearms, crimes committed with the concert or organized attendance of several people and international crimes: genocide, against humanity, war crimes and crimes of aggression.' [free translation].

[1198] 'Why are we afraid that the indigenous will prosecute homicide cases? In other words, we will stay to solve the chicken cases, so why are they giving us equality with ordinary justice?' Testimony of an indigenous authority in Monteagudo, according to Ministerio de Justicia de Bolivia, Viceministerio de Justicia Indígena Originario Campesina de Bolivia, and FORDECAPI - Pueblos indígenas y Empoderamiento (EMPODER) (n 1139) 117.

[1199] ILO C169's articles 8 and 9, UNDRIP's article 46 and OASDRIP's article XXXVI.

[1200] 'Artículo 28º.- (Justicia comunitaria). Se extinguirá la acción penal cuando el delito o la falta se cometa dentro de una comunidad indígena y campesina por uno de sus miembros en contra de otro y sus autoridades naturales hayan resuelto el conflicto conforme a su Derecho Consuetudinario Indígena, siempre que dicha resolución no

within an indigenous community by one of its members against another, their authorities have resolved the conflict following their law, and the resolution is not contrary to constitutional rights. It may be because the rulings of the indigenous authorities are res judicata and, consequently, no other judicial authority may assume the case again since it would breach the universal legal principle that no one may be prosecuted twice for the same crime.[1201] Be that as it may, the standard is closely related to the JDL's duty to other jurisdictions to not revise indigenous decisions (Art. 12.II), and the complementary principle provided by the Law of Judicial Organ (Art. 6). It is highlighted that ten years before the existence of the Bolivian Constitution, there was already a tendency to delineate the competence of indigenous jurisdiction under territorial and personal criteria. In a word, the current plurinational sense has not necessarily translated into a broader scope of the indigenous jurisdiction's exercise. As a result, this Code arguably granted the indigenous jurisdiction the possibility of solving all criminal offenses provided they met those legal conditions.[1202] Moreover, it is a favorable standard that indigenous peoples can take advantage of to expand the scope of their jurisdictional competence if they adopt a proactive attitude in resolving all kinds of criminal offenses, even if the State law does not grant them specific competence to do so. In the end, if indigenous jurisdiction has reached a final decision, it will prevail regardless of its legal competence.

*Concerning civil law*, article 10.II.b only establishes two limitations to indigenous jurisdiction without expressing the exclusion reasons. First, the cases must not directly or indirectly involve the Bolivian State or its interests, including the cases where the State is a process party and, second, the object of disputes must not be property. Accordingly, indigenous jurisdiction could have the competence to decide on the remaining civil, matters such as possession, law of obligations, contract law, torts law, inheritance law, provided the accomplishment of the two conditions referred. As in the case of criminal law described earlier, the State's exclusion of the indigenous jurisdiction competence could be founded both in the indigenous' lack of legitimate interest and in the limitation imposed through the personal validity area. Thus, the competence of indigenous jurisdiction is not affected regarding State's matters.

However, the indigenous jurisdiction's exclusion from knowing and resolving all kinds of property cases is questionable since it would be superfluous to real estate and unreasonable regarding the movable property. Under the territorial validity area, indigenous justice only has jurisdiction within indigenous territories which are, at the same time, collective or communal lands[1203] that belong to the indigenous peoples.[1204] Accordingly, it is not feasible that indigenous jurisdiction decides on real estate or sole proprietorship since it would fall out of its territorial validity area. Furthermore, community members do not have real estates within the indigenous territory but merely land possession internally

sea contraria a los derechos fundamentales y garantías de las personas establecidos por la Constitución Política del Estado.' Ley 1970 Código de Procedimiento Penal [Law 1970 Code of Criminal Procedure]. The article is translated in Table 19.

[1201] Gómez Valencia (n 1102) 207.

[1202] A further analysis on the effects of article 28 of Code of Criminal Procedure regarding res judicata are below.

[1203] Constitución Política del Estado Plurinacional de Bolivia, Article 394.III.: '[t]he State recognizes, protects and guarantees communitarian or collective property, which includes rural native indigenous territory, native, intercultural communities and rural communities. Collective property is indivisible, may not be subject to prescription or attachment, is inalienable and irreversible, and it is not subject to agrarian property taxes. Communities can be owners, recognizing the complementary character of collective and individual rights, respecting the territorial unity in common.' Elkins, Ginsburg and Melton (n 233). Moreover, real state as private property does not belong to a collectivity or its common goods or interests.

[1204] Ley Marco de Autonomías y Descentralización 'Andrés Ibáñez' [Framework Law of Autonomies and Decentralization 'Andrés Ibáñez'], First Final Article. 'The category of indigenous territory [original peasant indigenous territory] incorporated in the new Political Constitution of the State in its condition of Community Land of Origin [TCO] or indigenous peasant territory [TIOC] has as sole holders of the collective proprietary right to the indigenous peoples of the lowlands or highlands that claim such right' [own translation].

distributed by indigenous authorities through their law and customs.[1205] That is why the Bolivian law mandates that inheritance only concerns possession, and hereditary successions will remain under the regime of forced indivision concerning indigenous peoples' assets.[1206] Nevertheless, indigenous jurisdiction should have the competence to decide on disputes concerning community members' movable assets since they might have a legitimate interest in the matter and there is no contradiction with the Constitution, third parties' rights or the public interest.[1207] Thus, JDL's article 10.II.b could be too restrictive concerning indigenous movable assets. For the sake of the argument, it is notorious that theft and robbery, as movable assets related crimes, are not excluded from the exercise of indigenous jurisdiction (see Table 22).

In compliance with general Bolivian law, indigenous members could accord in writing to decide their private property or real state's disputes through arbitration, granting competence to their authorities or third parties by virtue of the principle of party autonomy.[1208] Nonetheless, it is stressed that this a whole different scenario because it does not involve the exercise of collective rights or the authority of indigenous peoples, but individual prerogatives on economic rights characterized as transmissible, temporary and renounceable, provided that the conflicting parties voluntarily agree on arbitration. Following this, indigenous jurisdiction does not depend on the parties voluntarily agreeing to submit their dispute to the indigenous authorities since they have the power to resolve disputes even against the will of one or both parties within the framework of the collective right to exercise indigenous jurisdiction. This consequence also stems from self-determination, the authority that indigenous peoples exercise jurisdiction over their members, and the symmetrical powers granted to other jurisdictions under Bolivia's egalitarian plural justice system.

As a result, article 10.II.b of the JDL is less favorable to the competence of indigenous jurisdiction because, although it reasonably limits the competence of the indigenous jurisdiction concerning the exclusions of the interests of the State and the real estates' property, it unreasonably reduces its competence by excluding community members' movable assets from its competence.

The third part of article 10.II.c lists eleven *general fields of law* excluded from the competence of indigenous jurisdiction. These matters are labor law, social security law, tax law, administrative law, mining law, hydrocarbon law, computer law, public and private international law, forestry law, and agrarian law (to better precise the jurisdictions and competencies of those areas, refer to Table 20). The only explicit exception on the list relates to agri-environmental jurisdiction's competence on agrarian law concerning 'internal community land distribution' in which indigenous communities have legal possession or collective proprietary rights. It is noted that indigenous peoples have a collective property and interest in those territories which, in turn, justifies their legitimate interest on deciding their internal use among their members.

Furthermore, under the constitutional standard that proclaims '[i]n the exercise of rights, no one shall be obligated to do anything that is not mandated by the Constitution or laws, nor be deprived of that

[1205] Fundación Tierra (n 1097); Gonzalo Colque, Efraín Tinta and Esteban Sanjinés, *Segunda Reforma Agraria. Una Historia Que Incomoda* (2a edición, Fundación Tierra 2016).
[1206] Ley de Servicio Nacional de Reforma Agraria 1996, Article 48 modified by Law 3545.
[1207] UNDRIP's article 46 and OASDRIP's article XXXVI.
[1208] Arbitration is an alternative means to the judicial resolution of disputes between the parties, be they natural or legal persons, public or private, national or foreign, when they deal with issues not prohibited by the Constitution and the Law, before an arbitrator or an arbitral tribunal. The arbitration may be agreed in writing by means of an arbitration clause or by an agreement, in which the parties are obliged to submit their controversies to arbitration, according to Ley 708 de Conciliación y Arbitraje 2015, articles 4, 5, 39, 40, 42 among others.

which they do not prohibit,'[1209] the laws not listed in article 10.II.c of JDL shall be construed within the material validity area of indigenous jurisdiction. Thus, among the main fields of Bolivian law, it could be said that family law, child and adolescent law, commercial law, contract law, inheritance law, and torts law are implicitly included under its competence. That is to say, indigenous jurisdiction has the competence to resolve disputes on the collective land distribution among indigenous community members, family law, child and adolescent law, commercial law, contract law, inheritance law, and torts law. Then, indigenous jurisdiction implicitly has a residual competence on these matters, which is favorable to it.

*Table 22: Crimes not excluded from indigenous jurisdiction competence in Accordance with Jurisdictional Demarcation Law 073*

| Groups of criminal offenses | Crimes not excluded from indigenous jurisdiction |
|---|---|
| Crimes against State security (109-141 dieciseister) | None |
| Crimes against the Public Service (142-165) | None |
| Crimes against the judicial function (166-185ter) | Unfaithful patronage (176), refusal or delay of justice (177), delay of justice (177bis), and breach of sanction (183). |
| Forgery of documents in general (198-203 bis) | Material falsification [of document] (198), ideological falsification [of document] (199), forgery of a private document (200), ideological forgery of medical certificate (201), suppression or destruction of a document (202), use of counterfeit instrument (203), and checks without provision of funds and poorly written (204-205). |
| Crimes against the public faith (186-205) | Material falsification [of document] (198), ideological falsification [of document] (199), forgery of a private document (200), ideological forgery of medical certificate (201), suppression or destruction of a document (202), use of counterfeit instrument (203), and checks without provision of funds and poorly written (204-205). |
| Crimes against common security (206-220) | Arson (206), other damage (207), and manufacture, trade, or possession of explosive substances, asphyxiants, etc. (211). |
| Crimes against the national economy, industry and commerce (221-239) | Commercial fraud (235), fraud in industrial products (236), clientele deviation (237), corruption of employees (238), possession, and use and manufacture of false weights and measures (239) |
| Crimes against the family (240-250) | Bigamy (240), illegal marriage (241), simulation of marriage (243), alteration or substitution of marital status (244), subtraction of a minor or incapable (246), induction to the escape of a girl, boy, adolescent or legally incapable (247), family abandonment (248), non-compliance with care duties (249), and abandonment of a pregnant woman (250). |
| Crimes against life, bodily integrity and dignity of the human being (251-290) | Very severe injuries (270), severe injuries caused by animals (270bis), severe and minor injuries (271), culpable injuries (274), self-harm (275), contagion of sexually transmitted diseases or HIV AIDS (277), genetic alteration (277bis), abandonment due to honor (279), abandonment of incapacitated persons (280), denial of assistance (281), pornography and obscene shows with children, or adolescents (281quater), racism (281quinquies), discrimination (281sexies), dissemination and incitement to racism or discrimination (281septies), racist or discriminatory organizations or associations (281octies), insults and other verbal attacks for racist or discriminatory reasons (281nonies), defamation (282), slander (283), offenses to the memory of the deceased (284), propagation of offenses (285), and insult (287). |
| Crimes against liberty (291-307) | Reduction to slavery or similar state (291), deprivation of liberty (292), threats (293), coercion (294), crimes against freedom of the press (296), attacks against freedom of education (297), trespassing on the home or its premises (298), violation of correspondence and private papers (300), violation of secrets in correspondence not intended for publicity (301), disclosure of professional secrecy (302), attacks against freedom of work (303), labor monopoly (304), negligent conduct (305), violence or threats, by workers and employees ( 306), and employer or employee constraints (307). |

[1209] Article 14 of the Constitution translated by Elkins, Ginsburg and Melton (n 233).

| Groups of criminal offenses | Crimes not excluded from indigenous jurisdiction |
|---|---|
| Crimes against sexual freedom (308-325) | Corruption of elder people (320) and obscene acts (323). |
| Property Crimes (326-363c) | Theft (326), theft of minerals (326bis), [theft] of common property (327), [theft] of use (328), theft of possession (329), robbery (331), theft of minerals (331bis), aggravated robbery (332), aggravated robbery of minerals (332bis), reception from crimes related to theft of minerals (332ter), extortion (333), kidnapping (334), fraud (335), abuse of blank signature (336), stelionate (337), insurance fraud (338), destruction of personal property to defraud (339), fraud of services or food (340), fraud under the pretext of remuneration to public officials (341), deceit of incapable persons (342), bankruptcy (343), uprising of assets or civil default (344), misappropriation (345 ), social security crimes (345bis), abuse of trust (346), [abuse] of treasure, thing lost or possessed by mistake or fortuitous event (347), appropriation or sale of pledge (348), cattle ranching (350), cruel treatment [of animals] (350bis), biocide (350ter), dispossession (351), alteration of boundaries (352), disturbance of possession (353), unauthorized entry (353bis), usurpation of waters (354), aggravated usurpation (355), prohibited hunting and fishing (356), simple damage (357), qualified damage (358), usury (360), aggravated usury (361), crimes against intellectual property (362) , violation of the privilege of invention (363), and financial crimes (363quater). |
| Environmental Law crimes | Crimes against public health through water pollution or spreading epizootics and plant pests (105), environmental crimes through destruction or subtraction of archaeological, historical or artistic heritage public property (106), and hunting, fishing, or capturing species (110 and 111). |

*Source:* Adapted and inferred from Compendium of criminal legislation,[1210] Jurisdictional Demarcation Law 073, Bolivian Penal Code,[1211] Law 004 on the fight against corruption, illicit enrichment and investigation of fortunes "Marcelo Quiroga Santa Cruz,"[1212] Coca and Controlled Substances Regime Law,[1213] Law Against Human Trafficking,[1214] Law on Terrorism, Separatism, Financing of Terrorism,[1215] Law on the control of firearms, ammunition, explosives and other related materials,[1216] Environmental Law,[1217] Félix Peral,[1218] and Ricardo Tola.[1219]

It should be recalled that State's sovereignty encompasses deciding and enforcing its legislation by practicing its jurisdiction[1220] and that, in the Bolivian plurinational context, it means excluding indigenous peoples' laws and jurisdiction on specific matters under the caveat that the State respects the limits imposed by UNDRIP and OASDRIP. Thus, the State has decided to exclusively apply its law with its specificities, conceding the competence to resolve any possible conflict that may arise to ordinary and agri-environmental jurisdictions. Consequently, it has limited indigenous peoples' law and jurisdiction, although they might have legitimate interests and, in some cases, even indigenous norms regarding those law fields. Except for computer law, the other listed fields of law imply compliance with mandatory State law on equal foot to all Bolivian residents to protect or secure fundamental legal relations or assets. As described below, such protecting character could be construed from the content of the Constitution. Computer law, on the other hand, concerns State's general legislation that surpasses the interests of indigenous peoples.

[1210] Ministerio Público Fiscalía General del Estado (n 1183).
[1211] Ley 1768 Código Penal [Law 1768 Penal Code].
[1212] Ley 004 de Lucha contra la Corrupción, Enriquecimiento Ilícito e Investigación de Fortunas 'Marcelo Quiroga Santa Cruz' [Law 004 on the Fight Against Corruption, Illicit Enrichment and Investigation of Fortunes 'Marcelo Quiroga Santa Cruz'].
[1213] Ley del Régimen de la Coca y Sustancias Controladas [Coca and Controlled Substances Regime Law].
[1214] Ley 263 Integral Contra la Trata y Tráfico de Personas [Law Against Human Trafficking].
[1215] Ley 170 Terrorismo, Separatismo, Financiamiento al Terrorismo [Law 170 Terrorism, Separatism, Financing of Terrorism].
[1216] Ley 400 de Control de Armas de Fuego, Municiones, Explosivos y Otros Materiales Relacionados [Law 400 on the Control of Firearms, Ammunition, Explosives and Other Related Materials].
[1217] Ley del medio ambiente.
[1218] Peralta Peralta (n 1195).
[1219] Tola Fernandez (n 1196).
[1220] Ryngaert (n 38).

*Labor law.* Articles 48.I and 50 of the Constitution impose the mandatory fulfillment with social and labor law [to all Bolivian residents] through courts and specialized administrative bodies, and law 25 of the Judicial Organ enforces its exercise through the ordinary jurisdiction. It should be noted that indigenous peoples conserve the authority to decide on community labor, even though it is imposed as an indigenous sanction, since it is not part of labor law and it does not involve an employer, salary, or a labor dependency relationship, elements required by the Bolivian General Labor Law.[1221]

Almost the same happens with *social security law*. Articles 45 and 50 of the Constitution declare that social security services belong to the State, that their privatization or license to others is prohibited, that the laws that govern it are mandatory [to all Bolivian residents] through courts and specialized administrative bodies, and the law 25 of the Judicial Organ enforces its exercise through the ordinary jurisdiction. Then, social security law belongs to State's law and not to indigenous peoples.

*Tax law.* Articles 298.I.19, 299.I.7, and 300.I.22 of the Constitution state that taxes are the prerogative of the central level of the State, autonomous departmental governments, and territorial entities, respectively. The Constitution also expresses that indigenous autonomies can administer territorial taxes in articles 304.I.13 and 323.II. As a result, it could be argued that indigenous peoples have a legitimate interest in deciding on tax law disputes that refer to their authority. However, it is not the case since tax law only concerns State law and not indigenous peoples' law. Besides, State tax law standards are mandatory for all Bolivian residents on an equal footing. Then, not only article 202.4 of the Constitution defines that disputes regarding the creation, modification, or suppression of taxes, licenses, and contributions concern the Plurinational Constitutional Court, but law 25 of the Judicial Organ explicitly determines tax law under the competence of ordinary jurisdiction. It should be clarified that Jach'a Karangas and other indigenous peoples require that their *sayañeros* (landholders) pay contributions to help in the indigenous administration. These contributions, however, are not only in money but also in the exercise of indigenous positions (through the *Sara Thaqui*, the *ayni* and, especially, the *muyu*), as previously explained. Therefore, it is self-evident that these indigenous norms are not related to the taxable event, the aliquot, the deductible amounts, or any other concerning State's tax law.

*Administrative law* concerns the Executive Organ's function of the State per excellence. Then, not only administrative law concerns the State as a necessary party, rendering the personal validity area inapplicable, but it also belongs exclusively to State's law. Numerals four and six of article 175 of the Constitution attributes to the ministries of State the authority to dictate administrative norms and, together to the Law of Administrative Procedure,[1222] decide administrative disputes. Furthermore, Agri-environmental Court[1223] and the Supreme Court of Justice[1224] have the competence to decide on administrative litigation [contentious-administrative proceedings].

*Public and private international law* are partially different from the other fields of law excluded by JDL, given that they involve international relations[1225] instead of the State's internal relations. Indigenous peoples have achieved greater presence, both locally and internationally since the last century, acquiring the recognition of their collective rights and duties, and even having a presence inside UN.[1226] However, under the constitutional personal and territorial validity areas, indigenous peoples are

[1221] Ley general del trabajo 1939.
[1222] Ley 2341 de Procedimiento Administrativo [Law of Administrative Procedure] 2002.
[1223] Constitución Política del Estado Plurinacional de Bolivia, Article 189.
[1224] Ley transitoria para la tramitación de los procesos contencioso y contencioso administrativo [Transitional law for the processing of contentious and contentious-administrative processes] 2014.
[1225] A critic stance against international law, as a colonized system of domination in Watson (n 923).
[1226] 'In 1982 the Working Group on Indigenous Populations (WGIP) was established as a subsidiary organ to the Sub-Commission on the Promotion and Protection of Human Rights. The Working Group provided an opportunity

excluded from exercising their indigenous jurisdiction with non-indigenous members. Then, the limit imposed by JDL regarding international law only reiterates the same. Moreover, the Constitution defines Bolivia's foreign policy as a prerogative authority of the central level of the State.[1227]

*Mining, hydrocarbon, forestry and agrarian laws*. The Constitution defines that minerals, hydrocarbons, water, air, soil and the subsoil, forest, biodiversity, the electromagnetic spectrum and all the exploitable physical forces are Bolivian natural resources.[1228] Then, the Constitution asserts that they 'are of strategic character and public importance for the development of the country',[1229] and that even though they belong to the Bolivian people in an indivisible and unlimited fashion, they are under the direct administration of the State 'on behalf of the collective interest.'[1230] Seemingly, mining, hydrocarbon, forestry and agrarian legal fields concern Bolivian people and the State's more compelling interest, above the individual and indigenous collective[1231] ones. Be that as it may, JDL explicitly excludes the indigenous competence to resolve disputes on these matters, with the exception referred to before, and the law 25 of the Judicial Organ determines that environmental jurisdiction has exclusive competence to decide them.

*Computer law.* Bolivia still does not have a legislative corpus related to computer law, and the Constitution does not establish anything in this regard either, except for the protection of privacy action.[1232] However, according to Téllez, computer law should regulate electronic government, personal data protection, Internet, intellectual and computer property, computer crimes, computer contracts, electronic commerce, labor aspects of computer science, and the probative value of the electronic documents, among others.[1233] Despite the current Bolivian lack of legislation, the list of matters that

for indigenous peoples to share their experiences and raise their concerns at the UN. As a subsidiary organ of the Sub-Commission, the Working Group was located at the lowest level of the hierarchy of UN human rights bodies. Its recommendations had to be considered and accepted first by its superior body, the Sub-Commission, then by the Commission on Human Rights and the Economic and Social Council (ECOSOC) before reaching the General Assembly… On December 14, 2007 draft resolution A/HRC/6/L.42 (HRC Resolution 6/36) was adopted establishing the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). As a result, the Working Group on Indigenous Populations met for the last time in July 2007… The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) was established by the UN Human Rights Council, in 2007 under Resolution 6/36 as a subsidiary body of the Council. The Expert Mechanism provides the Human Rights Council with thematic advice, in the form of studies and research, on the rights of indigenous peoples as directed by the Council. The Expert Mechanism may also suggest proposals to the Council for its consideration and approval.'
'Indigenous Peoples at the United Nations | United Nations For Indigenous Peoples' <https://www.un.org/development/desa/indigenouspeoples/about-us.html> accessed 5 October 2021.

[1227] Constitución Política del Estado Plurinacional de Bolivia, article 298.I.8.

[1228] ibid, Article 348.I.

[1229] Elkins, Ginsburg and Melton (n 233), Article 348.II.

[1230] ibid, Article 349.I.

[1231] ibid, Article 403 of the Bolivian Constitution. 'The integrity of rural native indigenous territory is recognized, which includes the right to land, to the use and exclusive exploitation of the renewable natural resources under conditions determined by law, to prior and informed consultation, to participation in the benefits of the exploitation of the non-renewable natural resources that are found in their territory, to the authority to apply their own norms, administered by their structures of representation, and to define their development pursuant to their own cultural criteria and principles of harmonious coexistence with nature.'

[1232] 'Every individual, or collective, that believes he or she to be unjustly or illegally impeded from knowing, objecting to, or achieving the elimination or correction of information registered by any physical electronic, magnetic or computerized form, in public or private files or data banks, or that might affect his or her fundamental right to intimacy and personal or family privacy, or his or her own image, honor and reputation, shall file a complaint of Action for Protection of Privacy' in translation of ibid, article 130.I.

[1233] Julio Téllez Valdés, *Derecho informático* (McGraw Hill Educación 2009) 15–16 <http://up-rid2.up.ac.pa:8080/xmlui/handle/123456789/1384> accessed 5 October 2021.

comprises computer law demonstrates that it concerns the State's general legislation above indigenous peoples' interests.

In conclusion, article 10.II.c reasonably excludes the competence of indigenous jurisdiction from hearing the eleven *general fields of law* above explained.

The *fourth part of article 10.II is an open clause* that recognizes to other laws the possibility to define the material validity area of the indigenous jurisdiction (reserve matters to ordinary, agri-environmental or other legally recognized jurisdictions).[1234] For instance, article 202.11 of the Constitution reserves the constitutional jurisdiction for deciding competency conflicts between indigenous, ordinary and agri-environmental jurisdictions, article 41.II of the law to Guarantee Women a Life Free of Violence that refers to ordinary jurisdiction all the cases related to sexual violence, femicide, and 'similar crimes' 'according to JDL,'[1235] and article 155 of the Girl, Boy and Adolescent Code that orders indigenous jurisdiction to refer any complaint of violence against minors to the competent authorities.[1236]

Given that the Constitution hierarchically occupies a higher position than State laws,[1237] and that it has determined the areas of validity of indigenous jurisdiction, JDL cannot, in turn, establish that the Constitution has this authority. However, this sort of normative forwarding between the JDL and the rest of the legislation opens room for discussing whether it is unconstitutional that a different law, other than JDL, may exclude indigenous jurisdiction. Evidently, the Constitution mandates that indigenous jurisdiction hears 'matters pursuant to that established in a law of Jurisdictional Demarcation'.[1238] Thus, it would be legitimate to understand that, for the sake of certainty, a single law, constitutionally named as JDL, should define all the interjurisdictional limits. Moreover, it could be argued that the Plurinational Constitutional Court has decided limiting uncertainties and formalities when analyzing indigenous peoples' affairs.[1239] Consequently, even though this kind of constitutionality challenge has not been raised to date, it would be arguably unconstitutional that the JDL authorizes to other laws the authority to establish the material validity area of indigenous jurisdiction in a fragmentary fashion against the constitutional mandate.

*Article 10's third paragraph*[1240] of the JDL orders that indigenous jurisdiction's matters must not be heard by ordinary, agri-environmental or the other legally recognized jurisdictions. Even though the

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[1234] 'The material validity area of the indigenous jurisdiction does not reach the following matters: … d) Others reserved by the Constitution and the Law to ordinary, agri-environmental, and other legally recognized jurisdictions.' Own translation of article 10.II.d of Ley 073 de Deslinde Jurisdiccional [Jurisdictional Demarcation Law].

[1235] 'Todos los casos de violencia sexual, feminicidio y delitos análogos serán derivados a la jurisdicción ordinaria, de conformidad a la Ley de Deslinde Jurisdiccional.' Ley 348 Integral para Garantizar a las Mujeres una Vida Libre de Violencia [Law to Guarantee Women a Life Free of Violence], articule 41.II.

[1236] Ley 548 del Código Niña, Niño y Adolescente [Girl, Boy and Adolescent Code] 2014, article 155.

[1237] 'The application of the legal norms shall be governed by the following hierarchy, in accordance with the authority of the territorial entities: 1. Constitution of the State. 2. International treaties. 3. National laws, statutes of the autonomies, organic charters and the other departmental, municipal and indigenous legislation. 4. Decrees, regulations and other resolutions issued by the corresponding executive organs.' In translation of Elkins, Ginsburg and Melton (n 233), article 410.II.

[1238] Translation of ibid, Art. 191.II.2.

[1239] The Plurinational Constitutional Court terms it as intra and intercultural contexts, defining subrules to seemingly decide indigenous peoples affairs respecting their laws, customs and cosmovision, in *SCP 1422/2012* (n 677); *SCP 0487/2014* (n 690); *Sentencia Constitucional Plurinacional 0778/2014* [2014] Plurinational Constitutional Court Expediente 02391-2012-05-AAC, Ligia Mónica Velásquez Castaños.

[1240] 'III. Los asuntos de conocimiento de la jurisdicción indígena originaria campesina, no podrán ser de conocimiento de la jurisdicción ordinaria, la agroambiental y las demás jurisdicciones legalmente reconocidas.' Ley 073 de Deslinde Jurisdiccional [Jurisdictional Demarcation Law], article 10.III. Own translation: 'indigenous

Constitution has implicitly defined through its personal, territorial and material validity areas that the competences of the Bolivian jurisdictions do not overlap, article 10.III of JDL explicitly prohibits ordinary, agri-environmental, and other recognized jurisdictions from hearing matters that belong to indigenous jurisdiction. It also underpins the prohibition to usurp competences between jurisdictions defined by article six of the law 025 of the Judicial Organ. Then, article 10.III of JDL is more favorable to protect the competence of the indigenous jurisdiction outperforming the constitutional protection of the possibility that indigenous jurisdiction has to resolve disputes.

The validity principle defined in article 6 of the Judicial Organ Law and articles 10.III counterbalance the effects of article 8.3 of C169, that granted indigenous peoples' members the chance to submit their disputes to indigenous or to State laws. This choice implies indigenous individuals withdrawing from their indigenous peoples' jurisdiction in the cases they deem appropriate, with the risk of excluding themselves from their responsibilities and relationships with their respective indigenous peoples. However, the Bolivian legal system derogates such a solution imposing indigenous members to resolve their disputes under indigenous jurisdiction and preventing the interference of other jurisdictions whenever its competence conditions are met. From a collectivist perspective and aiming to protect indigenous peoples' self-determination and culture, the Bolivian standard is preferable to the liberal and individualistic standard of C169. In any case, the democratic right of people to freely leave their communities is not undermined since they preserve it, provided they have no responsibilities left towards their indigenous peoples and their members. Consequently, the Bolivian standard should be preferred and construed applicable under article 35 of the C169.[1241]

### *Material, Territorial and Personal Validity Areas' Functions When Defining the Competence of Bolivian Jurisdictions*

Based on these reflections, it is worth asking what the function of material, territorial and personal validity areas is when distinguishing the competencies of the formal and indigenous jurisdictions. Differentiating jurisdictions but considering them hierarchically equal does not imply that they have the same powers. On the contrary, as recently stated, the Constitution and the JDL establish a jurisdictional system that prevents them from overlapping. On the one hand, the formal jurisdictions mainly differentiate their competencies by material and territorial criteria and not by personal consideration since these jurisdictions are conceived for all the people over whom Bolivia exercises its sovereignty. Then, for example, regarding the material criterion, a theft case belongs to the ordinary (criminal) jurisdiction, and an environmental case pertains to the agri-environmental jurisdiction. At the same time, regarding the territorial criterion, a real estate dispute in the rural area belongs to the agri-environmental jurisdiction, while if it happens in urban areas, it will correspond to the ordinary (civil) jurisdiction.

On the other hand, when the competencies of formal jurisdictions are contrasted with the indigenous ones, they are essentially distinguished by the personal and territorial validity areas, although apparently it could be construed that the Constitution and the JDL also establish the material criteria to achieve this goal. It is possible to observe that the so-called 'personal' and 'territorial' are the ones that mainly distinguish the application of the indigenous jurisdiction from the others. Hence, for example, although

jurisdiction's matters must not be heard by ordinary, agri-environmental or the other legally recognized jurisdictions'.

[1241] 'Article 35. The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.' Convention Concerning Indigenous and Tribal Peoples in Independent Countries.

the area of material validity is sufficient to exclude the agri-environmental jurisdiction if it is necessary to decide which jurisdiction is responsible for resolving a theft case, this same area is not sufficient to achieve such a task concerning the ordinary and indigenous jurisdictions since both have the competence to decide it. Therefore, in this example, it is necessary to apply the areas of personal and territorial validity. The same would occur in a case in which the area of material validity overlaps between the indigenous and agri-environmental jurisdictions. Using the same example applied to differentiate ordinary and agri-environmental competencies, the possession of rural land's discussion would concern the latter only if personal and territorial indigenous validity areas do not concur.

Consequently, only cases that occur in indigenous territories and involve two or more people who belong to the same indigenous peoples can be handled by its jurisdiction. Symmetrically, applying both areas of validity, the ordinary and agri-environmental jurisdictions are excluded. In this sense, the distinction between formal and indigenous jurisdictions to prevent them from overlapping in the same case is fundamentally achieved through the areas of personal and territorial validity.

Through these thoughts and examples, the functions of the material, personal and territorial validity areas can be inferred. Thus, while the area of material validity is, for the indigenous jurisdiction, the extent to which the State allows it to exercise jurisdiction concerning the matters in dispute, the areas of personal and territorial validity are those over which it would have the legitimacy to resolve disputes. In other words, since the material validity area identifies over which of the competencies of the formal jurisdictions the indigenous jurisdiction could also exercise justice, necessarily overlapping formal and indigenous competencies, personal and territorial validity areas avoid such a consequence.

Finally, by following the arguments stated previously,[1242] although the area of territorial validity contributes to the distinction of jurisdictions' competencies, the area of personal validity seems sufficient to achieve such a goal since the territorial one seems to be redundant and too restrictive regarding the exercise of indigenous jurisdiction.

### *Coordination and cooperation*

From a cultural perspective, Ariza argues that the encounter between different justice systems should imply agreements without subordination, where respect and recognition of each one's systems prevail.[1243] Possibly with the same perspective, André Hoekema defends a pluralism where there are principles or rules of coordination aimed at establishing the competencies of each of the present systems, since there must be respect for alternative legal orders.[1244] Reflecting a practical stance, Gómez Herinaldy claims that coordination applies to define the competences between indigenous and ordinary jurisdictions, protect indigenous individual or collective rights, and ensure that the intra-community decisions of the indigenous authorities regarding their members are not contrary to the Constitution.[1245] Furthermore, Gómez stresses that between jurisdictions, reciprocity relationships must be established regarding: a) Exchange of information on cases related to indigenous peoples. b) Availability of coercive instruments [from the State to indigenous peoples], c) and technical ones to carry out expert assessments. d) Compliance with indigenous decisions by the State and its institutions (notaries, public

[1242] See 'Territorial Validity Area' on page 213.
[1243] Ariza (n 1087) 13 and 16.
[1244] Hoekema (n 953).
[1245] Herinaldy Gómez Valencia, 'Justicias orales indígenas y sus tensiones con la ley escrita' in Victoria Chenaut and others (eds), *Justicia y diversidad en América Latina. Pueblos indígenas ante la globalización* (Primera, Facultad Latinoramericana de Ciencias Sociales, Ecuador (FLACSO) 2011) 420.

registries, among others) and e) vice versa. f) Cooperation of the indigenous authorities with the ordinary courts in the preventive apprehension of the accused.[1246]

The States of Colombia, Peru, Ecuador, and Bolivia recognized legal pluralism in their constitutions between the 90s and 2000s. Their constitutions established that forms of 'coordination',[1247] or 'coordination and cooperation'[1248] must be created between indigenous and ordinary jurisdictions. Nevertheless, Colombia, Ecuador and Peru still do not have a coordination law.

Ariza argues that the law of coordination between legal systems is not necessary in Colombia to develop different forms of encounter between own law and the national legal system.[1249] M. Bustamante explains that, as the supreme entity that guarantees constitutional rights in Colombia, the Constitutional Court has resolved the question by ruling a favorable interpretation at the beginning of pluralism and the search for an 'intercultural consensus.' According to this Court, the special jurisdiction is only obliged to respect some fundamental minimums (not to kill, not to enslave, not to torture, and to respect the principle of legality of penalties, according to its own law) so that its traditional authorities can exert it.[1250] On the other hand, although the Peruvian Constitution recognizes legal pluralism, at least one coordination law project was presented to Congress in October 2011[1251] and, another one later in May 2021.[1252] Peru still has not enacted this law. It is also the case of Ecuador that despite the fact of its constitutional recognition to indigenous justice, it still lacks mechanisms of coordination and cooperation defined by law[1253] to avoid the monocultural praxis approach that tends to delegitimize indigenous justice.[1254]

To the present, only Bolivia has accomplished its constitutional mandate through JDL, allocating five articles for coordination and cooperation.[1255] Article 13 of JDL duly prescribes that indigenous,

[1246] Gómez Valencia (n 1102) 207. Regarding the cooperation and coordination with public notaries and civil registry see Table 19.
[1247] Article 246 of the Colombian Constitution of 1991, and article 149 of the Peruvian Constitution of 1993.
[1248] Article 192.III of the Bolivian Constitution of 2009 and article 171 of the Ecuadorian Constitution of 2008.
[1249] Ariza (n 1087) 12.
[1250] Minda Bustamante Soldevilla, 'Hoja de Ruta de La Justicia Plural En Bolivia En Tiempos de Estado Plurinacional Comunitario' in Bernardo Ponce and Diana Soria Galvarro (eds), *Sistemas legales y pluralismo jurídico en América Latina* (Proyecto Participa - Unión Europea/Konrad Adenauer Stiftung 2015) 37–38.
[1251] ibid 38.
[1252] Lenin Fernando Bazán Villanueva, Proyecto de ley de Coordinación Intercultural entre Sistemas Jurídicos de Pueblos Originarios y Afroperuanos, y Entidades del Estado 2021 [7638-CR].
[1253] Viaene and Fernández-Maldonado (n 48).
[1254] Marcelo Bonilla Urvina, 'Pluralismo Jurídico En El Ecuador. Hegemonía Estatal y Lucha Por El Reconocimiento de La Justicia Indígena' in Rudolf Huber and others (eds), *Hacia sistemas jurídicos plurales. Relfexiones y experiencias de coordinación entre el derecho estatal y el derech indígena* (Konrad Adenauer Stiftung 2008) 66.
[1255] In the period between April 2008 and May 2009 and to improve access to justice through the proactive participation of informed citizens and intercultural dialogue, with emphasis on indigenous communities", with the support of Youth for the Development (JUDES) in Oruro, Mujeres en Acción in alliance with the Guaraní People Support Team (EAPG) in Tarija, Green Cross in Santa Cruz and SAYARIY in Chuquisaca, the Construir Program of Partners of the Americas has been implemented. They defined and expressed that '[c]oordinate is to articulate joint actions and to cooperate is to collaborate so that the different justice systems can administer justice in a timely manner.' *Pluralismo Jurídico y Diálogo Intercultural en Bolivia* (Compañeros de las Américas y Fundación Construir 2009) 57. In common understanding, to coordinate is to organize the different parts of an activity and the people involved in it so that it works well, and to collaborate is to work together with somebody in order to produce or achieve something in Oxford University Press, 'Oxford Learner's Dictionaries | Find Definitions, Translations, and Grammar Explanations at Oxford Learner's Dictionaries' sv coordinate and collaborate <https://www.oxfordlearnersdictionaries.com/> accessed 9 October 2021.

ordinary, agri-environmental and the recognized jurisdictions shall agree orally or in writing[1256] means and efforts to achieve harmonious social coexistence, respect to individual and collective rights, and guarantee access to individual, collective and communitarian justice. The mechanisms for coordination are briefly displayed in article 14. It lists the establishment of transparent access to information systems on personal backgrounds and spaces for dialogue on applying human rights in the decisions, experience exchange on methods of conflict resolution, and 'other coordination mechanisms that may emerge based on the application of this Law.' Following Yrigoyen and Guachalla's argument, that within the framework of legal pluralism, the definition and interpretation of human rights should not be unilateral but rather intercultural,[1257] this dialogue, as a conversation or discussion between equal subjects, shall consider the indigenous worldviews.

On the other hand, while article 15 instructs the above jurisdictions to cooperate to fulfill their objectives mutually, article 16.I dictates that cooperation mechanisms shall occur under conditions of equity, transparency, solidarity, participation and social control, speed, opportunity, and gratuity. The second paragraph of article 16.II lists the following cooperation mechanisms: a) Jurisdictional, prosecution, police, and penitentiary authorities shall cooperate immediately and provide background information of the cases whenever indigenous jurisdiction's authorities request it. b) The indigenous jurisdiction authorities shall cooperate with the authorities of the other jurisdictions. c) The submission of the information and antecedents of the matters or conflicts between the indigenous jurisdiction and the other jurisdictions, and d) 'other cooperation mechanisms that may emerge based on the application of this Law.'

The different cooperation mechanisms detailed by the JDL are derived from article 192 of the Constitution, which determines that any public authority or person will abide by the decisions of the indigenous jurisdiction and that for the fulfillment of the decisions of said jurisdiction, their authorities may request support of the competent organs of the State.[1258] Nonetheless, the cooperation mechanisms between indigenous jurisdiction and the public ministry or the police should be construed not as collaboration but as the fulfillment of their constitutional and legal duties. It should be considered that nor the public ministry nor the police 'collaborates' with ordinary jurisdiction. Nonetheless, one should wonder how these institutions may coordinate and collaborate with indigenous jurisdiction.

The public ministry has three major roles: to investigate and prosecute criminal offenses in ordinary jurisdiction as a procedural party[1259] while having the functional direction of the police.[1260] Considering those purposes, although public ministry might seemingly be excluded from prosecuting indigenous cases as a procedural party, since indigenous justice only encompasses indigenous members per the constitutional personal validity area, it could help to investigate indigenous offenses. For example, by requiring lab tests, graphologies, or other technical expertise.[1261] More to the point, the public ministry has the explicit duty to coordinate and cooperate with indigenous jurisdiction under article 16 of the Organic Law of the Public Ministry.

[1256] Gómez vindicates that written law conceals indigenous law and perpetuates the continuity and reproduction of monoculturalism. Gómez Valencia (n 1245) 420.
[1257] Yrigoyen Fajardo, 'Revista Crea - Centro de Resolución Alternativa de Conflictos' (n 1021); Guachalla Escóbar (n 1021).
[1258] Tribunal Supremo de Justicia, Órgano Judicial de Bolivia, *Protocolo de actuación intercultural de las juezas y jueces, en el marco del pluralismo jurídico igualitario* (n 1057) 61.
[1259] Ley 260 Orgánica del Ministerio Público [Organic Law of the Public Ministry] 2012, article 12.
[1260] ibid, article 40.1.
[1261] Gómez Valencia (n 1102) 207.

Article 16.II.a of JDL also orders to penitentiary authorities and the police to cooperate and provide background information of the cases whenever indigenous jurisdiction's authorities request it. Although this activity involves sharing information, for example, of detained or imprisoned people, either temporarily or in compliance with a precautionary measure, the criterion of cooperation also includes positive activities of these institutions. In the case of the police, indigenous jurisdiction could directly request its active participation to exert public force when needed, for instance, by keeping the public order within community hearings or enforcing indigenous judgments. On the other hand, the penitentiary authorities will consider the opinion of the indigenous authorities to classify the indigenous people who are imprisoned (as detainees a) in observation and initial classification, b) social rehabilitation, c) probation, and d) parole) in order that the execution of the sentence more effectively fulfills its purposes and respects the cultural identity of the convicted person.[1262]

Finally, article 17 of JDL reiterates the duty to cooperate between jurisdictions under disciplinary sanctions for ordinary, agri-environmental, and especial jurisdictions, and indigenous own laws and procedures for indigenous jurisdiction. The constitutional jurisdiction is not mentioned in JDL about the collaboration and cooperation duties.

The coordination and cooperation duties determined by JDL might not interfere or obstruct the exercise of indigenous jurisdiction. Contrarily, their compliance could assist indigenous jurisdiction to decide indigenous disputes. Thus, for example, the indigenous authorities can monitor the cases that the ordinary and agri-environmental jurisdictions are processing and involve members of their communities, claim jurisdiction when appropriate, or, in general, protect their juridical interests. In conclusion, coordination and cooperation between jurisdictions and between them and the public ministry, the penitentiary regime, and the police, in terms of articles 13 to 17 of JDL, is a favorable standard to exercise indigenous jurisdiction and protects its competence.

### *Coordination in practice*

Until now, no system has been established to share information in Bolivia between jurisdictions. In addition, the meetings that have existed by private and public initiatives have defined guidelines, agreements but have not adopted truly operational measures of cooperation and coordination. Thus, for example, there is the private project 'Strengthening of indigenous and native peoples of Bolivia in the administration of plural justice and conflict resolution mechanisms' carried out by the NGOs Fundación Construir and Cooperazione Internazionale COOPI, which was financed by the European Union and the German Cooperation GIZ. This project showed the results of the efforts carried out in the departments of La Paz, Oruro, Cochabamba, and Sucre during 2013, which concern:[1263] a) Dialogue tables between the indigenous and agri-environmental jurisdictions that agreed to create prolonged dialogue mechanisms and allegedly operating agreements. b) Dialogue tables at the municipal level in which a dialogue plan with an open agenda was agreed. c) There were 64 meetings at the inter-jurisdictional tables and 1697 participants, while in municipal tables, there were 19 meetings and 722 participants. The participants were Members of the Plurinational Constitutional Court, the Judicial Branch, the Ombudsman's Office, the municipality, the police, women's organizations, and civil society. d) In the highlands, an inter-jurisdictional minute was signed between Jach'a Karangas, the Oruro departmental court of justice, the agri-environmental judges, the Oruro ombudsman, and the Oruro Permanent Human Rights Assembly. They undertook this minute to develop joint coordination and cooperation actions, institutionalize the Interjurisdictional Councils of Plural Justice (not legally

[1262] Ley 2298 de Ejecución Penal y Supervisión [Law on Criminal Enforcement and Supervision] 2001, articles 157 and 159.
[1263] 'Diálogo entre justicias' (Fundación Construir 2014) Boletín 2 Nº01 año 4.

recognized), and create a Plurinational Community Departmental Council (not legally recognized). In other places, it was generally agreed to implement cooperation mechanisms (municipality of Challapata - Oruro) and recognize the need to initiate coordination for acts of violence against women (municipality of Mizque - Cochabamba and San Buenaventura - La Paz).

Another case was the National Summit of Plural Justice. The central government of Bolivia, through its Ministry of Justice, convened to the National Summit of Plural Justice on June 11 and 12 of 2016, divided into six working groups, in which all the State bodies, the actors related to justice, such as jurisdictional authorities, public prosecutor, police, as well as universities, NGOs, citizen groups and civil society. Although this Justice Summit essentially dealt with ordinary and agri-environmental jurisdictions, some relevant conclusions were adopted for indigenous jurisdiction and inter-jurisdictional collaboration. Of the six organized working groups, only working group 2, called 'access to plural justice,' had conclusions related to indigenous jurisdiction: a) The re-founding of the Bolivian justice system is necessary for its decolonization, depatriarchalizing, interculturality, and complementarity. b) It corresponds to modify the JDL. c) Modify law school and university curricula to include decolonization and depatriarchalizing. d) Hold a summit of Indigenous Justice. e) Maintain respect and hierarchical equality between indigenous and ordinary jurisdictions. f) Strengthen inter-jurisdictional coordination. g) Strengthen conciliation, taking the indigenous jurisdiction as an example. h) Prepare a diagnosis focusing on legal pluralism, decolonization, and depatriarchalizing that, among many points, considers the problems of coordination and conflict of powers between the indigenous jurisdiction and the ordinary jurisdiction.[1264] These conclusions, however, were a wish list of the public present that, despite the time that has elapsed,[1265] have had no consequences in reality except for the Indigenous Justice Summit held in 2018.

The National Summit of Indigenous Justice was held in 9 and 10 of August of 2018 by the Ministry of Justice and Institutional Transparency of the Plurinational State of Bolivia, through its Vice Ministry of Indigenous Peasant Indigenous Justice, and together with the institutions of the Unity Pact.[1266] The Summit was held with the support of the United Nations Development Program (UNDP-Bolivia) and the United Nations Population Fund (UNFPA). The national meeting brought together more than 200 delegates from indigenous and peasant organizations, the three branches of the State, and the Plurinational Constitutional Court. Four working groups (commissions) were organized, and their proposals (termed conclusions) were the following:[1267]

[1264] 'Cumbre Nacional de Justicia Plural para vivir bien' (Ministerio de Comunicación del Estado Plurinacional de Bolivia 2016) Official.

[1265] The same criticism raised by Eddie Cóndor in December 2016 could be restated today: it would give the impression that we are witnessing a moment of institutional paralysis of the Executive and Legislative, concerning the judicial agenda, which is not consistent with the mandates of its National Summit of Plural Justice… to build an integrated model plural justice... there is disappointment and annoyance because there are no coordinated and emerging measures of a horizontal relationship and respect between State Bodies. 'Tras la Cumbre de Justicia La reforma judicial en Bolivia no tiene timón y la crisis sigue en un callejón sin salida' *Correo del Sur* (Sucre - Bolivia, 16 December 2016) <https://correodelsur.com/especial/20161216_tras-la-cumbre-de-justicia-la-reforma-judicial-en-bolivia-no-tiene-timon-y-la-crisis-sigue-en-un-callejon-sin-salida.html> accessed 12 October 2021.

[1266] Confederación Sindical Única de Trabajadores Campesinos de Bolivia CSUTCB, Confederación Nacional de Mujeres Campesinas e Indígenas Originarias de Bolivia, Consejo Nacional de Ayllus y Markas del Qullasuyo CONAMAQ, Confederación Sindical de Comunidades Interculturales Originarios de Bolivia y la Confederación de Pueblos Indígenas de Bolivia CIDOB.

[1267] 'Cumbre Fija Retos Para Consolidar Implementación de La Justicia Indígena Originario Campesina' <https://www.youtube.com/watch?v=llweo7M7DeY> accessed 12 October 2021.

*Commission 1 for the strengthening of indigenous peasant indigenous justice:*

- The decolonization of justice through the strengthening of indigenous justice.
- Implement curricula on indigenous justice in the university system.
- Have departmental and regional inter-jurisdictional meetings between indigenous justice, the Public Ministry, and the Police to strengthen the plural justice administration system.
- Apply the languages of indigenous peoples in Bolivia.
- Consolidate a National Council of Indigenous Justice to follow up on the conclusions and recommendations of the Summit.

*Commission 2 of indigenous justice in indigenous autonomies:*

- Review the JDL in accordance with the Constitution.
- Training and permanent formation to the indigenous authorities on constitutional law.

*Commission 3 of coordination and cooperation mechanisms*

- Strengthen indigenous justice.
- Apply the intercultural action protocol of judges.
- Work on coordination and cooperation protocols with the police, the public prosecutor's office, and the agri-environmental court.
- Implement technological support mechanisms in the indigenous jurisdiction.
- Create data registration instances for coordination and cooperation mechanisms.

*Commission 4 on respect for human rights in indigenous justice*

- Guarantee the equal exercise of individual and collective rights without discrimination based on sex in indigenous justice.
- Make known indigenous justice.
- Indigenous justice must ensure the rights of minors and groups in vulnerable situations.
- Incorporate indigenous justice offices at the departmental and municipal levels.
- Guarantee process from the indigenous vision.
- Promote the application of indigenous justice.
- Guarantee the obligatory fulfillment of the resolutions of the rural native indigenous justice.

Even though some conclusions restate the National Summit of Plural Justice's conclusions of 2016 (e.g., the study curricula, the decolonization or the consolidation of the National Council of Indigenous Justice) or rest more on indigenous peoples' agency than on the State (e.g., the use of indigenous languages within their contexts, the promotion of indigenous jurisdiction or applying their cosmovision when exercising indigenous jurisdiction), some others rise a sense of claim against the State. Thus, all the conclusions that repeated the existing duties in the Constitution and JDL imply that indigenous peoples perceive that the State has not fulfilled its duties. For instance, the [lack of] binding quality of indigenous jurisdiction's decisions, the [absence of] an inter-jurisdictional information system, the [insufficient] coordination and cooperation meetings, the [deficient] strengthening of indigenous jurisdiction that encompasses the permanent training, and so on. Besides, when indigenous peoples demand reviewing JDL, they have disclosed their opposition to its content, proving to some extent that the consultation process of the JDL was a far cry from consistency. However, not everything was reiterated since protocols between jurisdictions and between indigenous jurisdiction and public entities or technological support were also demanded. It should be stressed that the unilateral creation of protocols is contrary to the inter-jurisdictional agreement approach foreseen in articles 13 and 16 of JDL. Finally, it could be said that indigenous jurisdiction guaranteeing the exercise of rights without

gender discrimination or protecting vulnerable groups' rights suggests a reminder of indigenous duties allocated in article 14.b of JDL.

*Cooperation in practice:*

In the review of Bolivian constitutional jurisprudence and indigenous cases, not a single case could be found that refers to the penitentiary regime.[1268] Likewise, there were no cases in which an indigenous investigation would be carried out by a prosecutor or even a case in which the public ministry had cooperated or collaborated with the indigenous jurisdiction. Contrarily, some cases gave an account of the police cooperation enforcing indigenous decisions[1269] that helped avoiding excesses. However, the police did not favorably assist the indigenous jurisdiction in all the cases. In one case, the police acted against indigenous jurisdiction when, instead of enforcing the indigenous decision as requested, it ignored indigenous authority, required them unnecessary formalities to act, changed the date to enforce the indigenous judgment, and violated criminal laws by attacking the community together with the sanctioned persons.[1270] This case is also the closest to a supposed collaboration of the public prosecutor's office, although in reality it is not like that, as explained below.

The agrarian union Portada Corapata, through its Jach'a Kamchinak Cheqa Phoqhayirinaka (Amawtico Justice Council or indigenous jurisdiction), consulted the Plurinational Court on how to protect their collective rights against the police and the ordinary jurisdiction. The indigenous authorities requested collaboration to enforce its decision to evict squatters. Instead of submitting to indigenous authority, the police required them unnecessary formalities to act, changed the date to enforce the judgment, and violated criminal laws by attacking the community together with the sanctioned persons. Subsequently, some community members filed a lawsuit against the police that the indigenous jurisdiction had to refer to ordinary jurisdiction because the former lacked the competence to decide it. Although the ordinary jurisdiction accepted the case, the interested party did not follow the process, extinguishing it for abandonment. The Bolivian general practice demonstrates that, since the public ministry has an excessive procedural burden and lack of resources, the cases it shall prosecute became extinguished and archived if their interested parties do not constantly follow them. The indigenous authorities claimed breach of cooperation and coordination because, in their perspective, they were not acting as an interested party but as a jurisdiction referring a case to another jurisdiction, and the referred jurisdiction should have carried on the case and informed them of the outcome.

Albeit the Plurinational Constitutional Court declared the consultation inadmissible because the indigenous peoples wrongfully chose the process 'consultation of indigenous authorities on applying their legal norms to a specific case,' under the facts reported by the indigenous authorities, the police would have breached its cooperation duty with the indigenous peoples (Art. 16.I.a of JDL) and its

[1268] The only case related to imprisonment, but not a situation in which the authorities of the penitentiary regime had been required to collaborate, is the following. The indigenous jurisdiction of Hampaturi requested the cooperation of the ordinary jurisdiction to imprison a member of the community as a sanction. However, this request was not attended. The Constitutional Court stated that the function of deprivation of liberty is not in the nature of the indigenous jurisdiction. In addition, it established that the indigenous jurisdiction can only use its own law and not State law. *DCP 0199/2015* (n 1113).

[1269] For instance, the police assisted with the enforcement of indigenous judgments in *Sentencia Constitucional Plurinacional 1016/2015-S3* [2015] Plurinational Constitutional Court Expediente 10727-2015-22-AAC, Neldy Virginia Andrade Martínez; *Sentencia Constitucional Plurinacional 0058/2016* [2016] Plurinational Constitutional Court Expediente 08087-2014-17-CCJ, Mirtha Camacho Quiroga.

[1270] *Declaración Constitucional Plurinacional 0043/2014* [2014] Tribunal Constitucional Plurinacional Expediente: 07368-2014-14-CAI, Juan Oswaldo Valencia Alvarado.

general duties. However, the ordinary jurisdiction and the public ministry did not breach their duties and they were not acting in the collaboration role.

First, according to article 10.III of JDL, each jurisdiction must decide the cases that correspond to their competencies. Then, considering that the referred case did not pertain to indigenous jurisdiction because of the personal validity area, the ordinary jurisdiction had the competence to resolve the dispute through State laws and procedures. Second, the indigenous jurisdiction has no authority to demand the ordinary jurisdiction, or the public ministry, to resolve a specific dispute under alleged cooperation. Moreover, while the public ministry investigates and follows criminal cases, it is not obliged to report to indigenous jurisdiction the outcome. It should be noted that the first draft of JDL, the one that was consulted to indigenous peoples, incorporated both obligations. However, the current JDL does not. As a result, although prosecutors did not fulfill their duties when the case was extinguished, it does not breach its duty to collaborate with indigenous jurisdiction.

## Intermediate conclusions

Bolivian scholars raised criticism against the Constitution and JDL arguing that it is far too restrictive to the exercise of indigenous jurisdiction. For instance, Ramiro Molina Rivero said that the JDL drastically restricts the powers of the indigenous jurisdiction, contradicting the hierarchical equality between jurisdictions and subordinating indigenous jurisdiction to ordinary jurisdiction.[1271] Xavier Albó recalled how some indigenous assembly members expressed that the JDL reduced indigenous jurisdiction to the theft of chickens and other trifles.[1272] Leonardo Tamburini considered that it is striking that the current JDL has developed a constitutional chapter regressively, posing material, personal and territorial limitations even more restrictive than those prospected in the neoliberal (pre-plurinational) era of the 1990s.[1273] Grijlava and Exeni considered that the JDL establishes mechanisms of distinction between an ordinary justice of national and full scope, on the one hand, and an indigenous justice defined as inferior and residual, on the other. It also denies the requirement of an intercultural understanding of justice and human rights and becomes a renewed exercise of disqualification and invisibility.[1274] Mendoza affirms that JDL has broken the constitution design of Bolivian justice, specifically through its article ten.[1275] Hayes maintains that the JDL has implicitly determined that the indigenous jurisdiction only hears minor cases and has restricted the possibility that indigenous jurisdiction may refer cases to the ordinary jurisdiction.[1276] Conversely to their opinions, it is construed that the exercise of indigenous jurisdiction in the Bolivian legal framework is favorable in relation to its other jurisdictions, as shown below.

The present Chapter aimed to respond the first research question of the dissertation.[1277] To achieve this end, the following has been carried out. The most favorable standards established by the international and Bolivian normative framework regarding the exercise of indigenous jurisdiction have been

[1271] Ramiro Molina Rivero, 'El Pluralismo Jurídico En Bolivia: Derecho Indígena e Interlegalidades' in Fernanda Wanderley (ed), *El desarrollo en cuestión: reflexiones desde América Latina* (Primera, Plural editores 2011) 368.
[1272] Albó (n 1146) 244.
[1273] Leonardo Tamburini, 'La jurisdicción indígena y las autonomías indígenas', *Justicia indígena, plurinacionalidad e interculturalidad en Bolivia* (Fundación Rosa Luxemburg / AbyaYala 2012) 252 <http://site.ebrary.com/id/10832426> accessed 22 September 2019.
[1274] Grijalva Jiménez and Exeni Rodríguez (n 47) 703.
[1275] Mendoza Crespo (n 235) 19.
[1276] Hayes Michel (n 1078) 257.
[1277] What is the scope of the content and limits of the collective right to indigenous jurisdiction through its formal recognition by the Bolivian international and local legal framework?

identified. For instance, the duties of the State to promote and strengthen indigenous justice, assist indigenous authorities in complying with their decisions, or the binding nature of indigenous jurisdiction's judgments. Among these norms, there are others designed to uphold them while protecting the rights of others. Thus, UNDRIP and OASDRIP proclaim that the restrictions that the State may impose on indigenous rights: a) cannot be discriminatory, b) shall be strictly necessary to secure due recognition and respect for the rights and freedoms of others, c) shall not violate international human rights obligations, and d) shall be consistent with a democratic society. Following this, within the space left by these restrictions, the exercise of the State's sovereignty restricted and expanded the exercise of indigenous jurisdiction through its legal framework. In this context, the Bolivian Constitution has established seven main limitations. Three of them refer to the areas of personal, territorial, and material validity. The Constitution establishes the meaning of personal and territorial validity areas, leaving the establishment of the area of material validity to the JDL. The other four limitations assert that only indigenous authorities shall exercise indigenous jurisdiction by applying indigenous laws to indigenous matters, and respecting the constitutional rights (to life, defense during trial, and others).

The degree of the scope of these limitations and expansions exerts both a positive and negative influence on the competence of the indigenous jurisdiction, which, in turn, is the framework on which the effectiveness of the exercise of indigenous jurisdiction by Jach'a Karangas (JK) is weighed. Whilst Table 23 summarizes the main findings and their assessment, it is noted that not all of them concern its effectiveness under the research scope, but the characterization of its qualities and interplay with other jurisdictions. In accordance, three of them portray the legal characteristics of indigenous jurisdiction in Bolivia, a) describing the Bolivian egalitarian legal pluralism defined by the Constitution and the JDL, b) including indigenous jurisdiction as part of the Bolivian Judicial Organ regarding its functions, c) referring to the enforcement or compliance of indigenous judgments by all State's authorities and persons; and, d) one concerns the interplay of jurisdictions through coordination and cooperation. It was found that a) is more favorable; b), c), and d) are favorable standards to the exercise of indigenous jurisdiction (contrast Figure 7. Characterization comparison between jurisdictions).

Evoking the research design, under JK's norms, the identified planned effect to assess the effectiveness was 'the possibility that the indigenous jurisdiction of JK has to resolve or contribute to resolving indigenous disputes.' Accordingly, three indicators were posed regarding the powers granted to indigenous jurisdiction in relation to ordinary and agri-environmental jurisdictions:[1278] being 'more effective' whenever indigenous jurisdiction has more powers, 'effective' if similar, and 'less effective' if fewer. However, since the effectiveness of rights is closely related to duties, they are also considered in the findings. Table 23 portrays an overview of the findings related to the legal framework.

[1278] More effective, if Bolivian legislation grants broader powers to indigenous justice than those granted to formal justice; effective, if Bolivian legislation grants powers to indigenous justice as broad as those granted to formal justice; and, less effective, if Bolivian legislation confers fewer powers to indigenous justice than those granted to formal justice.

*Table 23: Assessment of constitutional and legal standards established by the Bolivian State to the indigenous jurisdiction*

| Legal norm | Specificity | Observations | Assessment |
|---|---|---|---|
| Constitution | Effectiveness. Limit: indigenous jurisdiction applies indigenous laws | Such limit protects the interests of third parties unrelated to indigenous laws. It also aims to protect indigenous peoples' self-determination, culture, and existence by applying their law | Acceptable constitutional standard because it legitimately limits the competence of the indigenous jurisdiction, making it less effective. However, since the limit is plausible, it could be construed as irrelevant to the effectiveness assessment |
| | Effectiveness. Limit: indigenous jurisdiction decides indigenous matters | It is a practical and justified criterion that balances indigenous jurisdiction's function through the underlying interests of Bolivian individuals and collectivities. In turn, such limit protects the interests of third parties unrelated to indigenous matters. It also aims to protect indigenous peoples' self-determination, culture, and existence by applying their law | Acceptable constitutional standard because it legitimately limits the competence of the indigenous jurisdiction, making it less effective. However, since the limit is plausible, it could be construed as irrelevant to the effectiveness assessment |
| | Effectiveness. Limit: indigenous jurisdiction respects rights to life, defense and others recognized by the Constitution | International instruments and the Constitution unanimously establish that human rights are the limit to the exercise of indigenous jurisdiction | Acceptable constitutional standard because it legitimately limits the competence of the indigenous jurisdiction, making it less effective. However, since the limit is plausible, it could be construed as irrelevant to the effectiveness assessment |
| | Effectiveness. Limit: only indigenous authorities exercise indigenous jurisdiction | The constitution establishes a criterion of order by which not all indigenous members can exercise jurisdiction but exclusively indigenous authorities. Thus, the limit does not nullify the exercise of indigenous jurisdiction and, therefore, is not discriminatory. Additionally, indigenous authorities are periodically elected according to the indigenous norms, respecting democratic principles | Acceptable constitutional standard because it legitimately limits the competence of the indigenous jurisdiction, making it less effective. However, since the limit is plausible, it could be construed as irrelevant to the effectiveness assessment |
| | Effectiveness. Limit: personal validity area | It safeguards the recognition and respect of the rights and legal security of other people who are not indigenous or who, if they are, belong to other indigenous peoples because, within the framework of the Plurinational State, only members of the indigenous peoples shall know their laws and submit to their jurisdiction. It implies no overlapping competencies between jurisdictions | Acceptable constitutional standard because it legitimately limits the competence of the indigenous jurisdiction, making it less effective. However, since the limit is plausible, it could be construed as irrelevant to the effectiveness assessment |
| | Effectiveness. Limit: territorial validity area | The restrictive meaning of the territorial validity area is discriminatory because it affects egalitarian legal pluralism by excluding indigenous jurisdiction within legitimate settings outside their territories. It is also redundant in the Bolivian context to fulfill a plausible function. It implies no overlapping competencies between jurisdictions | Less favorable constitutional standard to indigenous jurisdiction because it unjustifiably limits its competence compared to the other jurisdictions, causing it to be less effective. |
| | Effectiveness. Limit: material validity area | The Constitution refers it to Jurisdictional Demarcation Law (JDL) | -- |

| Legal norm | Specificity | Observations | Assessment |
|---|---|---|---|
| | Characterization. The judicial function is singular in Bolivia | Indigenous jurisdiction is part of the Bolivian Judicial Branch regarding its function | Constitutional favorable standard to a quality of indigenous jurisdiction |
| | Characterization. Ordinary and indigenous jurisdictions enjoy equal status (equal hierarchy) | It is the essence of the egalitarian plural justice of Bolivia. The Constitution does not define or describe the meaning of 'equal hierarchy' | Constitutional favorable standard to a state or quality of indigenous jurisdiction |
| | Characterization. Enforcement: each public authority or person shall obey the indigenous jurisdiction's decisions | It defines the binding nature of indigenous jurisdiction's decision and the State and individual's duty to abide by indigenous decisions. It also involves coordination and cooperation between jurisdictions and State entities | Constitutional favorable standard to the enforcement of indigenous jurisdiction's decisions |
| Law of the Judicial Organ | Effectiveness. Limit: it reiterates constitutional limits | It restates constitutional content affirming that indigenous jurisdiction applies within personal, territorial, and personal validity areas respecting rights to life, defense, and others | Constitutional limits reiterated |
| | Characterization: Enforcement: It reiterates a state or quality of indigenous jurisdiction and the enforcement of its decisions | It restates constitutional content related to the exercise of the indigenous jurisdiction: judicial function is singular, the equal hierarchy between ordinary and indigenous jurisdictions, the duties of the State to promote and strengthen indigenous justice, assist indigenous authorities in complying with their decisions, and each public authority or person shall obey the decisions of the indigenous jurisdiction | Constitutional standards reiterated |
| | Effectiveness. Protection through complementarity principle | In the exercise of the judicial function, the jurisdictions have the duty not to obstruct, usurp powers or impede their exercise. Moreover, it states no overlapping competencies between jurisdictions | The statutory standard is more favorable than that provided for in the Constitution since it increases the protection of the exercise of indigenous jurisdiction |
| Jurisdictional Demarcation Law (JDL) | Effectiveness. It reiterates the constitutional limit to respect rights. | Restates constitutional limit: the indigenous jurisdiction shall respect rights to life, defense and others recognized by the Constitution | Constitutional limit reiterated |
| | Effectiveness. Sanctions of expulsion and land loss | Given that Bolivian legislation does not authorize the ordinary and agri-environmental jurisdictions to sanction with expulsion and land loss, and, on the other hand, it does allow it to the indigenous jurisdiction, it is possible to conclude that the JDL is more favorable to indigenous jurisdiction competence | The statutory standard is more favorable than that granted to other jurisdictions as it increases the competence of the indigenous jurisdiction, causing it to be more effective |
| | Effectiveness. Limits: personal and territorial validity areas | It reiterates constitutional content concerning personal and territorial validity areas | Constitutional limit reiterated |
| | Effectiveness. It limits the material validity area: traditionally and historically disputes versus current or modern disputes | It limits indigenous jurisdiction to know matters that it traditionally and historically knew. Favorable regarding historical and traditional matters and unfavorable regarding new ones | Less favorable statutory standard than that provided for in the Constitution because it unjustifiably limits the competence of the indigenous jurisdiction compared to the other jurisdictions, causing it to be less effective |

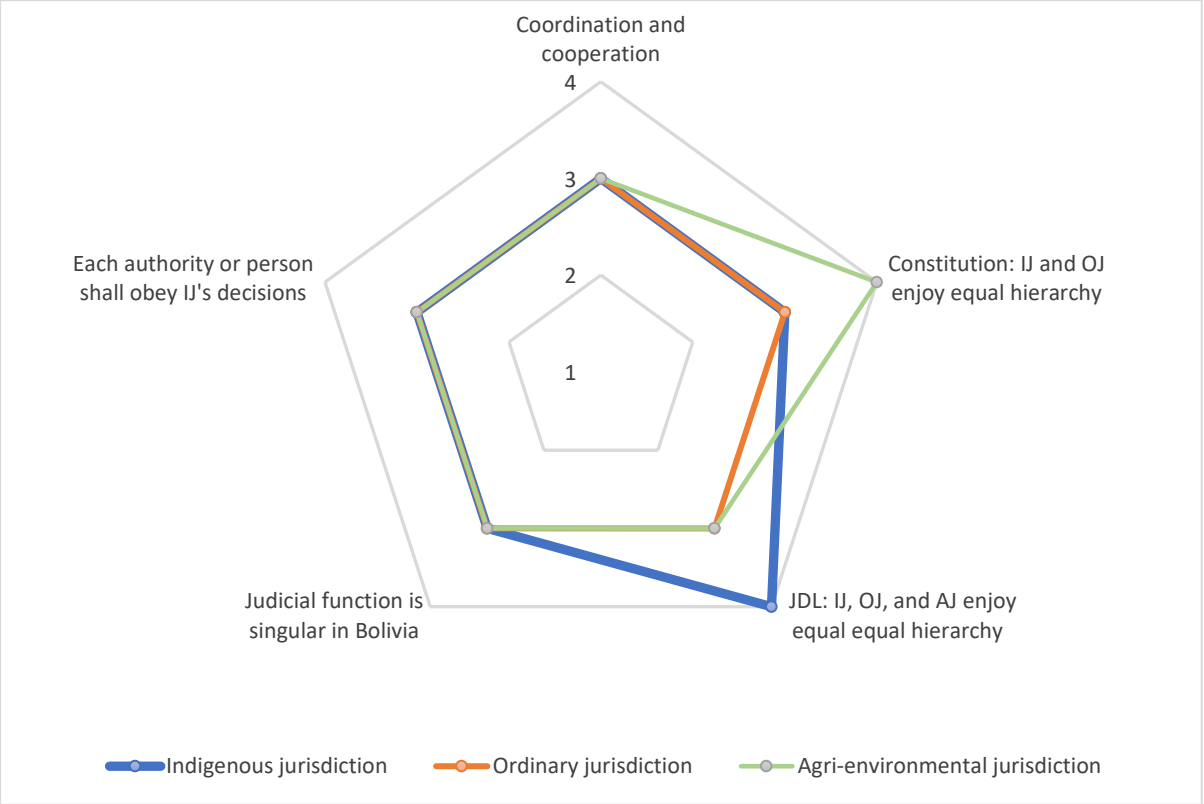
| Legal norm | Specificity | Observations | Assessment |
|---|---|---|---|
| | Effectiveness. It limits the material validity area: criminal matters | Limits on criminal matters: favorable regarding the 65.2% of crimes admitted to indigenous jurisdiction in which indigenous peoples may have a plausible interest to exercise their jurisdiction, and unfavorable on the remaining 34.8% of the same kind | Less favorable statutory standard to the competence of the indigenous jurisdiction, because it unjustifiably limits its competence compared to the ordinary jurisdiction, causing it to be less effective |
| | Effectiveness. It limits the material validity area: civil matters | Limits on civil matters: the exercise of indigenous jurisdiction is not affected concerning the exclusions of the interests of the State and the real estates' property of the indigenous jurisdiction competence. However, it might be affected regarding the exclusion of community members' movable assets from indigenous jurisdiction | Less favorable statutory standard to the competence of the indigenous jurisdiction, because it unjustifiably limits its competence compared to the ordinary jurisdiction, causing it to be less effective |
| | Effectiveness. It limits the material validity area: legal fields of law included | Collective land internal distribution: indigenous jurisdiction has the competence to resolve disputes on the collective land distribution among indigenous community members.<br>It is construed that indigenous jurisdiction has the competence to decide the other matters over which it has not been excluded, as family law, child and adolescent law, commercial law, contract law, inheritance law, and torts law. | Acceptable statutory standard to the competence of the indigenous jurisdiction because it maintains similar competencies between jurisdictions, causing it to be effective |
| | Effectiveness. It limits the material validity area: legal fields of law excluded | JDL excludes from the competence of indigenous jurisdiction: labor law, social security law, tax law, administrative law, mining law, hydrocarbon law, computer law, public and private international law, forestry law, and agrarian law. | Acceptable statutory standard because it legitimately limits the competence of the indigenous jurisdiction compared to other jurisdictions, making it less effective. However, since the limit is plausible, it could be construed as irrelevant to the effectiveness assessment |
| | Effectiveness. Protection of indigenous jurisdiction: duty not to revise indigenous decisions | Ordinary, agri-environmental, and other legally recognized jurisdictions have the duty not to revise indigenous decisions (equal hierarchy between jurisdictions). The duty underpins and protects the authority and possibility of indigenous jurisdiction to decide disputes | More favorable statutory standard than that provided for in the Constitution since it increases the protection of the exercise of indigenous jurisdiction |
| | Effectiveness. Protection: duty not to hear indigenous matters | Ordinary, agri-environmental, and other recognized jurisdictions have the duty not to hear matters that belong to indigenous jurisdiction (equal hierarchy between jurisdictions). It protects the possibility that indigenous jurisdiction has to resolve disputes | More favorable statutory standard than that provided for in the Constitution since it increases the protection of the exercise of indigenous jurisdiction |
| | Characterization. Ordinary, agri-environmental, and indigenous jurisdictions enjoy equal status (equal hierarchy) | It expands the egalitarian plural justice between ordinary and indigenous jurisdictions of the Constitution to all the existing Bolivian jurisdictions | More favorable statutory standard to a quality of indigenous jurisdiction than that provided for in the Constitution |
| | Characterization. It defines coordination and cooperation | JDL determines coordination and cooperation between jurisdictions and between them and the public ministry, the penitentiary regime, and the police | Favorable statutory standard to the interaction between jurisdictions |

| Legal norm | Specificity | Observations | Assessment |
|---|---|---|---|
| | Characterization. Enforcement: It reiterates constitutional standards on enforcement of indigenous decisions | It restates constitutional content related to the enforcement of indigenous jurisdiction's decisions: each public authority or person shall obey the decisions of the indigenous jurisdiction | Constitutional standard reiterated |
| Code of Criminal Procedure | Effectiveness. Material validity area: extinction of the criminal action | It orders the end of any criminal action provided that the crime is committed within an indigenous community by one of its members against another, their authorities have resolved the conflict following their law, and the resolution is not contrary to constitutional rights. As a result, it arguably grants the indigenous jurisdiction the possibility of solving all types of criminal offenses. It is possible to conclude that the Code of Criminal Procedure is more favorable to indigenous jurisdiction competence | Acceptable statutory standard to the competence of the indigenous jurisdiction because it maintains similar competencies between jurisdictions, causing it to be effective. However, it could lead to expand the scope of their jurisdictional competence if indigenous peoples adopt a proactive attitude in resolving all kinds of criminal offenses, even if the State law does not grant them specific competence to do so |

*Source:* Self-made.
*Note:* The assessment takes a literal approach to written law.

Starting with the positive findings related to indigenous jurisdiction, it is remarkable that indigenous peoples can apply their laws and resolve cases sanctioning their community members with temporal or definitive expulsion from their communities and the loss of land possession to protect the community and recover its harmony and balance to live well. Given that it is not authorized to other jurisdictions, indigenous jurisdiction is more effective. Further, three duties protect the possibility of indigenous jurisdiction in resolving disputes. Two of them specifically order ordinary and agri-environmental jurisdictions not to hear indigenous matters and not revise indigenous decisions, rendering indigenous jurisdiction more effective. The last one makes indigenous jurisdiction effective, given that it is a generic inter-jurisdictional duty not to obstruct, usurp powers or impede each other's exercise of jurisdiction. Other favorable standard orders the end of any criminal action provided that the crime is committed within an indigenous community by one of its members against another, their authorities have resolved the conflict following their law, and the resolution is not contrary to constitutional rights. As a result, it arguably grants indigenous jurisdiction the possibility of solving all types of criminal offenses and could lead to expanding their jurisdictional competence scope if indigenous peoples adopt a proactive attitude in resolving all kinds of criminal offenses, even if the State law does not grant them the competence to do so. It is also relevant to report the effectiveness of indigenous jurisdiction in deciding disputes on the internal distribution of lands within their collective territory, family law, child and adolescent law, commercial law, contract law, inheritance law, and torts law, as the other jurisdictions may decide on those matters as well.

*Figure 7. Characterization comparison between jurisdictions*




Source: Self-made

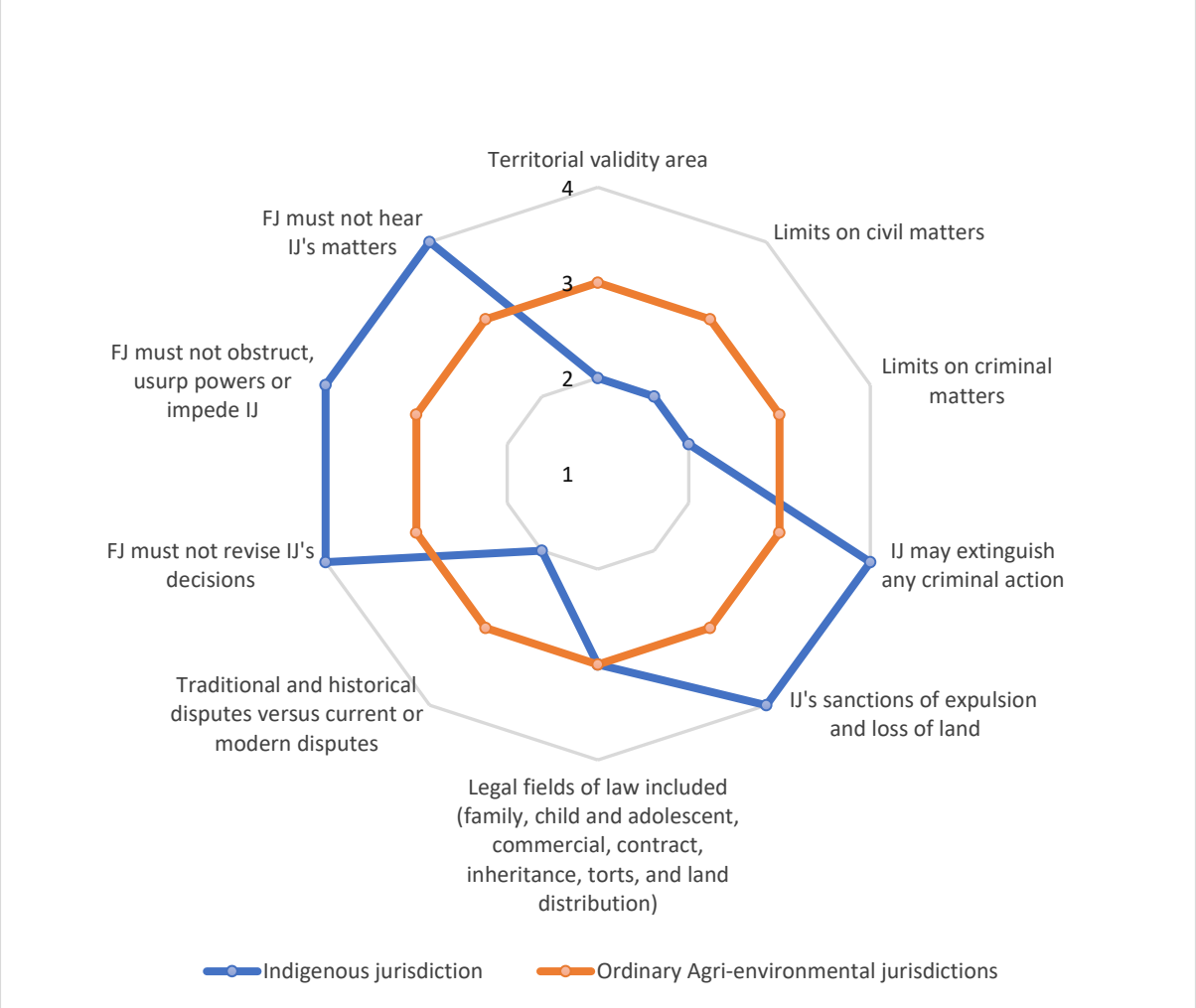
Note: Abbreviations: agri-environmental jurisdiction (AJ), formal jurisdictions (FJ), indigenous jurisdiction (IJ), Jurisdictional Demarcation Law (JDL), and ordinary jurisdiction (OJ). Not favorable (1), less favorable (2), favorable (3) and more favorable (4). The figure only serves an illustrative function without reflecting the precise distribution of the qualitative analysis and does not represent a quantitative assessment.

In contrast with these favorable findings, there are ten cases in which indigenous jurisdiction is less effective. Such asymmetry, however, could be lessened since, during the analysis, it became overt that six restrictions imposed to indigenous jurisdiction could be justified by international and local legal frameworks. Said differently, despite the fact that indigenous jurisdiction is less effective because it has fewer powers than ordinary and agri-environmental jurisdictions, some of the restrictions posed by the Bolivian State on indigenous jurisdiction could be construed as legitimate within its legal system. Therefore, none of the justified limits has been considered in the final effectiveness analysis (see Figure 8. Effectiveness comparison between jurisdictions). It is the case of constitutional restrictions concerning indigenous jurisdiction deciding indigenous matters of their members, through their authorities and laws, and respecting human rights, and the statutory limit that excludes indigenous jurisdiction from the competence of labor law, social security law, tax law, administrative law, mining law, hydrocarbon law, computer law, public and private international law, forestry law, and agrarian law.

And yet, there still are four unjustified restrictions imposed on indigenous jurisdiction that make it less effective. Thus, a) the Constitution and JDL unnecessarily limits the exercise of indigenous jurisdiction outside their territories even though the dispute fulfills personal and material validity areas and regards indigenous issues, under their laws, through their authorities, and without restricting or affecting third parties' rights. Not to mention that the territorial validity area might be redundant and impractical to limit the exercise of indigenous jurisdiction to indigenous matters since the concurrence of the other validity areas suffice to that end. The same could be said about b) the unjustified statutory JDL's limits that hamper indigenous jurisdiction from resolving current or modern issues (compared with traditional

and historical matters to which they have explicit competence), c) several crimes in which indigenous peoples may have a legitimate interest, or d) disputes over movable assets concerning property. Without the intention of justifying the restrictions that the legal framework has established on indigenous jurisdiction, it is highlighted that from this list, the 'unjustified limits' regards only two of general nature (a and b), while the other two are specific to certain cases (c and d). The restricted criminal offenses to indigenous jurisdiction (c) represent just a minority of cases compared to the offenses over which indigenous peoples indeed have the competence to decide. Furthermore, among the latter (d), indigenous jurisdiction has the competence to decide on robbery and theft, which involve personal property. Stated differently, 'unjustified restrictions' are the fewest, and their entity is relatively less relevant than the 'justified restrictions.'

*Figure 8. Effectiveness comparison between jurisdictions*




Source: Self-made

Note: Ineffective (1), less effective (2), effective (3) and more effective (4). Abbreviations: agri-environmental jurisdiction (AJ), formal jurisdictions (FJ), indigenous jurisdiction (IJ), and ordinary jurisdiction (OJ). The figure only serves an illustrative function without reflecting the precise distribution of the qualitative analysis and does not represent a quantitative assessment.

It might be feasible to discuss the unjustified limitations on indigenous jurisdiction pursuing broader self-determination and powers to indigenous peoples for the sake of the effectiveness of indigenous collective rights. However, it is debatable if it is suitable in the current context. Thus, as will be observed in the following chapters, the scope of territorial validity, the limitation of disputes to only traditional cases, and discussions on the movable property are those with the most negligible development,

analysis, and jurisprudential relevance. On the other hand, although there have been substantial discussions regarding the crimes of murder and homicide, the rest of the excluded crimes have received little or no attention at all. Additionally, the literature shows that indigenous peoples are not necessarily interested in resolving all disputes between their members.[1279] As will be seen later, contrary to the Bolivian legal framework provisions, both indigenous peoples and constitutional jurisprudence assume that cases can be referred between jurisdictions.[1280] It is noted that this perception also exists among the members of Jach'a Karangas, who, in addition, sometimes prefer that the indigenous jurisdiction does not resolve the cases.

This situation calls into question the obligation of the indigenous peoples' jurisdiction to resolve the problems and disputes their members have in cases in which personal, material and territorial validity areas concur. As noted, the Judicial Organ law and JDL have determined this duty, underpinned by the non-existence of overlapping competencies between the indigenous, ordinary, and agri-environmental jurisdictions implicitly foreseen in the Constitutional design and reaffirmed by the referred laws. Ariza maintains that it is prudent to consult the indigenous authorities if they wish to judge all the cases or if, on the contrary, they prefer ordinary jurisdiction to decide some of them instead.[1281] It is underscored that indigenous peoples have been consulted and agreed to refer, at their will, the cases they choose to the ordinary and the agri-environmental jurisdictions in the preliminary draft of the law of jurisdictional demarcation. Nevertheless, unfortunately, the legal text of the JDL that was discussed and approved by the Bolivian Plurinational Legislative Assembly is the opposite, and it was not consulted with indigenous peoples.

All things considered, the Bolivian current legal framework has raised its prior standards by a sound and broad recognition of indigenous jurisdiction, and the right to exercise it through operational laws, against the opinion of Leonardo Tamburini.[1282] Moreover, indigenous jurisdiction has a binding nature among indigenous members on the issues that concern its competency. In effect, overcoming C169, no other State jurisdiction may legally decide on indigenous disputes provided that indigenous jurisdiction has the competence to resolve them, disregarding the Grijlava and Exeni's position.[1283] Findings demonstrate that the exercise of indigenous jurisdiction has a rather favorable, broad, and protective legal framework that grants it a relatively broad competence to decide indigenous disputes. Thus, even if the State has imposed constitutional and legal limits to indigenous jurisdiction, they are justified in most cases, leaving a minority of questionable restrictions of relatively less significance. Otherwise stated, indigenous peoples have a fairly substantial right to exercise jurisdiction that recognizes a meaningful range of competence to decide indigenous disputes, arguably refuting Albó,[1284] Hayes,[1285] Mendoza,[1286] and Molina's[1287] concerns. Although there is undoubtedly a range of disputes that indigenous peoples are deprived of knowing in the Bolivian legal framework, their practical purposes of conflict resolution, in general, will not be thwarted by the relatively generous scope that the State has recognized to their powers.

[1279] Ariza (n 1087).
[1280] Cf. 'There Might Exist a Common Opinion of Formal Jurisdictions that the Indigenous Jurisdiction's Exercise is Voluntary (T20)' on page 350.
[1281] Ariza (n 1087).
[1282] Tamburini (n 1273) 252.
[1283] Grijalva Jiménez and Exeni Rodríguez (n 47) 703.
[1284] Albó (n 1146) 244.
[1285] Hayes Michel (n 1078) 257.
[1286] Mendoza Crespo (n 235) 19.
[1287] Molina Rivero (n 1271) 368.

# Chapter 4: Nación Originaria Suyu Jach'a Karangas

## Geographic Location, Population and History

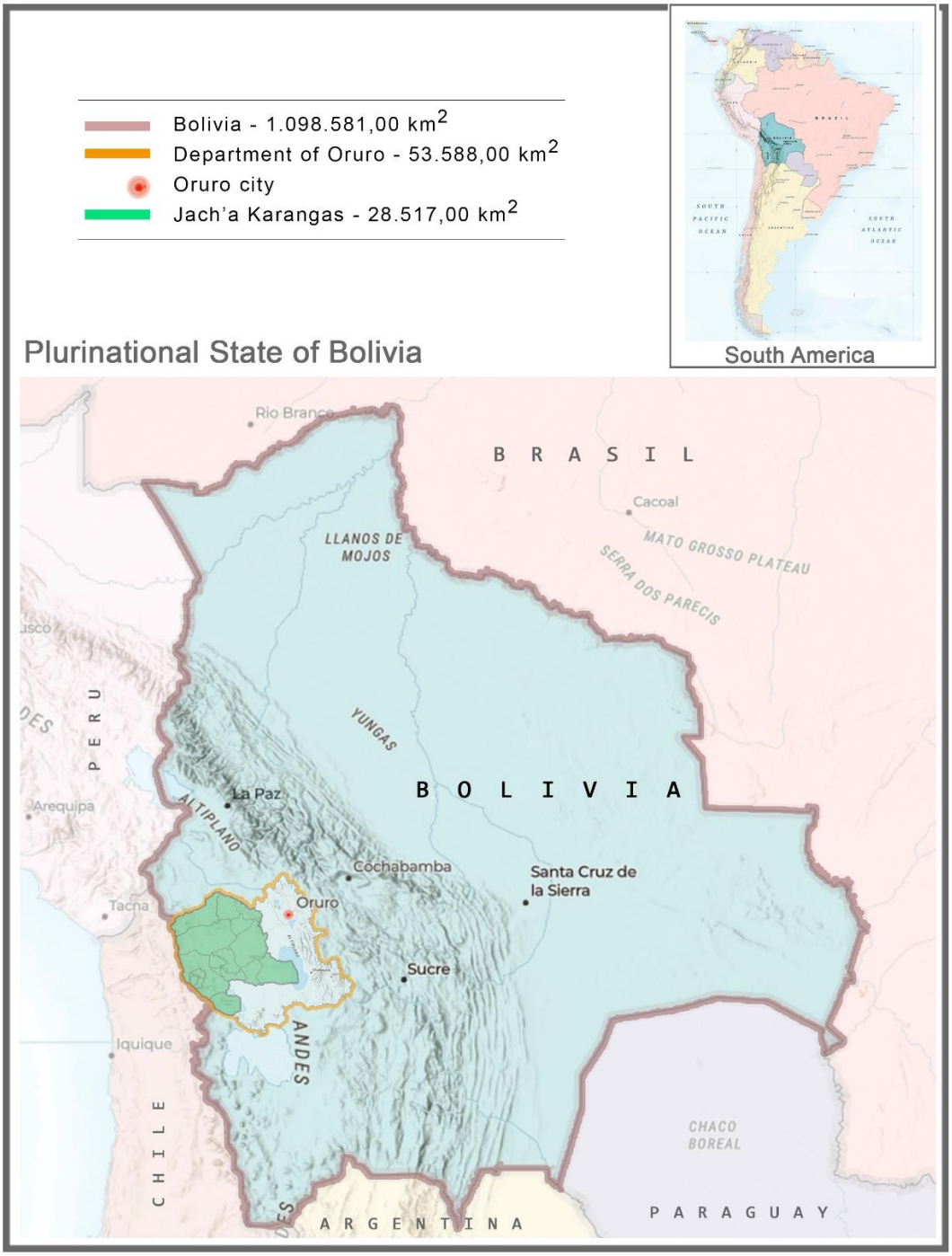
The area where current Peru and Bolivia countries are found has two well-defined geographical areas: the coast and the mountains. The latter, from the Vilcanota knot, where the mountain range is divided into Eastern and Western, encompasses the Altiplano, whose average height above sea level is 3,800 meters.[1288] In this part are the lakes Titicaca (Northern Altiplano, shared between Bolivia and Peru) and Poopó (Southern Altiplano, in Bolivia), both connected by the Desaguadero river (highlands of Bolivia). Beyond the cordillera and the sierra, to the east, are the valleys and the tropics, whose height descends to approximately 400 meters above sea level (lowlands of Bolivia). Nación Originaria Suyu Jach'a Karangas[1289] (JK) currently has a territory of 28,517 square kilometers[1290] situated in Bolivia's western region, in the highlands of the Altiplano (Map 1) with altitudes between 3800 and 4200 meters above sea level.[1291] It is located in the Central Altiplano, in the territory between the west of Lake Poopó and the Western Cordillera, embedded in the northwest of the Department of Oruro (whose previous indigenous name was Uru Uru) within its provinces of Carangas, Litoral, Mejillones, Nor Carangas, Sabaya, Sur Carangas, Sajama and San Pedro de Totora (Map 2).

According to official data from the National Institute of Statistics of Bolivia (INE for its Spanish acronym), the Department of Oruro had 501.757 inhabitants in 2012 of the 10.35 million inhabitants in Bolivia. The INE estimates that by 2020 Oruro will have reached 551,116 inhabitants, of which approximately 63,577 belong to Jach'a Karangas, in contrast to the 349,373 inhabitants of the province of Cercado, where Oruro's main capital city is located with a population of 302,643.[1292] Although it is a common opinion of the indigenous people interviewed that there is a high migration from the countryside to the cities of Bolivia, especially to the city of Oruro,[1293] and even to foreign countries, and that mainly the older adults remain in the countryside, there is also the perception that the majority of JK's population has a double residence in the countryside and a city in Bolivia. It gave rise to the dichotomy of residents, i.e., indigenous people who live in the city and visit their communities, and those who actually live in the Karangas' territory. Social migration calls into question the strengthening

[1288] Mesa Gisbert, de Mesa Figueroa and Gisbert (n 662) 11.
[1289] Although the name of this indigenous people is also spelled Carangas or Karankas, the name Karangas is preferred in this study, as it is thus written in Consejo de Gobierno del Suyu Jach'a Karangas (n 53); Consejo de Gobierno del Suyu Jach'a Karangas, 'Reglamento Interno Concejo Occidental de Ayllus de La Nación Originaria Suyu Jach'a Karangas' (19 diciembre 2011).
[1290] Article 1 Consejo de Gobierno del Suyu Jach'a Karangas (n 53).
[1291] Schubert and Flores Condori (n 54) 27.
[1292] Instituto Nacional de Estadística Bolivia, 'Población y Hechos Vitales' (*Instituto Nacional de Estadísticas - INE Bolivia*) s Proyecciones de población, según departamento y municipio, 2012-2020 <https://www.ine.gob.bo/index.php/censos-y-proyecciones-de-poblacion-sociales/> accessed 27 October 2020.
[1293] The department of Oruro has an average net total migration rate (international and internal) of -2.59 between the periods of 2012 and 2020, according to ibid Oruro: proyección de la poblacion total e indicadores demográficos 2012-2020.

and exercise of cultural rights since indigenous people no longer live in their territories, they are unaware of the reality of their community and its customs, and they begin to forget and disobey them.[1294]

*Map 1. Geographical context of Jach'a Karangas in the Plurinational State of Bolivia*




*Source:* Self-made based on the data existent on ArcGIS online[1295] and Jach'a Karangas archives.

Moreover, the Bolivian Plurinational Constitutional Court (PCC) explained this reality manifesting that

[1294] René Guery Chuquimia Escobar, Rubén Chambi Mayta and Fernando Claros Aramayo, *La reconstitución del Jach'a Suyu y la Nación Pakajaqi. Entre el poder local y la colonialidad del derecho indígena* (Fundación Programa de Investigación estratégica en Bolivia (PIEB) 2010) 72.
[1295] 'ArcGIS Online' <https://www.arcgis.com/> accessed 2 November 2020.

> ‘since ancient times, the lowland peoples had to migrate in search of the land without evil (*ivimaräei*). In the highlands, they were forced to migrate in search of the longed-for 'development.' For this reason, thousands of indigenous people left their communities to the cities or abroad. However, it is noted that Quechuas, Aymaras, Guarani, etc. continue to be a community; they return to it. Children and grandchildren of migrants continue to belong to the community because they continue to be in contact with it. It leads to the understanding that belonging to the 'territory' is inseparable from identity. Hence, their identity is not individual but in community, which makes the community the foundation of the existence of the *jaqi* (person).’[1296]

Migration possibly arises from economic reasons. Although JK’s main activities are agriculture and livestock,[1297] this region’s climate is classified as semi-arid and cold, with dry seasons of autumn, winter, and spring, which produce frost, snow, hail, and little rainfall,[1298] which are conditions unfavorable for such activities. Moreover, it is illustrative to state that Oruro’s department represents only 5.20% of Bolivia’s GDP on average in the last ten years (2009-2019),[1299] ranking sixth out of the nine Bolivian departments, and that only 4% of that GDP corresponds to agriculture and livestock on average in the same period.[1300]

In this regard, a former indigenous authority living in the city of Oruro stated that *‘it is the dream of the members of the Karangas communities to have a house in the city of Oruro,’* [1301] which is a factor that weakens the culture, but that happens for economic reasons. He comments that the first migrations he knows, almost without return, were to Chile in the 60s, then in the 80s to Argentina, Brazil, and even Europe. Now the migrations are mainly to the cities of Bolivia. He estimates that more than 80 percent of the Karangas population has a double residence, in the communities within Karangas and in the cities, especially Oruro. He explains that, as dual residency now seems more and more regular, they are beginning to propose that ‘urban indigenous peoples’ be recognized and then affiliated with Jach'a Karangas, as is the case in other countries.

Nevertheless, this former authority maintains that migrants from the city of Oruro rarely lose their relationship with the Karangas territory, as they usually visit their communities two or three times a year, especially during festivities. Furthermore, he says, those migrants who have *Sayañas*, or lands in the Karangas territory, also assume indigenous positions since everyone who occupies a *Sayaña* is obliged to assume them, which implies their greater permanence in the territory. However, he continues, the migrants' descendants are gradually losing this relationship with their territory, saying that they are from Oruro and that in Karangas are their grandparents' lands. Despite everything, he consoles himself by saying indigenous members are always present in Karangas with economic livestock activities.

The Department of Oruro is territory of three other indigenous peoples: the Killaka Asanajaqi (Quillacas Asanaques, Quillazas or Jakisa), Suras Urus Chipaya (or Sora), and Urus Lago Poopó (or simply Urus).

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[1296] *DCP 0006/2013* (n 774) para III.7.1.
[1297] Specially llamas, alpacas and quinoa, according to Ministerio de Desarrollo Productivo y Economía Plural - Bolivia, ‘Atlas de vocaciones y potencialidades productivas de Oruro, Bolivia’ (Ministerio de Desarrollo Productivo y Economía Plural - Bolivia, 2017).
[1298] ‘Atlas Del Viceministerio de Tierras Bolivia - Oruro’ (*Viceministerio de Tierras - Ministerio de Desarrollo Rural y Tierras*) <https://www.vicetierras.gob.bo/atlas/Atlas/Fichas/Tierras%20Altas/ORURO/> accessed 27 October 2020.
[1299] Instituto Nacional de Estadística Bolivia, ‘PIB Departamental’ (*INE*) s Participación departamental en el producto interno bruto según departamento 1988-2019 <https://www.ine.gob.bo/index.php/pib-departamental/> accessed 29 October 2020.
[1300] ibid Oruro: producto interno bruto según actividad económica 1988-2019.
[1301] Interview G-2020-30.

Each of these indigenous peoples currently constitutes a *Suyu* (Map 2). The name of Suyu was born in the Inca empire, in which there was a territorial organization with a center in Cuzco (a name that means the navel of the world) founded in the Tahuantinsuyo (also Tawantinsuyu) or land of the four suyus: Chinchasuyo (north), Cuntisuyu (on the Pacific coast), Antisuyo (in the jungle) and Collasuyo (in the Altiplano).[1302] The Tahuantinsuyo government had a dual form reflected in Cuzco, which was divided into the *urin* and *hanan* (Chinchasuyo and Collasuyo were *hanan* and Antisuyo and Cuntisuyo were *urin*).[1303] Morevover, the Collasuyo was constituted, among others, by the Karangas, who at that time had a continuous and discontinuous territory (*Taquintas*) with different ecological levels in the valleys of Chuquisaca (Inquisivi, Quime), Cochabamba (Quillacollo), as well as in the Pacific coast (Arica, Arequipa, Isluwa, Asapa, and Chiapa).[1304]

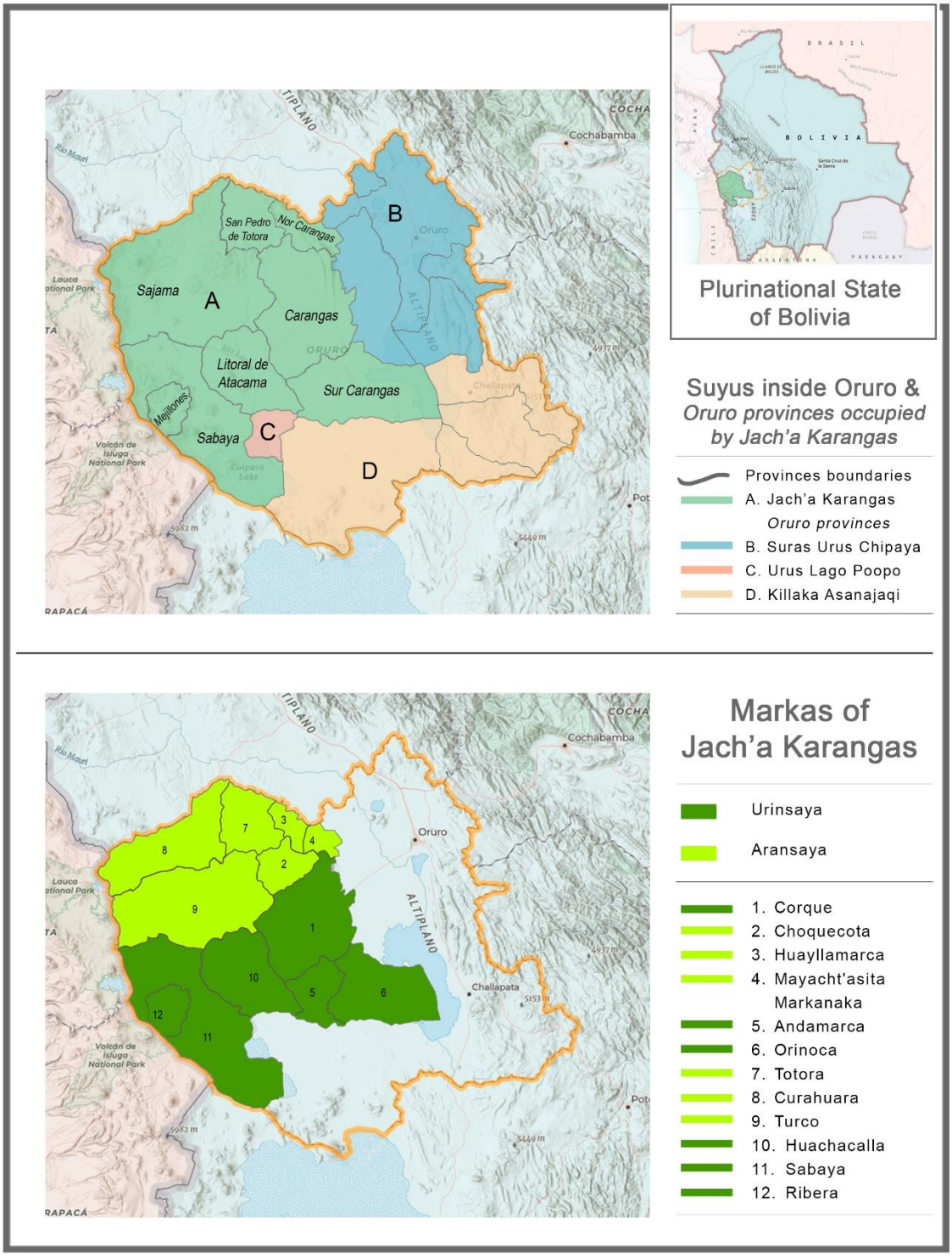
According to its Statute,[1305] JK is a precolonial and pastoral[1306] Aymara nation[1307] that preceded the *Tihuanacota* and *Inca's* civilization, the Spanish colonization, and the Bolivian State.[1308] However, Mesa argues that the Karangas' people began their existence in approximately 1100 AD, after the Tiahuanaco Empire disappeared (years 200 BC-1000 AD), and before the Inca Empire (years 1450-1538 AD approximately), being the Wankarani culture (approximately 1200-200 BC) which previously occupied the territories that now correspond to Oruro, Bolivia.[1309] Quiroga states that, in the pre-Hispanic period, Aymara's social identity was determined by belonging to ayllus. In the 15th century, Killaka - Asanaqi was a federation of Aymara '*Señoríos'* that together with Karanqa, Q'ara Q'ara, Chicha, and others formed the great Charka confederation. She maintains that during the Colony, they were autonomous nations in terms of their territorial management and exercised an autonomous power outside the limits set by the Spanish Crown, a situation that continued in force with few changes during the Republic, although a process was carried out to deconstruct the pre-Hispanic political-administrative units.[1310] For instance, the Agrarian Reform of 1953 introduced a different settlement model accompanied by other essential changes, such as converting *ayllus* into unions. In some Aymara sectors, such as Karangas, the organization of the ayllu and the traditional authorities are preserved, understanding that it is a very serious offense to be associated with unions or organizations that are contrary to the demands of indigenous peoples.[1311]

JK is an Aymara nation that through its history established mechanisms of resistance that allowed it to conserve and adapt its ancestral forms of social, political and territorial organization.[1312] The Karangas maintain that thanks to their ancestors' heroic struggle and the purchase of titles of the Crown of Spain, they were free and did not know '*pongueaje'* (forced servitude imposed during the beginning of the Republic of Bolivia in favor of landlords and creoles). [1313] Furthermore, they claim that despite the

[1302] Mesa Gisbert, de Mesa Figueroa and Gisbert (n 662) 54.
[1303] ibid.
[1304] Consejo de Gobierno del Suyu Jach'a Karangas (n 53) s Preamble.
[1305] Cf. 'Administration of Justice' on page 49 to review JK's approval of its Statute. The complete JK's Statute could be consulted on page 415 (Annex A) in its original version (Spanish) for further reference.
[1306] JK declared that they are shepherds par excellence, especially of camelids, which is the basis of their economy, main food, clothing, and means of transport, according to preamble of Consejo de Gobierno del Suyu Jach'a Karangas (n 53).
[1307] They were speakers of the *Jaqi Aru* or Aymara, who were called *people of the height* to differentiate them from the inhabitants of valleys or *runasimi* or *quischwa*, who arrived in the Lake Titicaca basin and adjacent areas of the Uru in the late days of the Tiwanaku empire, according to Quiroga (n 832) 8.
[1308] Article 1 Consejo de Gobierno del Suyu Jach'a Karangas (n 53).
[1309] Mesa Gisbert, de Mesa Figueroa and Gisbert (n 662).
[1310] Quiroga (n 832) 8–9.
[1311] Consejo de Gobierno del Suyu Jach'a Karangas (n 1289), article 53.g.
[1312] Molina Barrios and others (n 878) 36.
[1313] Consejo de Gobierno del Suyu Jach'a Karangas (n 53) s Preamble.

political-administrative division of Bolivia into departments, provinces, cantons, and municipalities, they could keep their territory, organization, authorities, and culture, for which they are committed to the construction and consolidation of the Plurinational State of Bolivia. [1314]

*Map 2. Suyus inside Oruro and Markas of Jach'a Karangas*




*Source:* Self-made based on the data existent on ArcGIS online[1315] and Jach'a Karangas archives.

[1314] ibid.
[1315] 'ArcGIS Online' (n 1295).

## Structure and Authorities

Just as during the Inca empire the Karangas adapted to the structure of the Tawantinsuyo, forming a Collasuyo's part, in recent history they also reconstituted themselves. Initially, on 11 June 1987, in Turcu Marka, they became the Western Council of Ayllus Jach'a Karangas (Consejo Occidental de Ayllus Jach'a Karangas) to be legally recognized by the State through Supreme Resolution 208507 of 20 December 1990.[1316] After the transformation of the State to Plurinational, on 20 June 2011, the Karangas adopted the XXV resolution in the Jach'a Mara Tantachawi held in Marka Andamarca, defining themselves as the Nación Originaria Suyu Jach'a Karangas.[1317] Consequently, on 19 December of the same year, Karangas approved its statute and internal regulations, [1318] establishing its economic and administrative capital in Corque Marka as the articulating center (taypi) of Suyu, and an office in the city of Oruro to coordinate with public and private institutions.[1319] Furthermore, Nación Suyu Jach'a Karangas is part of the National Council of Ayllus and Markas of Qullasuyu (CONAMAQ for its acronym in Spanish), which is the highest instance of political representation at the Bolivian level of the Ayllus and Markas existing in its highlands, and that currently agglomerates 16 suyus in six Bolivian departments.[1320]

According to article 11 of JK Statute, its organic structured is divided into two partialities: *Aransaya* and *Urinsaya*, which, from its smallest unit to the largest, encompass *Sayañas*,[1321] *Sapsis* or Communities, *Ayllus*, *Markas*, and the *Suyu*. Sayaña is the territorial cell that implies a territory and family unit, whose set makes up the Sapsi or Community. Sayaña is a space of land that a family occupies for its agricultural and livestock activities, which imposes the obligations of fulfilling the positions of authority[1322] and paying annually a contribution or sum of money to Jach'a Karangas. Each Sapsi involves a set of families related by consanguinity. A set of Sapsis makes up the Ayllu. The Ayllu is the cell of the territorial structure of the Suyu and is constituted in an economic, social, cultural, and territorial unit that is cohesive by a ritual and social center with its own organization. The set of Ayllus make up the Marka. The Marka[1323] is a territorial and government entity within JK, whose set forms a Partiality. Then, two Partialities make up the JK's Suyu, under the dual Aymara logic.

Aymara's duality (or *jaqthaptawi*)[1324] implies two opposites that need and complement each other, which allows considering different needs, balancing and avoiding conflicts, and promoting consensual solutions. [1325] According to Molina, Neri, and Tejerina, the Aymara duality exists in various areas and also encompasses the organization of territoriality into two halves: Aransaya (also Alasaya or Anansaya) and Urinsaya (also Majasaya or Hanansaya), in which each half has a meaning that opposes

[1316] Annex of the Consejo de Gobierno del Suyu Jach'a Karangas (n 53).
[1317] ibid, article 1.
[1318] Annex of the ibid.
[1319] ibid, article 7.
[1320] The departments are La Paz, Oruro, Potosí, Cochabamba, Chuquisaca, and Tarija. The 16 suyus are: Jach'a Karangas, Killaka, Asanajaqi, Charka, Qhara Qhara, Jach'a Pakajaqi, Urus, Suras, Kallawayas, Qullas, Chuwis, Chichas, Yamparas, Qhapaq, Umasuyu, Larecaja and Afrobolivian people, according to 'Conamaq' <http://www.conamaq.org/> accessed 31 October 2020.
[1321] Sayaña is the original family property within the Ayllu territory and is the inviolable domicile of the Aymara family, according to article 68 of Consejo de Gobierno del Suyu Jach'a Karangas (n 53).
[1322] Schubert and Flores Condori (n 54) 43.
[1323] Chuquimia Escobar, Chambi Mayta and Claros Aramayo (n 1294) 5, states thtat from the collective memory, it represents the union of the communities or ayllus, the union of the Aransaya and Urinsaya partialities.
[1324] Denis Racicot and others, *Sistema de toma de decisiones de la Nación Originaria Jach'a Karangas* (Oficina en Bolivia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos 2014).
[1325] Schubert and Flores Condori (n 54) 34–35.

the other and, at the same time, complements it, as a difference of equivalents.[1326] Furthermore, they sustain that each half is the possibility of the other to maintain harmony and pairing, without hierarchies, winners, or losers. [1327] In the logic of opposition and complementarity, Aransaya denotes above, man, puna, hard, and sun, while Urinsaya refers below, woman, valley, soft, and moon.[1328] Article 11 of JK Statute asserts that a Partiality is a territorial entity united by a ritual and social taypi (center), with common ancestral and cultural customs.

The Suyu (or nation, in Aymara translation[1329]) is territorially structured by the articulation of Markas with a common origin related to its Partiality. The Markas of the Urinsaya Partiality are Corque, Andamarca (or Andamarka), Huachacalla (or Wachakalla), Orinoca (or Orinoka), Rivera (or La Rivera), Sabaya and Belén de Andamarca; and the ones of Aransaya are: Totora (or Tutura), Choquecota (or Chukiquta), Curahuara (or Curawara), Turco (or Turku), Huayllamarca (or Huayllamarka), and Mayacht'asita Markanakas.[1330] Each Ayllu[1331] and Marka are also divided into Aransaya and Urinsaya partialities, except for Corque Marka which is divided into Samancha and Uravi (which have the local terms for Aransaya and Urinsaya).[1332] In Table 24 it can be seen how these Markas are distributed within the department of Oruro, within the framework of the Bolivian political and municipal division, as well as the Ayllus that compose them.

Considering the Karangas' organization, it could be said that each human group of Karangas associated by their origin, or Marka, makes up a *large* Karangas, which is what *jach'a* means in Aymara.[1333] Jach'a Karangas, or large Karangas, is constituted in a *nation* or *Suyu*, in its translation from Aymara. Then, Nación Jach'a Karangas or Suyu Jach'a Karangas are equivalent denominations but in different languages, despite the fact that they prefer to use the full name Nación Suyu Jach'a Karangas. Aditionally, as is recalled from the meaning of indigenous peoples and the plurinationality of Bolivia, *nation* is not only one of the components of the name that Bolivian indigenous peoples used to name themselves in their constitutional proposal presented to the constituent assembly, but also it is the preferred self-denomination of the indigenous peoples of the Bolivian highlands. The compound name is native indigenous-peasants nations and peoples [naciones y pueblos indígena originario campesinos], used 36 times in the approved 2009 constitutional text.

The Ayllus and Markas of the Suyu of Jach'a Karangas are found within the ancestral territory of Qullana, which constitutes an infinite space of the planet earth comprised in the Manqhapacha or magmatic subsoil, Akapacha or terrestrial soil and Alaxpacha or heaven, which together have value, but not a price (so it is inalienable, irreversible, non-seizable, imprescriptible and outside of public expropriation).[1334] The JK Statute establishes the following salient provisions on land and territory. The JK authorities administer the use, access to the land, and the territorial policy of all Ayllus and Communities, based on respect for the Pachamama and the Achachilas (or Mother Earth and spirits of

[1326] Molina Barrios and others (n 878) 112.
[1327] ibid.
[1328] Tristán Platt cited by ibid.
[1329] Chuquimia Escobar, Chambi Mayta and Claros Aramayo (n 1294) 3.
[1330] Except for the names in parentheses Consejo de Gobierno del Suyu Jach'a Karangas (n 53), article 11.
[1331] Schubert and Flores Condori (n 54).
[1332] Ximena Medinaceli and others, *Turco Marka: hombres, dioses y paisaje en la historia de un pueblo orureño; historia - arqueología - arquitectura* (Ximena Medinaceli ed, Primera edición, Instituto Estudios Bolivianos 2012) 226.
[1333] Juan Enrique Ebbing, *Gramática y Diccionario Aimara* (2a edn, Editorial 'Don Bosco' 1981).
[1334] Consejo de Gobierno del Suyu Jach'a Karangas (n 53), articles 59 and 60.

elders existing in the mountains, [1335] respectively).[1336] Therefore, public concessions must be authorized, social control of natural resources is exercised to private and public companies under penalty of their expulsion due to environmental damage, each Ayllu establishes ways of usufruct the land, and no conflict over land should pass to state courts without their knowledge.[1337] Furthermore, land usurpation is not allowed, the land cannot be sold, and it is inherited equally to male and female descendants unless they have changed their surnames or have renounced, despised, or abandoned it.[1338] The creation of new Ayllus and Markas, and the limits of the Sayañas, Ayllus, Markas, and Suyu are in charge of the council of authorities through the ten-year registration of lands and the land use plan.[1339]

*Table 24: Markas and Ayllus of Jach'a Karangas within Oruro's Provinces*

| Provinces | Markas / Partiality | Municipality | Parciality / Zone | Ayllus | |
|---|---|---|---|---|---|
| 1. Carangas | Corque / Urinsaya | 1. Corque | Urawi | Mallcunaca | Quita Quita |
| | | | | Puma | Tan:ga |
| | | | | A ucata | Wacalluma |
| | | | | Sullcawi | Coripata |
| | | | | Cataza | Chico Collana |
| | | | Samancha | Caracollo | Kala |
| | | | | Cupiasa | Camata |
| | | | | Collana | Sullcatunka |
| | Choquecota / Aransaya | 2. Choquecota | Aransaya | Jila Uta Qollana | Qollana |
| | | | | Taypi Uta Qollana | Sullka Tunka |
| | | | | Ta wi Qollana | Taypi Jila Uta |
| | | | | Sullka Uta Salla | |
| | Huayllamarca / Aransaya | 3. Huayllamarca, San Pedro de Totora | Chuquichambi | Jilanaca | Collana Carmen |
| | | | | Collana | Pumiri |
| | | | | Collo Huancaroma | |
| | | | San Miguel | Alianza 1° Kollo | Alianza 2° Kollo |
| | | | | Kollo Mallkunaca | Sullkiri Kollo |
| 2. Nor Carangas | Mayacht'asita Markanaka / Aransaya | 3. Huayllamarca, San Pedro de Totora | Chuquichambi | Jilanaca | Collana Carmen |
| | | | | Collana Primero | Pumiri |
| | | | | Collo Huancaroma | |
| | | | San Miguel | Alianza 1 ° Kollo | Sullkiri Kollo |

[1335] This Aymaran word concern the spirits of the elders existing in the mountains. Donato Gómez Bacarreza, *Diccionario Aymara* (Segunda, La Razón 2006) sv Achachila.
[1336] Consejo de Gobierno del Suyu Jach'a Karangas (n 53), article 62.
[1337] ibid, articles 63-65.
[1338] ibid, articles 63 and 66.
[1339] ibid, articles 78, 80, and 81.

| Provinces | Markas / Partiality | Municipality | Parciality / Zone | Ayllus | |
|---|---|---|---|---|---|
| | | | | Kollo Mallkunaca | |
| | | | Llanquera | Norte Jila Huara | Sullka Tunka |
| | | | | Central SullkaHuara | |
| | | | Belén de Choquecota | Jilanaca | Lerco |
| | | | Bella Vista | Sullka Tunka | |
| **3. Sur Carangas** | Andamarca / Urinsaya | 4. Santiago de Andamarca | -- | Bolivar | Pocorcollo |
| | | | | Yuruna | Cala Cala |
| | | | | Canalcillo | Rosa Pata |
| | Orinoca / Urinsaya<br><br>Belén de Andamarca / Urinsaya | 5. Belen de Andamarca | -- | Parco Marca | Sullca |
| | | | | Copacabana | Collana |
| | | | | Collo Huana | Inchura |
| | | | | Villa Huana | |
| **4. San Pedro de Totora** | Totora / Aransaya | 6. San Pedro de Totora | Aransaya | Aparu | Pachakama |
| | | | | Qollana | Lerco or Lirku |
| | | | | Parco | |
| | | | Urinsaya | Sapana | Warawa |
| | | | | Aymarani | Lupi |
| **5. Sajama** | Curahuara / Aransaya | 7. Curaguara de Carangas | Aransaya | Jila Uta Qollana | Sullka Uta Salla Qollana |
| | | | | Ta egi Uta Qollana | Sullka Tunka |
| | | | | Taypi Qollana | Ta i Jila Uta Qollana |
| | | | Urinsaya | Jila Uta Manasaya | Taypi Uta Choquemarka |
| | | | | Sullka Uta Manasaya | Sullka Uta Choquemarka |
| | | | | Jila Uta Choquemarka | Suni Papelpampa Choquemarka |
| | Turco / Aransaya | 8. Turco | Aransaya | Qollana | Sullka Salli |
| | | | | Jach'a Salli | Sullka Salli - Laca Laca |
| | | | Urinsaya | Jilanaca | Jila Pumiri |
| | | | | Jilanaca Chachacomani | Sullka Pumiri |
| | | | | Jilanaca Maca | Sullka Jilanaca - Cosapa |
| **6. Litoral** | Huachacalla / Urinsaya | 9. Huachacalla | Aransaya | Qollana | Tunka |
| | | | Urinsaya | Cañi | Camacho |
| | | 10. Escara | -- | | |
| | | 11. Cruz de Machacamarca | | | |
| | | 12. Yunguyu del Litoral | | | |

| Provinces | Markas / Partiality | Municipality | Parciality / Zone | Ayllus | |
|---|---|---|---|---|---|
| | | 13. Esmeralda | | | |
| 7. Atahuallpa | Sabaya / Urinsaya | 14. Sabaya | Aranzaya | Qollana | Canasa |
| | | | Urinsaya | Sacari | Comujo |
| | | 15. Coipasa | | | |
| 8. Mejillones | Ribera / Urinsaya | 16 La Ribera | Ribera | Cawara | Pabellón |
| | | 17. Todo Santos | Todo Santos Pira irani Chulumani | -- | |
| | | 18. Carangas | Carangas Triandrico | | |

*Source:* Self-made based on the data of Jach'a Karangas Statute, [1340] Territorial records of the Bolivian Vice Ministry of Lands,[1341] and a document prepared by Benjo Alconz, local field researcher from Jach'a Karangas.

JK declares as its principles the coexistence with nature and people with good, transparent behavior, peaceful collective or individual work (*Jan jayramti, Jan k'arimti* and *Jan lunt'atamti*), to live well (*suma qamaña*), the joint exercise of positions between men and women (*chacha-warmi*) with alternation and rotation (*muyu* or *muyuña*) as a duty for having the right to land and belonging to the community.[1342] Despite the fact that the *chacha-warmi* principle follows the duality world view and provides equal gender opportunities to asume community charges, the Aymara people tend to male authority.[1343] The testimony of a female authority portrays this reality:

> *'Our ingrained customs persist today that the man must always be the one to speak and not the woman. It does not happen as the law tells us that men or women have the same rights and opportunities to exercise. Most of the "Mamas" assume their positions with little knowledge. In the course of the exercise of the position, one is just learning. But, as I told you, community members themselves give more value to the man's word. That is why the women are a kind of accompaniment to the man.* '[1344]

*Muyuña* implies that all community members have the right to hold positions of authority and that each unit will have the opportunity to appoint the higher units' authorities in turn (for instance, each community has the turn to appoint the Tamanis for the Ayllu). [1345] Moreover, JK follows the Aymara worldview that respects balance, harmony, solidarity, consensus,[1346] and reciprocity (*ayni*), where there is no struggle or destruction of opposites but their complementarity, and the sacredness of Mother Earth (Pachamama), Father Sun (Tata Inti or Tata Willka),[1347] the Sajama and tata Sabaya mountains,[1348] among others.

[1340] ibid, article 11.
[1341] 'Atlas Del Viceministerio de Tierras Bolivia - Oruro' (n 1298).
[1342] Consejo de Gobierno del Suyu Jach'a Karangas (n 53), article 8.
[1343] It is also an opinion of Racicot and others (n 1324). Although in the assemblies, the participation of women is minimal or lesser than male participation, the male authorities are not always with the female authorities (they are ch'ullas or alone), and the presence of women is more a symbolic matter for festive, ritual, or civic events, there are cases in which the woman exercises the position in the absence of her husband, according to Chuquimia Escobar, Chambi Mayta and Claros Aramayo (n 1294) 189.
[1344] Interview G-2019-46.
[1345] Schubert and Flores Condori (n 54) 39 and 41.
[1346] The consensus is a significant value, and at the end of the treatment of a subject, the authority asks '*kunjamas jilanaca, walikiskiti?'* (how is it brothers, okay?). The answer might be *jallalla*, (which means long live! a good wish, hope, and satisfaction). Racicot and others (n 1324) 9.
[1347] Consejo de Gobierno del Suyu Jach'a Karangas (n 53), article 8.
[1348] ibid, articles 54 and 57.

JK's essential purpose is to retake the political, economic, cultural, and social Sara Thaqui (also Thaki or Thakhi), that is based on ancestral ethical and moral values to forge a community in balance with nature, as well as its dignity, sovereignty, identity, territory, politics (with candidates for State and municipal institutions), self-determination, autonomy, and sustainable integral development.[1349] The Sara Thaqui is the hierarchical course of positions instituted by the communal system, from lowest to highest, and, as referred to in article 51 of the JK Statute, it is the integral political system of government based on self-determination, self-government, election, and rotation of positions, with dual exercise (man-woman or chacha-warmi) corresponding to JK's own rules and procedures. Sara Thaqui considers the merits achieved at the service of the community, Ayllu, and Marka of the applicants, and it establishes that the authorities' positions may not be repeated or lengthened for any reason.[1350] It is a maturation process for a better understanding and application of the principles and values, with which a newly married couple[1351] must start with lesser positions, gaining prestige and experience.[1352] More to the point, it is a learning or school of life that orders the organization and coexistence of the community, where the teachers are the community as a whole, led by the former authorities (*pasiris*), which help fulfill the roles entrusted by the community[1353] along the way or thaqui. The exercise of authority, in any case, is an unpaid service in reciprocity to being a member of the community and owning the sayaña or plot of land.[1354]

The authorities should remain in the Suyu, Marka, Ayllu, or Sapsi that corresponds and for the duration of their position. However, migration phenomena and the constitution of double residences make many elected authorities simply residents; that is, authorities who live in the cities and enter indigenous territories with a frequency varying in each case. Various challenges arise in this regard, especially the proper fulfillment of indigenous positions. As Chuquimia, Chambi, and Claros argue, the resident authorities' situation does not allow them to fulfill their government and ritual functions, which perhaps affects the very concept of original authority.[1355] The residents *'want to have land without doing anything.'*[1356] returning to the countryside after a long time. Conflicts occur because they left shepherds to take care of and exploit the land on their behalf, who then no longer want to return the land or have left the land abandoned, causing the neighbors or community members to start owning it.[1357] An indigenous member, who is also a lawyer, commented that one of the solutions being found is that

> *'the indigenous brothers*[1358] *who return after having abandoned their lands for a long time, have the right to retain some of it. It will not be 100% ... this happens in exchange for getting up to date concerning the advancement of the community ... It is a conciliatory position ... The*

[1349] ibid, article 5.
[1350] Consejo de Gobierno del Suyu Jach'a Karangas (n 1289), articles 41.c and 42.g.
[1351] Marriage necessarily occurs between man and woman, being the moment when the quality of *jaqi* or older adult is acquired, according to Racicot and others (n 1324) 63.
[1352] Schubert and Flores Condori (n 54) 41.
[1353] Viadez cited by Molina Barrios and others (n 878).
[1354] Racicot and others (n 1324) 16.
[1355] Chuquimia Escobar, Chambi Mayta and Claros Aramayo (n 1294) 68. In their book, they transcribe a 2008 interview with a community member in the southern part of the department of La Paz that refers to a resident mallku (the one that lives in a city) expressing: 'I call them *mallkus in disguise* because they live in La Paz, and when there is a meeting or council, they arrive, get off the bus and voila, put on their poncho and whip. Then, when the meeting ends, they take off their poncho, put on their jacket again, and return to the bus heading to the city. They do not live here, do not know the community's reality or customs, and no longer comply with them.' [Own translation and highlighting]. ibid 72.
[1356] Interview G-2018-04.
[1357] Interviews G-2018-04, G-2018-13, G-2019-30, G-2019-40, G-2019-30, among others.
[1358] The members of the communities call each other brothers and sisters.

*children and grandchildren who are returning must minimally get up to date and comply with charges originating from the community.'* [1359]

According to the organization's level, the various JK's positions of authority are referred to in Table 25 and Table 26. The election of the authorities sometimes takes place several years before the start of the position, and the election of several generations of authorities can be decided on a single occasion for years to come,[1360] what possibly happens so that they can prepare for the position, since they are not paid positions, and represent, on the contrary, expenses and impoverishment. The elected authorities, before their consecration,[1361] are called *machaqas* or new authorities, and after concluding their position they are called *pasiris* or outgoing authorities. It is interesting to note that the JK Statute reserves its article 48 to state that now the denominations of authorities with colonial names, which were previously common, such as *agente cantonal* or titular, cantonal and auxiliary *corregidores*,[1362] are now 'eliminated.' Furthermore, the names of the positions have meanings; for example, *sullka* is younger, *jilaqata* is chief, *awatiri* is shepherd, *tamani* comes from *tama* which is 'group,' together with the suffix *ni* which is to congregate people, mallku is chief or condor, *t'alla* is a lady, *apu* is master, and *amauta* is wise, thinker or old.[1363] Apart from these positions, there are other functions that indigenous members can occupy, such as being part of the school board, which is one of the initial functions within the community, or being in charge of organizing festivities.

[1359] Interview G-2020-04.

[1360] Schubert and Flores Condori (n 54). It is a common procedure to elect authorities at the sapi, ayllu, and marka level (termed *ira)* three years in advance, time taken to prepare and know the problems in advance, know the activities of the authorities and projects for good management, according to Racicot and others (n 1324) 20.

[1361] The meaning of the word *consecration* implies ritual and social ceremonies in each Ayllu and Marka in the specific times of June 19-21 for the Aymara New Year, or from December to January, as expressed in Consejo de Gobierno del Suyu Jach'a Karangas (n 53), articles 31, 38 and 40. This is also explained because the indigenous authorities are carriers of a spiritual power, according to Racicot and others (n 1324) 22.

[1362] The Republic of Bolivia had as executive authorities the president at the head of the state, a prefect in each department, a subprefect in each province, and a 'corregidor' in each canton. Schubert and Flores Condori (n 54) 62. Corregidores responded to the administrative and political state structure and not to the indigenous autonomies, submitting them to their command.

[1363] Ebbing (n 1333). Mallku is related to *kunturi* or condor and, like this one, it is as if he looked from above showing his jurisdiction, while Apu regards to the divinities and spirits that are found on the mountain, according to Racicot and others (n 1324) 33 and 39.

*Table 25: Institutional structure of the indigenous authorities of Jach'a Karangas. Organizational level, position, title and description*

| Organizational level | Position (Chacha - Warmi) | Title name for men (chacha) | Title name for women (warmi) | Description |
|---|---|---|---|---|
| Comunidad (community) or sapsi | Sullka Tamani, Sullka Awatiri (Art. 10) or Sullka Jilaqata (Art. 22) | Sullka Tata Tamani, Sullka Tata Awatiri (At. 10) or Sullka Jilaqata (Art. 22) according to denomination of Markas | Sullka Mama Tamani, Sullka Mama Awatiri, or Sullka Mama Jilaqata | Highest authority in the community (Art. 22) |
| Ayllu | Awatiri or Tamani (Art. 10) | Tata Awatiri or Tata Tamani (At. 10) Also Awatiri Auqui, Tata Jilaqata, Tamani Auqui, Marani Awqui, Marka Awqui, Mallky llanto, Awatiri Jiliri or Jilaqatas Awqui, according to denomination of Markas (Arts. 24-25) | Mama Awatiri or Mama Tamani (Art. 10) Also Awatiri Tayka, Mama Jilaqata, Tamani Tayka, Marani Tayka, Marka Tayka, Mallku llanto, Mama Jiliri, according to denominations of Markas (Arts. 24-25) | Maximum social, political, economic authority of the Ayllu and spiritual guide of the community and the Ayllu (Art. 24) |
| Marka | Mallku of Marka - Mama T'alla of Marka Mallku of Council - Mama T'alla of Marka (Art. 10) | Mallku of Marka or Mallku of Council | Mama T'alla of Marka | Maximum Authority of the Marka, represented by Aransaya - Urinsaya partialities, according to the Muyu established by each Marka (Art. 32) |
| Marka | Mallku of Government Council - T'alla of Government Council (Aransaya Partiality and Urinsaya Partiality) | Mallku of Government Council (Aransaya partiality and Urinsaya Partiality) | T'alla of Government Council (Aransaya partiality and Urinsaya Partiality) | Maximum Authority of the Marka, represented by Aransaya - Urinsaya partialities, according to the Muyu established by each Marka (Art. 34) |
| Nación Originaria Suyu Jach'a Karangas | Apu Mallku - Apu Thalla (Aransaya partiality and Urinsaya Partiality) | Apu Mallku (Aransaya partiality and Urinsaya Partiality) | Apu Thalla (Aransaya partiality and Urinsaya Partiality) | This dual original ancestral authority is the government of Nación Originaria Suyu Jach'a Karangas. They are represented by Aransaya - Urinsaya partialities (Art. 36) |
| Nación Originaria Suyu Jach'a Karangas | Mallku of CONAMAQ Council | Apu Mallku (Aransaya partiality and Urinsaya Partiality) | Apu Thalla (Aransaya partiality and Urinsaya Partiality) | JK is represented on the National Council of Ayllus and Markas of Qullasuyu (CONAMAQ-B) with Apu Mallku and Mama T'alla (represented by Aransaya - Urinsaya partialities) (Art. 38) |
| Nación Originaria Suyu Jach'a Karangas | Amawta | -- | -- | Is the sage of JK (Art. 40) |

*Source:* Self-made based on the data of the JK Statute.

*Table 26: Institutional structure of the indigenous authorities of Jach'a Karangas. Organizational level, position, requirements, authority, duties, and duration of the post*

| Organizational level | Position (Chacha - Warmi) | Requirements | Authority and duties | Duration of the post |
|---|---|---|---|---|
| Comunidad (community) or sapsi | Sullka Tamani, Sullka Awatiri (Art. 10) or Sullka Jilaqata (Art. 22) | Art. 22<br>Be married (Chacha-Warmi), not having economic debts with the community, be moral, resign to political parties, know customs and habits, live in the community while during the position, among others | Art. 23.b<br>-Know and resolve in the first instance conflicts between community members within the community and with other community members<br>-Act on behalf of the community in front of the Ayllu and the Marka's Authorities Council<br>-Communicate indigenous peoples rights<br>-Guide councils (cabildos)<br>-Sign agreements with public and private institutions coordinating with the Awatiri<br>-Inform the members of the community the decisions taken.<br>-Promote and implement indigenous autonomy | Art. 22<br>One year |
| Ayllu | Awatiri or Tamani (Art. 10) | Art. 28<br>Be married (Chacha-Warmi), not having economic debts with the community and Ayllu, be moral, resign to political parties, know customs and habits, have previoulsy been Sullka Tamani (Awatiri), respect the use and representation of original symbols, have been chosen by council, live in the Ayllu while during the position, not having two post at the same time, among others (Art. 26).<br>Don't be lazy, thief, liar, libertine, and so on | Art. 27<br>-Intervene and reconcile in conflicts between and within families<br>-To administer justice by applying indigenous rules and procedures of the Ayllu<br>-Reconcile families<br>-Correct negligent<br>-Know and resolve land and boundary disputes<br>-Know and resolve in the first instance the conflicts between community members of the Ayllu<br>-Do Muyt'as (visits)[1364] regarding property limits and good behavior of families<br>-Register Sayañas, births and deaths of the Ayllu<br>-Act on behalf of the Ayllu in front of the Marka's Authorities Council<br>-Permanently use the indigenous authority symbols, among others<br>-Sign agreements with public and private institutions to benefit of community members of the Ayllu<br>-Inform the members of the community the decisions taken<br>-Control and supervise the Authorities Council<br>-Promote and implement indigenous autonomy | Art. 24<br>One year<br><br>Art. 31<br>The authority's consecration occurs in Aymara New Year (June) or between December and January |
| Marka | Mallku of Marka - Mama T'alla (or Thalla) of Marka Mallku of Council - | Art. 32<br>Be married (Chacha-Warmi), not having economic debts with the Ayllu and Marka, be moral, not having political party, knows customs | Art. 33<br>-Resolve social and territorial disputes<br>-Coordinate with Awatiris to solve land issues between community members<br>-Attend the conflicts of sayañeros (owners of sayañas) of their Marka's | Art. 32<br>One or two years depending on habits and |

[1364] It probably comes from the Aymara verb muytaña. Muytuña is to go around, according to Gómez Bacarreza (n 1335) sv Muytaña. It is the visit of the indigenous authorities that is made to the community members to introduce themselves, learn about the problems and interact, according to Racicot and others (n 1324) 27.

| Organizational level | Position (Chacha - Warmi) | Requirements | Authority and duties | Duration of the post |
|---|---|---|---|---|
| | Mama T'alla of Marka (Art. 10) | and habits, have previously been Sullka Tamani (Sullka Awatiri) and Tamani (Awatiri), have the endorsement of the Ayllu and their Marka, not belong to organizations contrary to indigenous peoples, among others | jurisdiction, hearing previously the community authorities' briefs<br>-Do Muyt'as arround the Ayllus<br>-Act on behalf of the Marka in front of the national, subnational governments and other indigenous peoples<br>-Participate in Mallkus Council, Suyu Government, Tantachawis of the Suyu, CONAMAQ, and Territorial Government Council of the Four Suyus in Oruro<br>-Sign agreements with private and public institutions to benefit the Marka with the consent of wawa qallus (community members)<br>-Inform Tamanis the decisions taken<br>-To replace the Mallku of Government Council in case of absence<br>-Promote and implement indigenous autonomy | customs of each Marka |
| Marka | Mallku of Government Council – T'alla of Government Council (Aransaya and Urinsaya Partialities) | Art. 34<br>-The same as Mallkus of Marka and T'allas of Marka (Art. 34)<br>-Have previously been Sullka Tamani (Sullka Awatiri), Tamani (Awatiri), an Mallku or T'alla of Marka | Art. 35<br>-The same as Mallkus of Marka and T'allas of Marka<br>-Attend to Government Council of Suyu Jach'a Karangas<br>-Inform to Government Council of their Marka the decisions taken | Art. 34<br>One or two years depending on habits and customs of each Marka |
| Nación Originaria Suyu Jach'a Karangas | Apu Mallku - Apu Thalla (Aransaya and Urinsaya Partialities) | Art. 36<br>-Be married (Chacha-Warmi)<br>-Sara Thaki (fulfill all inferior positions): have previously been Sullka Tamani (Sullka Awatiri), Tamani (Awatiri), Mallku or T'alla of Marka, and Mallku or Th'alla of Government Council<br>-Have the endorsement of the Ayllu, their Marka and their Suyu's partiality<br>-Not having economic debts with the Ayllu and Marka<br>-Having knowledge of all vindication policies of indigenous peoples<br>-Not belonging to any political party<br>-Be moral<br>-Not belong to organizations contrary to indigenous peoples (among others) | Art. 37<br>-Resolve social and territorial disputes within Suyu jurisdiction<br>-Attend the conflicts of sayañeros of their Suyus's jurisdiction, hearing previously the briefs of Mallku of Marka and the partiality<br>-Do Muyt'as arround the Ayllus<br>-Act on behalf of the Suyu in front of the national, subnational governments and other indigenous peoples<br>-Convene the Government Council of the Suyu and Tantachawis of JK<br>-Attend and lead the Territorial Government of the Four Suyus in Oruro<br>-Plan and program social, economic and cultural policies<br>-Sign agreements with public and private institutions to benefit of 13 Markas with the consent of the Government Council<br>-To be the main actor in the process of Sanitation of Community Lands of Origin and defense of its territory<br>-Promote indigenous autonomy (among others) | Art. 36<br>Two years<br>The change of authorities occurs intercalated between Aransaya and Urinsaya Partialities |
| Nación Originaria | Mallku of CONAMAQ Council | Art. 38<br>-Be married (Chacha-Warmi)<br>-Sara Thaki (fulfill all inferior positions): have | Art. 39<br>-Resolve social and territorial disputes within the Qullasuyu jurisdiction<br>-Attend the conflicts of sayañeros of their Suyus's jurisdiction, hearing previously | It is not defined |

| Organizational level | Position (Chacha - Warmi) | Requirements | Authority and duties | Duration of the post |
|---|---|---|---|---|
| Suyu Jach'a Karangas | | previously been Sullka Tamani (Sullka Awatiri), Tamani (Awatiri), Mallku or T'alla of Marka, Mallku or Th'alla of Government Council, and Apu Mallku<br>-Have the endorsement of the Ayllu, their Marka and the Suyu<br>-Not having economic debts with the Ayllu and Marka<br>-Having knowledge of all vindication policies of indigenous peoples<br>-Not belonging to any political party<br>-Be moral<br>-Not belong to organizations contrary to indigenous peoples (among others) | the briefs of Mallku of Marka and the partiality<br>-Do Muyt'as arround the Ayllus<br>-Act on behalf of the Suyu in front of the national, subnational governments and other indigenous peoples, plus in front of international institutions<br>-Attend to the Government Council of the Suyu and Tantachawis of JK<br>-Attend the Territorial Government of the Four Suyus in Oruro<br>-Plan and program social, economic and cultural policies<br>-Sign agreements with public and private institutions to benefit of 13 Markas with the consent of the Government Council<br>-Promote indigenous autonomy (among others) | |
| Nación Originaria Suyu Jach'a Karangas | Amawta | Art. 40<br>-Sara Thaki (fulfill all inferior positions): have previously been Sullka Tamani (Sullka Awatiri), Tamani (Awatiri), Mallku or T'alla of Marka, Mallku or Th'alla of Government Council, Apu Mallku, and positions in CONAMAQ-B<br>-Being honorable and respectable with sound knowledge over indigenous worldview and philosophy, ancestral ways, economic, political, social and cultural structures, and indigenous collective and individual rights<br>-Being pasiri of indigenous authority<br>-Be proposed by its Marka or Ayllu<br>-Not belonging to any political party<br>-Be moral (among others) | Art. 41<br>-Advise in the religious, spiritual, legislative, administrative and executive fields the Apu Mallkus, Apu T'allas, Mallkus and T'allas of Marka and Awatiris of Ayllus and communities<br>-Promote indigenous autonomy (among others) | Art. 40<br>Indefinite position from the consecration of authority |

*Source:* Self-made based on the data of the JK Statute.

## Jach'a Karangas Decision-making and Agreement Bodies

The JK Government structure is made up of the Tantachawinaka (communal decision-making body), Amuyt'irinka (legislative body), and Jilirinaka (executive body).[1365] The Suyu government rests with the Apu Mallku and Apu T'alla (or Thalla) of Urinsaya and Aransaya, which is accompanied by the Governing Council, made up of the Council and Markas Mallkus; and the Marka government rests with the Council Mallku-T'alla, Mallku-T'alla of the Marka and Awatiris and Mama Awatiris of Ayllus. [1366] The Amuyt'irinaka falls under the Amawtas Council (also Amautas), made of *pasiris* or former Apu Mallkus-Thallas, Mallkus-T'allas, tata-mama Awatiris, and community members with sound ancestral knowledge, who can resort to the support of NGOs, researchers, professionals, technicians, and young members interested in the claims of indigenous peoples. [1367] The Amuyt'irinaka fulfills functions of modification and interpretation of the Karangas norms, as well as advising and guiding the various levels of governments.[1368]

According to articles 43 and 50 of JK Statute, the Tantachawinaka is the highest decision-making body at each of the organizational levels and is made up of the following assemblies: the Jisk'a Mara Tantachawi and the Jach'a Mara Tantachawi[1369] at Suyu level (annual assemblies), Mallkus Council (monthly assembly), and Tantachawis of Marka, Ayllu and Community (annual assemblies). They are spaces of an ascending, public and participatory nature for the respective management, inspection and evaluation of each level. [1370] Table 27 refers to additional assemblies.

*Table 27: Governance and decision-making bodies*

| Suyu | Marka | Ayllu | Community |
|---|---|---|---|
| Jach'a Mara Tantachawi | Annual Marka Tantachawi | Annual assemblies | Annual assemblies |
| Jisk'a Mara Tantachawi | Monthly Councils | Monthly Assemblies | Monthly Assemblies |
| Jach'a Karangas Governing Council | -- | Biweekly Assemblies | Biweekly Assemblies |

*Source:* Article 50 of Jach'a Karangas Statute.

Jach'a Mara Tantachawi is the highest instance of deliberation and decision on issues related to the Suyu, as well as conflict resolution between Markas and Ayllus, that gathers during the Aymara's New Year (or *Machaq Mara* on June 19 to 21), with the Apu Mallku and Apu Thalla's Marka, the ex-authorities and current authorities, amautas, local leaders, community members (or *wawa qallus*) of the Markas, as well as judicial, political, administrative, municipal authorities and representatives of public and private organizations. [1371] At the request of the Markas and with prior approval of two-thirds of the Governing Council, it can meet extraordinarily to reform internal regulations, adopt decisions on social problems of interest or agree on political aspects that affect the structure of JK. [1372] The Jisk'a Mara Tantachawi is an intermediate instance of deliberation, decision, social control, and definition whose attributions are to safeguard the territorial unit of the Suyu, the modification of its internal norms, territorial development, elaborate public policies, plans, programs, and strategies of natural resources,

[1365] Consejo de Gobierno del Suyu Jach'a Karangas (n 53), article 42.
[1366] ibid, articles 44 and 45.
[1367] ibid, articles 52 and 53.
[1368] ibid, article 49.
[1369] Jisk'a means small, jach'a is big, mara is year, and Tantachawi is association or conglomerate, where tantasiña is to get together, according to Gómez Bacarreza (n 1335).
[1370] Consejo de Gobierno del Suyu Jach'a Karangas (n 53), article 43.
[1371] Consejo de Gobierno del Suyu Jach'a Karangas (n 1289), articles 12 to 14.
[1372] ibid, article 15.

as well as seeking institutional and economic support.[1373] The Tantachawis of Marka,[1374] Ayllu,[1375] and Community Councils[1376] have similar authorities in proportion to their areas.

Regarding the Jilirinaka, the authorities of Jach'a Karangas constitute it through the Government Council (at Suyu level), the Marka Authorities Council, and the Ayllu Authorities Council. The JK's authorities and councils execute Tantachawinaka's decisions and, in particular, administer justice among Karangas' members. Furthermore, the Tantachawinakas exercise social control over the functions of Jilirinaka.[1377]

The Government Council meets monthly to discuss norms, projects, agreements, proposals, and public policies favoring indigenous communities, social control, environment, prior consultation, capacity building, and heritage inventory. [1378] Furthermore, they have the authority to exercise indigenous justice in coordination with state justice, promoting indigenous peoples' collective rights.[1379] In this sense, it is remarkable that formal justice has a presence through ordinary and agri-environmental courts in the territory of Jach'a Karangas in four Markas: Corque, Curahuara, Sabaya, and Huachacalla. The Government Council also forms annual plans and organizes commissions of territorial organization, indigenous justice, social and economic development, land and territory, food security, and sovereignty, among others, within ordinary monthly sessions and, when required, in extraordinary sessions. [1380] Although the Apu Mallkus and Apu Thallas from Urinsaya and Aransaya, as well as Tata Mallkus and Mama Thallas from the Council of Markas inherently constitute the Government Council at Suyu level, the Mallkus and Thallas of Marka, the Awatiris of Ayllu and the Sullka Awatiris of Community can ask to join it, but only with the right to speak.[1381] The Councils of Marka[1382] and Ayllu[1383] have similar authorities in proportion to their areas.

Apart from these bodies, the Amautas Council is established as the highest ethical and moral authority according to the Andean worldview and for the orientation of political guidelines, public policies, and moral sanction to the authorities.[1384] It is made up of people of integrity who have completed Suyu's Thaqui, have held positions in Qullasuyu's National Council of Ayllus and Markas (or CONAMAQ), or are professionals of recognized trajectory, who know the context, indigenous rights, customs, and ancestral knowledge, who do not have a political affiliation, processes, or criminal record.[1385]

## *Symbolic and ritual elements*

In Karangas, symbolic and ritual elements are of the utmost importance when holding meetings, making decisions, acting as an authority, and, in general, carrying out social activities. These activities maintain

[1373] ibid, articles 16 to 18.
[1374] Chaired by Mallku and T'alla, and made up of tamanis, amautas, Ayllus leaders, political and administrative authorities, representatives of productive organizations, and community members, according to ibid, article 26.
[1375] Chaired by the Awatiris and made up of the Sullkatamanis, amautas, Ayllus leaders, representatives of productive organizations, as well as community members, according to ibid, articles 33 and 34.
[1376] Made up of the community members of sayañas, according to ibid, articles 35 and 36.
[1377] Consejo de Gobierno del Suyu Jach'a Karangas (n 53), article 43; Schubert and Flores Condori (n 54).
[1378] Consejo de Gobierno del Suyu Jach'a Karangas (n 1289), articles 7, 8, and 21.
[1379] ibid, article 20.d.
[1380] ibid, articles 9 and 10.
[1381] ibid, article 19.
[1382] Made up of the Mallkus and Thallas, and Ayllus' Tamanis, according to ibid, articles 22 and 23.
[1383] Made up of Awatiris, Sullkatamanis, and elected authorities of lower range to solve internal conflicts between communities through the administration of justice, among others, according to ibid, articles 28-32.
[1384] ibid, articles 43 and 47.
[1385] ibid, articles 44 and 45.

a close relationship with the spiritual and the totality of the surrounding reality or *Pachamama* (Mother Earth). Rituals are performed by the authorities in charge of presiding over the acts that bring together the other authorities and community members' participation. Besides, authorities must be dressed in the clothing that corresponds to their positions and carrying the physical elements that demonstrate them. The predominance of green colors, especially in the poncho, is characteristic of the Karangas authorities in allusion to the Pachamama. Men also carry a whip to represent justice, discipline, and correction for misconduct, as well as a scepter named *wara* (also *qulqiwara* or *quimsa rey)* that represents justice.[1386] The use of the *wara* occurs, especially during justice oral hearings, placed on the table in front of its bearer.

Typically, a gathering should begin with a ritual ceremony performed by the authorities that include coca leaves. According to Racicot, Romero, Chuquimia, and Fernández, coca leaves are raised with both hands, dropping them on a table and spreading a few drops of '*qirus of k'usa*' (an infusion of flowers), while invoking the deities (such as the Tata Sabaya and his Mama Karikima, Tata Sajama and Mama Azanake, or the Tata Illimani, among other surrounding mountains) to invite the Pachamama and asking for her license to start the meeting, augur understanding and strengthen the community.[1387] In words of Fernández the Pachamama is sacred because it is our mother and gives us sustenance for the good life or the suma qamaña. That is why the indigenous people, before starting any work, especially agriculture, invite her the best coca leaves and offer her alcohol, sprinkling the land.[1388]

Coca leaves, which are an indispensable and unavoidable element, rest on the table upon a colorful knitted blanket (awayu) where the authorities invited the participants to approach, greet, and pick up some of them to *akullicar* or *pijchar*,[1389] that is chew and retain them in their mouths to extract their essence. However, the participants carry their own coca leaves in small woven bags (*istalla* for women and *ch'uspa* for men[1390]). *Akullicar* coca is as if a dialogue is already being held, it is also the first word of the dialogue and the strengthening of relationships between people (to generate brotherhood), so this activity begins a few minutes before starting the meetings.[1391] The Amawta Mario Mendoza Gómez, an advisor to the Decolonization Unit of the Plurinational Constitutional Court, says that *akullicar* wisely introduces us to a dialogue of understanding, it allows us to open the conversation to think, analyze what we have to do and say, 'making our ideas immerse, and it leads us to a more reflective and wise language.'[1392] On special occasions, such as the Andean New Year or the Jach'a Mara Tantachawis, offerings are made with llama or lamb blood (*wilancha*) and tables on which various elements are burned in honor of and gratitude to the deities.[1393]

[1386] Racicot and others (n 1324) 56.
[1387] ibid 54.
[1388] Marcelo Fernández Osco, 'Modos Originarios de Resolución de Conflictos En Torno al Tema Tierra En La Zona Andina', *Modos originarios de resolución de conflictos en pueblos indígenas de Bolivia* (PIEB : Fundación UNIR Bolivia 2007) 30–31.
[1389] Akulliña is the Aymara's proper verb for chewing coca leaves according to Ebbing (n 1333). The use transformed akulliña into *acullicar*, also referred to as *pijchar* or *coquear* in Spanish.
[1390] ibid.
[1391] Racicot and others (n 1324) 54.
[1392] *Voto disidente declaración Constitucional Plurinacional 0028/2013* [2013] Tribunal Constitucional Plurinacional Expediente: 03058-2013-07-CAI, Efren Choque Capuma [II.5].
[1393] Racicot and others (n 1324) 57.

# Jach'a Karangas' Justice

## *Collective Burden to Harmony and Balance*

According to Schubert and Flores, indigenous law is a kind of oral-civic-social law that provides sanctions in the event of non-compliance with rules concerning the family (intrafamily behavior), land (redistribution, allocation, use, and loss of land), and procedural norms (which govern the way to resolve conflicts).[1394] Indigenous justice's main characteristics can be classified into two areas: substantial law and procedural law, as those authors call them. Regarding substantial law, they refer to the values of harmony, respect for life, the balance of partialities, and compliance with the principles of *ama qhilla, ama llulla,* and *ama suwa* (not to be lazy, liar and thief). Regarding procedural law, they suggest that the main task of the indigenous authorities' are to investigate the facts, weigh the parties' legitimate interests in dispute, and resolve conflicts promptly.[1395]

It is striking that the JK Statute proposes a reading of plural application of its legal system. Thus, it guarantees and recognizes both the exercise of Constitutional and international human rights, such as self-determination and cultural identity, as well as the strengthening of the rights, practices, customs, rituals of their worldview, and participation in JK's organizational structures through Sara Thaqui.[1396] This plural legal combination could be explained, perhaps, considering that the Karangas statute was approved in 2011 under the influence of the Bolivian Constitution of 2009 and the historical framework summarized in Table 12. This double allegiance does not remain in the Statute, but it is, in fact, undoubtedly present in the indigenous peoples of JK. The Constitution has an unusual prestige among the population of Karangas, who have it as an inescapable reference when explaining or commenting on their indigenous justice. Furthermore, they tend to prioritize the Constitution and mark it as the insurmountable legal limit to submit their decisions and actions, even forgetting their own law.

> *'I believe indigenous justice has been progressively strengthened since the new Constitution. Previously, it was disappearing. The cases were referred to the 'corregidores,' who are political authorities. We are recovering since the Constitution because the indigenous authority reappears.'*[1397]

> *'We always respect it. We cannot get out of the new Political Constitution of the State, the rules and procedures that exist, we cannot get out of there. It cannot be. We cannot get out of the context of the Political Constitution. We act on that because there are their rights.'*[1398]

> *'We have the Political Constitution of the State. Those of us who know it rely solely on that. However, other authorities do not know it, nor do they solve disputes.'*[1399]

To deepen the characterization of JK's indigenous justice, Molina, Negri, Claros, and Layme[1400] propose to inquire about the meaning of *conflict* as a cultural construction that, for that very reason, cannot be homogeneous or universal. They did this exercise in Jach'a Karangas in 2012, along with two

[1394] Schubert and Flores Condori (n 54) 19. Although these authors refer to Curahuara Marka's justice, the characteristics they mention are broad enough to encompass JK's justice considering the principles of its Statute.
[1395] ibid 67–71.
[1396] Consejo de Gobierno del Suyu Jach'a Karangas (n 53), articles 13-15.
[1397] Indigenous lawyer interview, G-2019-06.
[1398] Indigenous authority interview, G-2019-26.
[1399] Indigenous authority interview, G-2019-31.
[1400] Molina Barrios and others (n 878).

other indigenous peoples. They argue that the meaning of the conflict arises from the constant relationship between the material conditions (organizational structure) and the narratives of each social formation, which is why the concept of community is relevant both as a structure and as a narrative in indigenous peoples.

As a structure, they maintain, community refers to the common ownership and use of productive resources; non-inhibition of the potency of the collective subject; non-atomization of the political, economic, social, and cultural dimensions; horizontal, supportive, and reciprocal social relations rejecting power concentration by elites; and, the re-establishment of these balances through various means, including conflict.[1401] As a narrative, these authors argue that the community involves the knowledge of its members through their links forged in traditions, rites, spiritual discourses, and myths, in an identity based on ethnic property and reciprocity concerning duties. It is what they call *numus*, as part of the etymology of community. Indeed, following these authors, the word community [*communitas*] has two parts: '*cum'* concerns what links and '*numus'* is the sharing of a burden, duty, or task.[1402] Thus, the authorities' powers are not prerogatives but burdens of service to be shared. They argue that the *numus* summons the union by the feeling of debt and, at the same time, by the feeling of protection felt by the community members, where their subjectivities are possible only within the *numus* of the community.[1403] Consequently, they understand the community's conflict as an opportunity to reestablish order and balance in the community.[1404] In this sense, they assert that the community is continuously inclusive of its members through its narratives, and the exclusion of a member is exceptional when it is impossible to solve a conflict.[1405]

Molina, Negri, Claros, and Layme begin by arguing that in Jach'a Karangas, community forms of agricultural and livestock production persist through adaptation processes, as well as its community narrative in which not only community behavior predominates over the individual but the Sara Thaqui comprises the *numus* as an organizing principle.[1406] Among the terminology identified by these authors to refer to JK's conflict, the words *ch'axwa* and *jani suma qamaña* stand out.[1407] *Ch'axwa* (war or fight between several) implies a conflict of magnitude, especially over land (*uraqi*, a word that also denotes territory and life), which can occur between families, Communities, Ayllus, Markas, Partialities, and Suyus (intra-ethnic and inter-ethnic conflicts) and that has exceeded dialogue, breaking the balance of the community.[1408] *Jani suma qamaña*[1409] or *jani suma qamata* (to live badly) means to cause damage to Sara Thaqui, the balance, the interests, and the foundations of the community, by an individualistic transgression, since the word *jani* (evil) is also related with walking the wrong path (*jani suma thaquiru sarnaqaña*), individually and without knowing each other (*jani suma iñt'asisa qamaña*).[1410]

Following the holistic principle of Aymara duality, the *ch'axwa* is in front of the *muxa* (peace or agreement) as two complementary opposites, which do not imply annulment, where the realization of one depends on the realization of the other: there has to be a fight so that there is a reunion (apthapi), because if evil is avoided for good, good can turn into evil.[1411] Within this framework, consensus and

[1401] ibid 21–25.
[1402] ibid 26–27.
[1403] ibid 27–29.
[1404] ibid 30, citing Max Gluckman, Paul Bohannan, Pierre Clastres, Tristán Platt and Xavier Isko.
[1405] ibid 28.
[1406] ibid 40–41.
[1407] ibid 41–42.
[1408] ibid 43–44.
[1409] Suma qamaña (to live well) is a principle recognized in article 8 of the Bolivian Constitution.
[1410] Molina Barrios and others (n 878) 46–49.
[1411] ibid 110–113.

conciliation play an important role. Not only do indigenous authorities avoid imposing decisions if they are not indispensable, but they usually summon the parties and stakeholders to several conciliation hearings,[1412] declare hearing adjournments aiming at letting the parties talk privately and freely, and advise them to agree peacefully.

> *I see it as an authority: the good thing is always to enter peace, or we would be at enmity, and we would not be satisfied … The good thing will always be to agree on consensus more than anything else, on land and territory. For the suma qamaña [living well], living in harmony is being under the conditions of the mutual agreements of our ancestors. On the contrary, what is not good, is to impose or force.*[1413]

> *Perhaps it is not in the Constitution, but our procedures, which we have practiced for years, are agreements and consensuses.*[1414]

> *Here it is a bit of mediation ... even if you are right, but a little bit you must lose so that the other party also feels good*.[1415]

Whereas conciliation regards an alternative dispute resolution mechanism within the occidental paradigm, it is construed as a final decision or res judicata under indigenous law.[1416] As a result, whenever a conflict affects harmonious coexistence, the authorities' role, within a wide margin of discretion, is to encourage the reconciliation of those affected, and if this purpose fails, it is sent to a higher authority, or a coercive decision is adopted.[1417] Thus, the community also expects the authority to exercise its prerogatives and resolve the case if parties in conflict do not reach an agreement. A lawyer, who is also an indigenous member of JK, describes that

> *the indigenous jurisdiction has two stages that should be very clear: a mediative, conciliatory stage. Once it is exhausted, the authority must issue a resolution as a sentence in ordinary justice, and then there is a winner and a loser. The ideal is to reconcile, but since sometimes that does not happen, it has to be resolved by issuing a resolution, either in favor of one or the other*.[1418]

It is stressed that indigenous authorities rarely decide disputes between parties and reserve such exercise for those cases that refer to sanctions and the imposition of duties such as restitution of goods or redress. The indigenous authorities even consider that they cannot intervene with a decision in the parties' disputes when they refer to their particular issues, having only the duty to convene them to reach conciliation. It is the case, for instance, of an indigenous authority whose responses suggest that if parties do not reach an agreement, they might not comply with a decision.

> *Question: Now, if the two parties resort to the indigenous authority and he or she decides, does the loser accept that decision? How is it in this case in your experience?*

[1412] In two conciliation hearings in which the investigator was able to participate, directed by the Apu Mallkus of JK, it was observed that these authorities warned the parties that if they did not reach an agreement in the third hearing, they would decide the case directly.
[1413] Indigenous authority interview, G-2020-07.
[1414] Indigenous authority interview, G-2019-25.
[1415] Indigenous authority interview, G-2019-36.
[1416] *SCP 1259/2013-L* (n 243) para III.5.
[1417] Schubert and Flores Condori (n 54) 21.
[1418] Indigenous lawyer interview, G-2019-49.

*Answer: Both parties must always agree. If both parties agree, the indigenous authority benefits too. Now, if both parties do not agree, there is no way to decide. An indigenous authority cannot bind against the will.*[1419]

Indigenous agreements and decisions are recorded in handwritten indigenous minute books and signed by all stakeholders, usually the parties to the conflict and indigenous authorities. In Jach'a Karangas, these books contain meetings, activities, celebrations, memories, agreements, and dispute resolution, among others, in a disorderly manner since they do not use a separate justice book. In words of Spedding, although in some communities everything is recorded in a single minute book, many communities are extremely protective of them since they represent a kind of communal record, and they try to hide the records from the gaze of anyone outside, and even other members of the community.[1420] As a consequence, these books are often missing due to the absence of suitable places to store them, the interests of community members, or other reasons.

*'The indigenous authority has its minute book. There are all of us who have attended these boundary activities and those disputes.'*[1421]

*'In our own Corque, there is an absence of minute books and some minutes. There are no books, that is, they do not exist. So, I think it is necessary to file them well inventoried because they are documents [the authorities] have to rely on. There is not, and that is for lack of a suitable office.'*[1422]

Finally, Molina, Negri, Claros, and Layme argue that the administration of conflict in JK is more related to its causes than its effects by analyzing the community function as a whole, pursuing restorative justice rather than punitive and repressive actions, and trying to regain the community's harmony and balance.[1423] In other words, conflict is an open possibility in the continuous flow of life of a community, to rebalance harmony and ensure personal ties through a humanistic, comprehensive, and conciliatory justice that looks towards the common good in each case in concrete, without applying homogeneous abstract solutions with the blindness that characterizes State justice.

To this end, the exercise of indigenous justice is public, i.e., it concerns community attendance. Indigenous justice tends to be more public when the problem is more intense in terms of conflict, community values, or related persons. An ordinary judge settled in Jach'a Karangas and who is a member of an indigenous peoples in the northern part of Potosí explained that:

*'The strength of indigenous justice is that it is simple and easily resolves conflicts. On the other hand, the community acquires knowledge when solving the problems of the same community. The judgment is public, not in all cases, but it is when there are Jach'a Juchas [major disputes]. Depending on the conflict size, it is made in front of children, women and men of the Ayllu or the community. It is not done as in ordinary justice, within four walls in an office desk. The knowledge was transmitted orally, in a public way. Thus, everyone knows their rights and obligations within the community, Ayllu, and Marka. Through that very fact, everyone learned from the judgment and the process. Reading or writing was unnecessary since it emerged*

[1419] Indigenous authority interview, G-2019-29.
[1420] Alison Spedding Pallet, '¿Cosmopraxis, conciliación o cobardía? Análisis de unos libros de justicia en Los Yungas' [2016] Temas Sociales 215, 219–220.
[1421] Indigenous authority interview, G-2018-02.
[1422] Indigenous authority interview, G-2018-06.
[1423] Molina Barrios and others (n 878) 51–55.

*naturally from the community's will and the authorities. This way of administering justice was transmitted from generation to generation because it was the way to judge.* '[1424]

*Table 28: Duties of the indigenous justice authorities by position*

| Organizational level | Position (Chacha - Warmi) | Authority duties |
|---|---|---|
| Comunidad (community) or Sapsi | Sullka Tamani, Sullka Awatiri (Art. 10) or Sullka Jilaqata (Art. 22) | Art. 23.b<br>-Know and resolve in the first instance the conflicts between community members of the community with other communities |
| Ayllu | Awatiri or Tamani (Art. 10) | Art. 27<br>-Intervene and reconcile in conflicts between and within families<br>-To administer justice by applying indigenous rules and procedures of the Ayllu<br>-Reconcile families<br>-Correct negligent<br>-Know and resolve land and boundary disputes<br>-Know and resolve in the first instance the conflicts between community members of the Ayllu |
| Marka | Mallku of Marka - Mama T'alla (or Thalla) of Marka Mallku of Council - Mama T'alla of Marka (Art. 10) | Art. 33<br>-Resolve social and territorial disputes<br>-Coordinate with Awatiris to solve land issues between community members<br>-Attend the conflicts of sayañeros (owners of sayañas) of their Marka's jurisdiction, hearing previously the community authorities' briefs |
| Marka | Mallku of Government Council – T'alla of Government Council (Aransaya and Urinsaya Partialities) | Art. 35<br>-Resolve social and territorial disputes<br>-Coordinate with Awatiris to solve land issues between community members<br>-Attend the conflicts of sayañeros (owners of sayañas) of their Marka's jurisdiction, hearing previously the community authorities' briefs |
| Nación Originaria Suyu Jach'a Karangas | Apu Mallku - Apu Thalla (Aransaya and Urinsaya Partialities) | Art. 37<br>-Resolve social and territorial disputes within Suyu jurisdiction<br>-Attend the conflicts of sayañeros (owners of sayañas) of their Suyus's jurisdiction, hearing previously the briefs of Mallku of Marka and the partiality |
| Nación Originaria Suyu Jach'a Karangas | Mallku of CONAMAQ Council | Art. 39<br>-Resolve social and territorial disputes within the Qullasuyu jurisdiction<br>-Attend the conflicts of sayañeros of their Suyus's jurisdiction, hearing previously the briefs of Mallku of Marka and the partiality |

*Source:* Self-made based on the data of Jach'a Karangas Statute.

## *Jurisdictional Authorities and their Hierarchy*

Jach'a Karangas has as one of its objectives to administer its indigenous justice in coordination with the ordinary and agri-environmental jurisdictions[1425] through its indigenous authorities, which should be respectful people within the framework of its institutional hierarchy.[1426] Jilirinaka has the power to administer indigenous justice through indigenous authorities. However, the Tantachawinakas (or community meetings) also have the power to hear these disputes and solve them when the case becomes complex or delicate and affects the coexistence of the families. Furthermore, since Tantachawinaka is

[1424] Interview G-2019-50.
[1425] The JK Statute says 'ordinary justice.' Consejo de Gobierno del Suyu Jach'a Karangas (n 53), article 6.
[1426] From the lower-ranking authority named *Sullka Tamani* or *Sullka Awatiri* (at *Sapsi* level), passing by the *Tata* (man) *and Mama* (woman) *Awatiris* or *Tamanis* (at *Ayllu* level), the *Mallku* (man) *and Mama T'alla* (woman) *of Markas* and the *Mallku of council and Mama T'alla* (at *Marka* level) to the *Apu Mallkus* and *Apu T'alla of the Government Council* (at the *Suyu* level, as senior authorities).

the highest decision-making body, it can review the determinations of the Jilirinaka and exercise social control over investigative tasks undertaken by indigenous authorities in a specific case. Although the JK statute does not precisely establish the scope and limits of each of the indigenous authorities' exercises, Table 28 refers to them under the criteria of organization level (Sapsi, Ayllu, Marka, and Suyu) and position. It is underscored that the enumeration of the authorities' duties is not limited to any matter but JK's territorial level of organization. For instance, Ayllus' authorities have jurisdiction within their territorial limits to resolve any matter but not regarding Markas or Suyu's issues.

It is said that if a conflict is not resolved with the lower authorities, it must progressively pass to the authorities of greater hierarchy.[1427] However, when lower authorities can resolve conflicts, higher authorities do not accept cases, which is why referral of cases is recommended very exceptionally.[1428]

> *'When there is a problem, they go in a hierarchical order [to the authorities]. A community member must present his problem to the Jilakata, to the Ayllu's Tata Tamani. If the Tata Tamani cannot [resolve it], [it must] go up to Mallku of the Marka. If he cannot, it goes to the Mallku of Council. In all these cases, trying to solve [the dispute], the Tata Tamani of Ayllu must be necessarily there because he knows his wawa qallus [community member or "children of the territory"].'* [1429]

## *Offenses and Sanctions*

In a general reading, the author Regalado argues that even though there exist as many sanctions as indigenous justice systems, the types of sanctions are relatively similar: fines in kind or money, return of stolen objects, compensation, physical exercises, payment of damages through communal work, cold water washing, punishment with nettle, the whip, hitting with cactus, loss of communal rights, and expulsion from the community, also considered one of the most severe sanctions.[1430] Even though some of these sanctions could be construed as barbaric or savage,[1431] it should be noted that most of them are, to some extent, indigenous adaptations of colonial punishments.[1432] However, it must be recognized that after the harsh but brief punishment, the sanctioned persons have the possibility of being with their families, working to compensate for the evils caused, or restoring social relations in the community. Such activities may occur outside the community if the community member is expelled. It is not the case in current occidental sanction systems that have abolished corporal punishments exerting instead jailing, life imprisonment, or even the death penalty.

To understand the meaning of indigenous sanctions, professor Fernández Osco explains that they comprise moral, social, and legal dimensions. Thus, the sanction is moral for the feeling or behavior of the community towards the sanctioned person through insults, isolation of community decisions, and loss of the honor of him and his family, among others. This dimension seeks repentance and recognition of the fault by the sanctioned. Fernández argues that for this reason, it is an external or legal sanction,

[1427] Chuquimia Escobar, Chambi Mayta and Claros Aramayo (n 1294) 70.
[1428] Schubert and Flores Condori (n 54).
[1429] Indigenous authority interview, G-2018-07
[1430] Regalado (n 242) 105.
[1431] When referring to indigenous justice, Boaventura also uses the term: 'demonization by racism' in Sousa Santos (n 26) 21.
[1432] Libardo José Ariza and Manuel Iturralde, 'Whipping and Jailing: The Kapuria Jail, Indigenous Self-Government and the Hybridization of Punishment in Colombia' (2021) 2 Incarceration 2632666321994469, 12.

not an internal one, as understood in Western law.[1433] Sanctions also have a social scope since the sanctioned person's nuclear or extended social group also receives responsibility in a delegated manner. Thus, in the case of transgression of any of its members, the fault will fall on the whole, for which they will have to be directly responsible for the sanctions' effectiveness since the protected legal right is the family, the social group, and, in the background, the person.[1434] It is legal because indigenous sanctions are institutionalized through a power structure that makes them enforceable, but their execution varies according to the criminal act.[1435] As a result, when analyzing indigenous sanctions from an intercultural perspective, their moral, social and legal dimensions should be considered. However, the Plurinational Constitutional Court had constantly rejected the social dimension of indigenous sanctions through its jurisprudence, overruling indigenous decisions allegedly on the grounds of sanctioning third parties.[1436]

Fernando Huanacuni maintains that the meanings of State and ancestral community justice differ. State justice is individualistic and anthropocentric, presupposing individual human rights as fundamental. He conceives that human beings tend to expand and appropriate, so the State's task is to limit, rationalize, and regulate this tendency through individuals rights and obligations. Thus, he concludes, private property and capital are protected with priority, even if they go to the detriment of Mother Earth and life. Under such premises, Huanacuni argues that the Western paradigm limits the actions of individuals to achieve their coexistence and imposes coercion through the deprivation of liberty. In contrast, this Aymara author maintains that community legal systems prioritize the life and freedom of community members. As a consequence, punitive sanctions are not sought, but rather the restoration of balance by assigning forced labor roles that sensitize the complementation and care between all.[1437]

> *'Our indigenous justice is, as I can tell you, very disciplined. These crimes cannot occur, be it rape, theft, or usurpation. You cannot commit them because if you do, you are frowned upon, you have dishonored your family and relatives, and those things are not allowed in the community and the family itself. So, one who has committed crimes at least three times has to leave his home, like it or not, and must leave disciplined. Today, they may steal or rape and they [formal jurisdictions] do not say anything. Ordinary justice will take them for a few years; they will be in jail and released, and later, as if nothing, they will walk among us. That is different with our justice, much different.'*[1438]

Within this framework, Jach'a Karangas has no penalty for deprivation of liberty.[1439] However, Karangas provide proportional sanctions to the committed offenses' level in its Regulations article 54. Unlike unions that classify conduct and sanctions with higher precision,[1440] Karangas has no fixed regulation regarding sanctions (community work, fines, or compensation), which are imposed with great flexibility and according to the crime and the indigenous authorities' subjective decisions. The

[1433] Marcelo Fernández Osco, *La Ley Del Ayllu: Práctica de Jach'a Justicia y Jisk'a Justicia (Justicia Mayor y Justicia Menor) En La Comunidades Aymaras* (1a ed, Programa de Investigación Estratégica en Bolivia PIEB 2000) 52.
[1434] ibid 53.
[1435] ibid 54.
[1436] For instance, cf. cases 2010.1586.R-Amp-SC, 2015.0057-CAI-DC, and 2012.1422-AL-SC.
[1437] Huanacuni Mamani Fernando, *Buen Vivir / Vivir Bien. Filosofía, Políticas, Estrategias y Experiencias Regionales Andinas* (Tercera edición, Oxfam América y Solidaridad Suecia América Latina (SAL) 2010) 70–71.
[1438] Indigenous authority interview G-2018-09.
[1439] Molina Barrios and others (n 878) 103 transcribe an interview referred to as K-7, in which it is argued that: the ordinary justice immediately puts the person who caused the death in jail, without considering that this person's family is left without financial resources, deepening the problem. On the other hand, in indigenous justice, the person who caused the death has to support the victim's children and wife and their own family until they can do it for themselves. The murderer is not locked up in jail because indigenous culture does not have jails.
[1440] Chuquimia Escobar, Chambi Mayta and Claros Aramayo (n 1294) 190.

community members and the authorities can commit minor (Jisk'a Jucha), serious (Jach'a Jucha), and very serious (Sinti Jach'a Jucha) offenses. A former indigenous authority expressed that whilst *'Jach'a Jucha involves many problems, Jisk'a Jucha relates to few.'*[1441]

*Table 29: Offenses in Jach'a Karangas*

| Minor offenses (Jisk'a Jucha) | Serious offenses (Jacjh'a Jucha) | Very serious offenses (Sinti Jacjh'a Jucha) |
|---|---|---|
| Absence in councils | Abandonment of office without justification | Using the organization for personal purposes, whether political, economic, or cultural |
| Absence in acts of importance for the Ayllu | Do not wear the clothing of original authority and symbols | Abuse of authority for personal, family, or group benefit |
| Unexcused arrears | Go against the interests of the communities, ayllus, and markas | Misappropriation of organization's assets |
| Absences in work and scheduled activities | Not respecting and not enforcing the autonomy of the organization and its internal rules | Negotiate with the public sector without the consent of the Government Council of Apu Mallkus-Apu Thallas |
| Failure to report resolutions of Cabildos and Tantachawis | Not attending and not resolving conflicts of the community members | Betray the claims of indigenous peoples |
| Failure to respect the symbols of indigenous authority | Unjustified absence to social mobilizations demanding the rights of indigenous peoples | Doing political activities while being an authority |
| Carry out actions without consulting community members or other authorities | Failure to convene established councils of a decisive nature | Get involved with organizations that oppose the demands of indigenous peoples (unions) |
| | Failure to comply with the guidelines of the parent organization of Jach'a Karangas and the Qullasuyu's National Council of Ayllus and Markas (CONAMAQ) | Recurrence of serious offenses |
| | Submitting the claims of Jach'a Karangas to the political parties | Failure to account for the position of authority. |
| | Make decisions without consulting the community members of Ayllu and Marka that go against their rights | Failure to comply with internal rules and procedures |
| | Make decisions without consulting or agreeing with the pasiris and leaders | Not knowing or defending the rights of indigenous peoples |
| | Recurrence of minor offenses, up to two consecutive times | |
| | Failure to comply with the roles and functions of indigenous authorities | |

*Source:* Articles 50 to 53 of Jach'a Karangas Rules of Procedure.

Minor offenses generate reprimands[1442] that can constitute offenses and serious offenses in the event of recidivism. Serious offenses may, in the case of indigenous authorities, involve removal from office. Sanctions for very serious offenses correspond to distancing from the community (i.e., expulsion) and the application of indigenous justice. [1443] As such, the sanctions are given by JK authorities and the Councils of Government, of Markas, and of Ayllus, who are in charge of administering indigenous justice and, by doing so, specify the offenses and sanctions in each case.[1444] Even though Table 29 portrays the offenses in Jach'a Karangas' written Rules of Procedure, it is clarified that this group of

[1441] Interview G-2018-09.
[1442] It is the recommendation (iwxarapiña) that is given, as a message or teaching to restore the community order that precedes the conflict, according to Molina Barrios and others (n 878) 54.
[1443] Consejo de Gobierno del Suyu Jach'a Karangas (n 1289), article 54.
[1444] ibid, article 55.

offenses does not exclude other possible ones. For instance, it does not involve robbery or infidelity, which are nonetheless decided through their customs.

According to the interviews, the most common conflicts concern land disputes (limits, repossession of returning migrants, and agricultural activities on other people's land) that lead to fights and severe and minor injuries. On the other hand, there are cases of domestic violence and property issues related to theft, fraud, and verbal loans of seed and cattle, among others.[1445]

## *Two Sides of the Same Coin*

Jach'a Karangas' authorities begin indigenous judicial hearings and communal meetings with rituals devoted to the Pachamama, their ancestors, sharing the chewing of coca leaves and beverages, as explained above. Contrary to the opinion of Spedding,[1446] most of the interviews and the indigenous minutes reviewed for this research refer to ceremonial practices before the indigenous justice hearings.[1447] Within the ritual, the highest-ranking indigenous authorities in charge take the floor and reflect the parties to share their opinions with truth and respect to reach favorable agreements for them and the community. It is stressed that even when the authorities may occasionally exercise jurisdiction with physical violence, e.g., when inflicting a punishment, they request guidance and enlightening to wisely resolve the case in 'good time.'

It is interesting to contrast indigenous justice in extreme situations. The first circumstance shown refers to indigenous authorities' reflections in charge of a hearing before entering the discussion. It should be noted that these reflections are accompanied by the ritual act of chewing coca leaves and imbibing an alcoholic beverage (in small amounts) shared with their deities, ancestors, and the entire environment or Pachamama. Furthermore, they are invoked to witness and guide the hearing and are asked for wisdom to reach an adequate solution so that the hearing is 'in good time.' A transcription of a hearing's fraction recorded in a minute is transcribed below to illustrate these reflections. On this occasion, the hearing was led by a couple of indigenous authorities (chacha-warmi):

> *'Before the hearing, the Apu Mallku carried out the ritual act where the deities, Jilacatas, ancestors were summoned to 'eliminate the bad from the hearts so that the problem can be solved for the good of all.' To fulfill the request, the Apu Mallku invited the parties in conflict to 'acullicar' [chew coca] so that dialogue prevails in resolving the conflict. Immediately afterward, the Mallku... reflected the following to them:*
>
> *"In the Ayllu we are all brothers, family members. You went very far with the criminal process. There could be fights, but they must be overcome. The criminal process affects both of you. Today, you want to resolve the conflict. The criminal process can land you in jail, and the whole family suffers. And, with these actions, what example are you setting? To avoid penalties, I claimed jurisdiction [from the ordinary judge]. There will be no winners or losers in the reconciliation. Take into account that resorting to lawyers entails expenses and more expenses.*

[1445] Interviews G-2018-04, G-2018-07, G-2018-08, G-2019-14, G-2019-36, G-2019-49, G-2020-01, G-2020-03, G-2020-08, and G-2020-11.

[1446] Spedding Pallet (n 1420). This English anthropologist author, born in England and residing between La Paz city and the rural area of Los Yungas, where she cultivates coca leaves and is part of a peasant union, compares the reality of her Syndicate with Fernández Osco's descriptions of indigenous justice rituals made in his book Fernández Osco (n 1388).

[1447] Interviews G-2018-01, G-2018-04, G-2018-06, G-2018-07, and G-2018-09 confirm that indigenous jurisdiction has rituals at the beginning of the hearings, which are of utmost importance to reach favorable agreements to living well.

*The origin of the fight began with the terrain. Therefore, I ask you to help solve the conflict with your predisposition. In my capacity as an authority, I will act under the precept of the Constitution… in my capacity as the authority, I consider myself as your father. That is why the fight of my community members causes me pain. My performance will be subject to the truth of the facts."*

*The Mama Thalla said:*

*"My wish is that you reach a solution. I beg you to solve it. There must be recognition of our actions. Let us look for a solution with patience and heart."* [1448]

This kind of reflection on occasions leads to relatively intense commitments, as can be seen from the intentions that emerge from the following fragment of an act of commitment signed by the parties and indigenous authorities after resolving a dispute:

*'Fourth: Our commitment is for our dignity, for our family, for the community, for respecting our ancestors, and for our deities. This commitment will be complied with through the family's and community's vigilance.'* [1449]

Although in many disputes there is 'patience and heart,' and hearing after hearing is held, perhaps in excess and without apparent results, according to some community members, reflection, support, solution options, and acts of brotherhood usually emerge. It should be noted that indigenous people call each other brothers and sisters in the Bolivian highlands. These practices occur in cases where there is no harm to the community that could cause its immediate abomination, repudiation, and sense of urgency. However, in the following testimony of a former authority, the situation is the opposite. The community, frustrated by the ordinary jurisdiction's actions and irritated by a community member's behavior, took immediate and drastic actions. These actions could well be understood as excluded from indigenous jurisdiction:

*'The best thing about ordinary justice is that they have rules. However, the worst thing is that he, who has money, rules. Let's say, for example, a murder. I saw it ten years ago at my work. A person murdered his wife, and her family denounced and captured him. So far, so good. They have brought him to Oruro, but here, with the money, two weeks later, he was already back in his community. Even worst, he was acting haughty. There is much corruption. I don't know if the police have negotiated or the judges or the prosecutor, I don't know. The truth is that people have told me this person has murdered his wife and, after two weeks, he has returned threateningly. That is why, as I was telling you, money rules here, it's like a novel. But later, this same person has committed another murder, and then, as ordinary justice is not as effective, they [the community] have done justice. They grabbed him and made him sing because [the corpse of] the dead person appeared... They grabbed and tied him there, in the open, for three days. Just [for this reason], he spoke: 'I have killed him there...' Then, in a field, he had buried him, and on top of him, he had sown barley. [After four days] He [the murderer] was dying of thirst. They showed him water and told him: if you speak the whole truth, you will drink water. He has sung everything, they say: he had killed his father-in-law and [acknowledged] all the misdeeds that he has done. Later, they did not give him water, but they had burned him that night in the square.'* [1450]

[1448] Indigenous minute A.2019.05.04.
[1449] Indigenous minute A.2019.09.04b.
[1450] Former indigenous authority interview, G-2020-0).

There is a range of alternatives between these two extremes, most of which respect legal limits and human rights. When analyzing the Plurinational Constitutional Court's (PCC) ten years of jurisprudence, slightly more than 34% of all cases affected individual rights, essentially the right to due process, compared to almost 66% that were respectful of the individual rights and guarantees established in the Bolivian Constitution and its constitutionality block. It is highlighted that these numbers only concern the cases where the violation of individual rights was claimed and not when collective rights were at stake (e.g., when indigenous peoples claimed the recognition of their competence). Consequently, although the PCC cases are barely the tip of the iceberg regarding all the cases that indeed may exist, these numbers might represent reality to some extent, considering the distinct and several cases reviewed related to the indigenous peoples existing in Bolivia.

In JK, on the other hand, of the PCC's 21 cases reviewed, only three affected the right to due process and one the right to petition; that is to say, almost 81% respected individual rights. Moreover, neither of the indigenous minutes revised show signs of violation of individual rights. In this regard, it is interesting to cite a case that reached the media[1451] regarding a robbery of around one hundred llamas.[1452] In March 2014, one hundred heads of camelid cattle were stolen, including llamas and alpacas. The indigenous authorities formed an investigation commission among the three Markas involved (Curahuara de Carangas, Totora, and Turko). The indigenous authorities requested the ordinary jurisdiction and the prosecutor to help them conduct the investigations. However, they felt that the ordinary judge and the prosecutor assigned to the case did not fulfill their work and did not collaborate with the indigenous jurisdiction. Therefore, together with the indigenous commission formed, the indigenous authorities arrested five community members after conducting their investigations. During the detention of the accused, they were fed and interrogated, keeping a record of the responses through minutes. Then, they requested help from the ordinary jurisdiction and the prosecution to attend an oral hearing to decide the sanction of these people. However, neither the prosecution nor the judge showed up to carry out this activity, even though they verbally offered to do so. For these reasons, the indigenous authorities and the community members emitted a resolutive vote a) declaring that the indigenous jurisdiction would take charge of the entire investigation process and sanction theft, and b) expressed their distrust in the prosecutor's office and the ordinary jurisdiction for their performance failure, violation of collaboration, and discrimination against the indigenous jurisdiction. Immediately afterward, they conducted the indigenous hearing to decide on cattle theft. At the hearing, in the square of the town, they decided a) that the detainees were responsible for the robbery, b) for which they were given an economic sanction, c) the conditional release of the detainees as long as they comply with the payment of damages to the victims, and d) give them and the indigenous authorities guarantees that they will not threaten, insult or attack them.

During this process, which lasted approximately three months, the indigenous authorities assumed a relevant role in guiding, mediating, and solving the problem. On the one hand, they prevented community members from affecting the life and integrity of the people identified as thieves. During the time the thieves were detained, they were given food and room. The decision they adopted did not imply the loss of freedom for four years that the Penal Code foresees, but the return of what was stolen, the payment of damages, and the respective guarantees for satisfying those obligations. On the other hand, faced with the refusal of the ordinary jurisdiction and the prosecution to cooperate, the indigenous

[1451] 'Ladrones de llamas continuarán en Cosapa - Periódico La Patria (Oruro - Bolivia)' (*Periódico La Patria*) <https://impresa.lapatria.bo/noticia/180444/ladrones-de-llamas-continuaran-en-cosapa> accessed 29 November 2021.

[1452] The indigenous document revised in this case is signed as A.2014.04.30, and it was cited by interviews G-2019-32 and G-2019-49.

authorities decided to assume jurisdiction over the dispute fully and accomplished it within the protection of individual rights.

As can be seen from this data, the exercise of indigenous jurisdiction in JK not only safeguards the collective interest of the community by seeking to restore its balance and harmony but, at the same time, is cautious in protecting prerogatives, interests, and rights of the parties involved in a dispute. It is a dialogical justice that seeks concerted solutions to the problems that may occur within the community in a reflexive and restorative way. Although it is possible that there could be some excesses on some rare occasions, they could respond more to extreme situations in which the community is inflamed, indignant, and directly affected by execrable acts, than for reasons of actual jurisdictional exercise. Moreover, JK has a hierarchical structure of authorities and councils that entitle it to exercise jurisdiction with strength and justice, allowing the parties to resolve their disputes with the closest authorities of their Sapsis (Sullka Tamani, Sullka Awatiri, or Sullka Jilaqata) until JK's highest-ranking authorities if required (Apu Mallkus and Apu Thallas). In short, JK has enough institutionality to exercise its jurisdiction effectively.

# Part III

# Effectiveness of Jach'a Karangas' Collective Right to Exercise Indigenous Jurisdiction

# Chapter 5: Internal and External Factors Concerning the Effectiveness of Jach'a Karangas' Collective Right to Exercise Indigenous Jurisdiction

The third part of this dissertation aims to answer the second and third research questions that concern the extent to which duty bearers and the right holder allow the indigenous jurisdiction of Jach'a Karangas (JK) the possibility of resolving disputes. Given that this evaluation presupposes knowing the research findings, i.e., the research data, this part is divided into two chapters. Chapter five synthesizes the research findings and the foci of chapter six is to assess the effectiveness of JK's collective right to exercise indigenous jurisdiction.

Chapter five serves two purposes for this case study. The first is to present the research results in an orderly and systematized manner to relate each element proposed in the analytical model to reckon right's effectiveness. The second, on the other hand, attempts to explain to a certain extent both the reasons that support the effectiveness achieved by JK concerning its collective right to exercise jurisdiction and duty bearers' performance in this regard. This analysis is the substance or material basis for the effectiveness assessment of JK's jurisdiction exercise. Accordingly, research data systematization is conducted through a SWOT analysis (strengths, weaknesses, opportunities, and threats) to achieve both objectives. This type of analysis has been chosen, among other reasons, because it allows differentiating rights' internal and external exercise functions, as explained below.

On the other hand, chapter six's cornerstone is to evaluate the effectiveness of JK concerning the right to exercise its jurisdiction. The assessment is accomplished in a fragmented manner with respect to each stakeholder through the qualitative and quantitative approaches proposed in the research design. It tackles the analysis of duty bearers' and the right holder's actions. While its first part refers to the State's Judicial Organ and the activities of JK's indigenous individuals as duty bearers, its second part concerns the right holder's exercise, i.e., JK exerting indigenous jurisdiction and asserting duties on its duty bearers. The connection of each of these parts is adjourned to the final chapter of the thesis, which presents the final conclusions.

Additionally, this study is delivered diachronically and synchronously to appreciate the evolution and trends of the effectiveness assessed within the analysis period and the global research data. Finally, the effectiveness of JK is contrasted with other indigenous peoples that inhabit Bolivia through the cases that reached the Plurinational Constitutional Court. This comparison accounts for JK's relative effectiveness' situation with respect to its peers.

# Section 5.1: SWOT Analysis

Following the research design, the data has been collected under the proposed analysis framework to evaluate the effectiveness of the collective right to exercise indigenous jurisdiction. That is, through indicators aimed at recognizing the possibility that Jach'a Karangas (JK) has of resolving disputes through the exercise of its jurisdiction according to the actions of duty bearers and the right holder. This section aims to systematize the relevant data to explain, to a certain extent, the effectiveness causes of JK's jurisdiction exercise. It is considered convenient to present these reasons through the internal and external rights' functions to achieve this objective. That is, identifying the facts and perceptions relevant to the internal factors of JK that reflect the reasons for the effectiveness of its right to exercise jurisdiction (termed internal effectiveness in the analysis framework) against the external factors that describe the margin of compliance that duty bearers have in this regard (termed external effectiveness).[1453]

Among the possible models to carry out this analysis, it has been chosen to use the SWOT analysis because it allows allocating the reasons for effectiveness in the internal and external rights' functions and, in addition, organizing them into favorable and unfavorable criteria in each case. The SWOT is an acronym that stands for Strengths, Weaknesses, Opportunities, and Threats, being the first two the internal factors and the latter the external ones. Namugenyi, Nimmagadda and Reiners explain that strengths and opportunities are positive factors that make up the internal capacities of the organization to achieve its objectives or the environmental situations that may favor it to exploit its advantages, respectively. Conversely, the weaknesses and threats hinder, affect, or delay the objectives of the organization.[1454]

According to Gürel and Tat, although SWOT analysis was created for strategic planning in the 1960s at Harvard Business School, this model also has various applications in regional development and multicultural projects with many analytical levels (such as individuals, organizations and countries, among others). [1455] These authors also suggest using SWOT combined with other techniques because although it has advantages such as being widely used, converging on positive and negative traits on a single 'Two-by-Two Matrix,' or allowing macro evaluations that guide from the general to the specifics, it also has limitations such as providing only an overview and summary.[1456] Consequently, in Table 30 a SWOT analysis is presented in a matrix, and, subsequently, to overcome the SWOT analysis shortcomings, its components are developed and described in its main topics based on the collected sources.

In some cases, an analysis is included, and in others, only a description of these elements is presented, both supported by the research findings and with references to all the sources consulted: PCC and lower-ranking courts cases, interviews, and indigenous minutes. The actors involved, the right holder and duty bearers, are the primary criterion for organizing the SWOT analysis following the research design.[1457] As a result, considering that the strengths and weaknesses are internal to the exercise of indigenous jurisdiction, they only involve the holder of the right, JK's indigenous jurisdiction, and its indigenous authorities when they exercise it. On the other hand, since the opportunities and threats are external,

[1453] Cf. 'A Definition of the Effectiveness of the Rights' on page 40.
[1454] Christine Namugenyi, Shastri L Nimmagadda and Torsten Reiners, 'Design of a SWOT Analysis Model and Its Evaluation in Diverse Digital Business Ecosystem Contexts' (2019) 159 Knowledge-Based and Intelligent Information & Engineering Systems: Proceedings of the 23rd International Conference KES2019 1145.
[1455] Emet Gürel and Merba Tat, 'SWOT Analysis: A Theoretical Review' (2017) 10 Journal of International Social Research 994.
[1456] ibid.
[1457] See 'Right Holder and Duty Bearers,' page 45 and following.

they refer only to the duty bearers identified. Furthermore, although the Bolivian legal framework was incorporated in the SWOT analysis, it has not merited a development in this section since a previous chapter is dedicated to it. Finally, to identify each of the points of the SWOT analysis with its subsequent development, the corresponding numbers were included just after each epigraph.

*Table 30 Strengths, Weaknesses, Opportunities, and Threats of the Indigenous Jurisdiction's Exercise of Jach'a Karangas*

| Strengths | Weaknesses |
|---|---|
| *Indigenous authorities:*<br>1. They know of the indigenous individuals in conflict (background, family relations, general behavior, among others).<br><br>*Indigenous jurisdiction:*<br>2. It is accessible justice for indigenous members due to the nearness of indigenous authorities, its gratuity, lack of bureaucracy, and uncomplicatedness (it is governed by *ama qhilla, ama llulla, and ama suwa* principles).<br>3. It is a direct, dialogical, and concerted justice for living well, according to indigenous' own law. Indigenous authorities seldom impose their decisions and essentially seek restoration, reconciliation, and the reestablishing of the balance of the community.<br>4. It gives the chance to reach satisfactory agreements directly between the parties in dispute and with the support and guidance of the authorities.<br>5. Indigenous peoples' own law and structure allow it to make the indigenous authorities fulfill their duty to administer justice, assume their indigenous positions, and overcome bias.<br>6. Competence claims could enforce the duties of formal jurisdictions and community members.<br>7. It may decide outside its legal competence (more effective). | *Indigenous authorities:*<br>1. Their positions have a short duration and usually lack continuity regarding the exercise of indigenous jurisdiction. Moreover, their positions are unremunerated.<br>2. They might assume that the Constitution and JDL grant them a lesser competence than the one held. They sometimes might consider that the indigenous jurisdiction only regards land disputes.<br>3. They might consider that indigenous jurisdiction's exercise is voluntary.<br>4. They might lack legal training on State Law and indigenous peoples' collective rights or even ignore their own law. However, some of them tend to apply State Law instead of indigenous law, distorting indigenous justice.<br>5. They might lack interest in exercising the indigenous jurisdiction, especially when it concerns getting involved in complex, difficult, or compromising problems. Furthermore, they do not revise ordinary and agri-environmental processes to claim their competence.<br>6. They might decide cases even when they have conflict of interests with one of the parties and possibly acting biased.<br>7. Sometimes, they prioritize cultural activities instead of justice administration because they do not live in their communities and their positions have a short duration.<br>8. Due to the migration phenomenon, their possible bias or inexperience, they might lack credibility and authority among their community members.<br>9. They rarely resolve disputes, even if the parties to the dispute cannot reach an agreement. They might experience fear and threats of possible reprisals that could be taken against them when they cease to be authorities.<br><br>*Indigenous jurisdiction:*<br>10. It may reject totally or partially a case under their legal competence (ineffective).<br>11. It commonly lacks the preservation of its decisions in files, and if they exist, they are difficult to identify due to the order criteria used.<br>12. It might lack coercion and forced compliance with its decisions.<br>13. It might lack predictability and a written legal framework (subjective decisions), which would imply possible arbitrariness or uncertainty of the authorities when administering justice. |
| **Opportunities** | **Threats** |
| *Bolivian legal framework:*<br>1. The exercise of indigenous jurisdiction has a favorable, broad, and protective legal framework that grants it a relatively broad competence to exclusively decide indigenous disputes, even though it imposes some unjustified limits that could be considered negligible. Furthermore, it recognized indigenous peoples the possibility to impose their competence over the agri-environmental and ordinary jurisdictions to resolve disputes that belong to it through Jurisdictional Competency Disputes.<br><br>*The PCC:*<br>2. In cases where the legality of indigenous decisions is challenged, the | *The Bolivian State*<br>1. It might not support indigenous jurisdiction's exercise.<br><br>*The PCC*<br>2. It may sometimes decide indigenous disputes directly, against the subsidiarity principle or require excessive compliance with procedural formalities preventing the indigenous peoples from exercising their jurisdiction.<br>3. It could argue partiality of the indigenous authorities, the extemporaneous claim of jurisdiction, or apply the 'living well paradigm' to reject the exercise of indigenous jurisdiction disregarding legal limits.<br>4. It could limit indigenous sanctions, mainly the expulsion of community members, disregarding JDL provisions.<br><br>*Formal jurisdictions' lower-ranking judges:*<br>5. They arrived at Jach'a Karangas territories arround 2007, giving the community members the possibility of choosing them to resolve their disputes locally without traveling to the cities to carry out judicial procedures. |

PCC may conduct expert opinions to understand better the different dimensions of the context related to the cases it resolves.
3. It expanded the material, personal and territorial validity areas defined by the Constitution and the JDL in some of its aspects.
4. It expanded the equal hierarchy of indigenous and ordinary jurisdictions to the agri-environmental jurisdiction.
5. It decided that the criteria to define the competence of the jurisdictions provided by the laws prior to the Constitution and the JDL be interpreted and modified following the latter.
6. It mandated lower-ranking judges to check their competence before accepting any case.
7. Provides accompaniment to resolution of disputes between collectives

*Formal jurisdictions' lower-ranking judges:*

8. They respect indigenous decisions (if they are aware of them).

*Coordination and cooperation:*

9. Agri-environmental jurisdiction is generally willing to assist the indigenous jurisdiction in resolving indigenous disputes by providing their technical services and presence at hearings.

*Indigenous members:*

10. The party who feels losing in a process before the formal jurisdiction or who is about to be imprisoned resorts to his or her indigenous authorities so that they claim the competence to resolve the dispute.

*Community members might prefer indigenous jurisdiction because:*

11. They perceive that formal jurisdictions are bureaucratic, impose their decisions, have a high possibility of being unfair and corrupt, have delayed justice, are very costly in their procedures (including the need to hire lawyers), ignore the indigenous individuals in conflict (in their background, families, behavior, among others), and only seek to punish and imprison.
6. They justify admitting all cases presented to them (they might even seek cases), including those corresponding to indigenous jurisdiction, to guarantee access to justice and prevent indigenous people from taking justice into their own hands.
7. The agri-environmental jurisdiction practices dispute resolution through conciliation on possession matters that correspond to the indigenous competence.
8. They sometimes illegally reject the indigenous jurisdiction's claim of competence.
9. They sometimes might consider that the indigenous jurisdiction resolves disputes of little relevance.

*Coordination and cooperation*

10. State's institutions seldom cooperate and coordinate with the indigenous jurisdiction

*Indigenous litigants:*

11. They would believe that they can file their claims in the formal or indigenous jurisdictions indistinctly.
12. They might consider that the formal jurisdictions are the next instance to which they can turn if they cannot reach an agreement in the indigenous jurisdiction or if it does not resolve their disputes.
13. They might believe that formal jurisdictions have a greater capacity to resolve more complex issues. In addition, they may consider that the indigenous jurisdiction only regards land disputes and conflicts of little relevance.
14. Their sense of duty toward their community and authorities may have diminished due to migration to cities, loss of indigenous values and customs, and low confidence in the authorities and indigenous justice.
15. Complainants often go directly to formal jurisdictions to resolve their disputes. In some cases, the parties that lose in an indigenous process may resort to formal jurisdictions aiming to change the decisions or even judicialize or criminalize the exercise of indigenous jurisdiction. At the same time, they may threaten or harass their indigenous authorities.
16. The defendants sometimes hinder the indigenous jurisdiction by not attending the hearings.

*Community members might prefer formal jurisdictions because:*

17. There is a perception that formal jurisdictions are more advanced than the indigenous one because their judges have studied law (they are lawyers) and have constant legal training.
18. There is a perception that almost every process leads to a decision with the formal jurisdictions and that they coerce their decisions by forcing compliance, albeit with delayed justice. Instead, they might consider that indigenous jurisdiction does not decide disputes.
19. Indigenous members might perceive that they are subject to the written legal framework, limiting arbitrariness and increasing the predictability in the resolution of their disputes, preserving them for later corroboration.

*Common opinion of formal jurisdictions:*

20. There might exist a common opinion that indigenous jurisdiction's exercise is voluntary

*Source:* Self-made.

*Note*: Abbreviations: Plurinational Constitutional Court (PCC), Jurisdictional Demarcation Law (JDL). The SWOT analysis encompasses all the research sources' data collected.

# Section 5.2: Internal Factors

## Strengths of the Indigenous Jurisdiction's Exercise of Jach'a Karangas

The strengths imply an internal greater advantage of one organization over another due to its favorable characteristics, allowing it to fulfill its objectives, take advantage of the opportunities and overcome the threats that may arise.[1458] Applying these elements to this case study, they concern JK's internal effectiveness to achieve its planned effect in contrast to its duty bearers. In other words, whether JK has the possibility of resolving disputes of its indigenous members under the legal framework of the Bolivian egalitarian plural justice system because its indigenous jurisdiction has the capacity to administer justice among its members and impose duties in this regard over its duty bearers in the case they may transgress it.

### *Indigenous Authorities*

#### *Acquainted with Indigenous Parties' Context (S1)*

There is a general perception among indigenous authorities that they naturally know the parties to the conflict directly. Provided that authorities live in their communities or regularly pay visits to them and attend reunions and festivities, it seems reasonable that they know the general way members in dispute behave within their communities and their families, neighbors, work, and land. When it comes to helping to resolve a dispute, formal jurisdictions *'are not going to be able to understand better than an authority that is nearby,'* [1459] since they know the daily living of everyone.[1460]

For instance, an indigenous member, who first tried to solve his dispute in the indigenous jurisdiction and then resorted to the ordinary and agri-environmental jurisdictions, reflected that, after considering his entire experience, he would return to the indigenous jurisdiction because, despite its delays and the fact that *'it does not know how to read or write'* (as if contrasting the allegedly erudite character of the formal jurisdictions with the indigenous one), at the end the authorities *'know how we have lived, how we have walked and what family we come from.'* [1461]

In addition, they usually already know the circumstances and the matter firsthand and even which witnesses to trust.[1462] One of them maintained that

> *'we know our people; we know what they are like and we are always in contact with them … we know what a person is like, and we know how a person changes ... so they accept the guilt or the wrong thing they have done. They say "I am going to get better", and they do it.'*[1463]

[1458] Gürel and Tat (n 1455) 997.
[1459] Indigenous member and lawyer interview G-2019-49.
[1460] Interview of an indigenous member with indigenous process experience, G-2020-26.
[1461] Interview of an indigenous member with indigenous and agri-environmental process experience, G-2019-16.
[1462] Indigenous authority interview G-2020-23.
[1463] Interview G-220-16.

## *Indigenous Jurisdiction*

### *Accessibility (S2)*

Community members may consider that indigenous justice is a justice for all, a justice that they can access[1464] for various reasons. They rely on the indigenous authorities of their local communities,[1465] who shall resolve their disputes and only refer them to higher authorities when they cannot, as a former indigenous authority explained: '*justice must start from the original authority of the community or Tamani... and successively, according to our norms, it must go to the mallkus and from them to Jach'a Karangas*'[1466] to the Apu Mallkus.

Indigenous justice is also free of cost, except that some minor expenses must be paid, such as the occasional transfer of the indigenous authorities to the scene of the events, especially when it comes to higher-ranking authorities who do not live in the community where a land dispute may exist. This feature extends to the absence of lawyers to resolve disputes since the parties do not have to pay their fees.[1467] It should be noted that unlike formal jurisdictions in which the parties cannot act directly but through lawyers,[1468] the indigenous authorities do not admit the parties to attend the hearings with lawyers to avoid rendering the cases more complex and because they consider the parties, their families, and the authorities may suffice to solve the disputes:

> *'lawyers know... we had a mixed lawyer, he has withdrawn because the lawyers... are sleeping in their offices every day ... so they have withdrawn because more people are now going to the indigenous authorities. So in any robbery or fights [the community members] no longer go to the lawyer, they go to their indigenous authority.'*[1469]

Furthermore, indigenous justice is more straightforward and more accessible for community members[1470] as it is governed by three fundamental principles that allow them to differentiate between what is permitted and what is a crime, as an indigenous member commented: *'I believe more in indigenous justice because it is the Ama Llulla, Ama Qhilla [and Ama Sua]. We handle that in the countryside.'*[1471] An agri-environmental judge, after comparing jurisdictions, manifested that in the indigenous justice *'there is not much bureaucracy. So, I see that if someone has a problem in their*

[1464] Interview with an indigenous member with indigenous process experience, G-2020-09.
[1465] *'The authorities are in the community, so we can go to their offices if there is any demand and not travel to the city'* (interview with an indigenous member with indigenous process experience, G-2020-10).
[1466] Interview G-2018-14.
[1467] *'The best thing is that someone who has a conflict does not spend money on lawyers. He only has to abide by the decisions of the original authorities'* (indigenous authority interview, G-2020-08).
[1468] For example, the inalienability of the technical defense of a lawyer in criminal proceedings in the ordinary jurisdiction in accordance to Ley 1970 Código de Procedimiento Penal [Law 1970 Code of Criminal Procedure], Article 9. In civil proceedings, the claim must be signed by a lawyer, according to Ley 439 Código Procesal Civil [Law 439 Civil Procedural Code] 2013, Article 110.10.
[1469] Interview G-2018-10.
[1470] A judge recognized that indigenous jurisdiction *'resolves according to its uses and customs ... they always resolve within the framework of conciliation or reconciliation as the term is worth, and then they do not handle many legal documents'* (interview G-2020-18).
[1471] Interview G-2020-02.

*community, their authority comes, their authority summons the other party, and they always try to fix it using conciliation.'*[1472] For such reasons, an indigenous process may conclude quickly.[1473]

## *Direct, Dialogical, and Concerted Justice for Living Well (S3-4)*

The indigenous justice of JK protects its communities by restoring its peace, harmony, and balance through conciliation.[1474] In doing this, indigenous authorities reflect and persuade the parties to directly settle their problems during the hearings they summon,[1475] and, at the same time, they avoid imposing rulings.[1476]

> *'Before proceeding to start the hearing, we do the ritual act that is the custom of our ancestors, share a little coca and a little drink, to constantly remind us of our ancestors who have made charges and who have solved this kind of problem ... we ask our Achachilas*[1477] *and our ancestral gods, the Pachamama, for everything, and then we start to dialogue.'*[1478]

> *'Rituality is important because for any problem, for any job, for any query... [in it] we ask for help to solve it or to make us be patient.'*[1479]

> *'So, once we act in this way, it seems that people become aware and can also say with respect ... Thus, we begin the hearing.'*[1480]

The collected testimonies also mentioned that it does not concern good and evil, punish and reward or black and white positions, where one of the parties shall lose and the other win, but rather a dialogical and satisfactory dispute resolution[1481] for both parties.[1482] Community members shall recover their friendship to live well with concerted solutions[1483] instead of imposed decisions to which they might not show their conformity:

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[1472] Interview G-2020-24.
[1473] As affirmed by an indigenous lawyer and an authority in interviews G-2020-04 and G-2020-20 respectively. Real examples of the immediacy of the indigenous jurisdiction can be seen in the summaries of the indigenous minutes A.2014.04.30, A.2015.11.12, A.2015.11.15, A.2016.04.06, A.2016.01.12, A.2017.03.21, and A.2019.05.04 in annex E.
[1474] Most of the cases are resolved through conciliation, according to a judge's interview G-2020-18.
[1475] Indigenous minute A.2019.05.04, in which, due to a fight between neighbors, some got severe injuries. During the indigenous hearing summoned to resolve the dispute, the parties reached an agreement after the Apu Mallku reflected on them. Cf. other examples in indigenous minutes A.2017.03.21, A.2019.05.04, A.2019.09.04b. The latter is related to case LRFJ.O.San Pedro de Totora 2018.2019.03 (annex C).
[1476] Indigenous minute A.2019.05.22a, in which the authority asked the parties to dialogue to find a settlement, or else he will decide the dispute. It is interesting to recall the transcript made in 'Two Sides of the Same Coin' on page 286.
[1477] This Aymaran word concern the spirits of the elders existing in the mountains. Gómez Bacarreza (n 1335) sv Achachila.
[1478] Indigenous authority's interview G-2018-06.
[1479] Indigenous authority's interview G-2018-04.
[1480] Indigenous authority's interview G-2018.01.
[1481] Fromherz asserted that in some cases, indigenous justice is preferred by indigenous because of its cultural acceptance, transparency, accessibility, efficiency, or even its theory of justice that is preventative and restorative. Fromherz (n 27).
[1482] Interview G-2019-36.
[1483] For instance, indigenous minutes A.2019.09.04b, related to LRFJ.O.San Pedro de Totora 2018.2019.03.

*'The good thing will always be to reach an agreement in consensus, more than anything else in the suma qamaña [live-well] territory, to live in harmony, that is, under the conditions of the mutual agreements of our ancestors. The opposite, what is not good, is imposing or forcing.'*[1484]

An indigenous authority points out that ordinary justice can also solve disputes but does so through coercion. On the other hand, indigenous justice can solve them based on dialogue, understanding, and peaceful coexistence[1485] in a restorative manner.[1486] As a result, it gives a chance to reach satisfactory agreements directly between the parties in dispute[1487] and with the support and guidance of the authorities:

*'The best thing is that you solve the problems within the community, and sometimes when there is the will of the parties and the authority, the arrangement is always very satisfactory, agreed upon verbally, and hand in hand with coca, which is the custom.'*[1488]

## *Compliance with Indigenous Jurisdiction's Exercise (S5)*

The internal authorities' structure and organization of JK may guarantee indigenous members' access to indigenous justice when its hierarchical authorities impose on lower authorities to act their positions and assume their responsibilities towards their communities,[1489] or even the communities to act on it.[1490] Conversely, cases that cannot be resolved in the communities with local authorities can be referred to higher authorities, as occurred in a case narrated by a community member:

*'Out of fear that the man was aggressive, no solution was reached [in the community]. All the information was passed on to Jach'a Karangas [to Apu Mallku] ... who called the conciliation hearings but even so, the accused man did not want to take responsibility ... after much insistence, we had to apply indigenous justice, where after exhausting all instances, a [final] resolution was issued.'*[1491]

Following this same logic, the structure of the indigenous jurisdiction can prevent the existence of partiality of the indigenous authorities when resolving disputes. That is, the authority could refer the dispute to another community's authority, as a former Apu Mallku suggested,[1492] or even to a superior one. As a judge recognized:

*'What will make indigenous justice stronger is not going to be the law; it will be their structures and procedures ... It will not be the norm; it will be how the indigenous authorities proceed. If indigenous authorities proceed well, they will be accepted in their community, and it will become stronger and stronger.'*[1493]

[1484] Interview G-2020-07.
[1485] Interview G-2019-42.
[1486] Indigenous authority interview G-2020-29.
[1487] For instance, case A.2019.07.24 in annex E.
[1488] Indigenous authority interview G-2020-12.
[1489] For instance, indigenous minutes A.2016.nd.01, A.2016.11.30, A.2016.06.13, A.2011.12.02, and A.nd.01.
[1490] For example, indigenous minutes A.2010.03.19 related to A.2011.03.18. In the first, the Apu Mallku determined that the land possessors or 'sayañeros' of the community shall gather to resolve the land dispute between two community members. The second act shows the settlement reached.
[1491] Interview G-2020-01.
[1492] Interview G-2018-04.
[1493] Interview G-2019-41.

## *Competence Claims Could Enforce the Duties of Formal Jurisdictions and Community Members (S6)*

The ordinary and agri-environmental jurisdictions invade the competence of the indigenous jurisdiction despite the complaints that some indigenous authorities have made directly to them[1494] or the courses and legal training attended by the formal judges.[1495] At the same time, some of the indigenous members may also present their claims directly to the formal jurisdictions, violating the right to exercise indigenous jurisdiction. Faced with this situation, sometimes indigenous authorities have claimed jurisdiction to resolve disputes,[1496] even reaching the PCC. These claims have had an interesting effect on the parties and, one might say, also on the lower-ranking judges. Thus,

> *'there was a land dispute ... in the agri-environmental court ... [which] should be discussed in the indigenous court. So, they have reached the Constitutional Court, which has favored the indigenous jurisdiction. [The case] has returned to zero ... [the parties] have spent money and time in vain ... [the case] has remained there, the problem continues, because the two parties are tired. [However,] they can no longer affect indigenous justice again.'* [1497]

According to an indigenous authority, at first, the indigenous parties did not believe that the indigenous jurisdiction could decide the case or claim the competence to resolve it. However, when the case returns from the PCC favoring the indigenous jurisdiction, the community members recognize their mistake and begin to submit to it.[1498] An indigenous member with formal and indigenous process experience said, *'it seems absurd that you resort to State justice because you still have to return to our indigenous jurisdiction.'*[1499] Finally, in certain cases, the agri-environmental judge rejects some processes according to some indigenous authorities testimonies.[1500]

## *Dispute Resolution Outside its Competence (S7)*

As argued in *opportunities* and in the next chapter, the PCC admitted and, consequently, validated in some cases the exercise of indigenous jurisdiction beyond its competencies. It implies that the indigenous jurisdiction has managed to expand the limits of its competence through a genuine desire to maintain its self-determination and culture in aspects that initially were limited by law.

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[1494] An indigenous authority maintains that he told an agri-environmental judge: *'as a judge, you do not have a request from both parties, and you are coming to exceed my authority, you are an agri-environmental judge in your office, but here, for me, you are nothing.*' (interview G-2018-11). Another demanded a judge: *'not to meddle in our justice during my tenure since those cases are under my authority.'* However, according to his testimony, the judge continued to interfere (interview G-2020-11).

[1495] *'Workshops are being held so that ordinary justice stops interfering in indigenous jurisdiction issues. We are fighting a lot on that, and we have to define it once and for all'* (indigenous authority interview G-2019-13).

[1496] See cases 0022/2018, 0007/2016, 0031/2017, 0031/2016, 0032/2017, 0078/2017, 0081/2017, 0005/2018, 0092/2015, 2463/2012, and 0156/2019-CA in 'Plurinational Constitutional Court Case Law Analysis' on page 468.

[1497] Indigenous authority interview G-2018-07. The case could be related to LRFJ.AE.Curahuara de Carangas 2017.2019.012 (cf. annex C) and the PCC case 0022/2018 (cf. annex B).

[1498] Interview G-2019-26. The interview may refer to a different case from the narrated one.

[1499] Interview G-2020-02.

[1500] Interview G-2020-07: *'you have to solve [the problem] first with your authorities, then under that report, we can intervene.'* Interview G-2019-23: *'some have gone directly to the agri-environmental court, and there they have been told that they must start with the Awatiri, and in this way, they went to the indigenous authority of their community.'*

Interestingly, a community member who also is a lawyer argues that since there are equal hierarchies between formal and indigenous jurisdictions, it is not appropriate to restrict the powers of the latter:

> *'From my point of view, if indigenous justice and ordinary justice are constitutionally and conventionally hierarchical equal. Then, it was unnecessary to delimit the material sphere in certain matters, be it corruption, adolescent girls, etc. They could not demarcate it because, ultimately, they are de-hierarchizing indigenous justice from ordinary justice.'*[1501]

Perhaps in this same line of thought, some indigenous authorities consider that the Constitution grants unrestricted powers to indigenous justice to resolve disputes, although they perceive that the JDL severely limits indigenous jurisdiction:[1502]

> *'According to their own rules and procedures, communities should resolve disputes through indigenous justice without the intervention of ordinary justice because the Constitution clearly says that it grants us everything, and the original authorities, such as mallkus, are at the level of a judge.'*[1503]

# Weaknesses of the Indigenous Jurisdiction's Exercise of Jach'a Karangas

The weaknesses correspond to the internal disadvantages of one organization compared to another in achieving its objectives due to having unfavorable characteristics that do not allow it to take advantage of the opportunities or respond to the threats that occur. [1504] Applying these elements to this case study, they are the internal ineffectiveness that JK has regarding the formal jurisdictions to achieve its planned effect. In other words, JK cannot have the possibility of resolving disputes of its indigenous members under the legal framework of the Bolivian egalitarian plural justice system because its indigenous jurisdiction does not have the capacity to administer justice or ground duties on its duty bearers when they disregard it. Under Table 30, the following content concerns the main weaknesses identified in this study construed as the possible reasons to explain the ineffectiveness of JK in achieving its planned effect.

## *Indigenous Authorities*

### *Duration, Continuity, and Unremunerated Indigenous Positions to Exercise Jurisdiction (W1)*

Even though it is an indigenous tradition kept for generations through the *Muyu* and *Sara Thaqui*,[1505] the interviews portrayed that one of the indigenous authorities' shortcomings relates to the short duration and continuity of one or two years of their indigenous positions.[1506] The outgoing authorities

[1501] Interview G-2019-38.
[1502] Cf. Indigenous Authorities Might Assume that the Law Grants a Lesser Competence than the One Actually Held, page 305.
[1503] Interview G-2019-13.
[1504] Gürel and Tat (n 1455) 997.
[1505] As explained before (cf. 264 and following).
[1506] Cf. Table 26: Institutional structure of the indigenous authorities of Jach'a Karangas. Organizational level, position, requirements, authority, duties, and duration of the post.

return to their daily activities and hardly leave guidelines for the new ones who enter the position,[1507] ignoring the advanced procedures or the allegations and evidence of the parties.[1508] Sometimes, new authorities even must begin to learn how to act their positions. An indigenous authority commented:

> *'The weakness would be that we do not give continuity. The position ends, and each brother goes where he resides and works. Everything that he has learned and processed in a Marka stays there. He neither communicates nor gives instructions to the one who is going to replace him in the position to continue with the processes.'*[1509]

An indigenous lawyer pondered that

> *'ordinary justice takes a long time but at least it solves [the problems], while, due to the short duration of the [indigenous] authorities, we have seen cases that in four or five years they have not been able to resolve. In that sense, I mean, they not only become the same [as ordinary justice], with a lot of delays, but they do not resolve [the disputes].'*[1510]

Another indigenous lawyer stated, perhaps having as a model the Western justice system of the State: *'that is why justice must be institutional. It can no longer be adrift for a limited time of one or two years.'*[1511] The logical consequences are the unsolved community members' disputes and, to some extent, their lack of interest in resolving them through the indigenous jurisdiction, as a community member with indigenous process experience manifested:

> *'I have a land conflict, but it has not been resolved so far. It remains in the Marka. As the authorities are only for one or two years, they do not solve the conflict. They keep notifying and notifying. Up to now, I have not had a solution to my dispute, as evidenced by my family.'*[1512]

The indigenous authorities of JK are in charge, in addition to the task of exercising jurisdiction, of other activities related to seeking resources, carrying out cultural activities, and coordinating with higher authorities and other communities, among others (cf. Table 26). This multiplicity of activities reduces the authorities' possibility of working and generating resources for themselves and their families. Moreover, the shifts to assume the indigenous positions through the *'muyu'* and the '*Sara Thaki*' for land possessors (or *sayañeros*) within the community have, among their central characteristics, the crucial role of performing community service in retribution for what is received, and, reciprocally, their lack of remuneration, representing both an honor and a burden.[1513] An agri-environmental judge reflected that

> *'perhaps they should be there for two years [instead of one], but it seems that it is a lot of sacrifices to be so long for the authorities, because some stop working [to assume authority] and then after a year they are thinking of just leaving. They are just waiting for the end of the*

[1507] A judge recalled that he had had a good cooperation relationship with some indigenous authorities whom he asked to recommend that the future new authorities give it continuity. However, he frustratedly explained that *'the authority that serves his term seems to keep what he has done and does not pass it on to the authority of 2021'* (Interview G-2020-24).
[1508] An indigenous member and lawyer portrayed this situation: '*I met indigenous authorities who, with good judgment, lead a cause, but when the end of their administration comes, they leave it halfway. The other that comes does not understand the case ... we are in that situation of injustice'* (Interview G-2019-20).
[1509] Interview G-2019-15.
[1510] Interview G-2019-49.
[1511] Interview G-2019-20.
[1512] Interview G-2020-09.
[1513] More on the subject on page 264.

*year. So, I don't know, indigenous justice does not receive any salary. Logically it is a huge sacrifice because they are with their own resources.'*[1514]

A former indigenous authority complained that

*'the weakness is the economic part of continuing [as an authority] because we all live and have an economic obligation in the family. To be in that [indigenous authority's position], you have to persevere permanently... For that, you need to have a livelihood, a salary, or at least stationery and transportation. Many do not have that financial support, and it weakens them. They leave for their work, to support their families.'*[1515]

Therefore, not only does it end up being desirable that indigenous authorities' positions remain brief, but also the authorities might feel affected and demotivated. A lawyer, member of JK, concluded that faced with a dispute, the indigenous authorities sometimes *'make time pass and say, "I don't have time" ... they don't have a salary or anything, so they cannot often come to solve land problems. So, they make time pass, and that's it; another administration is over.'*[1516]

## *Indigenous Authorities Might Assume that the Law Grants a Lesser Competence than the One Actually Held (W2)*

Indigenous peoples could lack knowledge regarding the limits of the indigenous jurisdiction's competencies. According to the interviews carried out, the indigenous authorities seem to have general and intuitive knowledge about the limits of the competencies of the jurisdictions, lacking precision in specific cases. In addition, there is a belief that, in contrast with the Constitution, the JDL would have limited the competencies of the indigenous jurisdiction to a greater extent than what it literally established.

An indigenous authority asserted that *'there are some articles (of the JDL) that are not in accordance with the Constitution. Here, the Constitution is the highest standard and we must act according to it.'*[1517] Another one construed that the government punished indigenous peoples for their lack of skill to handle justice: *'for this reason, we constitutionally achieved indigenous justice, and then with the Jurisdictional Demarcation Law, they took everything from us.'*[1518] Even judges considered that the JDL has excessively limited the exercise of indigenous jurisdiction,[1519] so, in their opinion, it would be appropriate to apply international standards to broaden its competence.[1520]

This situation may cause the authorities to assume that they have less competence to resolve disputes than they actually have and could mistakenly assume that formal jurisdictions should decide certain disputes when, on the contrary, under the JDL, those cases correspond to them. According to interviews with indigenous authorities of JK, their jurisdiction supposedly could not solve crimes of theft,[1521] fraud[1522] and fights.[1523] Even a community member, who is a lawyer, argued that almost all criminal

[1514] Interview G-2019-07.
[1515] Interview G-2019-11.
[1516] Interview G-2019-33.
[1517] Interview G-2019-11.
[1518] Interview G-2019-01.
[1519] Interview G-2019-41.
[1520] Interview G-2019-07.
[1521] For instance, interviews G-2019-05, G-2019-12, G-2019-32, G-2019-35 and G-2020-05.
[1522] Interview G-2018-06.
[1523] Interview G-2019-35.

offenses are outside indigenous jurisdiction.[1524] However, the JDL grants competence to the indigenous jurisdiction to resolve these crimes.

In a case of slander that occurred at a community meeting in Andamarka, the affected person called on the Mallku of Marka to solve the problem. After several witnesses stated what had happened, the indigenous authority asked the slanderer to give public satisfaction to the affected person. However, given the lack of compliance, the Mallku of Marka reportedly told the claimant that *'it would be good for you to go to ordinary justice because this is a public order crime. I can't solve this case.'*[1525] Nevertheless, the JDL does not exclude the indigenous jurisdiction over crimes of public order and indeed grants it the competence to decide crimes of slander.[1526] As a result, the claimant stated that she would prefer ordinary justice because, unfortunately, the indigenous authorities are not prepared.

In JK, there is also a general belief by the indigenous authorities that only the cases of land disputes belong to the indigenous jurisdiction. Moreover, many interviews implied that the JDL would only allow them to resolve disputes over land and the verbal and physical attacks the land contenders inflicted on each other. An indigenous authority asserted that the JDL clarifies that indigenous jurisdiction only has the competence to *'conciliating land disputes and the rest regards to ordinary justice*.*'*[1527] Another determined that the indigenous jurisdiction deals with cases of boundaries and land limits and that if the problem worsens, it corresponds to the agri-environmental jurisdiction.[1528]

## *Assuming Indigenous Jurisdiction's Exercise is Voluntary (W3)[1529]*

From the data collected in this case study, it is observed that indigenous peoples commonly believe, together with some indigenous litigants, judges, and magistrates of the PCC, that indigenous peoples might share their competencies with the ordinary and agri-environmental jurisdictions and consequently, they can 'voluntarily' refer their cases to them. This relatively generalized belief, contrary to law,[1530] may affect the Bolivian egalitarian and plural justice system since it implies that the prerogatives of dispute resolution agreed exclusively in favor of the indigenous peoples cease to be such. Next, it is observed how this situation is interpreted inside JK to subsequently comment on its possible effect externally.

According to the testimonies collected through interviews, the indigenous authorities and individuals may share, at some extent, the same belief that indigenous jurisdiction can voluntarily refer its cases to ordinary or agri-environmental jurisdictions if the indigenous authorities understand they cannot resolve them. An indigenous authority recognized: *'It happens in all the communities: if there is a possibility*

[1524] Interview G-2019-49.
[1525] Interview G-2019-47 of an indigenous with indigenous process experience.
[1526] Cf. Table 22. Furthermore, the PCC granted the competence to the indigenous jurisdiction in cases of aggravated robbery (cf. 0082/2017 and 0917/2015), criminal association and trespassing (0082/2015), document forgery (cases 0698/2013 and 0388/2014), attempted murder (1225/2013, 1145/2013, 0005/2016, and 0924/2016-S1, although there are cases that reject it), severe injuries (0010/2017, 0012/2017 among others), forgery and use of an instrument forged (0388/2014, 0698/2013, 0011/2017, and 0064/2019), deprivation of liberty (0060/2016), qualified damage (0045/2017 and 0057/2017), domestic violence (0047/2017) and sabotage and extortion (0036/2018).
[1527] Interview G-2018.01.
[1528] Interview G-2019-11.
[1529] Related to opportunity 1: 'Indigenous Jurisdiction Has an Exclusive and Excluding Competence to Resolve Disputes (O1),' page 318; and threat 20: 'There Might Exist a Common Opinion of Formal Jurisdictions that the Indigenous Jurisdiction's Exercise is Voluntary,' page 350.
[1530] In the case of indigenous peoples, it is possible that this belief has its origin in the JDL project that the State submitted for prior consultation, as explained in 'Prior and Informed Consent' on page 222.

*of solving it, it is solved in the community through my authority, and if not, it is better to report it to the agri-environmental judge.'*[1531] Some authorities consider they shall first send the case to their higher authorities and only then to formal jurisdictions: *'if we have not been able to solve it, we pass it on to our Mallkus. If our mallkus cannot resolve, it goes to ordinary justice or agri-environmental.'*[1532]

It is stressed that, on the contrary, most of the interviews expressed their concerns and oppositions against indigenous individuals freely choosing to which jurisdiction claim their disputes, as an indigenous authority criticized:

> *'I believe that it is against customs, I believe that they should first go to the indigenous authority to resolve the conflict … They are betraying because they are not respecting their community, their ayllu, their suyu.*'[1533]

Interestingly, some of the indigenous urban residents or individuals with indigenous and formal jurisdiction processes argued that each indigenous individual has the right to choose between indigenous and formal jurisdictions to claim their disputes. Then, while indigenous peoples, through their jurisdictions, may decide to refer cases to ordinary or agri-environmental jurisdictions, to some extent indigenous individuals are expected to first resort to indigenous jurisdiction.

From an external perspective, it is striking how the PCC, in several of its cases,[1534] suggests that indigenous peoples can opt whether to resolve disputes that fall under their competence if they have the means, disposition, and eagerness to deal with them or refer them to formal jurisdictions when they so prefer. The Protocol of Intercultural Action of Judges of the Supreme Court of Justice of Bolivia adopts and follows the same position.[1535] These sources seem to construe the constitutional and legal limits that protect the indigenous jurisdiction from the interference and superimposition of formal jurisdictions as mere suggestions. Then, when this supposed voluntariness is applied, the actual exercise of the jurisdictions ceases to reflect the equal hierarchy between jurisdictions that is the heart of the Bolivian egalitarian plural justice system.

Although it is against the law to admit the exercise of indigenous jurisdiction on such a voluntary basis, one should wonder if such an alternative would seem more fitting to Bolivian reality. The Bolivian legal solution to differentiate jurisdictions without the possibility of referring cases between them does not consider indigenous peoples' diverse capacities and institutional strengths and weaknesses to administer justice. It could have taken for granted their viability to resolve all the disputes presented to them and that the current legal design has imposed on it. Although some indigenous peoples have a larger structure and can exercise their jurisdiction over more complex issues, others do not have these possibilities. In this sense, the legislative solution of jurisdictional demarcation furnished by the Constitution and the JDL in Bolivia could be debatable. Paradoxically, the rigor of the demarcation established by the Constitution, the JDL, and the Law of the Judicial Organ could result in its violation or non-compliance in the current Bolivian context.

As a result, considering the indigenous peoples with lesser capabilities, perhaps it could be preferable to legally reflect this voluntary position into a flexible criterion for inter-jurisdictional competencies demarcation, adapting their competencies to the extent possible, i.e., considering the issues they 'can resolve' instead of those that 'they must resolve.'

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[1531] Interview G-2019-23.
[1532] Interview G-2019-30.
[1533] Interview, G-2020-29.
[1534] For instance, cases 0043/2014, 0764/2014, 0199/2015, and 0064/2019-S4.
[1535] Tribunal Supremo de Justicia, Órgano Judicial de Bolivia, *Protocolo de actuación intercultural de las juezas y jueces, en el marco del pluralismo jurídico igualitario* (n 1057) 91–92.

## *Lack of Legal Training and Application of State Law (W4)*

Indigenous authorities seem to have many limitations of knowledge and experience in resolving disputes. The people interviewed have constantly stated that the authorities lack adequate training concerning the law[1536] and the indigenous justice to resolve disputes. For example, a former authority claimed that:

> '*Our authorities must have preparation. They shall take courses and seminars. It would be better to have a diploma in indigenous justice. On the one hand, indigenous justice seems fine to me, but there is no knowledge of those who administer this justice; there is no experience.*'[1537]

Furthermore, indigenous authorities' lack technical knowledge or legal training to decide a case through specific criteria such as the interpretation of possession documents or land mapping and measurements when it concerns land disputes. A lawyer in JK commented that it is not that indigenous authorities do not want to solve disputes; on the contrary, they often do not know how to deal with them.[1538] An indigenous authority criticized that his colleagues, due to lack of experience or little information, try to free themselves from their responsibilities by saying: *'go to the police, go to the Prosecutor's Office or go to the judge'* instead of doing justice.[1539] Moreover, a party of an indigenous process complained that his problem

> *'has not been solved. There has been no resolution because [the authorities] said "we have to study [the case]." But until they "study," there has been no solution, and it has remained that way. Neither the authorities of the Marka nor of the Council or the Suyu have been able to solve it.'*[1540]

Such limitations may cause imprecise solutions that could favor one of the parties against the plausible interests of the other: *'the people were not prepared, nor were the authorities themselves. The Mallkus of Marka and those of the Consejo were not prepared either, so they simply wanted to solve this type of [land] problem with rough estimates.'*[1541] Consequently, they try to resolve disputes through equity, as an indigenous authority explained his decisions' rationale: '*I considered more or less equality of land, so that there is more or less equality. If you have water, you have to give water, if you have crops too. Everyone equally.*'[1542] At the same time, indigenous authorities could prefer delaying the dispute resolution. In this sense, an indigenous lawyer considered that

> *'many community members evidently present their demands before indigenous authorities, but due to a lack of preparation or knowledge of indigenous justice, many brother authorities leave it for the next indigenous authority. That exists, it is not rare but quite common. I would say (...) that is why sometimes they go to ordinary justice, specifically to the agri-environmental one.'*[1543]

The absence of training may *'weaken our indigenous rights,'*[1544] wailed an indigenous member. It could imply dissatisfaction or frustration of the community members when they experience the administration

[1536] Many authorities ignore there exists an JDL. For instance, interview G-2019-17.
[1537] Interview G-2018-01.
[1538] Interview G-2019-20.
[1539] Interview G-2019-36.
[1540] Interview G-2020-09.
[1541] Interview G-2019-32.
[1542] Interview G-2018-02.
[1543] Interview G-2020-04.
[1544] Indigenous member with indigenous process experience interview, G-2020-09.

of indigenous justice compared with the activity of the formal jurisdictions. Such frustration may delegitimize the indigenous jurisdiction and could entail resorting to other jurisdictions outside the community. A former authority criticized:

> *'They do not know indigenous justice and cannot solve problems. How can you apply if you don't know? That's why we're stumbling. [The parties or judges say to you:] "you can't, so send the case to the ordinary courts." Now the indigenous authorities have to be capable and trained. Otherwise, they will always stumble and will not be able to solve any problem. So training is essential.'* [1545]

This situation can deepen if it is considered that sometimes the parties, dissatisfied or offended with the process and the results obtained by the indigenous jurisdiction, turn to the PCC claiming their rights and the latter annuls or overrules the indigenous decision.[1546]

Due to a lack of training and knowledge of State law, indigenous authorities may believe that they do not have the mechanisms to force community members to respect indigenous jurisdiction or, in general, to claim the collective right to exercise indigenous jurisdiction, asserting duties on their duty bearers. For example, an authority mistakenly maintained that *'you can't tell them: "no, you have to solve your problems here, in the indigenous justice system." You cannot force them to respect the community.'* [1547] In a similar opinion, another authority resignedly maintained that in formal proceedings they could only accompany the party that does not have money to defend itself.[1548] However, the Bolivian legal framework contemplates the mechanisms to achieve such tasks in favor of the indigenous jurisdiction, only that sometimes they are unknown, as one judge explained: *'theoretically they have all the instruments... it is as if they gave you a tractor to make it easier for you to plow, but you don't use it.'*[1549]

Training should be in twofold: concerning State regulations to understand prerogatives and legal limits and on indigenous' own law. The latter is particularly relevant considering the phenomenon of residents (people who no longer live in their communities) since new indigenous authorities who reside outside their communities are usually unaware of their own laws,[1550] and some of them were not even born in the community.[1551] However, to avoid acculturation or assimilation, the task of teaching indigenous laws should be in the hands of the indigenous peoples themselves and encompass *'not only those of the present, but also those of the past.'*[1552] The indigenous response to this difficulty rests on the training that should happen within the community based on the Sara Thaqui, as a former authority affirms:

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[1545] Interview G-2019-45.
[1546] For instances, cf. PCC cases 0243/2010-R, 1639/2011-R, 1114/2012, 0062/2014-S3, 1024/2014, 246/2015-S1, 0448/2015-S3, 0707/2015-S1, 0917/2015-S1, 0006/2017-S1, 1197/2016-S3, 0303/2018-S3, 0371/2019-S4, 0364/2019-S4, 0737/2019-S2 and 0433/2020-S3 in annex C.
[1547] Interview G-2020-08.
[1548] Interview G-2020-20.
[1549] Interview G-2019-10.
[1550] For instance, interview G-2018-13: *'A majority of the authorities are residents. When they take office, they do not know much about the processes of doing justice ... few authorities are from the community, live in the countryside, and have that knowledge.'* Furthermore, interview G-2019-46 might portray the causality of this circumsntance: *'We know very well that those who come to exercise the position of indigenous authority are sometimes people who go in search of work, even abroad, and have to come to fulfill the position by obligation. They come without knowledge ... they are unaware of our own laws. So, with what knowledge are they going to do justice? That is why they prefer to let their position pass without doing justice. The community member who needs justice has to go to ordinary justice.'*
[1551] According to a judge's opinion, interview G-2019-50.
[1552] Indigenous lawyer interview, G-2019-09.

> *'We attach great importance to Sara Thaqui to hold indigenous positions ... I have started ... young, recently married... first, school board... later we have made... corregidor..., the patronal feast of the Virgin of Copacabana. Then, I was elected as Tata Tamani Jilakata and after Mallku de Concejo ... Why is Sara Thaqui important? Many communities, many ayllus name the Jilakata directly, without knowing the Sara Thaqui. However, there is where we learn to respect older people, to invoke our deities ... We learn how to "pijchar" [chew] coca leaves, how to deliver it, how to lead the "wawa qallus" [community members]. We believe that the Sara Thaqui is very important. When they get drunk or have conflicts, some of my brothers who have not made any position throw away the poncho, "I resign" [they say]. What is happening? They have no experience.'*[1553]

In addition, as advised by a former indigenous authority, the training should not only be for authorities but for community members, as users of the indigenous jurisdiction:

> *'Some brothers have little knowledge of justice and are stumbling at higher instances without considering that the solution is in our community, in our Marka. So, in this way, more progress needs to be made on justice ... The weakness is in the community members themselves because they do not know and still do not trust their authorities ... there is a great weakness, a great void from the base.'*[1554]

Some people interviewed consider that a possible solution to this difficulty would be training the indigenous authorities before they start their positions, in addition to the *Sara Thaqui*, through courses and workshops. For example, through the experience gained by former authorities[1555] or the comparison and replication of the good practices of each Marka.[1556] However, some shortcomings are observed since people are not always interested in receiving instruction before being consecrated as authorities.[1557] In addition, when they are already authorities and begin to know, their positions end, and new authorities must enter.[1558] In this sense, *'training is not very beneficial.'*[1559] Indigenous authorities inevitably compare themselves to judges who study to be lawyers and then continue training afterward,[1560] holding their positions for long periods. A party to an indigenous process lamented that *'supposedly the indigenous authorities have the rank of judges, but this result does not occur.'*[1561]

Amid this situation, it is observed that some authorities consider it plausible to apply State law in the resolution of conflicts between the parties, which could undermine indigenous law as it falls into disuse. One authority maintained that *'the Awatiri must know not only the terrain and the context, but also the Constitution and the laws to apply them'*[1562] because otherwise, as another expresses, the indigenous

[1553] Interview G-2018-07.
[1554] Interview G-2018-12.
[1555] Interview G-2020-21 to an indigenous authority.
[1556] Interview G-2020-12 to an indigenous authority.
[1557] Indigenous authority interview G-2019-05.
[1558] For example, interviews G-2018.06, G-2019-05, and G-2019-32 to indigenous authorities, and G-2019-27 to a judge. The latter says that '*one of the biggest weaknesses, I think, is the transition of the authorities from their positions. A year passes, and again they change to another authority. So, when the authority is getting into his functions and training, another year comes together with another authority. The new authority has to start again. So then, there is no continuity. That is the key, the great shortcoming that I have seen.*' It is also the opinion of interview G-2019-41.
[1559] G-2019-09 lawyer.
[1560] For instance, authorities interviews G-2019-12, G-2019-45, and G-2020-03; and an indigenous lawyer in G-2020-04.
[1561] Indigenous with indigenous process experience interview, G-2019-40.
[1562] Interview G-2018-08.

jurisdiction *'would be doing whatever it seems right.'*[1563] Another authority stated that they require the availability of up-to-date agrarian, criminal, and civil laws of the State to interpret them correctly when judging a person.[1564] At the same time, this possible preference for State law could make the exercise of indigenous jurisdiction unnecessarily more difficult, given the lack of legal knowledge. Thus, an authority comments that he was trying to explain how the Civil Code establishes hereditary succession when what corresponded was simply to divide the possession of a *Sayaña* that is the collective property of the community.[1565] It also seems that some may believe that the Constitution allows them to exercise jurisdiction but applying State regulations:

> *'if we applied the laws, we could solve [the problems]. But, since I don't know anything, how will I resolve it? Before, we did not know the laws and could solve disputes. We punished the guilty ... But now, with the Constitution, there is no way to resolve disputes.'*[1566]

Furthermore, it also was argued that *'we do not have laws in the community, but we do have the Constitution. We just rely on it.'*[1567] By and large, the lack of more precise knowledge about the State laws that govern the exercise of indigenous jurisdiction can result in a weakness, especially if one takes into account the possible distortions that the intuition of the authorities can produce in this regard.

## *Lack of Interest in Exercising the Indigenous Jurisdiction (W5)*

On the one hand, on some occasions, indigenous authorities may also lack interest in resolving simple cases. Thus, for instance, a community member resorted to the agri-environmental jurisdiction stating that his authority refused to resolve a case in which his neighbor had destroyed the posts and cables that served as boundaries between their lands.[1568] A community member who is a lawyer explained that: *'many authorities turn a blind eye for not resolving a conflict, they directly tell you ''no, it is not my competence''.'* [1569] In the same sense, a former PCC indigenous magistrate asserted that sometimes the indigenous authorities *'do not have the legal political will to fulfill their roles.'* [1570]

On the other hand, indigenous authorities may prefer to avoid hearing the case when disputes regard violent crimes or high conflictive scenarios between families or communities. Most of the interviewees expressed that indigenous authorities are not able to tackle murder, homicide, rape, divorce or adultery.[1571] An indigenous authority considered that indigenous jurisdiction does not have the competence to resolve those kinds of matters and that he would rather advise and guide the parties instead of assuming the position of rendering justice.[1572] Another one considered that:

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[1563] Interview G-2018-04.
[1564] Interview G-2019-02.
[1565] Interview G-2018-01.
[1566] Interview G-2019-04.
[1567] Interview G-2019-31.
[1568] Case LRFJ.AE.Curahuara de Carangas 2019.2019.05 in annex C.
[1569] Interview G-2020-17.
[1570] Interview G-2019-19.
[1571] For example, the authorities 'do not want to assume fights between neighbors, robbery' (interview G-2019-02), 'crimes of violence' (interview G-2019-06), and 'they are not solving adulteries' (interview G-2019-18 ). Another one justified that *'when it is a fight between neighbors or theft, the indigenous authorities do not want to accept them. In fights we understand because they must have a forensic examination.'* (Indigenous authority interview, G-2019-02).
[1572] Interview, G-2019-24.

> *'those have been extreme situations. For example, the topic of homicides and rapes. Many have not been able to interpret it and have felt very limited regarding these aspects. I think we have had many limitations with indigenous justice compared to ordinary justice.'* [1573]

Apart from this, indigenous authorities should constantly go to the ordinary and agri-environmental courts to review the cases to claim their competence in a timely manner when it corresponds and open the chance for collaboration between jurisdictions through the exchange of information. However, according to the interviews conducted, the authorities do not carry out this activity, and, as a consequence, they do not know whether formal jurisdictions are invading their competencies.[1574]

## *Possible Bias (W6)*

Some interviewees also reflected that indigenous authorities might act with a bias favoring one of the parties in conflict, driven by friendship, kinship, or other reasons. For instance, an indigenous authority recognized that indigenous justice *'has a drawback, [the authority] is biased, so it does not apply justice well.'*[1575] Jach'a Karangas' Ayllus are made up of communities that comprise the Sayañas or family territorial units.[1576] Consequently, people within a community are typically united by family ties, friendship, cultural bondings (e.g., they are godfather and godmother of other's children) or even enmity, as an indigneous authority explained: *'unfortunately, there are always relatives in a community, in an Ayllu. So, there is a certain concern and discomfort to do justice … there is already a bit of suspicion.'* [1577]

Indigenous authorities are aware that they shall act with impartiality when deciding disputes: *'the authority should not be judge and judged ... any authority that has a problem or conflict [with one of the parties] could not be the authority since impartiality no longer exists.'*[1578] However, at the same time, they might construe it is acceptable to act neutral instead of referring the case to a genuinely unbiased authority: *'when one is an authority, one must first have power and decision. Where duty begins, friendship ends, be it son, father, uncle, or family member. We shall act impartially.'*[1579] This situation can certainly cause distrust of the parties to the process, which, finally, may prefer another jurisdiction.[1580] From experience, a judge explained that it is possible that *'the indigenous authority is wanting to act well, but he will not be able to prevent its impartiality from being questioned.'*[1581]

It is also possible that the indigenous process begins with a neutral authority and that later, due to its constant rotation, a new biased authority enters. For example, a party to an indigenous process complained:

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[1573] Interview G-2019-01.
[1574] When the indigenous authorities were asked if they believed that the State justice is currently processing cases that belong to the indigenous justice system and what kind of cases they are, the general answer was that they were unaware of this point (for example, interview G-2020-07).
[1575] interview G-2020-12.
[1576] Consejo de Gobierno del Suyu Jach'a Karangas (n 53), Article 11.
[1577] Interview G-2018-07.
[1578] Interview G-2019-02. Similar testimonies in interviews G-2018-08, G-2019-07, G-2020-10, among others.
[1579] Interview G-2020-21.
[1580] *'In rural areas, the indigenous authorities are distrusted. They may be relatives of one of the disputed brothers. So, I prefer to go to another jurisdiction where they will give me a correct solution'* (indigenous authority interview G-2019-15).
[1581] Interview G-2019-41.

> *'we have held several hearings to no avail. We have come to nothing. Then, later, the Awatiri changed... he was a member of the claimant's family. So it has not been possible to move forward. Until now, I am in that problem.'*[1582]

Although the structure and institutionality of the indigenous jurisdiction of JK can face biased authorities to guarantee a fair trial to the parties, on a day-to-day basis, this does not necessarily happen, being a weakness of the authorities when it comes to resolving disputes.

## *Urban Migration, Lack of Legitimacy, and Predisposition for other Cultural Activities (W7-8)*

The phenomenon of urban migration also has adverse effects on the exercise of indigenous jurisdiction, causing the parties to the processes sometimes to prefer formal jurisdictions. Thus, elected authorities may have their residences outside their communities and arrive at their communities to act their positions. A judge commented that *'the indigenous authorities are [frequently] not in their community. And they don't work the land anymore. They don't produce. Their main activity to support their family is something else, either commercial or professional.'* [1583]

Obliged by these circumstances, indigenous authorities exert their positions only during some days, mostly during weekends. Some interviews exposed the related emerging issues, such as indigenous authorities favoring festivities or non-conflictive social and cultural activities connected to their positions, consequently disdaining the exercise of indigenous jurisdiction. A former indigenous authority lamented that:

> *'The indigenous justice of Jach'a Karangas, of the Markas, is completely shut down. [The authorities] cannot manage or solve [the problems]. So, I tell my awatiris: what is the use of being indigenous authorities? They don't want to know anything. They already arrive as tourists..., they come to dance, to do All Saints day.'* [1584]

Interestingly, the uprooting generated by occasional visits to the community seems also to produce some loss of the authority's legitimacy when tackling a conflicting situation among community members:

> *'Some authorities are strong and others are not. For example, they have begun to yell at each other and fight almost over the authority. So, when there's that, you can't resolve [disputes]. That is why they have passed them from the "original" [local authority] to the Mallku, the Mallku to the other Mallku.'*[1585]

Evidently, the authorities living outside their communities not only causes their unawareness of the community problems, but the affected parties resorting to formal jurisdictions to resolve their disputes. A judge described that:

> *'Conversing with the inhabitants of Corque, I have seen that here the indigenous authorities should remain in the community and that in their absence, the inhabitants go to court to solve*

[1582] Interview G-2019-40.
[1583] Interview G-2019-08.
[1584] Interview G -2019-04.
[1585] Interview G -2020-06.

*their problems. So, one weakness that I have seen is that the indigenous authorities are not there.'*[1586]

## *Rarely Rule a Case (W9)*

The interviews also described that the indigenous authorities repeatedly summon conciliation hearings, urging the parties in conflict to reach an agreement, but rarely rule the case even though the parties could not settle them, causing a sense of unnecessary retardation and lack of authority. Several indigenous minutes and some agri-environmental files portray this situation.[1587] As a result, indigenous individuals may prefer to resolve their disputes through formal jurisdictions. An agri-environmental judge explained that

> *'the indigenous authorities have always tried to solve the problems. They have summoned [the parties], they have tried. The problem is that sometimes they have not been able to solve it. Sometimes, the parties do not want to give in. They are intransigent. [The indigenous authorities] could issue resolutions to resolve the matters, but they do not. They cannot. That is why they go to agri-environmental justice for land issues or ordinary justice for fights.'*[1588]

One of the parties to a process described this situation: *'the authorities have helped us solve [our problems], it works as long as both parties agree, right? But when there is no agreement, the dispute continues.'*[1589] Another one complained to his authority: *'with the other party we are patient, several hearings were held and it is the same, we still do not have any document or act of conformity.'* [1590] Following, and in a self-critical attitude, an indigenous authority commented that *'since there is no capacity, then it seems that our authorities hope that [the parties] voluntarily agree or that it be resolved [on its own].'*[1591] Apparently, indigenous authorities may prefer not to take a position or impose their criteria to the parties, except in urgent o extreme cases. An indigenous authority commented that

> *'my policy is that both [parties] reconcile, dialogue, sit down at a table and dialogue, because an authority, even if it lives in the place, does not know the limits of the lands. So we are not going to favor one or the other. We will always be a conciliator or mediator as long as they have the clarity to solve it.'*[1592]

More to the point, another authority stressed that *'the authority with the stubborn nothing can do,'*[1593] while another admitted that *'if [the parties] do not agree, then we leave it until they reflect later (...)*

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[1586] Interview G-2019-08. However, it should be considered that: *'we don't have close relations, for example, with the agri-environmental court in Corque... We can't visit them since we don't have any incentive to spend at least three days in Corque every week. We are only on weekends, and on weekends the judge leaves; he only works until Thursday, so we do not have a dialogue about how to cooperate. That is what is missing. The mallkus should have at least for their passage, at least for their food to stay for about three days and seek that inter-institutional cooperation.'* (Interview G-2018-06).

[1587] Cf. agri-environmental lower-ranking court cases LRFJ.AE.Curahuara de Carangas 2019.2019.007 and LRFJ.AE.Curahuara de Carangas 2017.2019.012 in 'Annex C: Lower-Ranking Courts' Case Analysis' on page 578, and indigenous minutes A.2015.03.20, A.2018.11.12, A.2019.05.15, A.2019.05.20, A.2019.09.11, A.2017.02.17, A.2017.03.14, A.2017.03.15, A.2019.05.22a, A.2019.05.22b, and A.2019.06.05 in 'Annex E: Indigenous Minutes and Documents Analysis' on page 599. (In the last five, the indigenous authorities stated that they would study the documents presented as an excuse to adjourn the hearings).

[1588] Interview G-2019-07.

[1589] Interview G-2020-26.

[1590] Indigenous minutes A.2019.05.22a.

[1591] Interview G-2020-05.

[1592] Interview G-2019-12.

[1593] Interview G-2019-44.

*There, they have to agree. If they agree halfway, then that's it. Now, if they can't (...) We can't force them against their will.'*[1594]

Some of the reasons transcribed above could be explained by the fear and threats that authorities may experience of possible reprisals that could be taken against them when they cease to be authorities. Interviews report that losing parties in proceedings may threaten and harass authorities when their positions are over if they take a stand and decide the case without insisting that the parties voluntarily settle. This situation is more relevant considering the short duration of indigenous positions:

> *'There are authorities. It's not that they don't have that capacity [to make decisions], but they have that fear of not being able to solve the problem because they think "I'm going to issue a resolution in their favor. And, when I'm going to leave office, I'm going to be prosecuted, I'm going to have physical or verbal attacks." So that is the fear that the authority has*.'[1595]

Indigenous authorities may also delay decisions because one or both parties to the process are their relatives or friends.[1596]

## *Indigenous Jurisdiction*

### *It Might Reject Totally or Partially a Case Under its Legal Competence (W10)*[1597]

Indigenous jurisdiction can reject some cases that community members present to it, believing that they are not competent to resolve them even though they are. For instance, an Awatiri explained that if they ask him to solve a robbery case, what he has to do is *'submit the report to the ordinary justice system because that is their responsibility. They are the ones who have to solve it according to what is written in the laws and not the indigenous authorities.'*[1598]

### *Preservation of its Decisions (W11)*

Indigenous jurisdiction commonly lacks the preservation of its decisions in files. Its minute books, where it could have recorded its processes and oral hearings, are usually arranged chronologically, mixing jurisdictional activities with others of management, social or cultural nature, such as the consecration of its indigenous authorities, *Tantachawis*, indigenous councils, meetings, and seminars, among others. On some occasions, there is more than one minute book for the same periods written in parallel, as seen in Table 4. As a result, it is difficult to follow up on the cases or even identify them. On many occasions, there is only the record of some isolated hearings in the minute books, which does not allow knowing its complete development or conclusion. In addition, these handwritten minutes are often totally or partially lost over time, as a former indigenous authority manifested:

[1594] Interview G-2019-29.
[1595] Interview G-2020-24.
[1596] For example, interview G-2020-23: *'for not getting along badly with any of the two parties, they make the time pass one year for two years.'*
[1597] Related to 'Indigenous Authorities Might Assume that the Law Grants a Lesser Competence than the One Actually Held,' page 305.
[1598] Interview G-2019-32.

*'In our own Corque, some acts and books are absent, they do not exist. So, I think that it is necessary to file it well inventoried. Because they are documents on which [the authorities] have to rely upon.'*[1599]

## *Lack Coercion (W12)*[1600]

Another weakness of the indigenous jurisdiction, for which some community members might prefer formal jurisdictions, is its lack of coercion to enforce its decisions and agreements. The lack of coercion would occur in routine cases when the community does not have the urgency to adopt forceful measures. Interviews explain that Jach'a Karangas' authorities *'are losing power ... because they don't know how to enforce decisions'*[1601] and that *'there are wawa qallus [community members] ... who are insolent and, in the end, their stubbornness wins, frustrating the rest.'*[1602]

In contrast, it is interesting to see that a similar situation occurs in formal jurisdictions. A community member, who is also a lawyer, maintained that

> *'in all cases that are not punished with jail, the parties disobey. When the sanction is not deprivation of liberty, the parties let justice decide and then do not comply ... None of the parties comply when they see that, even if they fail to comply, there is no sanction.'*[1603]

This situation could show that the possible preference of community members for formal jurisdictions is not properly founded. However, even so, it is a weakness.

## *Predictability (W13)*[1604]

Some interviewees stated that the indigenous jurisdiction *'lacks laws, articles, [and] regulations.'*[1605] Therefore, it does not have *'an indigenous code to resolve issues.'*[1606] For this reason, they maintain: *'we don't have a point of reference for [doing justice],'*[1607] so *'routinely, perhaps at our discretion, we resolve disputes.'*[1608] Such arguments may raise the discussion of whether it is pertinent to write regulations or statutes that could define essential elements of indigenous justice and serve as a reference. Although JK has a statute and regulations,[1609] its rules are not specific. Furthermore, no interviewee has referred to those standards, which would suggest a range of possibilities from not knowing them to not intending to use them. The following quote is interesting, in which an ordinary judge, but also a member of an indigenous peoples from the north of Potosí (Ayllu Chayanta, municipality of Chayanta), reflects:

> *'At least from the indigenous peoples where I come from, we had discussed whether a type of statutes and regulations could be consolidated in writing, but some brothers said quite rightly*

[1599] Interview G-2018-06.
[1600] Cf. 'They Might Perceive that Formal Jurisdictions Processes Lead to an Enforceable Decision (T18),' page 349
[1601] Interview G-2020-11.
[1602] Interview G-2020-23.
[1603] Interview G-2019-38.
[1604] See 'Preservation of its Decisions,' page 315. Figure 1
[1605] Interview G-2019-42.
[1606] Interview G-2020-05.
[1607] Interview G-2020-11.
[1608] Interview G-2019-37.
[1609] Cf. pages 259 and following.

*that it would deny our own culture. Our knowledge has always been oral,*[1610] *and it has never been written. It also gives us identity as Aymara and Quechua peoples, speaking mainly of the highlands. We would have to debate to know how far that could go [positivizing indigenous norms] so as not to lose our cultural identity.* '[1611]

[1610] The PCC's case 0036/2018 recognized that indigenous law and jurisdiction do not exist solely in writing.
[1611] Interview G-2019-50.

# Section 5.3: External Factors

## Opportunities of the Indigenous Jurisdiction's Exercise of Jach'a Karangas

Opportunities correspond to externalities that could favor an organization to achieve its objectives, meaning 'a situation or condition suitable for an activity. Opportunity is an advantage and the driving force for an activity to take place.'[1612] Applying these elements to this case study, they are the positive external aspects or external effectiveness that favor JK to achieve its planned effect. In other words, JK may have the possibility of resolving disputes of its indigenous members under the legal framework of the Bolivian egalitarian plural justice system because its duty bearers respect it, i.e., its members use or prefer it, and the State jurisdictions do not interfere or restrict its exercise. Therefore, under Table 30, the following content concerns the main opportunities identified in this study construed as the possible reasons to explain the effectiveness of JK in achieving its planned effect.

### *Bolivian Legal Framework*

#### *Indigenous Jurisdiction Has an Exclusive and Excluding Competence to Resolve Disputes (O1)[1613]*

The PCC stated that the recognition of egalitarian legal pluralism starts from the fact of the coexistence of different legal systems within the Bolivian territory, which have their own rules, institutions, and authorities.[1614] Furthermore, it asserts that:

> *'[u]nder the pluralism of the Plurinational State, the coexistence of various legal, political, and economic systems is not reduced to 'recognizing' the other systems by a superior culture... especially if these systems are prior to and pre-existing to the State ... The pluralism of the Plurinational State is erected in a decolonizing pluralism, which raises the egalitarian coexistence of various legal, political, economic, and cultural systems oriented towards a new institutionality stripped of all forms of monism and homogeneity ... this plurality of systems is open, therefore, subject to a process of irradiation, reconstitution, and feedback to each other.'*[1615]

As explained before, the egalitarian plural justice system resulting from this framework concerns equal hierarchy[1616] between jurisdictions belonging to the same Judicial Organ. Even though the latter is

[1612] Gürel and Tat (n 1455) 998.
[1613] Concerns opportunity 1. Related to weakness 3: 'Assuming Indigenous Jurisdiction's Exercise is Voluntary (W3),' pages 306 and following; and threat 20: 'There Might Exist a Common Opinion of Formal Jurisdictions that the Indigenous Jurisdiction's Exercise is Voluntary,' pages 350 and following.
[1614] *SCP 0300/2012* (n 31) para III.1.2.
[1615] *DCP 0006/2013* (n 774) para III.1.
[1616] According to the PCC, same hierarchy between jurisdictions may imply they shall not review their decisions, and subordinate and superimpose one another. Further explanation in Bolivian Constitutional Framework, pages 201 and following.

implied in the Constitution,[1617] the PCC has made explicit that the indigenous jurisdiction is part of the Judicial Organ.[1618] Such egalitarian justice system requires a legal design to avert cumulative or concurrent jurisdictions to a single case, i.e., the possibility of overlapping competencies between jurisdictions. Bolivia has accomplished that task by defining personal and territorial validity areas to distinguish the indigenous jurisdiction's competencies from the others, and the material criterion to differentiate the competencies between ordinary from agri-environmental jurisdictions.[1619]

Distributing the competencies between jurisdictions under these differentiated methods might be the outcome of the distinct Bolivian jurisdictions' nature. Thus, the indigenous jurisdiction is a far cry from a State's conventional jurisdictions because while the latter has a unique body and a structure legally defined by the State, the indigenous jurisdiction is made up of several indigenous peoples' jurisdictions. Under the category of 'indigenous jurisdiction' lies a complex of multiple Bolivian human organizations with different backgrounds, territorial extents, populations,[1620] worldviews, authorities and institutional capacities. Each indigenous peoples may have its own and different indigenous jurisdiction. As a result, while the indigenous' territorial validity area represents the indigenous peoples' territories in which each of them has self-determination, the territory-based division of competencies within the ordinary or agri-environmental jurisdictions only represents a district in which a judge or a court of the same jurisdiction has the competence but bearing in mind that the same jurisdiction also has the competence throughout the Bolivian territory. In other words, each indigenous people only have competence inside its territory, whereas a conventional State's jurisdiction has competence throughout Bolivia, including indigenous territories. The same happens with the criterion of personal validity area, under which an indigenous people only may decide disputes among its members, whereas ordinary and agri-environmental jurisdictions have the competence to decide disputes among all Bolivian residents, including indigenous peoples' members.

Along with the criteria to define competencies to circumvent any possible competence overlapping, the Bolivian plural justice system also prohibits jurisdictions from trespassing the boundaries of their competencies. Not only the equal hierarchy between jurisdictions imposed by the Constitution and the PCC's interpretation on the matter determines the duty not to usurp one another competencies, but there are two specific legal prohibitions as well. On the one hand, the Law of the Judicial Organ dictates that in the exercise of the judicial function, jurisdictions are related based on mutual respect and may not obstruct, usurp competencies or impede their work of imparting justice.[1621] On the other hand, JDL,

[1617] Article 179.I: 'The judicial function is singular. Ordinary jurisdiction is exercised by the Supreme Court of Justice, the departmental courts of justice, the sentencing courts and the judges; the agri-environmental jurisdiction is exercised by the Agri-Environmental Court and judges; and the rural native indigenous jurisdiction is exercised by their own authorities. There shall be specialized jurisdictions regulated by the law.'Elkins, Ginsburg and Melton (n 233).

[1618] *SCP 0300/2012* (n 31) para III.1.2; *Sentencia Constitucional Plurinacional 0518/2019-S4* [2019] Plurinational Constitutional Court Expediente 27934-2019-56-AL, René Yván Espada Navía [III.1 and III.2]; *Sentencia Constitucional Plurinacional 0037/2013* [2013] Tribunal Constitucional Plurinacional Expediente 00160-2012-01-CCC, Soraida Rosario Chánez Chire [III.4].

[1619] The Constitution, Law of the Judicial Organ, and JDL characterize and define the competence between jurisdictions. See 'Bolivian Statutes' on page 219. It is highlighted that these are criteria to differentiate the competence between jurisdictions and that there exist another conditions to discern the competence within each of the jurisdictions, such as the geographical space, hierarchy, turns, or even the prevention that grants it to the judge or court that first intervened in the process. Alejandro Abal Oliú, *Derecho Procesal*, vol I (Segunda, Fundación de Cultura Universitaria 2001) 244–296; Villarroel Ferrer and Villarroel Montaño (n 236) 67–74.

[1620] For instance, Guarasugwe people were only thirteen against the Mataco people that were 1797, or Movima people that were 12230 in 2001 Ramiro Molina Barrios and Xavier Albó, *Gama Étnica y Linguística de La Población Boliviana* (Programa de las Naciones Unidas para el Desarrollo - PNUD 2006) 99.

[1621] Ley 025 del Órgano Judicial [Law of the Judicial Organ], article 6.

intending to protect the indigenous jurisdiction, orders that the ordinary, agri-environmental and the other legally recognized jurisdictions shall not hear indigenous matters.[1622]

## *The Plurinational Constitutional Court*[1623]

### *Expert Opinion (O2)*

In cases where the legality of indigenous decisions is challenged, the PCC may conduct expert opinions to understand better the different dimensions of the context related to the cases it resolves. This possibility, however, only began in January 2012 when the PCC was inaugurated under the Constitution of 2009.[1624] The Constitutional Procedural Code establishes that the PCC may order the production of additional expert information when it deems it necessary and appropriate, allocating a period of up to six months for this purpose and suspending all procedures in the meantime.[1625] For this reason, in the first cases during the analysis period of this study and until 2012, the Constitutional Court only had the possibility of carrying out coordination and cooperation processes with the indigenous peoples to understand the reality better since it did not have this instrument available.[1626]

The first time that the PCC applied an expert opinion in the cases analyzed for this study was in case 1422/2012 to recognize that a Neighborhood Council was, in fact, an indigenous people and that, for this reason, it had the collective right to exercise jurisdiction. Subsequently, the PCC conducted expert opinions with various objectives to decide the cases presented to it with greater depth and perspective. Thus, for example, in case 1624/2012, the PCC discovered that the indigenous jurisdiction did not comply with its own regulations when punishing one of its members. Case 0007/2017 was the first to use an expert opinion to dismiss the argument of the possibility that the indigenous jurisdiction would act with bias if it was granted the competence to resolve the dispute.[1627] The same thing happened later in case 0011/2017. Case 0843/2017-S3 was the first to use an expert opinion to determine that the indigenous jurisdiction had complied with due process, and, conversely, case 1048/2017-S2 determined that it had not. Unfortunately, the PCC did not conduct expert opinions in some other cases where more information would have been necessary[1628] or, instead, obtained partial expertise.[1629]

### *Expansion of the Indigenous Jurisdiction's Validity Areas of Competence (O3)*

In terms of this research, the PCC's rulings that expanded the competence of the indigenous jurisdiction beyond the Constitution and the JDL made the indigenous jurisdiction more effective. According to the Bolivian legal framework, to determine if the indigenous peoples have the competence to resolve a dispute, the areas of personal, territorial, and material validity must concur simultaneously.[1630] The Constitution and the JDL defined and characterized them. This section identifies how the PCC expanded

[1622] Ley 073 de Deslinde Jurisdiccional [Jurisdictional Demarcation Law], article 10.III.
[1623] The referred cases could be consulted in Annex B. For further reference to PCC's case types, see Constitutional Actions, page 463.
[1624] For further reference, see pages 355 and following.
[1625] Ley 254 Código Procesal Constitucional [Law 254 Constitutional Procedural Code], article 7.
[1626] Although this should have happened in case 1586/2010-R, the PCC preferred to issue its decision solely based on the evidence provided by the parties in conflict, which caused this court to affect the effectiveness of the indigenous jurisdiction.
[1627] Cf. 'Possible Bias of Indigenous Authorities' on page 332.
[1628] For example, in cases 2076/2013, 0057/2015, 0484/2015-S2, 0019/2017, 0516/2017-S3, and 0433/2018-S1.
[1629] For instance, in case 0033/2015-S3.
[1630] See 'Bolivian Limits to the Collective Right to Exercise Indigenous Jurisdiction,' page 208.

them as opportunities for the exercise of indigenous jurisdictions, considering that this same court established the duty to apply the highest jurisprudential standard.[1631]

### *Material Validity Area*

Of the areas of validity established by the Constitution and the JDL, the material scope is the one that has attracted the most attention. Thus, the opinions gathered in the interviews only involve the area of material validity, disregarding the others. It is interesting to note that indigenous authorities, indigenous members, judges, and scholars commonly perceive that the powers of the indigenous jurisdiction have been excessively restricted by the JDL, even though this statute is fairly ample.[1632] Be as it may, the PCC has issued some decisions during the study period that have expanded the competencies of the indigenous jurisdiction in the material validity area, overcoming the limitations established in the JDL to some extent.

The PCC has decided to construe the JDL 'in such a way that what is inhibited to the indigenous jurisdiction is the result of a systematic interpretation of the constitutional text from which it results that the exclusion of a 'matter' of its competence seeks, in an evident and clear way in the specific case, to protect a legal asset of a national or international entity, according to the particularities of the specific case.' [1633] As a result, the indigenous jurisdiction would have jurisdiction to resolve all cases of its interest that do not encompass legal assets of a national or international nature.

The PCC also established that

> 'indigenous jurisdiction may hear under its norms… all the acts, facts and conflicts that historically and traditionally indigenous peoples knew. Therefore, the scope of material application of this jurisdiction must be interpreted most broadly and progressively to ensure the validity of plurinationality and respect for the full exercise of self-determination ... the exclusions of the competence from the indigenous jurisdiction must be construed in a restrictive and exceptional manner, in order to avoid suppressing their exercise of the right to self-determination.'[1634]

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[1631] The PCC, within the framework of the principles of favorability and progressiveness, pronounced the plurinational constitutional judgments *Sentencia Constitucional Plurinacional 2233/2013* [2013] Plurinational Constitutional Court Expediente 03621-2013-08-AL, Neldy Virginia Andrade Martínez [III.3], and; *Sentencia Constitucional Plurinacional 0087/2014-S3* [2014] Tribunal Constitucional Plurinacional Expediente 06641-2014-14-AAC, Neldy Virginia Andrade Martínez [III.1]. They established that the current constitutional precedent is the one that embraces the highest standard of protection of the fundamental right or constitutional guarantee. The highest standard is the decision that would have resolved a legal problem more progressively, through an interpretation that tends to make more effective and materialize the fundamental rights and constitutional guarantees provided for in the Constitution and in the international human rights instruments that are part of the constitutional block. Case 2233/2013 pinpointed that the use of the highest standard has at least two practical consequences. First, in the case of having two contradictory constitutional sentences, a judge or court must choose the one that most adequately protects fundamental rights (the highest standard), depending on the circumstances. Second, if different jurisprudential understandings are not antagonistic but progressive, they must be harmonized for the most appropriate resolution of the case in attention to fundamental rights, obtaining the highest standard through jurisprudence integration.

[1632] Cf. 'Intermediate conclusions,' page 250, and 'Indigenous Authorities Might Assume that the Law Grants a Lesser Competence than the One Actually Held,' page 305.

[1633] *SCP 0026/2013* (n 1096) para III.2.3.

[1634] *Sentencia Constitucional Plurinacional 0764/2014* [2014] Plurinational Constitutional Court Expediente 02917-2013-06-CCJ, Ligia Mónica Velásquez Castaños [III.3.2].

In addition to establishing favorable interpretation parameters, the PCC opened the indigenous jurisdiction to the matters it heard according to its norms, disregarding the limitations of the JDL.

In addition, it explained that the indigenous jurisdiction understands the conflict as a whole, without differentiating whether it is a criminal, civil, social, or family matter,[1635] and defines what disputes to resolve or sanction by its self-determination,[1636] so it has a presumption of competence.[1637] Therefore, the PCC has eliminated the differences in matters provided for by the JDL and entrusts the indigenous peoples to discern the scope of the area of material validity according to their self-determination.

Within this framework of justifications, which favorably expands indigenous jurisdiction in its scope of material validity compared to the exclusions of the JDL, the PCC has expanded the material scope in the following matters: family violence against a woman,[1638] severe injuries against a woman,[1639] crimes against minors,[1640] corruption in municipal administration,[1641] and private ownership of real estate.[1642]

### *Personal Validity Area*

Without discussing the scope of the personal validity area, the PCC clarified that the particular link of the persons who are members of the respective indigenous peoples does not imply that they have a permanent residence in it or that they cannot move for short or long periods to other places in the country, according to their interests.[1643]

In 2014, the PCC had established that the personal bond must be interpreted most extensively and progressively, considering it fulfilled when there is a cultural, ideological, religious, worldview, or another bond between the indigenous peoples and its members; or when through self-identification or any other declaration of will, one or more persons generate a bond of belonging to an indigenous people.[1644] Although this second criterion forgets that indigenous peoples must also accept individuals as members, it is a possible explanation that the PCC gives to justify applying indigenous jurisdiction to people outside of it for reasons related to will, as seen below.

The PCC expanded the personal scope for four different reasons to those who are not members of indigenous peoples in the following cases:

a) When they have carried out acts in indigenous territories affecting the people and property of the community.[1645] This criterion is possibly the broadest of all since it would encompass all the possible reasons why indigenous peoples might have an interest in judging third parties.

[1635] *SCP 0388/2014* (n 28) para III.5.
[1636] ibid; *Declaración Constitucional Plurinacional 0131/2015* [2015] Tribunal Constitucional Plurinacional Expediente: 2015.0131-CAI-DC, Macario Lahor Cortez Chavez [III.3].
[1637] *Sentencia Constitucional Plurinacional 0075/2015* [2015] Plurinational Constitutional Court Expediente 07827-2014-16-CCJ, Ruddy José Flores Monterrey [III.2.3].
[1638] Cases 0610/2019-S1 and 0047/2017.
[1639] Case 0041/2018.
[1640] Case 2036/2010-R.
[1641] Case 0015/2019-S1.
[1642] Case 0025/2017.
[1643] *SCP 0005/2016* (n 1032) para III.4.
[1644] *SC 0764/2014* (n 1634) para III.3.1. Partially followed by cases 0055/2016 and 0067/2017, among others.
[1645] *DCP 0006/2013* (n 774) para III.8. Followed by cases 0037/2013 and 0874/2014, among others.

b) When they voluntarily, expressly, or tacitly submit to indigenous jurisdiction, arguing that 'the collective right to administer their justice is related to constructing their social identity.'[1646] It is emphasized that whoever expressly or tacitly accepts the indigenous jurisdiction does not become an indigenous member for that reason, which is why it is about expanding the personal scope. If the third party becomes a community member, there would be no expansion. However, since the law prohibits the parties from choosing the jurisdiction that will resolve their disputes, as explained below, expanding this area on the grounds of the will is debatable.

For example, the PCC interpreted in case 0026/2013 as a tacit will of non-community members to occupy indigenous territories. Later, arguing the progressive and extensive interpretation of the constitutional norms related to fundamental rights, the PCC specified that the indigenous jurisdiction applies to third parties when they have contact with the community due to their land ownership.[1647] Subsequently, the PCC considered that the third party knows the customs of these indigenous peoples, but without considering it a requirement.[1648] It is interesting to note that the expansion of this personal validity area concerning land ownership is confused with the territorial sphere since it is no longer 'belonging to' a community but rather possessing land in it. This PCC's confusion becomes evident when case 0016/2019, under the subtitle of 'personal scope of validity,' maintains:

> 'according to the sketches of the addresses of the parties in conflict and the photocopies of their identity cards... it is evident that both the plaintiff and the accused live in Santiago de Huata ... a territory in which indigenous jurisdiction is exercised.'[1649]

c) When they live or reside permanently in an indigenous community as long as certain legitimate interests link them, for example, the possession of farmland, family descent, or that they express themselves to submit voluntarily to indigenous jurisdiction.[1650] It is emphasized that this extension should only happen when the third party resides permanently in the community.

d) When they belong to a different social organization structure than the structure in which the indigenous jurisdiction is found, it is possible to judge them through the latter since both structures share the same cultural traits. This situation occurred in a case in which members of a union sued members of an indigenous community, and the latter claimed jurisdiction to resolve the dispute. [1651]

### *Territorial Validity Area*

The territorial validity area determines that indigenous jurisdiction applies 'to the relations and juridical acts that are carried out, or the effects of which are produced, within the jurisdiction'[1652] of indigenous

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[1646] *SCP 0026/2013* (n 1096) para III.2.1.3. Followed by cases 1810/2014, 1983/2014, 0075/2015, 0005/2016 (it also expands the criteria, as seen below), 0029/2016, 0006/2017- S1, 0061/2017 (which also includes those who were not born into a certain culture but adopt it), 0008/2018, and 0303/2018-S3, among others.

[1647] *Sentencia Constitucional 0071/2016* [2016] Tribunal Constitucional Plurinacional Expediente: 10964-2015-22-CCJ, Macario Lahor Cortez Chavez [III.4]. Followed by cases 1336/2016-S2, 0081/2017, and 0035/2019, among others.

[1648] *Sentencia Constitucional Plurinacional 0023/2019* [2019] Tribunal Constitucional Plurinacional Expediente: 24473-2018-49-CCJ, Karem Lorena Gallardo Sejas.

[1649] *Sentencia Constitucional Plurinacional 0016/2019* [2019] Plurinational Constitutional Court Expediente 22506-2018-46-CCJ, Julia Elizabeth Cornejo Gallardo [III.5.1].

[1650] *SCP 0005/2016* (n 1032) para III.4.

[1651] *Sentencia Constitucional Plurinacional 0059/2019* [2019] Tribunal Constitucional Plurinacional 23982-2018-48-CCJ, Brígida Celia Vargas Barañado [III.4]. A similiar decision could be found in case 0388/2014.

[1652] Elkins, Ginsburg and Melton (n 233), Article 191.II.3. To better precise this concept, the term 'jurisdiction' (or 'jurisdicción' in the constitutional original wording) of the quotation's final part is construed as 'territory,' coinciding with the term 'territorial' provided by the Constitution when referring to this area.

peoples. In the Bolivian context, it is sometimes difficult and imprecise to determine with a margin of certainty the precise limits within which indigenous peoples have jurisdiction, as noted in the previously.[1653] Perhaps for similar reasons, it is possible to affirm that, of the three validity areas of the indigenous jurisdiction, the territorial one seems to be the least relevant in the parties' discussions and for the PCC at the time of resolving cases, according with the data collection.

Under these circumstances, the PCC has adopted a consistent jurisprudential line that softens the limits imposed by the area of territorial validity, expanding the competence of the indigenous jurisdiction to a certain extent. Thus, case 0026/2013 maintains that 'in general, indigenous jurisdiction applies to ancestral territories.'[1654] This expression does not limit the jurisdictional exercise of indigenous peoples to their currently consolidated or delimited territories. On the contrary, it has the virtue of dispersing the boundaries in the broad and debatable historical annals that could describe the territorial extension that indigenous peoples had ancestrally.

In this sense, JK, according to its statute, ancestrally had a wide extension that far exceeded the current department of Oruro, even reaching Cochabamba, Chuquisaca, and a part of northern Chile. As a result, according to the literal meaning of that expression, Karangas could enjoy a vast geographical space to exercise its jurisdiction. Case 0005/2016 somehow complements this opinion by holding that one must proceed 'within the framework of the principle of respect for indigenous territorial autonomy, without understanding those [indigenous lands] formalized or consolidated through the Ley Marco de Autonomías y Decentralización Administrativa [Framework Law on Autonomies and Administrative Decentralization].'[1655]

## *Expanded Equal Hierarchy Among Jurisdictions (O4)*

The egalitarian plural justice system resulting from this framework has, as one of its expressions, the equal hierarchy between jurisdictions. While the Constitution establishes hierarchical equality between ordinary and indigenous jurisdictions, the JDL[1656] and the PCC's case-law had extended this equal hierarchy also for agri-environmental jurisdiction. Case 1422/2012 stated: 'thanks to legal pluralism and according to the conception of inter-legality ... this [indigenous] jurisdiction is autonomous and hierarchically identical to the ordinary or the agri-environmental jurisdictions, generating between them a relationship of coordination but not of subordination.'[1657] Later, the PCC added equal hierarchy also for specialized jurisdictions.[1658] Hence, equal hierarchy concerns agri-environmental, indigenous, ordinary and specialized jurisdictions. It is noted that the constitutional jurisdiction is not part of the equal hierarchy between jurisdictions since it controls the constitutionality of the others:

> 'The principle of unity of the judicial function (art. 179 of the Constitution), by which all jurisdictions have as common denominator respect for fundamental rights, constitutional guarantees, and obedience to the Constitution, finds unity in the interpretation carried out by the Plurinational Constitutional Court both of the rights and guarantees and the constitutional

[1653] Cf. 'Territorial Validity Area,' page 213.
[1654] *SCP 0026/2013* (n 1096) para III.2.2.i.
[1655] *SCP 0005/2016* (n 1032) para III.4.
[1656] Ley 073 de Deslinde Jurisdiccional [Jurisdictional Demarcation Law], article 3.
[1657] For instance, *SCP 1422/2012* (n 677) para IV.3. The same position was adopted by other cases, such as 200/2012, 0323/2014, 0847/2014, 1990/2014, or 0007/2015.
[1658] *Sentencia Constitucional Plurinacional 1048/2017-S2* [2017] Tribunal Constitucional Plurinacional Expediente 19089-2017-39-AAC, Zenón Hugo Bacarreza Morales [III.2]. Followed by others, such as 0035/2019.

norms themselves, since, due to the binding nature of its resolutions, all judges and authorities are bound to the interpretation made by this body.' [1659]

The 'same hierarchy' among jurisdictions is an opportunity since none of them can review each other' decisions, neither of them can superimpose or subordinate the other and, instead, they shall coordinate.[1660]

## *Indigenous Jurisdiction Competence on Pre-Constitutional Laws (O5)*

The fourth part of article 10.II of the JDL is an open clause that excludes indigenous jurisdiction from hearing matters reserved explicitly for other jurisdictions by the Constitution and the law. For instance, Law to Guarantee Women a Life Free of Violence refers to ordinary jurisdiction in all the cases related to sexual violence, femicide, and 'similar crimes.'[1661]

However, this open clause is a far cry from its pacific implementation. In fact, some ordinary and agri-environmental judges declared themselves competent to decide a cause based on existing laws before the Constitution of 2009 (termed as pre-constitutional laws by the PCC), causing indigenous jurisdiction to be ineffective. Since before the Constitution of 2009, Bolivia was a republican nation-state, and the content of its laws did not recognize the indigenous jurisdiction, all its pre-constitutional laws granted competence only to formal jurisdictions under their literal interpretation.

The PCC in 2010 defined that all pre-constitutional laws must be adapted to the new Constitution; otherwise, it would be incoherent with the new social aspirations defined by the Constituent Assembly.[1662] However, the PCC initially decided that the indigenous jurisdiction was incompetent to resolve cases of internal land disputes since it interpreted that there were laws prior to the Constitution and the JDL of 1996 and 2006 that specifically granted jurisdiction to the former agrarian jurisdiction, which currently corresponds to the agri-environmental jurisdiction. To seal this argument, it stated that: 'although the internal distribution of lands in the communities that have legal possession or collective property rights falls within the competence of the [indigenous] jurisdiction, conflicts arising from possession and property rights do not.'

Subsequently, the PCC modified this understanding by maintaining that the analysis of the three areas of validity of the indigenous jurisdiction must be carried out based on the Constitution and the JDL and not on previous laws.[1663] Likewise, it argued that although the internal distribution of land and the resolution of disputes over the possession of land have different natures, both seek to guarantee the right of possession and the collective properties use, for which the indigenous jurisdiction has the competence to resolve possession disputes of collective lands.[1664] The PCC confirmed this position by specifying

[1659] *SCP 0300/2012* (n 31) para III.1.2.
[1660] For more explanation, see 'Bolivian Constitutional Framework,' page 201.
[1661] 'Todos los casos de violencia sexual, feminicidio y delitos análogos serán derivados a la jurisdicción ordinaria, de conformidad a la Ley de Deslinde Jurisdiccional.' Ley 348 Integral para Garantizar a las Mujeres una Vida Libre de Violencia [Law to Guarantee Women a Life Free of Violence], articule 41.II.
[1662] *Sentencia Constitucional 0044/2010* [2010] Constitutional Court Expediente 2007-16649-34-RDN, Marco Antonio Baldivieso Jinés [III.1.2].
[1663] A general precedent of the Constitutional Court held that 'a consequence of the immediate validity of the Constitution is that all the other norms of the legal system have to adapt to it and therefore, also the pre-constitutional norms' ibid.III.1.2
[1664] *Sentencia Constitucional Plurinacional 0022/2018* [2018] Plurinational Constitutional Court Expediente 20770-2017-42-CCJ, Gonzalo Miguel Hurtado Zamorano [III.3].

that the competencies provided for in the laws prior to the 2009 Constitution must be interpreted according to the indigenous validity areas of the current laws.[1665]

Under PCC's precedents, the entry into force of the Constitution and JDL implicitly modified jurisdictional and competence definitions within the whole Bolivian legal system when indigenous jurisdiction became existent and mandatory. Further, it not only involves JDL's article 10.II.d but the entire material validity area, including the indigenous jurisdiction's competence next to ordinary and agri-environmental ones. Thus, the PCC made indigenous jurisdiction effective regarding constitutional limits with both pre-constitutional and future laws.

## *Lower-Ranking Judges Must Verify Their Competence Before Accepting Any Case (O6)*

Although the Constitution and the JDL do not establish the duty of the judges of the ordinary and environmental jurisdictions to verify their competence when they receive a lawsuit, the PCC has established it. It also determined that they must verify whether the indigenous jurisdiction had already decided the case:

> 'the operators of the ordinary jurisdiction ... before processing the case, to facilitate the restitution of social harmony, they must adopt all the mechanisms that allow them to know if the problem arose in an indigenous peoples and if it was already known by its authorities, in order to promote and assist timely.'[1666]

These obligations were also defined and developed in the Protocol of Intercultural Action of Judges of the Bolivian Supreme Court of Justice.[1667]

## *Constitutional Court Provides Accompaniment to Dispute Resolution between Collectives (O7)*

In the analysis period, some cases were identified in which two or more collectivities (indigenous peoples or unions) were in dispute. Faced with these circumstances, the PCC has decided, in most cases, to grant communities a period to resolve their disputes concertedly, ordering them to report the results and sometimes giving general guidelines to achieve a fair result. For instance, an intracultural dialogue, if the conflict involves two diverse organizations within the same indigenous people (a union and an Ayllu, for example), or an intercultural dialogue if they were two different peoples.

Although the PCC unilaterally imposes these guidelines, it is construed that they are acts of cooperation or collaboration since reasonable common goals are sought, such as the peaceful and concerted resolution of conflicts. In addition, these guidelines imply assistance because, without being a resolution of the problem by the PCC, they refer to the execution of future acts to settle a dispute between parties. The law does not provide this type of accompaniment. Although the Constitutional Procedural Code in its article 17.I refers to adopting necessary actions to comply with resolutions, such as precautionary measures, they do not correspond to monitoring or accompanying the dialogue between communities

[1665] *Sentencia Constitucional Plurinacional 0035/2019* [2019] Plurinational Constitutional Court Expediente 20157-2017-41-CCJ, Julia Elizabeth Cornejo Gallardo [III.7.2]. Followed by 0064/2019-S4.
[1666] *Sentencia Constitucional Plurinacional 0067/2017* [2017] Tribunal Constitucional Plurinacional Expediente: 18856-2017-38-CCJ, Efren Choque Capuma [III.6].
[1667] Tribunal Supremo de Justicia, Órgano Judicial de Bolivia, *Protocolo de actuación intercultural de las juezas y jueces, en el marco del pluralismo jurídico igualitario* (n 1057) 80–82.

to settle a dispute between parties. On the other hand, as long as the guidance and accompaniment are general, they are not equivalent to interference or paternalism since they do not affect indigenous self-determination.

The following cases have been identified within the analysis period:

- In the same community with two parallel organizational structures, a union and an Ayllu, the authorities of the former denounced the community members of the latter for criminal offenses.

In one case, the PCC ordered an intracultural dialogue between both parties (a union and an Ayllu) to reach a joint decision within a month. Moreover, the PCC ordered the parties in dispute to report the results to the PCC's Coordination Unit.[1668]

In another case, the PCC ordered the joint creation of an ad hoc mixed tribunal between both structures (a union and an Ayllu).[1669]

In another case, the PCC held that the law does not condition the exercise of indigenous jurisdiction on a community having a single social organization, which is why it decided in favor of the indigenous jurisdiction, ordering that it resolves the case jointly between the two existing organizations (union and Ayllu). Moreover, it ordered that the Ombudsman's Office, ensuring the validity, promotion, and fulfillment of human rights, should accompany the organizations in this regard.[1670]

In another case, the PCC decided that the community should decide the dispute without imposing a deadline, report, or the creation of an ad hoc tribunal.[1671]

- Although it was a dispute between an Ayllu and one of its communities in the indigenous people of JK, the PCC understood that they were two separate communities. The Ayllu sanctioned the community for not preventing one of its members from acquiring a fraction of the collective property through a judicial process. The PCC annulled the sanction and ordered intra- and intercultural dialogue between the authorities so that they resolve their differences following the postulates of the paradigm of living well.[1672]

## *Formal Jurisdictions' Lower-Ranking Judges Respect Indigenous Decisions (O8)*

According to the interviews collected, judges are reluctant to review indigenous decisions or reopen a previously resolved case in the indigenous jurisdiction. To this end, they stated that they must first acknowledge this situation at the request of one of the parties to the process and have written proof.[1673] Although inter-jurisdictional coordination would have been preferable and documentary evidence should not be required because the indigenous justice is oral and sometimes resolutions or acts are not written or, having been written, they are lost, the judges recognized that admitting a case already resolved would mean double judging.[1674] Some of them even stated that, at the time of rejecting the demands, they advised the parties to the process to request their hierarchical indigenous authorities to

[1668] Case 388/2014.
[1669] Case 0093/2017.
[1670] Case 0059/2019.
[1671] Case 0064/2019.
[1672] Case 0778/2014.
[1673] Interview G-2019-41.
[1674] Interview G-2019-07.

review their indigenous decisions or agreements[1675] or, instead, go to the constitutional jurisdiction.[1676] The case study could not find any case or judicial file on the matter to corroborate it.

## *Coordination and Cooperation. Agri-environmental Jurisdiction is Generally Willing to Assist the Indigenous Jurisdiction (O9)[1677]*

In the processes carried out by the agri-environmental court located in JK, some successful cooperation cases in favor of the indigenous jurisdiction have been identified. Thus, the agri-environmental judge ordered that the technical staff of the court conducts an expert opinion[1678] at the request of the indigenous authorities,[1679] or provided this service at the request of one of the parties to the process, allegedly later used by the indigenous jurisdiction.[1680] It is underscored that these services are free of charge.

Likewise, the agri-environmental judge agreed to participate with his technical and support staff in indigenous hearings to help resolve the dispute at the request of the indigenous authorities.[1681] In this context, an agri-environmental judge stated:

> *'The truth is that we have the advantage of having an engineer who uses GPS, called technical support. In some conflicts that exist, the court supports this aspect. We extract the GPS points and give them a georeferenced map. We are cooperating in this way. We are working in coordination.'*[1682]

Another judge recognized that the agri-environmental and ordinary judges must coordinate with the indigenous jurisdiction. Although he reflected that the judges should seek to meet with the indigenous authorities for this purpose, he considered that the indigenous authorities should also approach them.[1683]

## *Indigenous Members Resort to their Authorities Before Occurs a Potential Negative Outcome in Formal Jurisdictions (O10)*

Indigenous members resort to their authorities asking to claim the competence to resolve their disputes before receiving a foreseeable negative outcome from formal jurisdictions. This situation often occurs in criminal proceedings, especially if there is a possibility that the accused person will be imprisoned. It was the case in the four criminal cases reviewed for this investigation[1684] and some indigenous minutes.[1685] Also, the PCC has resolved some of these matters.[1686] An indigenous authority explained

[1675] Interview G-2019-10.
[1676] Interview G-2019-27.
[1677] Cases referred coud be consulted in Annex C.
[1678] Regarding, for instance, technical reports with GPS, satellite images, damage assessments, and land divisions in rural areas.
[1679] Case LRFJ.AE.Curahuara de Carangas 2019.2019.01.
[1680] Cases LRFJ.AE.Curahuara de Carangas 2019.2019.04, LRFJ.AE.Curahuara de Carangas 2019.2019.009, LRFJ.AE.Curahuara de Carangas 2019.2019.010, LRFJ.AE.Curahuara de Carangas 2019.2019.015, and LRFJ.AE.Curahuara de Carangas 2019.2019.016
[1681] Cases LRFJ.AE.Curahuara de Carangas 2019.2019.013 and LRFJ.AE. Curahuara de Carangas 2019.2019.014.
[1682] Interview G-2019-07.
[1683] Interview G-2019-41.
[1684] Cases LRFJ.O.Totora and San Pedro de Totora 2017.2019.01, LRFJ.O.San Pedro de Totora 2018.2019.02, LRFJ.O.San Pedro de Totora 2018.2019.03, and LRFJ.O.Curahuara de Carangas 2015.2019.04 (a and b).
[1685] For example, indigenous minutes A.2013.03.02 y A.2019.04.26.
[1686] For instance, concerning JK, cf. the cases 0031/2016 and 0005/2018 in Annex B.

that sometimes the parties go directly to ordinary or agri-environmental justice and that when *'one is losing, and the other is winning, the one who is losing wants us to solve the problem.'* [1687] The judges located in Karangas are also aware of this situation and share the same opinion.[1688]

These phenomena open the opportunity for the indigenous authorities to claim the competence to resolve the community members' disputes, as happened in a request made by the Mallkus of Marka to the Apu Mallku of JK to claim the competence from the ordinary jurisdiction since a community member criminally denounced them.[1689] As the ordinary judge illegally rejected the Apu Mallku's request, the PCC ruled in favor of the indigenous jurisdiction.[1690]

### *Community Members Might Prefer Indigenous Jurisdictions Since Formal Jurisdictions might be Bureaucratic, Costly, and Unfair (O11)*

They perceive that formal jurisdictions are bureaucratic, impose their decisions, have a high possibility of being unfair and corrupt and delay justice. A community member complained that within formal jurisdictions, the processes are prolonged and there is no justice for the poor: *'it is one of their greatest difficulties, the lack of speed and the bureaucracy. On the other hand, they always partialize to whoever puts more money.'*[1691] It is also construed that ordinary and agri-environmental jurisdictions are very costly in their procedures (including the need to hire lawyers). For instance, an indigenous authority explained that:

> *In the ordinary jurisdiction, I say that whoever has money will win, although it is very unfair to me. It is very retarded and has much bureaucracy. For example, if a person has physically hit another and has left bruises on his face, he requires a lawyer. The lawyer must go to the FELCC [police or Special Force Against Crime]. That's three days... It's a lot of bureaucracy, and it's very slow. We, as ordinary people, know very well that lawyers always dilate. The longer the process takes, the more fees they earn.'*[1692]

Furthermore, State judges ignore the reality of indigenous individuals in conflict and only seek to punish and imprison. An indigenous authority criticized: '*It's not cold-blooded punishment, is it? Like ordinary justice: "well, this is going to jail, period." It shouldn't be like that, right? … [Instead,] indigenous justice tries to take care if someone has stolen out of necessity. It gives special treatment. The community sympathizes and shares.'*[1693]

## Threats to the Indigenous Jurisdiction's Exercise of Jach'a Karangas

Threats correspond to externalities that could negatively affect an organization to achieve its objectives, meaning 'a situation or condition that jeopardizes the actualization of an activity. It refers to a disadvantageous situation... that should be avoided.'[1694] Applying these elements to this case study, they are the external ineffectiveness that disfavors JK from achieving its planned effect. In other words, JK

[1687] Interview G-2019-30.
[1688] Interview G-2019-50.
[1689] Indigenous Minute A.2013.08.30.
[1690] Case 0007/2016.
[1691] Interview G-2020-10.
[1692] Interview G-2020-20.
[1693] Interview G-2020-30.
[1694] Gürel and Tat (n 1455) 998.

may not have the possibility of resolving disputes of its indigenous members under the legal framework of the Bolivian egalitarian plural justice system because its duty bearers disrespect it, i.e., its members do not use or prefer it, and formal jurisdictions interfere or restrict its exercise. Therefore, under Table 30, the following content concerns the main threats identified in this study construed as external reasons to explain the ineffectiveness of JK in achieving its planned effect.

## *Lack of Support from the State (T1)*

Bolivia has recognized the indigenous jurisdiction as one of the State's jurisdictions, together with ordinary, agri-environmental, and special jurisdictions. However, it has never foreseen a budget for paying the salaries of those who administer indigenous justice, covering their expenses, such as transportation or stationery, or providing them with infrastructure. On the contrary, indigenous peoples must cover costs through their indigenous authorities.

Nevertheless, it should be noted that the State does have a budget for its other jurisdictions and that, in addition, the Law of the Judicial Organ establishes that access to justice in Bolivia is free and at no cost to the Bolivian people.[1695] A judge settled in JK pondered that:

> *'they do not have the means to function as they should in court. For example, the courts have all their means, equipment, desks, and professionals, but indigenous authorities do not have those means. That is to say that the State has abandoned them a little ... It is not accompanying them as it should, perhaps even paying them a minimum wage.'*[1696]

An indigenous lawyer from Karangas acknowledged that:

> *'As far as we have advanced now, it is thanks to the brothers' will who have given on their part to carry out indigenous justice ... Specifically, the indigenous authority, as a natural judge, does not receive money. He has no salary, he is honorary. Besides, they do not improve in the administration of justice [like judges do].'*[1697]

In addition to the obvious difficulties that this situation generates, these reasons could also explain the pejorative feeling, contempt, and disincentive that indigenous authorities have when they compare themselves or are compared to judges.

> *'I believe that there is no incapacity, but on the contrary, what happens is that when indigenous authority compares the procedure of ordinary justice and the indigenous procedure, he believes that ordinary justice is the best when it is the other way around.'* [1698]

## *The Plurinational Constitutional Court*[1699]

### *Deciding Indigenous Cases Directly (T2)*

Sometimes, the PCC decides indigenous disputes directly, without allowing the indigenous jurisdiction to administer justice by remedying the faults it may have committed. It is interesting to note that on

[1695] Ley 025 del Órgano Judicial [Law of the Judicial Organ], article 3.8.
[1696] Interview G-2019-27.
[1697] Interview G-2020-04.
[1698] Interview G-2019-38.
[1699] Cases referred coud be consulted in Annex B.

many occasions, the PCC, despite deciding against the indigenous jurisdiction by annulling its decisions, resolves to order the indigenous jurisdiction to issue a second decision correcting the violations of the rights of the complaining parties.[1700] However, in some others, the PCC directly decides disputes without giving this opportunity to the indigenous jurisdiction to remedy rights violations[1701] or predefines the content of the indigenous decisions.[1702] When the latter happens, the PCC causes the indigenous jurisdiction to lose the possibility of exercising its jurisdiction.

Another threat to indigenous jurisdiction's exercise concerns compliance with the subsidiarity principle. Article 29 of the Constitution mandates that the action of Amparo[1703] shall be presented to any judge or court provided that there is no other standard means or legal recourse for the immediate protection of restricted, suppressed, or threatened rights and guarantees (the constitutional case law refers to it as the principle of subsidiarity). It means that plaintiffs must have previously exhausted all ordinary and extraordinary processes and actions that the law makes available to them in a timely manner. However, this principle has exceptions on urgent matters if the protection under regular procedures could arrive too late or there is the imminence of irremediable and irreparable damage to occur if the Amparo protection is not granted as could happen with *de facto* measures (or taking law in their own hands),[1704] older adults' issues,[1705] or water issues.[1706]

When resolving Amparo actions against the decisions of the indigenous jurisdiction, the PCC sometimes did not apply the principle of subsidiarity. In other words, without considering that indigenous peoples have internal structures and hierarchies between authorities and collegiate bodies to resolve disputes, the PCC decided to accept Amparo actions on cases that hierarchical indigenous authorities have not yet reviewed.[1707] To avoid this situation, the PCC could coordinate with the indigenous authorities concerned or an anthropological expert opinion to determine if the principle of subsidiarity was complied with according to the internal structures of each indigenous people. Even though the PCC complied with the subsidiary principle in general,[1708] its inconsistency may pose a threat.

Under debatable arguments to protect compliance with the guarantee of due process in its various components, the PCC has avoided, in some cases, the exercise of indigenous jurisdiction. It happened mainly when the PCC has excessively required formalities to verify the existence of a due process or when it has preferred the formal jurisdictions because it assumed that the indigenous authorities would act with partiality. Thus, when analyzing the proceeding of the indigenous jurisdiction, the PCC might be excessively meticulous with the fulfillment of formalities or written evidence that would support compliance with due process. By acting in this way, the PCC could decide against the indigenous jurisdiction, affecting its legal exercise and making it ineffective. In the analysis period, an evolution

[1700] For example, cases 2076/2013, 1127/2013-L, 0486/2014, 1254/2016-S1, and 0153/2018-S2.
[1701] For instance, cases 1956/2013, 0691/2017-S3, 1048/2017-S2, 0306/2019-S1 and 0985/2019-S1.
[1702] For instance, case 0924/2016-S1.
[1703] The Action of Amparo takes place 'against the illegal or unjustified acts or omissions of public servants or of individuals or collectives, who restrict, suppress or threaten to restrict or suppress rights recognized by the Constitution and the law.' Elkins, Ginsburg and Melton (n 233), article 128.
[1704] For example, case 0985/2019-S1.
[1705] As it occurs in case 0563/2019-S3.
[1706] E.g., case 0691/2017-S3.
[1707] For example, case 1586/2010-R. In Jach'a Karangas, it occurred in case 0778/2014 in which the community sanctioned by its Ayllu did not claim review by the Marka to resolve the problem but directly filed a claim with the PCC.
[1708] Cf. cases 1586/2010-R (concerns Jach'a Karangas), 0206/2017-S2, 0843/2017-S3, 1161/2017-S2, 0722/2018-S4, 0518/2019-S4 y 0026/2020-S2.

of the case law is observed since, in the beginning, the PCC had a negative tendency in this regard,[1709] which was later formally corrected[1710] and, subsequently, on occasions, applied favorably.[1711]

## *Possible Bias of Indigenous Authorities (T3)*

Following this, the PCC might hinder the legal exercise of indigenous jurisdiction, arguing unfair process due to indigenous authorities' partiality and conflict of interests when resolving disputes. In this way, although the indigenous jurisdiction was competent because the personal, territorial and material validity areas were met, in many cases, the PCC preferred formal jurisdictions, asserting that indigenous authorities would act with bias (favoring one of the parties or even themselves). Consequently, the PCC prevented the exercise of indigenous jurisdiction based on the impartial judge guarantee granting the competence to formal jurisdictions applying the complementary principle. [1712] Although the complementary principle, recognized in article 4 of the JDL and described in the previous chapter, 'implies the concurrence of efforts and initiatives of all the constitutionally recognized jurisdictions,' the law does not foresee it as a criterion to define jurisdictional competencies. PCC's

[1709] Thus, for example, the case 2076/2013 (it is highly attentive to details on the indigenous jurisdiction due process performance), 0961/2014 (it requires that the indigenous resolution be motivated as if the parties to the process did not know the reasons for the decision), 1203/2014 (in which the PCC requires documentary evidence signed by indigenous authorities to demonstrate the existence of a process), 0607/2015-S3 and 0150/2016-S1 (in both cases the PCC rules against the indigenous jurisdiction arguing, among others, the lack of documentary evidence to prove the reasons for the decisions. Given the communitarian characteristics of indigenous justice, it is most likely that the community and the involved parties were aware of the indigenous decision and its reasons. In the latter, the dissenting vote also argued that the PCC incorrectly prefers documentary evidence, which would impose excessive formalism on the indigenous jurisdiction, and a written justice system instead of an informal, oral and prompt justice). It is interesting to note that the indigenous jurisdiction may also request documentary evidence (for instance, cases A.2016.05.30, A. 2017.02.17, A.2017.03.15, A.2019.04.26 or A.2019.07.24).

[1710] For instance, case 0486/2014 inaugurates a paradigm on the application of due process based on a) the minimal intervention of the constitutional jurisdiction in front of the indigenous jurisdiction, b) the intangibility of indigenous decisions, c) that the constitutional jurisdiction can only intervene in indigenous jurisdiction in cases where constitutional rights have been seriously affected, and d) that indigenous due process has different components than formal due process because it obeys different constitutionally recognized legal traditions, although the PCC does not explain what they are. For these four reasons, the PCC establishes that due process must impact the indigenous jurisdiction only in the face of violation of the rights to defense, life, dignity, and physical integrity. Despite this paradigm, which is undoubtedly relevant and favorable for the indigenous jurisdiction in general, the case itself does not comply with it. The PCC orders the indigenous jurisdiction to issue a new decision sufficiently motivated.

[1711] Case 0843/2017-S3 assumes that due process shall be construed within community relations: '[a]s indicated in the Technical Field Report, prepared by the Technical Secretary of this Court, [community members] have a direct relationship. They know each other and are aware of all the activities carried out in the community. Therefore, the [indigenous] decisions do not require notification under the terms of the ordinary jurisdiction, which is why it is not reasonable to require that the Minutes of the Ordinary General Meeting of January 15, 2015, be personally notified to each of the today plaintiffs, as they claim, since that would be ignoring how the indigenous communities make their decisions.(IV.4.2)' *Sentencia Constitucional Plurinacional 0843/2017-S3* [2017] Plurinational Constitutional Court Expediente 18894-2017-38-AAC, Ruddy José Flores Monterrey [IV.4.2].

[1712] 'An impartial judge [is] the one who decides the judicial controversy submitted to his knowledge free of any interest or personal relationship with the problem, maintaining an objective position at the time of adopting his decision and issuing the resolution. The impartial judge vetoes the possibility that a person, an institution, or a group becomes judge and party at the same time since this would violate due process in its natural judge element (SSCC 2487/2010-R and 0349/2010- R, among others). This aspect reaches the indigenous jurisdiction in such a way that if it does not ensure a minimum standard of due process, its exclusion corresponds to activate the ordinary jurisdiction under the principle of complementarity. Another understanding would generate a breach of the Constitution and the human rights treaties that make up the block of constitutionality.' *Sentencia Constitucional Plurinacional 0029/2016* [2016] Plurinational Constitutional Court Expediente 10344-2015-21-CCJ, Ruddy José Flores Monterrey [III.3].

case law displays an evolution on the matter, beginning with a dissenting vote in 2014 in favor of rejecting the indigenous competence,[1713] then as a secondary and unnecessary argument to justify awarding the competence to formal jurisdictions,[1714] and then as the only or main reason.[1715]

Later, the PCC acknowledged that indigenous peoples' jurisdictions might have the means to cope with partialized authorities through their structures and organizations by referring the case to other authorities. It was due to a technical field report from its Decolonization Unit that established that the dispute could be resolved impartially by the indigenous jurisdiction because it had a superior instance that could administer justice. The field report also explained that since indigenous positions usually change within a year, they can cease to be in office when a constitutional ruling is passed, and conflicts of interest could naturally disappear.[1716] Since this case, the PCC mostly favored the indigenous jurisdiction[1717] when it was proven that the latter could overcome bias.[1718]

Almost in parallel, but earlier, the PCC also began a second line of argument favoring the indigenous jurisdiction, respecting its capability to cope with any possible bias or even other risks against due and fair processes. Thus, the Court decided in case 0058/2016 that in Jurisdictional Competency Disputes, compliance with individual rights and guarantees by indigenous jurisdictions in their processes and decisions must be the subject of another specific procedure claimed by the affected party, if any. The PCC continued and strengthened this argument in the following years,[1719] overturning its previous position.

### *Opportunity to Claim the Competence*

Through case 0017/2015, the PCC created a new requirement for jurisdictions to claim the Jurisdictional Competency Dispute action. Through this case, the PCC established that, although the Constitutional Procedural Code does not have a rule in this regard, it is necessary to define the opportunity to claim the competence, given that: a) It is not an absolute right. b) The PCC must ensure justice and compliance with the parties' fundamental rights. c) Formal processes have stages that preclude after they are carried out (they should not be repeated). d) Judges and parties deserve to have legal certainty of procedural acts. e) Competence claims cannot be allowed during the recursive or execution stages of the decisions. f) The judicial movement unnecessarily deployed by the State for an eventual claim of competencies causes economic damage to it. For this reason, according to the PCC, the claimant jurisdiction must request competence within a 'reasonable period as soon as it becomes aware [of the process].' Otherwise, the PCC 'will understand the tacit acceptance of the authority's competence that initially assumed knowledge of the dispute.' In addition, the PCC established that the parties to the process must urge the

[1713] The dissenting vote in case 0388/2014 argued, among others, that the PCC's decision should have declared the ordinary jurisdiction competent instead of violating the right to a natural and impartial judge by granting the competence to the same union that presented the criminal complaint before the ordinary jurisdiction. For more information on the matter, see 'Plurinational Constitutional Court Case Law Analysis' on page 468 and also revise other similar dissenting votes concerning the cases 1754/2014 and 0059/2016.
[1714] Cases 0098/2015 and 0029/2016.
[1715] For instance, cases 0017/2015, 0031/2016, 0010/2017, 0019/2017, 0037/2017, 0072/2017 or 0073/2017. In most of these cases, the magistrates in favor of the indigenous jurisdiction presented their dissenting votes.
[1716] *Sentencia Constitucional Plurinacional 0007/2017* [2017] Tribunal Constitucional Plurinacional Expediente 09811-2015-20-CCJ, Zenón Hugo Bacarreza Morales [III.5].
[1717] Some cases still rejected the indigenous jurisdiction based on bias, such as 0010/2017.
[1718] For example, case 0011/2017. It is noted that the same magistrate rapporteur that rejected the indigenous competence in case 0010/2017 for bias admitted it in the case 0011/2017 after inquiring if there was a change of authority or if another authority could intervene to resolve the case.
[1719] For instance, in cases 0071/2016, 0075/2017 (it argued that the authorities are responsible for guaranteeing their impartiality when resolving disputes within the framework of their own rules and procedures), 0023/2018, 0006/2019, 0035/2019, 0050/2019, 0064/2019 or 0037/2020.

jurisdiction they consider competent to claim the process and not act passively, according to their duty of procedural loyalty.[1720]

Since the indigenous jurisdiction was the only one claiming competence during the analysis period, this new requisite practically applies only to indigenous authorities. Furthermore, considering they are unaware of the processes and that the indigenous parties may only resort to them when they feel like losing their cases, the PCC's opportunity requisite may prevent the exercise of indigenous jurisdiction.[1721]

It should be noted that some of the PCC's magistrates had divided opinions on the matter. Some created and forced the opportunity requisite, some were against it and tried to overrule it, and some were indifferent to it.[1722] Consequently, depending on who the rapporteur magistrate was, the decision varied. Thus, case 0060/2016 was the first to annul the opportunity requirement, arguing that: a) it limits rights to access to justice, due process, and the natural judge. b) It is necessary to annul the precedent to make the indigenous jurisdiction effective. c) It must be feasible to claim the competence at any procedural stage to decongest the formal jurisdictions. d) In the indigenous jurisdiction, there are no stages, and it is not possible to determine what is the first 'opportune' moment to make the competence claim. e) There can be no tacit acceptance of competence since it is a matter of public order and not of the parties' will. In addition, the Constitution orders nullity of acts carried out without competence. Later, this new precedent was followed and strengthened,[1723] even though case 0042/2017 tried to reinstall it.[1724]

### *Living Well Test Paradigm*

Although the *living well test paradigm* follows the PCC's trend in reversing the sanctions of the indigenous jurisdiction,[1725] it is explained separately due to its specific characteristics. The so-called ' living well test paradigm' was created and used for the first time by the PCC in case 1422/2012, in which it considered it would be unfair to use a strict test of compliance with fundamental rights:

> 'the fundamental rights in force for the members of the indigenous peoples cannot follow the same guidelines of interpretation, nor can they contain the same configurative elements typical of the hard cores of fundamental rights in other contexts. In this perspective, the paradigm of living well is configured as a true pattern of inter and intra-cultural interpretation of fundamental rights.'[1726]

According to PCC explanation, this test consists of five phases to contrast the indigenous judgment not with fundamental rights but with values and facts. Hence, the indigenous decision must be consistent with a) intercultural and intracultural constitutional values (equality, complementarity, reciprocity,

[1720] *Sentencia Constitucional Plurinacional 0017/2015* [2015] Tribunal Constitucional Plurinacional Expediente 07184-2014-15-CCJ, Juan Oswaldo Valencia Alvarado [III.3].
[1721] See cases 0017/2015, 0315/2015-CA, 0012/2016, and 0042/2017.
[1722] For instance, and taking into consideration Table 31, Neldy Virginia Andrade Martínez, Juan Oswaldo Valencia Alvaro, Karem Lorena Gallardo Sejas and Carlos Alberto Calderón Medrano were in favor of the opportunity requisite, and Zenón Hugo Bacarreza Morales and Efren Choque Capuma were against it.
[1723] For instance, cases 0006/2017, 0007/2017, 0051/2017, 0055/2017, 0088/2017, 0018/2018, 0040/2018, 0041/2018 and 0050/2019. Case 0041/2018 argued that due to the principle of gradual progress of rights, it was not possible to apply the regressive argument of the cases that followed judgment 0017/2015.
[1724] It is interesting to see how in the same Plenary Chamber of the PCC, there have been conflicting opinions that produced, on the same date, contradictory decisions breaking the jurisprudential unity. Thus, on that same occasion, ruling 0042/2017 was issued, re-establishing the opportunity requirement, and ruling 0051/2017, held precisely the opposite.
[1725] See below 'Reversing Indigenous Sanctions Disregarding the Law.'
[1726] *SCP 1422/2012* (n 677) para IV.5.

harmony, inclusion, transparency among others, and *Ama Qhilla, Ama Llulla, Ama Suwa* (do not lie, do not be lazy, and do not steal), *Suma Qamaña* (live-well), *Ñandereko* (harmonious life), *Teko Kavi* (good live), *Ivi Maraei* (land without evil), *Qhapaj Ñan* (noble path or live),[1727] among others), b) indigenous peoples' cosmovision and c) internal indigenous norms and procedures. Furthermore, the indigenous punishment shall be d) proportional to the sanctioned behavior and e) strictly necessary for the community's interest protection.[1728]

Despite the good intentions that the PCC would have had at establishing the living well test paradigm, almost every time it has been used, it has had the consequence of overruling the contested indigenous decision.[1729] Of this group of decisions, the only occasion the PCC favored the exercise of indigenous jurisdiction occurred because it modulated its application by maintaining that before applying it, it must first consider whether the indigenous jurisdiction has other instances to resolve the dispute.[1730] Interestingly, on the other occasions, the PCC only asserted the indigenous decisions did not pass the paradigm of living well test by arguing a lack of compliance with the elements of this test without explaining the reasons.

It is highlighted that the self-made living well test paradigm is a broad and imprecise instrument not provided by law that allows the PCC to decide in favor or against the indigenous jurisdiction's exercise according to its subjective opinions and not following the applicable legal framework. Furthermore, the PCC does not seem to have the legitimacy to decide on indigenous values. For instance, deciding whether the expulsion sanction contradicts the indigenous peoples' values, mainly if it did not conduct anthropological studies through its decolonizing unit, and since communities have already felt the sanctioned members violated their values.[1731] Finally, the PCC could have overruled the indigenous decision based on other legal arguments in some cases instead of applying the self-made living well test paradigm.[1732]

## *Reversing Indigenous Sanctions Disregarding the Law (T4)*

Another menace against the exercise of indigenous jurisdiction is the limitation of indigenous sanctions by the PCC disregarding the law. Perhaps because indigenous justice must be framed within human rights and the Constitution, the sanction of whipping offenders does not appear in the JK official regulations, a sanction applied formerly with some frequency along with other physical punishments in extreme cases.[1733] The Bolivian Constitution prohibits any kind of torture, and physical or moral violence in its article 114. It is stressed that the PCC had not decided in favor or against lashing[1734] as

[1727] The PCC adopted the values of the article 8 of the Constitution.
[1728] The 'living well' test could be compared, to some extent, with the reasonableness test of Juan Cianciardo, *El principio de razonabilidad. Del debido proceso sustantivo al moderno juicio de proporcionalidad* (Editorial Ábaco de Rodolfo Depalma 2004). The reasonableness test covers three aspects or judgments: adequacy, necessity and proportionality. To that end, the consistency of values, worldview, norms and indigenous procedures (a, b and c) could account for the first judgment, i.e., adequacy.
[1729] Cases 1422/2012, 0057/2015, 0484/2015-S2, 0444/2016-S1, 0647/2018-S2, and 0563/2019-S3.
[1730] Case 0722/2018-S4. In other words, the PCC favored the indigenous jurisdiction by applying the principle of subsidiarity and not the living well test paradigm.
[1731] Cases 0057/2015, 0484/2015-S2, 0444/2016-S1, 0647/2018-S2, and 0563/2019-S3.
[1732] For instance, case 0484/2015-S2.
[1733] Cf. 'Jach'a Karangas' Justice', on page 278.
[1734] In case 246/2015-S1, the PCC differentiated the land dispossession decision taken by the indigenous jurisdiction from the barbaric violence that later occurred within the community when many community members flogged another one, considering that violent and disproportionated actions are not indigenous jurisdiction. Note that indigenous jurisdiction did not decide the whipping as a punishment but spontaneously occurred later. The other case concerns an indigenous sanction against a community member with expulsion, a $50,000 fine, and ten

the Colombian Constitutional Court did, admitting it.[1735] Nonetheless, apparently, in some ayllus of JK there still exists the whipping sanction, as the following testimonies endorse:

> *'Ten lashes would be an arroba, five would be half an arroba*[1736] *and in public, in the main square, so that people know that they are suffering the punishment so that they [the community members] can see that committing any crime can no longer happen. They must be punished, whipped in the presence of the public and in the square. It is how our statute manifests.* '[1737]

In the following case, whiplash refers to a way of exerting indigenous jurisdiction when the community authorities adopted a method to investigate and solve a case:

> *'In a case of robbery, a strange lady from another Marka came to Huachacalla Marka under the pretext of looking for the father of her unmarried daughter. She stayed with an elder..., in which, taking advantage of his age, the lady indicates him to buy bread for breakfast. In his return, she would have emptied his entire house... The twelve authorities of the council met and issued a methodology to apply indigenous justice: they had resolved to find the lady putting the Mama T'allas in charge since a woman was involved... The women intercepted the evildoer. The woman initially refused: 'it was not me.' Well, finally, the Mama T'allas decided to undress the woman in the square publicly. Then, the evildoer realizes that her attitude does not suit her. Then, she begins to "sing:" 'Yes, I have stolen.' Two or three other women are commissioned to bring the stolen goods. 50% of the money has been recovered. At that moment, the ladies decided to hit three whips for each Mama T'alla because the lady was saying: 'I forgot, I don't know where I left the goods.' However, she knew where the stolen goods were. In that sense, she has been whipped three times by Mama T'alla in her hand. Before all this, an endless number of rituals are done. You have to ask the Pachamama so that everything that is being proceeded first is in good time, and it also serves for the education and reflection of the lady. After all, a minute is signed.* '[1738]

Contrary to the whipping, the Bolivian legal frameworks admit the expulsion punishment with some exceptions, as explained before.[1739] In the opinion of Chuquimia, Chambi, and Claros, community members' expulsion is more difficult today than in the past.[1740] Even though the PCC resolved some

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blows (or lashes) for supplanting indigenous authority in the exercise of indigenous jurisdiction. Before executing any of the sanctions, the community member claimed his right to due process (case 1048/2017-S2), and the authorities consulted their decision's legality (case 0105/2017). The PCC decided to favor the indigenous member arguing the violation of his right to due process without referring to the legality of the whipping sanction.

[1735] 'The whipping consists of flogging with a "dog herding dog," which is carried out on the lower part of the leg. This punishment, which is considered less important than the stocks, is one of the sanctions that the Paeces use the most. Although undoubtedly causing distress, its purpose is not to cause excessive suffering but to represent the element that will purify the individual, the ray. It is thus a symbolic figure or, in other words, a ritual used by the community to sanction the individual and restore harmony.' *T-523-97* [1997] Corte Constitucional de Colombia Expediente T-124907, Carlos Gaviria Días [3.3.3.a)].

[1736] At least two interviewees explained that the quantity of lashes is named after weight measurements: approximately 'cuartilla' equals 4 lashes, 'arroba' 10 to 12, and 'quintal' 36 (interviews G-2018-07 and G-2019-19).

[1737] Andamarka's Former indigenous authority interview, G-2018-07.

[1738] Indigenous authority interview, G-2018-10.

[1739] Cf. 'Jach'a Karangas' Justice', on page 278. Furthermore, article 5.III of JDL establishes the prohibition of the sanction with loss of land or the expulsion of the elderly or people with disabilities due to non-compliance with communal duties, positions, contributions, and communal work.

[1740] They consider that the community's collective interest was arguably more substantial since land ownership now is more individual than collective. Chuquimia Escobar, Chambi Mayta and Claros Aramayo (n 1294) 71. Currently, there is an erroneous perception that the Constitution and the law prohibit expulsion in Jach'a Karangas. In this sense, some of the indigenous members and authorities refer to the expulsion as past events that are no

cases accepting the indigenous sanction of expulsion[1741] or even extending the indigenous jurisdiction's competencies,[1742] in several others it limited this indigenous prerogative beyond the parameters established by the JDL, becoming a threat to its jurisdictional exercise.

During the analysis period, the PCC decided on two expulsion cases regarding JK, accepting one and rejecting the other. In the first case, the PCC favored the indigenous decision to expel a man for sexual abuse of several minors, arguing that it is an indigenous jurisdiction's prerogative.[1743] Conversely, in the other case, the PCC rejected the expulsion sanction of an older man who had problems with the community for more than ten years, intended to appropriate the lands of others and did not participate in community meetings. [1744] The PCC established that despite the wrongdoings of the expelled man, the JDL allegedly prohibits older men's expulsion because they deserve 'extended protection.' This position disregarded article 5.III of JDL, which only prohibits the expulsion or loss of land to older people and people with disabilities due to non-compliance with communal duties, such as contributions, positions, and community work. It is noted that the PCC misrepresented the case since the indigenous jurisdiction ordered the man not to do agricultural work and raise livestock on one of his lands (Sayaña) and did not expel him.

The PCC repeatedly rejected the expulsion of older adults in three other cases[1745] of other indigenous peoples applying this same argument. In one of them, it also excluded a woman from expulsion by establishing that they also deserve extended protection.[1746] In another case in which two brothers had been expelled, the PCC excluded the sister from expulsion because she was the mother of two children who, due to their underage status, also deserve extended protection and should not accompany their mother in the expulsion.[1747] Following the precedent of the latter, the PCC also excluded a woman from expulsion for being a mother of an underage son, when the community decided to expel a family after it did not change its pattern of extremely violent behavior and lack of respect for the authorities and the

longer feasible. *'The authorities and the parties should pijchar coca, ch'allar [ritual of toasting and watering the Pachamama with alcohol], and make prayers to solve the problem well, and that the parties in dispute tell the truth … At some point, when the matter is very complex or delicate, I have heard that the Awatiri can coordinate with the Yatiri [who is a wise sorcerer and may act as folk healer] to give an adequate solution. In such cases, the person is accompanied to the 'Tupo' or 'Apacheta' [high and cold land or passage through the mountain], which is the place where he is dispatched so that he never comes back. I did not see this during my 60 years, but I heard it from my elders' testimony'* (former indigenous authority interview, G-2020-30). It is also the case with a lawyer who is a member of JK: *'The penalty of expulsion has also been limited by the Law of Jurisdictional Demarcation, you can no longer be expelled from the place of your life because it is a human right*' (indigenous lawyer interview, G-2019-09). In contrast, some community members may have a more precise comprehension of their faculties and limits regarding expulsion. Furthermore, understanding the legal limits, they seem to try to overcome them using other means, as the following interviewee portrays: *'The Jurisdictional Demarcation law, if I am not mistaken, clearly indicates that a person over 60 years of age cannot be expelled from their land even if they do not comply with their obligations such as attending meetings, working in the community, and other aspects. The law prohibits expelling them. But, it does indicate that they can transfer those same sayañas or lands to any of their children' (Former indigenous authority interview, G-2018-01).*

[1741] For instance, cases 0076/2018-S1, 0055/2019, and 0481/2019-S2. In the cases 0028/2013 and 0056/2017-S1, the PCC has not admitted the process and has left the expulsion decisions subsisting. Furthermore, it has justified the expulsion asserting that it emerges from indigenous peoples` self-determination and is compatible with the Constitution and its principles and values of plurinationality, pluralism, and interculturality. Therefore, the expulsion 'enjoys the same constitutional dignity as the sanctions imposed by ordinary justice' in *DCP 0006/2013* (n 774) para III.7.3.

[1742] Cf. PCC's SWOT opportunities.

[1743] Case 2036/2010-R.

[1744] Case 0150/2016-S1.

[1745] Cases 0358/2013, 0113/2014-S2 and 0563/2019-S3.

[1746] Case 0563/2019-S3.

[1747] Case 0924/2016-S1.

community for many years.[1748] It is noted that the JDL does not prohibit women or mothers' expulsions from indigenous peoples' communities.

Furthermore, the PCC has denied several cases of expulsion, justifying that the right to due process of those sanctioned had been violated, that the sanction was unreasonable to the conduct committed by those sanctioned,[1749] that the indigenous peoples do not provide for this sanction in their written norms, that the indigenous decision has not been sufficiently motivated to adopt such a measure. However, these arguments are debatable in some cases because expert examinations had not necessarily been carried out to determine whether due process had indeed been affected,[1750] whether the oral and traditional indigenous norms allow for expulsion,[1751] or whether there was sufficient motivation in the indigenous decision.[1752] At the same time, it is also debatable whether there is excessive intervention in the assessments that indigenous peoples legitimately adopt to determine the reasonableness of their sanctions.[1753]

Since the PCC ruled against most of the expulsion's decisions, the indigenous authorities might believe it is prohibited by the Constitution and laws. It is the case in Sabaya Marka, where its indigenous authorities more recently decided to banish a person and, through an Amparo, the guarantees judge overruled the decision.[1754] The judge explained that the indigenous sanction was overruled based on the claimant's rights to due process and defense.[1755] An indigenous authority understood the indigenous prerogative to sanction individuals with expulsion is unfairly limited:

> *'The Constitution tells you no one should be expelled. So … in Sabaya Marka … [a person was] expelled two months ago. That was it. But he claimed in a Constitutional Amparo and won. So, the issue is that the bad guy has won against an entire community.'*[1756]

All things considered, the PCC has taken different positions regarding the extreme indigenous sanctioning measures of whipping and expulsion. Regarding the first, the PCC has avoided making an express statement and has resolved the related cases through other arguments, leaving it for the future to decide. On the other hand, when it comes to expulsion, although the PCC has accepted it when certain requirements are met, in many other cases, it has excluded it with implausible debatable arguments that might not be supported by law, affecting the indigenous jurisdiction's exercise, and giving the belief that expulsion might be prohibited.

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[1748] Case 0076/2018-S1.

[1749] The PCC created the 'paradigm of living well' as reasonableness test to discuss the necessity, the coherence of internal and external values and the proportionality of an indigenous sanction, as seen before.

[1750] Due process. For instance, cases 2076/2013, 0967/2015-S1, and 0516/2017-S3.

[1751] Norms. E.g., case 939/2017-S2.

[1752] Motivation. For example, cases 0486/2014, 0961/2014, 0033/2015-S3, 0967/2015-S1, 1254/2016-S1, and 0433/2018-S1.

[1753] Proportionality. For instance, cases 1422/2012, 2076/2013, 0057/2015, 0484/2015-S2, 0444/2016-S1, 1254/2016-S1, and 0647/2018-S2.

[1754] According to the Constitutional Procedural Code, the lower-ranking judges have to decide Amparos in the place of their jurisdiction. These decisions are then sent to the Constitutional Court for review, as explained in 'Constitutional Actions' on page 463.

[1755] *'I heard, as an ordinary judge and judge of constitutional guarantees, that they determined the expulsion of a community member without making him participate in the meeting. Practically, without giving him a chance to defend himself or at least state his argument why he would have acted this way. Perhaps his actions could have been against the community but [the sanctioned person] has the right ... obviously, based on the Constitution, it is a totally infringing act of the right to defense.'* (Ordinary judge interview, G-2019-50).

[1756] Indigenous authority interview, G-2019-36.

## *Formal Jurisdictions' Lower-Ranking Judges*

### *Arrival of Formal Jurisdictions to the Indigenous Territories (T5)*

In the past, formal jurisdictions did not reach communities. An indigenous authority recalls that in the 1990s, *'there were no such courts [formal jurisdictions] ... if [the community members] had land problems, they had to talk.'* [1757] A judge commented that *'indigenous justice has always existed. It's just that before, there weren't many courts, and many judges didn't reach the communities.'* [1758]

Consequently, in addition to self-composition, the indigenous jurisdiction was the typical means of resolving disputes through community and authorities. Then, it was usually the case, except that some community members would have ventured to capital cities, relatively far away, to sue for their legal claims against other community members and surpass their indigenous authorities. Nonetheless, resorting to judges instead of indigenous authorities implied inviting people from outside the community to decide community issues, with which it was predictable that the community would reject and sanction these acts.

When the State expanded its judicial presence throughout Bolivia, beginning at the end of the last century with ordinary courts[1759] and in 2007 with the agrarian courts in indigenous areas,[1760] things changed. Concerning JK, the State created courts in the municipalities of Corque, Curahuara de Carangas, and Huachacalla, coinciding with some of its major Markas. As a result, these courts began to coexist closely and intimately with the nearby communities affecting the indigenous jurisdiction.

Some opinions gathered through interviews are relevant to grasp a greater perspective on the matter. For example, a community member reflected that the coexistence of jurisdictions in one place could make the indigenous jurisdiction redundant. He noted that in the communities where formal justice has not reached because there is a lack of access to roads, *'you can see the need for indigenous justice... it is not the same in Karangas.'* [1761] Another one, who is also a lawyer, deepened this perception by explaining that

> *'when it is said that the objective of the ordinary jurisdiction is to reach the last municipality, then the [indigenous] jurisdiction is being invaded, because the more courts in the communities ... the more the [indigenous] jurisdiction is unknown, because ... they have more knowledge, personnel, and logistics, while the indigenous justice system does not have that capacity.'* [1762]

A judge, who was in Karangas from the beginning of formal jurisdictions' arrival, first in the agri-environmental court and then in the ordinary jurisdiction, thoroughly explains her experience and perception of this issue.[1763] When she arrived in Curahuara de Carangas in 2007, she commented that community members saw her court *'as an alien, strange institution, because indigenous authorities had always resolved community problems [on their own].'* More to the point, her court was seen *'as a disturbing element of harmony.'* For this reason, continues the judge, the indigenous authorities felt that

[1757] Interview G-2019-18.
[1758] Interview 2019-41.
[1759] Ley 2025 1999.
[1760] Ley 3545 de Revolución Agraria—Modificación de la Ley 1715 de Reconducción de la reforma Agraria [Agrarian Revolution Law] 2006; Tribunal Agroambiental, Órgano Judicial de Bolivia, *Memoria Histórica 1999-2019 Tribunal Agroambiental*, pp 20–21 (2019).
[1761] Interview G-2019-38.
[1762] Interview G-2019-49.
[1763] Interview G-2019-10.

it was a lack of respect for their investiture and decided that the court's decisions would not be valid in the communities. As time passed, when the authorities could not resolve their cases, *'they allowed the parties to go to my court,'* the judge commented, because they saw it *'as a higher instance.'* She recalls that it was difficult for her to make indigenous authorities understand that both jurisdictions were on an equal footing since they considered that *'a judge with studies and training was more capable'* than them. With the passing of time, finally, there were approaches between authorities and her *'to solve disputes and not affect third parties.'*

Formal courts created in the indigenous territory affected the indigenous jurisdiction because, suddenly, community members had a second option to access justice, and indigenous authorities felt threatened. In some cases, a sort of delegitimization of the indigenous jurisdiction occurred compared to formal state jurisdictions, in which there is a structured process, specialized lawyers, written laws that allegedly avoid arbitrariness, and mechanisms to enforce decisions. In others, however, there is a reaffirmation of indigenous jurisdiction, perhaps due to mistrust of judges who do not know local traditions or the inertia of maintaining culture and community institutions. In addition, formal jurisdictions are related to economic power since going to them implies expenses, in contrast to the free-of-charge nature of indigenous jurisdiction. Consequently, community members may perceive formal jurisdictions as corrupt since they apparently exchange money for justice. As a community member with experience in both indigenous and formal jurisdictions stated:

> *'I am currently doing criminal proceedings elsewhere. But this justice of the State is a total corruption. There is no justice for those who do not have money. We have to be realistic, it's like this: for those who have money, there is justice because their money moves [the justice system].'* [1764]

## *Lower-Ranking Judges Usually Admit All Cases Presented to Them (T6)*

Judges in JK frequently admit cases belonging to the indigenous jurisdiction,[1765] disregarding the Constitution and the JDL. In the interviews, judges usually present excuses to justify themselves, as if they could make amends for their jurisdiction invasion.

For example, a judge held that indigenous authorities are not present in the community, so he resolves the disputes of the community members through conciliation, stating that he cannot deny justice.[1766] Likewise, another one explained that he receives disputes that indigenous authorities could not previously resolve[1767] to justify his jurisdiction invasion arguing for *access to justice* instead of cooperating with them. With a similar argument, a judge maintained that if *'the authorities do not want to receive them, I cannot reject them.'*[1768]

Moreover, another judge understood that jurisdictions may be unaware of their competencies or confuse them because they intersect, admitting later a supposed legal duty to accept all lawsuits filed in his court to prevent indigenous members from taking justice into their own hands.[1769] However, his words also seemed to justify accepting and processing cases under an allegedly blurry area where the competence

[1764] Interview G-2020-02.
[1765] Cases of LRFJ.O.Totora and San Pedro de Totora 2017.2019.01, LRFJ.O.San Pedro de Totora 2018.2019.02, LRFJ.O.San Pedro de Totora 2018.2019.03 and LRFJ.O.Curahuara de Carangas 2015.2019.04 that concerns severe and minor injuries, threat of death and domestic violence against older persons (Annex C).
[1766] Interview G-2019-07.
[1767] Interview G-2019-50.
[1768] Interview G-2019-10.
[1769] Interview G-2019-41.

of each jurisdiction is not defined and, at the same time, the possibility of denying indigenous jurisdiction's requests attributing responsibility for such definition solely to the PCC. Nevertheless, the JDL pinpoints the matters belonging to each jurisdiction (material validity area), and the Constitutional Procedure Code gives the required judge the possibility of accepting or denying the indigenous authority's competence claim before sending the case to the PCC. It is what the criminal courts settled in JK did when the indigenous jurisdiction requested the competence to decide the four cases reviewed for this study.[1770] In fact, ordinary jurisdiction judges of Curahuara de Carangas and Totora Marka voluntarily recognized their competence invasion by accepting the competence of the indigenous jurisdiction requested by the Apu Mallku of JK. Remarkably, contrary to one of the agri-environmental judges' positions, they referred the cases to the indigenous authority even though they began in 2015, 2017, and 2018.[1771]

Likewise, judges expressed that they generally summon indigenous authorities when community members claim their rights to make them aware of the dispute, and one of them explained that they must seek the indigenous authorities to coordinate with them and vice versa. However, from reviewing criminal and agri-environmental proceedings, it is observed that ordinary judges in the four criminal proceedings did not summon indigenous authorities and that the agri-environmental jurisdiction only called them on one out of every four occasions. These data show that lower hierarchy courts commonly fail to comply with their duty to coordinate with their indigenous peers, and still, in some processes, it could be observed that indigenous authorities present requests or participate in the hearings even though they had not been summoned. However, it is observed that agri-environmental courts freely cooperate with indigenous authorities and the parties through their technical support staff, preparing reports based on maps, GPS measurements, and satellite images, among others. [1772]

One of the agri-environmental judges expounded through the interview G-2019-07 that indigenous authorities permanently request the competence to resolve the disputes he is dealing with. He expressed his annoyance at these requests, considering them thoughtless and impulsive given that indigenous authorities, according to him, do not analyze the stage in which the cases are and how they were handled. He argues that sometimes indigenous authorities request cases shortly before adjudicating, which interferes with justice and harms the timely resolution of the dispute. Then, when the process is advanced, he prefers to avoid admitting a claim of competence, as if the time would grant him the competence to resolve the dispute in contradiction with the Constitution and the JDL. In addition, he reflected that if the judge denies the competence request, the process must await a resolution for a long time in the PCC. He maintained that the indigenous authorities make a grave mistake since land exploitation cycles should not be stopped, and land conflicts must be resolved quickly. However, the judge did not consider legally supported arguments, such as the personal, material, and territorial validity areas of competence, or that he may cause this delay and affectation by acting without competence instead of legally referring the case to the indigenous jurisdiction.[1773] Finally, he commented that he usually declines his jurisdiction when the process is carried out as conciliation but

[1770] Cases of LRFJ.O.Totora and San Pedro de Totora 2017.2019.01, LRFJ.O.San Pedro de Totora 2018.2019.02, LRFJ.O.San Pedro de Totora 2018.2019.03 and LRFJ.O.Curahuara de Carangas 2015.2019.04 (Annex C).
[1771] See 'Opportunity to Claim the Competence' on page 333.
[1772] Cf. Annex C, cases LRFJ.AE.Curahuara de Carangas 2019.2019.01, LRFJ.AE.Curahuara de Carangas 2019.2019.009, LRFJ.AE.Curahuara de Carangas 2019.2019.013, and LRFJ.AE.Curahuara de Carangas 2019.2019.014.
[1773] It is interesting to note that the PCC decided against the competence of this judge in the case 0005/2018, recently explained in a previous footnote.

does not do so in other cases since indigenous authorities may act partialized to one of the parties[1774] and impose their criteria by force, which portrays a certain distrust on indigenous authorities to exercise jurisdiction fairly.

In sum, these justifications might suggest that judges are aware they affect indigenous jurisdiction and may ignore the lengthy processes that the indigenous jurisdiction sometimes takes to reach an agreement.

## *Agri-Environmental Jurisdiction Practices Possession Dispute Resolution Through Conciliation (T7)*

The agri-environmental courts located in JK resolve most cases through conciliation, and they mostly concern possession land disputes. As evidence, the vast majority of the agri-environmental processes of the lower-ranking courts analyzed for this research involve land issues and have been processed by conciliation.[1775] Furthermore, the agri-environmental judges explained that they *'resolve disputes through conciliation,'* [1776] collaborating with the indigenous people to resolve their cases.[1777] Judges even commented that they proactively go to communities seeking for cases to resolve them by conciliation,[1778] and the majority of them, if not all, regard disputes over land possession.[1779] Interestingly, indigenous disputes on land possession are under the indigenous jurisdiction, according to the JDL and the interpretation made by the PCC jurisprudence.[1780] In a critical stance, a former PCC magistrate argued that *'instead of helping, the State harms because it has taken away [from the*

[1774] Supporting this criterion, another environmental judge argued that one of the main problems is that most community members are relatives, so the authorities cannot avoid acting biased when doing indigenous justice (G-2019-41 interview).

[1775] Cf. Annex C, in which the agri-environmental judge mostly accepted the cases in a conciliatory proceeding. Furthermore, the interviewees admitted acting by conciliation. For instance, a former agri-environmental judge said, *'most of the processes that I have known have been by conciliation. Very few were contentious'* (G-2019-10), and other judges manifested that their courts attend many conciliations (G-2019-41 and G-2020-24).

[1776] Interview G-2020-24.

[1777] Interview G-2019-41.

[1778] A judge recognized: *'If I am not proactive, there would be no single process here [in court]. I would be sitting here without justifying anything. So then, there has to be action. If someone comes and tells me, "brother, I have this conflict," I immediately tell him to file a complaint right here, right now. We directly receive the complaint verbally ... So then, I already have a cause. I will sit around and do nothing if I do not do this. No one comes.'* Interview G-2019-07. Another judge expressed the same: *'judges do not have to be sitting in their office, but rather they shall go to the scene of the events to solve the problem ... There, [in the field], people also show up and say "I have this problem. How can I solve it?" We prepare their conciliation requests at that moment because we start from the conciliation before entering into a contentious process. So, the parties are happy since they are not charged anything, not a single cent: it is free. They appear in person, and they let us know their problem. Then, the secretariat receives their request in a record, the day and time of the hearings are set, the summoned parties are notified, and the hearings are carried out. We solve the problems there.'* Interview G-2020-24.

[1779] Interview G-2020-24. One of the agri-environmental judges explained that in Jach'a Karangas there is no individual property since all lands are under a collective property regime. He asserted that *'the agri-environmental courts deal only with conflicts of possession and not of property rights. Therefore, our resolutions do not give property rights; we only protect possession.'* Interview G-2019-07. In general, the agri-environmental cases reviewed correspond to the recovery or protection of indigenous territory, boundary disputes between neighbors (disturbing possession, removal of milestones, or overlapping of land, among others), redistribution of land among community members, land division among heirs, claims for damage caused by livestock or agricultural activity, and request for expertise and measurements. Files reviewed in the agri-environmental court of Curahuara de Carangas, although they do not deal with indigenous territory protection (as, on the other hand, the PCC's case 0005/2018 claimed by JK does), they concern the rest.

[1780] Cf. cases 0078/2017, 0843/2017-S3 and 0022/2018, Annex B.

*indigenous jurisdiction] the rite of harmony and conciliation. Now, the State has created conciliatory judges, which is the essence of managing indigenous justice.'*[1781]

In this same line of argument, the PCC established in case 0069/2017 the precedent that agri-environmental processes, in which the parties are summoned to conciliate, invade the indigenous jurisdiction that, interestingly, applies the exact mechanism to resolve disputes, provided that the three areas of personal, material, and territorial validity areas concur. It could be argued that they are not jurisdictional acts that may interfere with indigenous jurisdiction. However, these acts prevent the indigenous jurisdiction from assuming jurisdiction in the way they usually exercised it, that is, through conciliation. A similar decision is reached in case 0005/2018. Despite these PCC precedents, agri-environmental judges continue to admit possession disputes through conciliation and invading indigenous jurisdiction.

Despite these PCC decisions, the agri-environmental jurisdiction has established a series of publications to conciliate disputes that correspond to the indigenous jurisdiction. To justify the conciliatory exercise, the agri-environmental jurisdiction states that conciliation can sometimes be conducted through a mixed court made up of environmental judges and indigenous authorities,[1782] or that it concerns the principle of culture of peace through inter-jurisdictional cooperation and coordination efforts.[1783] Likewise, the agri-environmental jurisdiction argued that conciliation would be valid if it has the will of the parties, the values and norms of indigenous peoples are respected, and hierarchical equality is recognized through coordination and cooperation.[1784] Finally, the agri-environmental jurisdiction argued the access to justice to validate conciliation of indigenous disputes, stating that the Court of Corque (in JK) makes conciliations on property boundaries and fencing between neighbors and that the Court of Curahuara de Carangas carries them out in demarcation between lands.[1785] In this way, the agri-environmental jurisdiction tends to violate and superimpose the exercise of indigenous jurisdiction.

## *Judges Occasionally Reject Indigenous Jurisdiction's Claim of Competence (T8)*

The frequency of *jurisdictional competency dispute* processes handled by the PCC concerning JK of an approximate average of one per year in the analysis period[1786] shows that seldom judges reject indigenous authorities' competence requests. For example, it is observed that the ordinary jurisdiction accepted the requests of the indigenous authorities in the cases LRFJ.O.Totora and San Pedro de Totora 2017.2019.01, LRFJ.O.San Pedro de Totora 2018.2019.02, LRFJ.O.San Pedro de Totora 2018.2019.03 and LRFJ.O.Curahuara de Carangas 2015.2019.04.[1787]

However, judges sometimes reject these requests on grounds that may disregard the legal framework. Such was recognized by an agri-environmental judge, arguing that although he accepts competence requests from indigenous authorities when they are related to conciliation, he rejects them when they belong to processes: *'sometimes they ask me to refrain from hearing a case. I do it, but when it is*

[1781] Interview G-2019-19.
[1782] Tribunal Agroambiental, Órgano Judicial de Bolivia, *Protocolo de Conciliaciones Interculturales En Materia Agroambiental* (2020) 11.
[1783] Tribunal Agroambiental, Órgano Judicial de Bolivia, *Protocolo de Conciliación Agroambiental En Sede Judicial* (Sin fecha) 9 and 13.
[1784] Tribunal Agroambiental, Órgano Judicial de Bolivia, *Guía de Capacitación a Jueces En Conciliación Agroambiental y Su Vinculación Con El Deslinde Jurisdiccional* (2021) 19–20.
[1785] Tribunal Agroambiental, Órgano Judicial de Bolivia, *Rendición Pública de Cuentas 2020 del Tribunal Agroambiental. Informe final.* (2020) 30–31.
[1786] Further information in the next section of this chapter.
[1787] For more detail, see appendix C.

*conciliation. In processes, I refuse.'*[1788] The same judge was sued in a jurisdictional competency dispute before the PCC by the Apu Mallku of JK precisely for not refraining from hearing a land possession process, although the three personal, territorial and material validity areas concurred.[1789] The PCC decided to favor the indigenous jurisdiction in case 0022/2018.[1790]

In sum, when the indigenous jurisdiction requests the competence to resolve disputes, the responses varied. In some cases, formal jurisdictions admitted their illegal invasion of competence. In others, they rejected the requests under arguments that are not legally supported, even if they may recognize the competence belongs to the indigenous jurisdiction.

## *Judges Might Consider that Indigenous Jurisdiction Only Deals with Conflicts of Little Relevance (T9)*

An ordinary judge held that *'indigenous justice must be recognized in its true dimension and with the importance it deserves.'* [1791] However, he considers that this is not the case today, not only because the JDL greatly restricts indigenous jurisdiction but also because his fellow judges do not genuinely value and respect it. This judge criticized that *'in the Departmental Court [of Oruro] the authorities have only handled indigenous justice as a discourse, to be at peace as authorities. They do not share my point of view and only recognize indigenous justice for training courses.'*

In effect, it seems that the formal judges underestimate the capacity of the indigenous jurisdiction to resolve disputes since, in the interviews, they insinuated that the indigenous authorities could only resolve minor disputes. Thus, they stated that the JDL *'prudently had made some delimitations of competencies because the indigenous authorities necessarily need more expertise. They do not have this expertise because they do not have the means.'* [1792] They *'cannot even resolve the small fights between community members.'* [1793] Hence, *'what are the indigenous authorities going to solve? they practically deal with small conflicts.'* [1794] Some judges have *'guided the authorities a little. It is the coordination and cooperation duty. For example, I have sometimes suggested that they ask for the competence [to resolve the dispute] because those were small problems they could solve.'* [1795]

[1788] Interview G-2019-07.
[1789] For more details on this process, see LRFJ.AE.Curahuara de Carangas 2017.2019.012 (a, b, and, c) in Appendix C.
[1790] For more information on this process, see Appendix B. It seems that at the time of the G-2019-07 interview, the judge was unaware of the PCC's decision since the process LRFJ.AE.Curahuara de Carangas 2017.2019.012 was still in possession of the agri-environmental court, and until its last act on September 30, 2019, PCC decision 0022/2018 was not yet on its record. Although the date of the PCC's decision is June 29, 2018, it seems that the current issuance of the decision is later. For that same reason, the cases analyzed by this investigation only reached until the first months of the year 2020 because they were the only ones published and available on the PCC website in 2021.
[1791] Interview G-2019-08.
[1792] Interview G-2019-27.
[1793] Interview G-2019-07.
[1794] Interview G-2019-50.
[1795] Interview G-2019-07.

## *State's Institutions Seldom Cooperate and Coordinate with Indigenous Jurisdiction (T10)*

Although State institutions are obliged to comply with the determinations of the indigenous jurisdiction, it seldom occurs. Most indigenous authorities consider that the Police and the Prosecutor's Office do not provide the service to which they are obliged.

The authorities have complained that the police *'is the one that asks for the most money and does not help.'*[1796] On the borders with Chile, *'there is a lot of contraband income, so the police are more attentive to that than taking care of citizens.'*[1797] An authority explained that

> *'the police have not been trained to support us. We know that the police are the arm that should execute the resolutions we issue. The police comply with the resolutions of ordinary justice, but they do not recognize indigenous justice. It is not in their mentality.'*[1798]

Thus, a Mallku from Marka commented that *'it has not been possible to coordinate well with the police, we have not been able to understand each other.'*[1799] To serve indigenous authorities, the police requests an order from the prosecution or judges to act,[1800] so it is necessary to explain to them[1801] about the validity of indigenous jurisdiction. Then, sometimes, they help.

On the other hand, most of the interviewees who have referred to the Public Ministry have considered that it acts against the indigenous jurisdiction and does not support plural justice. For example, an indigenous community member, lawyer, stated that *'the prosecutor's office opens and continues cases that belong to the indigenous jurisdiction. In no way does it cooperate or coordinate because the prosecutor's office is an institution with Western vision.'*[1802]

# *Indigenous Litigants*

## *Claimants May Believe they Can Sue within Formal or Indigenous Jurisdictions Indistinctly (T11)*[1803]

Another threat is that some indigenous members who litigate may sometimes believe that they can lodge their claims before indigenous justice or formal justice in an alternative or indistinct way, even though the legal framework establishes exclusive and excluding competencies.

Thus, when the litigants were asked if they would feel betraying JK and its customs, some litigants maintained that they consider *'it is the right of every person to go to indigenous justice or ordinary justice,'*[1804] because in *'Bolivia we are one. So, we don't have our State justice and our indigenous justice... the two must go hand in hand. It is not betraying anything.'* [1805]

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[1796] Interview G-2019-02.
[1797] Interview G-2019-11.
[1798] Interview G-2019-08.
[1799] Interview G-2020-23.
[1800] Interview G-2019-20.
[1801] Interview G-2019-45.
[1802] Interview G-2019-38.
[1803] Related to 'Assuming Indigenous Jurisdiction's Exercise is Voluntary,' page 306.
[1804] Interview G-2020-10.
[1805] Interview G-2020-02.

## *They Might Consider Formal Jurisdictions are the Next Instance (T12)*

It is a common belief of community members and indigenous authorities that formal jurisdictions have the competence to resolve disputes that the indigenous jurisdiction has not been able to settle. Thus, for example, an indigenous authority maintained that despite dealing with all the disputes that are presented to him, *'he passes them on to ordinary justice if the problem cannot be resolved.'* [1806]A litigant prioritized the instances to which he would turn if he could not find a solution to his dispute: *'I would go first to the Mallku of the Council, if he could not, to the Mallku of Jach'a Karangas and if he could not, to the agri-environmental judge. Lastly, I would go to the Constitutional Court.'*[1807]

## *They Might Believe that Formal Jurisdictions have Greater Capacity to Resolve Complex and Hard Cases (T13)*

Without differentiating the material validity area established by the JDL, some indigenous members believe that while indigenous justice could resolve minor disputes, more complex or challenging cases correspond to formal jurisdictions, which threatens the exercise of indigenous jurisdiction. An indigenous lawyer explained that this *'is reduced to the fact that indigenous peoples resolve the jiska justice [small justice] and ordinary jurisdiction deals with the great justice, or jach'a justice.'* [1808] A community member explained that indigenous authorities lack the training to resolve challenging cases.[1809]

## *Low Confidence and Migration Could Have Diminished Indigenous Members' Sense of Duty Towards their Communities and Authorities (T14)*

Several members and indigenous authorities of JK have reflected that the indigenous jurisdiction has frequent difficulties because the community is unaware of its own institutions and lacks self-confidence. *'We write our minutes and we do not value ourselves,'*[1810] maintained an indigenous litigant suggesting that they disregard indigenous authorities' decisions. At the same time, an authority compared that the indigenous jurisdiction

> *'is not like formal justice: when a resolution comes out, it is accepted. But, on the contrary, when an indigenous authority dictates his resolution, they do not give us importance or value us ... even though the Constitution and laws order their binding nature. So, something is missing, something fails.'*[1811]

They even claim to other jurisdictions *'without considering that the solution lies in our community.'* [1812] The interviews also displayed a decrease of the indigenous parties' sense of duty toward their community and authorities. *'They have tried to solve it in the community, but those affected have gone directly to ordinary justice. They [the claimants] do not validate the actions of the community. That is the problem. There is no indigenous justice sense'* among community members.[1813]

[1806] Interview G-2019-30.
[1807] Interview G-2020-09.
[1808] Interview G-2019-20.
[1809] Interview G-2020-09.
[1810] Interview G-2020-06.
[1811] Interview G-2018-07.
[1812] Interview G-2018-12.
[1813] Interview G -2019-11.

A former indigenous magistrate of the PCC essayed an explanation concerning indigenous authorities, arguing that *'the first problem is that of legal self-consciousness ... which results in the authorities' failure to comply with their obligations.'* [1814] From another perspective, an indigenous litigant pointed out that they may also need legal training to tackle indigenous disputes; otherwise, *'they are going to stumble, and others will ignore and try to discourage them.'* [1815]

Some interviews have referred to migration and city residence of some community members as the fundamental reasons to explain their loss of values and lack of respect for indigenous institutions. When migrants *'try to return to their origins ... they overlook indigenous authorities,'* commented one authority.[1816] That is because they are *'external subjects who have other ideas, have other criteria, have other thoughts. They only return with the interest of recovering' their sayañas. In these conditions, those who come back are sometimes 'very arrogant and disrespectful,'* [1817] tending to *'scorn the family member who was possessing the land.'* [1818] Occasionally they are *'retired from the military or the police, and act like bosses.'* [1819] A judge reveals that they may also be former public officials or legislative assembly members who previously preferred indigenous justice and now, *'due to their greater economic resources, prefer to go to formal justice and persecute their own brothers with the rigor and force of that jurisdiction.'* [1820]

As a result, low confidence and migration may have diminished indigenous members' sense of duty towards their communities and authorities, threatening the exercise of Karangas jurisdiction.

## *Claimants May Resort to Formal Jurisdictions and Judicialize Indigenous Decisions (T15)*

For various reasons, community members may lodge their lawsuits in formal jurisdictions,[1821] threatening the exercise of the indigenous jurisdiction of Karangas. The main reasons are listed below:

- Sometimes, it is simply a matter of convenience, as a judge maintains: community members *'who know they have the support of their community and the other party does not prefer the indigenous jurisdiction'*[1822] and vice versa. Some may go to formal jurisdictions because they have the financial means to meet their high costs[1823] and lawyer's fees,[1824] knowing that the other party cannot. Further, occasionally community members *'do not believe in indigenous justice.'*[1825]

- Many land disputes also involve minor aggressions that are taken to the ordinary criminal jurisdiction since their victims tend to exaggerate them and denounce them as crimes. An authority analyzed that

[1814] Interview G-2019-19.
[1815] Interview G-2019-45.
[1816] Interview G-2019-15.
[1817] Former authority's interview G-2018-06
[1818] Former authority's interview G-2018-07
[1819] Former authority's interview G-2018-03.
[1820] Interview G-2019-50.
[1821] It does not mean the case will conclude in the formal jurisdiction. An Apu Talla sharply commented that *'they spend all their money, get tired, and return to indigenous justice.'* Interview G-2019-39.
[1822] Interview G-2019-41.
[1823] Indigenous authority's interview G-2019-20.
[1824] Indigenous lawyer's interview G-2019-20.
[1825] Indigenous authority's interview G-2020-08.

the criminal jurisdiction has accepted cases that, in his opinion, *'were not serious, such as minor verbal or physical aggressions.'*[1826]

- The indigenous exercise of jurisdiction could be judicialized or criminalized by the party that has lost the process. If the indigenous decision *'is not in favor of the community member or does not obtain what he sought through indigenous justice, he prefers to go to the formal jurisdiction,'*[1827] explains an indigenous authority. For these reasons, the authorities often fear lawsuits against them for possible illegalities when deciding a case. *'The authority is afraid that any judgment without a technical basis will cause him to be judged and held accountable. That has happened.'*[1828] They may even fear physical or verbal aggression when they finish their authority's position.[1829]

The judges, for their part, usually accept these cases and reject the requests for jurisdiction by the indigenous authorities. However, it is highlighted that the PCC has corrected the criminalization cases brought to its jurisdiction. For instance, 0925/2013, 0874/2014, 0012/2017, 0047/2017-S1, 0015/2018, and 0046/2018, among others.[1830]

## *Defendants May Hinder Indigenous Jurisdiction's Exercise by not Attending the Hearings (T16)*

Indigenous defendants may neglect or lose indigenous hearings, as seen in indigenous minutes A.2009.09.10, A.2015.12.14, A.2016.05.30, A.2010.02.27 and A.2010.03.19.[1831] An indigenous authority complained that when the defendants *'do not attend the hearings, the process does not advance, it falls behind'*[1832] threatening the exercise of Karangas' indigenous jurisdiction. Thus,

> *'when the hearing is summoned, [the defendants] don't show up, they don't obey anything. When [the defendants] don't show up, that's the end of the process, and the lawsuit doesn't move forward. It lags behind. In my opinion, it can't be fixed. [The problem] remains the same.'*[1833]

A claimant in an indigenous process also showed his disappointment:

> *'I have resorted to the indigenous justice, but there has been no good result because the neighbor who was affecting me has refused [to appear]. He has not undergone [the process]. So [my authorities] did nothing in the end. This is how it has been until now.'*[1834]

This situation could worsen if it is taken into account that the defendants may not reside in the community. Moreover, given that the indigenous jurisdiction does not have mechanisms to carry out trials in absentia, as is the case in the ordinary jurisdiction for civil proceedings, disputes are not resolved if the defendants do not attend the hearings. An indigenous authority commented his frustration exercising the indigenous jurisdiction: *'until now, it has not been possible to achieve [justice] because one is a resident in Choquecota and the other is a resident in the city of Santa Cruz.'*[1835]

[1826] Interview G-2020-20.
[1827] Interview G-2019-01.
[1828] Indigenous authority's interview G-2019-02.
[1829] Judge's interview G-2019-38.
[1830] Cf. Annex B.
[1831] See annex E.
[1832] Interview G-2019-04.
[1833] Interview G-2019-04.
[1834] Interview G-2019-40.
[1835] Interview G-2019-37.

## *Community Members Might Prefer Formal Jurisdictions*

### *They Might Perceive Formal Jurisdictions as More Advanced than Indigenous Ones (T17)*

In the interviews, some community members and indigenous authorities refelected that the indigenous jurisdiction is less advanced than the formal ones, for which they would prefer the latter to settle their disputes, especially when they are complex or challenging cases.[1836] Thus, one indigenous authority recognized that they are not as competitive in knowledge as the judges.

> *'The Constitution [says that] we are at the level of a lawyer or the level of Judge, but lawyers have studied for five years. We, as indigenous people, by putting on a poncho, already believe ourselves to be at the level of a judge.'*[1837]

We must consider that *'the indigenous authorities have barely reached primary school and only some will be high school graduates. They lack legal knowledge.'*[1838] Moreover, *'there is a complex [of the community members] believing that the indigenous authorities do not know about justice. They believe that those who know are the judges, the learned people. Therefore, they themselves minimize indigenous jurisdiction.'*[1839]

### *They Might Perceive that Formal Jurisdictions Processes Lead to an Enforceable Decision (T18)*[1840]

Some community members consider that the indigenous authorities do not take decisions to resolve disputes, which makes the *'problems in the Ayllus and Markas worsen.'*[1841] On the contrary, *'all [formal] processes reach a judgement.'*[1842] In addition, community members may prefer formal jurisdictions because they maintain that indigenous jurisdiction's decisions, if they exist, are not enforced.

> *'They have also gone to the agri-environmental sector. They no longer prefer our authorities because they know that when resolutions or determinations are issued in the Ayllu, they are not enforced. So, people no longer want their authorities to attend to them because they say that they do not do justice, they do not enforce.'*[1843]

### *They Might Prefer Formal Jurisdiction for their Predictability (T19)*[1844]

Some community members consider that the indigenous jurisdiction is discretionary since it does not have processes or deadlines defined by law, as is the case with formal jurisdictions. An authority lamented that *'indigenous justice does not have a specific regulation, like ordinary justice, that must be*

[1836] See 'They Might Believe that Formal Jurisdictions have Greater Capacity to Resolve Complex and Hard Cases,' page 346.
[1837] Interview G-2018-14.
[1838] Interview G-2019-37.
[1839] Indigenous lawyer, interview G-2019-49.
[1840] Cf. 'Lack Coercion,' page 316.
[1841] Indigenous authority's interview G-2019-25.
[1842] Indigenous lawyer's interview G-2020-17.
[1843] Indigenous authority's interview G-2020-11.
[1844] Related to 'Preservation of its Decisions,' page 315, and 'Predictability,' page 316.

*done with deadlines. That does not exist.'*[1845] Additionally, formal jurisdictions *'have their criminal and civil code where they are governed. So, for example, if there is theft, you already know the punishment.'*[1846] On the contrary, *'in indigenous justice it is not known how the authorities are going to do it,'*[1847] established an indigenous litigant.

On the other hand, no complete precedents maintain the memory of the indigenous decisions adopted, to later be consulted in case of doubt, or to confirm the agreements between the parties in dispute. Indigenous justice does not have adequate logistics or infrastructure to organize and preserve files. An indigenous member who is a lawyer maintained that

> *'sometimes we record the processes and decisions in minutes. Those acts are lost by passing from authority to authority. Some authorities do not act in good faith because they misplace or lose them. That is where these types of documents are lost. That's the worst; there is no longer a precedent that can help us or future generations ... On the other hand, in ordinary justice, a resolution is issued by a competent authority, which is filed, and, at any time, a certified photocopy can be requested.*'[1848]

As a result, indigenous members may prefer formal jurisdictions, threatening the exercise of indigenous Karangas jurisdiction.

## *There Might Exist a Common Opinion of Formal Jurisdictions that the Indigenous Jurisdiction's Exercise is Voluntary (T20)*[1849]

Despite there is no overlapping competencies and jurisdictions are forbidden to invade one another's competencies in Bolivia, the phenomena of inter-jurisdictional competencies invasions are a proven fact (e.g., cf. Figure 11). Moreover, just as one jurisdiction may illegally invade the competence of another, it also may occur that one jurisdiction could illegally intend to refer its cases to another incompetent jurisdiction. The latter only takes place from indigenous jurisdiction to formal ones. A former indigenous magistrate of the Supreme Court of Justice, acknowledging the existence of these illegalities, stated that:

> *'There are cases that the law says pertain to indigenous justice. The indigenous justice has no reason to refer them to ordinary justice. The ordinary justice is not applying this norm either because without having the competence, it is receiving cases from indigenous justice. There is a situation that must be saved. Each jurisdiction must exercise its competence.'*[1850]

There exists a common supposition that indigenous jurisdiction can refer its cases, if it prefers, to ordinary or agri-environmental jurisdictions. Allegedly, the competence may depend on the discretion of the indigenous jurisdiction. The following quote from the PCC illustrates how it construes that the indigenous peoples may decide to refer the cases that belong to indigenous jurisdiction to the others if they voluntarily may prefer to:

[1845] Indigenous authority's interview G-2019-46.
[1846] Indigenous authority's interview G-2020-11.
[1847] Interview G-2020-15.
[1848] Indigenous Lawyer Interview, G-2020-19
[1849] Related to opportunity 1: 'Indigenous Jurisdiction Has an Exclusive and Excluding Competence to Resolve Disputes (O1),' page 318; and weakness 3: 'Assuming Indigenous Jurisdiction's Exercise is Voluntary (W3),' page 306.
[1850] Interview G-2019-09.

> ‘Under the self-determination of indigenous peoples (art. 2 of the Constitution), each has its legal system according to its worldview, with its culture, traditions, values, principles, and norms. By virtue of this, they determine what facts or matters they resolve, decide or sanction ... and which they prefer to refer to another jurisdiction.’[1851]

Lower-ranking judges have the same opinion, specifying that the indigenous jurisdiction could refer the cases when it cannot solve them: *‘previously, an attempt should be made to resolve the case within their community and with their indigenous authorities. Only in the case of not having any possibility to decide it, they shall refer it to the agri-environmental justice.’* [1852] Additionally, indigenous peoples might also have the same understanding.[1853] As a result, there is a belief against the law that the competence can change accordingly to the will and interests of indigenous peoples and that formal jurisdictions can take over the cases that the indigenous jurisdiction refers to them. This voluntaristic understanding of the competencies gained greater force with the following two PCC case law:

a) The first one regards the cases in which the PCC has rejected indigenous jurisdiction based on extemporaneous claim of jurisdiction.[1854] It is a contested but currently dormant PCC’s line of case law that considers the competent indigenous authority may only claim jurisdiction during the first stage of the process or as soon as indigenous authorities know about it, after which it should no longer be feasible. Then, the incompetent jurisdiction becomes competent as the indigenous competent jurisdiction did not claim in time (or did not claim at all). The PCC interpreted the lack of claim as an implicit consent granting the competence.

b) The second concerns the PCC’s acceptance of the voluntary withdrawals of competence claims made by the indigenous peoples before the PCC decides the claims, and even though the antecedents show the three validity areas of indigenous competence concur.[1855] Consequently, the PCC almost always have accepted that indigenous jurisdiction can voluntarily exclude itself from deciding a case, even though the case belongs to its competence.

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[1851] *SCP 0037/2013* (n 1618) para III.8. Other cases followed the same argument, for instance *SC 0764/2014* (n 1634); *DCP 0199/2015* (n 1113).
Interestingly, the PCC almost never imposed the indigenous jurisdiction the duty to resolve the cases under its competence. It happened, for instance, in a prior control of indigenous statutes case in which the PCC rejected the indigenous peoples’ alleged faculty (self-defined) to refer cases to formal jurisdictions whenever they concern serious matters. The PCC clarified that if a case legally corresponds to the indigenous jurisdiction, it cannot refer ‘serious matters’ to the formal state jurisdictions, as if they were a higher instance. Instead, the indigenous jurisdiction must resolve the cases that correspond to it within hierarchical equality between jurisdictions. *Declaración Constitucional Plurinacional 0077/2017* [2017] Tribunal Constitucional Plurinacional Expediente: 16205-2016-33-CEA, Mirtha Camacho Quiroga.
[1852] Interview G-2019-50.
[1853] For instance, see in Annex B: *Declaración Constitucional Plurinacional 0064/2019-S4* [2019] Tribunal Constitucional Plurinacional Expediente: 27316-2019-55-CAI, René Yván Espada Navía. Furthermore, according to the testimonies collected through interviews, the indigenous authorities might belief that indigenous jurisdiction can refer its cases to ordinary or agri-environmental jurisdictions if they understand they cannot resolve the dispute. For instance: an indigenous authority recognized that *‘if the problem cannot be solved, it goes to ordinary justice. There are different kinds of problems. An example of land that we have not been able to solve, we have passed to our Mallkus. If our Mallkus cannot solve it, only then it goes to ordinary or agrarian justice.’* (Interview, G-2019-30.) Another stated: ‘*If there is a possibility of solving the problem, it is solved in the community through my authority, and if not, it is better to report it to the agri-environmental judge*.’ (Interview, G-2020-23).
However, there is a common opposition against indigenous individuals freely choosing to which jurisdiction claim their disputes. (Cf. weakness 3 in Table 30 and its following justification).
[1854] See threat 3 in Table 30 and its following justification.
[1855] *Sentencia Constitucional Plurinacional 0068/2017* [2017] Tribunal Constitucional Plurinacional Expediente 17169-2016-35-CCJ, Zenón Hugo Bacarreza Morales. The precedent was followed later by constitutional orders emitted by the Admission Comission. For instance, 0171/2017-CA of 19 June 2017.

In both cases, the PCC accepted the voluntaristic criterion in a single direction, i.e., from indigenous jurisdiction to the State's formal jurisdictions. The Protocol of Intercultural Action of Judges of the Supreme Court of Justice of Bolivia also considers it acceptable that the indigenous jurisdiction refers its cases to the formal jurisdictions whenever it voluntarily decides the dispute should be resolved by them, based on its self-determination and through inter-jurisdictional cooperation and coordination.[1856]

Furthermore, the voluntary exercise of jurisdictions is also justified under the right to access justice[1857] whenever the indigenous jurisdiction is unable[1858] or unwilling to resolve its indigenous members' disputes.[1859] Allegedly, under these arguments, the indigenous authorities can refer the cases to formal jurisdictions, and the parties can choose which jurisdiction to claim their rights.[1860]

Bearing in mind these ideas, one should wonder about the principal or accessory character of the indigenous jurisdiction for Bolivian's egalitarian plural justice system, in contrast with the ordinary and agri-environmental jurisdictions. One way to answer this question is from the Bolivian design of justice in force and that, to some extent, continues by inertia from the legal framework prior to the existence of the Plurinational State. In fact, as seen in the previously, the Bolivian legal framework endows by default powers to formal jurisdictions to resolve all possible disputes that may occur. Apart from the special jurisdictions such as the military,[1861] the ordinary and agri-environmental jurisdictions encompass the fullness of powers to hear and decide all the possible controversies that may exist in Bolivia, including those that would belong to the indigenous jurisdiction if any of the personal, territorial or material validity areas shall not coincide. It could be that this plenitude of powers is one of the reasons formal jurisdictions have an invasive and proactive role concerning the cases belonging to indigenous jurisdictions. A former PCC magistrate interprets the constantly active and disruptive

[1856] Tribunal Supremo de Justicia, Órgano Judicial de Bolivia, *Protocolo de actuación intercultural de las juezas y jueces, en el marco del pluralismo jurídico igualitario* (n 1057) 79, 91–92. Even though cooperation and coordination between jurisdictions could partially mitigate this contradiction, indigenous decisions might lose their distinct and peculiar traits and authenticity. Moreover, they perhaps could lead to a process of assimilation in the long run if indigenous peoples would depend on the assistance of formal jurisdictions to decide their disputes. However, it is highlighted that the cooperation and coordination given to the indigenous jurisdiction have not managed to overcome the purely formal meeting or the sporadic advice that not necessarily reflects the current legal framework. Perhaps, for these reasons, it is not uncommon for formal jurisdictions to be resolving cases that fall within the indigenous jurisdiction.

[1857] For example the PCC applied this criterion in *Declaración Constitucional Plurinacional 0020/2016* [2016] Tribunal Constitucional Plurinacional Expediente: 12512-2015-26-CAI, Macario Lahor Cortez Chavez. Furthermore, an agri-environmental judge settled in Karangas explained: *'In some cases, to say in a conciliation process, the parties decide practically where to go because our Constitution establishes access to justice. They can go to the indigenous justice, or they can also go to the agri-environmental justice. It is up to them.'* (Interview, G-2020-24).

[1858] As shown below, it seems that sometimes the indigenous jurisdiction cannot resolve the cases due to their difficulties and social complexities. Perhaps for these reasons, most cases referred to formal jurisdictions concern criminal proceedings in the PCC's case law. The only agri-environmental case is *Auto Constitucional 0315/2015-CA* [2015] Tribunal Constitucional Plurinacional Expediente: 11883-2015-24-CCJ, Commission of Admission. All the other related cases are criminal (for instance, 0026/2013, 0017/2015, 0012/2016, 0042/2017, 0068/2017, 171/2017-CA).

[1859] A former agri-environmental and ordinary judge reflected on this: *'I have to look for a communication bridge because it made me think "the authorities don't want to receive them," "I can't reject them".'* (interview G-2019-10).

[1860] For instance, an indigenous litigant complained about access to justice because he was frustrated in his claim for land in the indigenous jurisdiction. His land dispute continued because his authorities did not resolve his dispute even though he could not reach an agreement with his neighbor: *'First, again I am going to go to the indigenous authority of my Ayllu and, from there, if there is no solution, I want him to refer me to the agri-environmental judge for a conciliation. If it doesn't happen there, I don't know where we would go. I don't know if it depends on their opinions*.' (Indigenous litigant interview, G-2019-40)

[1861] Villarroel Ferrer and Villarroel Montaño (n 236) 135.

exercise of ordinary jurisdictions, implicitly regarding them as capable of deciding both non-indigenous and indigenous cases alike:

> '[There is a] *'juricide'*[1862] *problem. It means that although the Constitution recognizes it* [indigenous justice]*, in practice, the competence of ordinary justice operators is imposed. It generates a diametrical conflict of the coexistence of indigenous justice in the face of the hyperactive coexistence of ordinary State justice*.'[1863]

In contrast, indigenous jurisdiction's competence only concerns a fraction of the possible controversies that may exist within the indigenous peoples' territory and among its members. Additionally, the indigenous jurisdiction does not have an unshared competence with the other jurisdictions that would render its activity essential or decisive in solving disputes. In this sense, Bolivia apparently could comply with its justice function, as a State, with the involvement of indigenous jurisdiction or not. As a result, indigenous jurisdiction would be seen as a mere addition to the Plurinational State that could be substituted. An indigenous authority explained:

> *'It seems to me that it is a bit difficult while the Bolivian State has its own rules. Our standards are not relevant to national laws, so we are an underground nation. And, perhaps, the little they have done is acknowledge and give us a little freedom with self-determination. In the middle is law 073 [JDL], but that is not complete; it suffers from many flaws. A small law may provide guidelines but does not induce us to administer justice well. For example, the law says that corruption, fraud, and fights are not our competence. So, if they have fought almost to the death in a community, what will we do if it is not within our competence? Pass the case on to higher authorities? While it happens, the resident is already gone, and he cannot be pursued. So, we require serious conversations and intense sessions with the authorities of the Bolivian Plurinational State to see how to make our justice work very well. Because, if not, we will continue like this, lukewarm, we will never be cold or hot, and we will always be an adornment of politicians... that scares me, politicians. When we, as indigenous people, present ourselves, who is the one who benefits? It is the politician who is going to be the national authority. And we? remain as an ornament. There are my people. That scares me. It looks like we would be serving as a lapel flower (laugh).'* [1864]

This situation is aggravated by the supposition that the indigenous jurisdiction can only resolve minor disputes, as previously explained, or that it is unrefined and anachronistic, as an indigenous lawyer observes while raising criticism against the Bolivian State:

> *'As long as the nation* [indigenous peoples] *does not achieve its sovereignty or right to self-determination, we will continue to be subject to the republican, top-down, distorted, discriminating, third-level colonial State, despite theoretically there is that egalitarian hierarchy. However, in reality, it is, as I say, between empirical and scientific. It is like the colliri* [indigenous healer] *of good hand we have in the community versus the academic surgeon specialist. The surgeon is going to do it because of the years of study and science, while the colliri can do it as far as he can, but there are complexities that he is not going to establish...*

[1862] The intwerviewee used the word 'juricidio,' apparently in the sense of killing the law. As 'juris' [Law] and 'cidio' from the latin root *caedere* [kill]. Spanish and English use the word 'cidio' [or 'cide'] respectively in different words with the sense of killing. For intance, suicidio [suicide] feminicidio [feminicide], genocidio [genocide], infanticidio [infanticide], parricidio [parricide], among others.
[1863] G-2019-19, former PCC magistrate interview.
[1864] Indigenous authority interview, G-2018-06.

*they are not yet at this height of the knowledge of the 21st century, we continue in the justice of the eighteenth and nineteenth centuries*.'[1865]

In summary, considering the positions of the PCC and the Supreme Court of Justice, they may share the opinion that the indigenous jurisdiction is merely voluntary. It threatens the indigenous jurisdiction's exercise, implying that JK could straightforwardly abandon its prerogative to administer justice and entrust it to the formal jurisdictions under the acceptance of the Bolivian highest courts of justice. Beyond the latters' legal incompetence in resolving indigenous matters, this situation concerns JK's exercise of indigenous jurisdiction's ineffectiveness whenever this threat may occur on account of the Bolivian Judicial Organ.

[1865] Indigenous lawyer interview, G-2019-20.

# Chapter 6: Effectiveness of Jach'a Karangas' Collective Right to Exercise Indigenous Jurisdiction

# Section 6.1: Duty Bearers

## Formal Jurisdictions of the State's Judicial Organ

### *Introduction*

This section aims to answer the research sub-question 2a, i.e., to what extent does the Bolivian Judicial Organ, through its constitutional case law and the behavior of the lesser hierarchy formal courts settled in JK, allow the indigenous jurisdiction of JK to resolve disputes? Following the research design, the primary source to resolve this research question is the Plurinational Constitutional Court's (PCC) case law. The PCC is the interpreter of the Constitution, which, in turn, recognizes the Bolivian egalitarian plural justice system and the collective right to exercise indigenous jurisdiction and has the responsibility to resolve the competence conflicts between indigenous, ordinary, and agri-environmental jurisdictions. In its role, the PCC describes the limits of the exercise between jurisdictions while seeks to protect individual and collective rights. Furthermore, because the PCC's case law regards final decisions that have binding effects regarding the reasons of its judgments on all individuals and collectivities,[1866] it applies to Jach'a Karangas independently of the indigenous peoples involved in its decisions. It is noted the PCC's case law also refers to the lesser hierarchy formal courts' decisions when they are related to constitutional actions, which are also part of the research question.[1867]

Additionally, to further understand the response of the Judicial Organ, a sample of twenty cases brought to the formal judges settled in Karangas were also considered as well as nine judges interviews. This sample of cases and the conducted interviews allow understanding the indigenous jurisdiction's effectiveness in greater detail. As is self-evident, not all the cases processed by the lower-ranking judges based in JK deserve a claim of competence (either the indigenous authorities ignore them or, knowing them, they are not of their interest), and, in case of claims, not all of them are denied by formal judges.

Recalling the methodology and analysis framework for this research, the exercise of indigenous jurisdiction's effectiveness assessment heavily relies on the legality and favorability of the right holder

[1866] According to articles 203 of the Constitución Política del Estado Plurinacional de Bolivia. and 15.II and 132.II of Ley 254 Código Procesal Constitucional [Law 254 Constitutional Procedural Code].

[1867] The research's data collection tried to identify all the PCC's relevant cases to the investigation in the analysis period, which allows to some extent presenting numerical results in this regard. However, the effectiveness assessment of each of these cases responds exclusively to qualitative criteria within the framework of the proposed research design, maintaining its qualitative nature.

and the duty bearers' behaviors towards indigenous jurisdictions and judicial decisions adopted whenever disputes arise between them. Accordingly, there are four crucial moments to assess this right's effectiveness: when the indigenous claimants choose the jurisdiction to lodge their claims, when jurisdictions decide to accept or reject them, when the defendants accept or challenge these decisions, or when the judges decide those disputes. Each of these moments could be assessed through four indicators: *more effective*, *effective*, *less effective*, or *ineffective*, depending on the wording provided for each case. For instance, when judges legally award a dispute favoring the indigenous jurisdiction, i.e., within the legal parameters, they render its exercise *effective* but *more effective* if they do it disregarding the legal framework. Likewise, they could make it *ineffective* if they illegally prefer formal jurisdictions over the indigenous or *less effective* if they resolve the case only partially respecting the legal limits.[1868]

## *Effectiveness regarding judicial decisions of duty bearers*

### *Plurinational Constitutional Court*

#### *Context and composition*

It becomes relevant to digress slightly to explain the Bolivian Constitutional Court's context as that might have some influence in the outcome of the cases. Thus, the Bolivian Constitution of 2009 instituted the PCC,[1869] extinguishing the old Constitutional Court created by the 1994 partial reform[1870] of the Constitution of 1967.[1871] The old Constitutional Court began to function in the period 1998-1999, conceived as an independent body but embedded in the Judiciary, with five members elected by two-thirds of Congress for ten years.[1872] However, once Movement Towards Socialism (MAS for its Spanish name) became the ruling party and the Aymara, indigenist and unionist leader Evo Morales Ayma was elected president in January 2006, the Constitutional Court's fragility and instability began as constitutional judges were forced to resign without being replaced. In 2006, the Court only functioned with two regular judges and three substitutes, and in 2007 there was no quorum because only two substitute judges were in office, and in 2008 only one judge remained. [1873] In May 2009, the last constitutional judge resigned, denouncing the Government for pressing to dismantle the Constitutional Court, the lack of appointments of new judges by Congress, the suspension of approximately 4,100 cases, the reduction of the budget of the Constitutional Court to almost one-ninth, and arguing that 'under these conditions, I would have to be an accomplice of the Government and dedicate myself only to doing a decorative task.' [1874]

[1868] For more detail, see 'Linking Data to Research Proposition and Criteria for Interpreting the Findings' on page 68 and Table 6.
[1869] Constitución Política del Estado Plurinacional de Bolivia, articles 196-204.
[1870] The Constitution of 1967 was partially reformed by law 1585 of 12 August 1994 and put into effect by law 1615 of 6 February 1995.
[1871] Constitución Política del Estado de Bolivia del 6 de febrero de 1995, articles 116, 119-121 and related.
[1872] Millán Terán and Óscar Antonio, 'El sistema electoral para la elección de los magistrados del Tribunal Constitucional Plurinacional' (2015) 19 Revista Ciencia y Cultura 107, s 3.1.
[1873] Josafat Cortez Salinas, 'El Tribunal Constitucional Plurinacional de Bolivia. Cómo se distribuye el poder institucional' (2014) 47 Boletín Mexicano de Derecho Comparado 287.
[1874] Thomson Reuters, 'Tribunal Constitucional Bolivia acéfalo tras renuncia magistrada' *Thomson Reuters* (26 May 2009) <https://www.reuters.com/article/latinoamerica-bolivia-tribunal-idLTASIE54P2FS20090526> accessed 30 January 2022.

Law 03 of 13 February 2010[1875] declared the positions of the judges and magistrates of the Bolivian high courts of justice, including the Constitutional Court, transitory. Moreover, it determined that the President of the State shall appoint the judges of the Constitutional Court and the Supreme Court of Justice. For this reason, on 17 February 2010, the president issued a supreme decree[1876] appointing five permanent magistrates and five alternate magistrates of the Constitutional Court[1877] to exercise their functions until the new Constitutional Court (termed Plurinational Constitutional Court - PCC) initiate its activities following the law. For this investigation, considering the analysis period, they are considered as the first generation of judges of the Constitutional Court. In addition to this, article 3 of Law 040 of 1 September 2010[1878] (which modified Law 03) established that the magistrates of the Constitutional Court would liquidate the cases presented until 6 February 2009 and that, subsequently, they would only resolve the actions for Liberty, Constitutional Amparo, Protection of Privacy, Compliance and Popular from 7 February 2009 until the beginning of the functions of the PCC. The first generation of constitutional magistrates served until December 2011. These practical and normative limitations could explain the inexistence of constitutional cases in 2009 and the few cases relevant to the investigation found between 2010 (four cases) and 2011 (one case) expressed in Figure 3.

The PCC began its jurisdictional activities in January 2012 with seven permanent judges and seven deputies[1879] (referred to as 'magistrates' in Bolivian law), once they were elected by popular vote,[1880] in compliance with the provisions of the Constitution and relevant laws.[1881] They were the second generation of constitutional magistrates during the analysis period and served until December 2017. Almost at the end of their six years of functions established by law, the Legislative Assembly issued Law 929, increasing their number to nine, each corresponding to one of the nine departments of Bolivia. The election of the third generation of magistrates was held in December 2017, and they began their

[1875] Ley 003 de Necesidad de Transición a los Nuevos Entes del Órgano Judicial y Ministerio Público [Law of Necessity of Transition to the New Entities of the Judicial Organ and Public Ministry].
[1876] Decreto Supremo 432 [Supreme Decret 432] 2010.
[1877] The permanent judges were Fausto Juan Lanchipa Ponce, Abigael Burgoa Ordoñez, Ernesto Félix Mur, Ligia Mónica Velásquez Castaños, and Marco Antonio Baldivieso Jinés; and the deputy judges were Lily Marciana Tarquino Lopez, Agapito Alpire Perez, Eve Carmen Mamani Roldan, Magali Zaida Calderon Maldonado, and Nelma Teresa Tito Araujo.
[1878] Ley 040 de adecuación de plazos para la elección de los vocales electorales departamentales y la conformación del Órgano Judicial y del Tribunal Constitucional Plurinacional [adequacy of deadlines for the election of departmental electoral members and the formation of the Judicial Branch and the Plurinational Constitutional Court] 2010.
[1879] The permanent magistrates were Gualberto Cusi Mamani (indigenous), Efrén Choque Capuma (indigenous), Ligia Mónica Velásquez Castaños (part of the first generation of constitutional judges appointed by supreme decree), Mirtha Camacho Quiroga, Ruddy José Flores Monterrey, Neldy Virginia Andrade Martínez, and Soraida Rosario Chanez Chire. The deputy magistrates were Macario Lahor Cortez Chávez (indigenous), Milton Hugo Mendoza Miranda, Juan Oswaldo Valencia Alvarado, Blanca Isabel Alarcón Yampasi, Carmen Silvana Sandóval Landívar, Edith Vilma Oroz Carrasco, and Zenón Hugo Bacarreza Morales in accordance with Órgano Electoral Plurinacional, Tribunal Supremo Electoral, *Atlas Electoral de Bolivia*, vol Tomo IV (2017) <www.oep.org.bo>.
[1880] According to Cortez, the 2009 Constitution established the method of electing judges and magistrates through voting, a unique method of election in the region and the world, but with antecedents in Latin America in Mexico (Constitution of 1857), Nicaragua, and Honduras in the XIX century. Cortez Salinas (n 1873).
[1881] Law of the Plurinational Constitutional Court went into effect in January of 2012 when the magistrates of the PCC were installed in their positions, under Ley 027 del Tribunal Constitucional Plurinacional [Law 027 of the Plurinational Constitutional Court] 2010, second transitory disposition, once the magistrates were elected by popular vote in October 2011 through the election of its magistrates. The election was called on 13 May 2011 by resolution 079/2011 of the Supreme Electoral Tribunal through its Órgano Electoral Plurinacional, Tribunal Supremo Electoral (n 1879) 425. It is noted that Law 03 called the elections for December 2010, but Law 040 repealed this provision, ordering that the Supreme Electoral Tribunal calls them.

functions in January 2018 to date.[1882] In both judicial elections, it is highlighted that blank and invalid votes prevailed, reaching almost 60% in 2011 and more than 65% in 2017. These percentages could demonstrate the population's rejection of the means of selecting or pre-selecting high authorities of the judicial body,[1883] among other possible explanations, since the Legislative Assembly is in charge of the candidates' pre-selection by two-thirds of its members present, following articles 182.III and 198 of the Constitution, from which the population chooses by vote. Furthermore, the government party MAS controlled those two-thirds in both candidate pre-selections, [1884] which generated opposition's social and political controversies and blank and invalid vote campaigns.[1885]

In contrast with the former Constitutional Court, the Constitution states that the PCC consists of magistrates with representation from the ordinary and the indigenous justice systems.[1886] However, the number of indigenous magistrates could be deemed negligible. During PCC's first period, law 027 established that two out of the seven magistrates shall be indigenous. Although this number was already low, considering that the census had established that more than 60% of the population was indigenous,[1887] the reform (Law 929) reduced the number, ordering that only one of the nine magistrates must be indigenous. In addition, the Legislative Assembly established an exceptional and transitory regime through Law 960[1888], eliminating the need to pre-select one person of indigenous origin per department, requiring only applicants that self-identified themselves as indigenous and without a minimum number[1889].

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[1882] Orlando Ceballos Acuña (Chuquisaca, deputy Paul Enrique Franco Zamora), Brígida Celia Vargas Barañado (La Paz, deputy Karel Romelia Chávez Uriona), Karem Lorena Gallardo Sejas (Cochabamba, deputy Jesús Víctor Gonzales Milan), Georgina Amusquivar Moller (Oruro, deputy Lizet Angelica Carvajal Rada), Petronilo Flores Condori (Potosí, deputy Pastor Segundo Mamani Villca), Carlos Alberto Calderón Medrano (Santa Cruz, deputy Isidora Jiménez Castro), Julia Elizabeth Cornejo Gallardo (Tarija, deputy Marcos Ramiro Miranda Guerrero), Gonzalo Miguel Hurtado Zamorano (Beni, deputy Marco Antonio Justiniano Mejia) y René Yvan Espada Navia (Pando, deputy Carla Adriana Cortéz Hoyos). 'Elecciones Judiciales 3 de diciembre 2017. Separata de Información Pública.' (Órgano Electoral Plurinacional Bolivia 2017) 4.

[1883] DPLF Fundación para el Debido Proceso, *Elecciones judiciales en Bolivia: ¿aprendimos la lección?* (DPLF Fundación para el Debido Proceso 2018) <http://www.dplf.org/sites/default/files/informe_dplf_elecciones_judiclaes.pdf>.

[1884] Órgano Electoral Plurinacional, Tribunal Supremo Electoral (n 1879) 21 and following.

[1885] Amanda Driscoll and Michael J Nelson, 'Crónica de una elección anunciada. Las elecciones judiciales de 2017 en Bolivia' (2019) 26 Política y gobierno 41.

[1886] Constitución Política del Estado Plurinacional de Bolivia, article 197.I. The need for genuinely intercultural jurisprudence requires that the intelligence and sensitivity of the PCC be effectively plurinational. Otherwise, the PCC could easily become one more means of harassment and reduction of indigenous jurisdiction due to the unilateral imposition of culturally biased criteria of constitutionality control, following Clavero (n 1037) 58.

[1887] The Bolivian Census of 2001 recorded 62% of the indigenous population, which diminished for a number of possible reasons to 40.57% in its Census of 2012 in accordance with Centro de Estudios Jurídicos e Investigación Social - CEJIS (n 574).

[1888] Ley 960 transitoria para el proceso de preselección y elección de máximas autoridades del Tribunal Constitucional Plurinacional, Tribunal Supremo de Justicia, Tribunal Agroambiental y Consejo de la Magistratura [Transitional law for the pre-selection and election process of the highest authorities of the Plurinational Constitutional Court, Supreme Court of Justice, Agri-environmental Court and Council of the Magistracy] 2017. Law 960 modified Law 929. Both laws aimed to improve the criteria for the pre-selection of judges and make this process transparent due to social pressure and the bad experience of blank and invalid votes that occurred in the 2011 elections.

[1889] Organization of American States, 'Informe final de la Misión de expertos electorales. Elección de altas autoridades del Órgano Judicial y del Tribunal Constitucional Plurinacional Estado Plurinacional de Bolivia.' (OAS - Organization of American States 2017) <http://scm.oas.org/pdfs/2018/CP39442SINFORMEFINALCORR1.pdf>.

*Table 31: Comparison of the effectiveness granted by the generations of rapporteur magistrates 2010-2011, 2012-2017 and 2018 - early 2020 (all indigenous peoples)*

| Magistrates 2010-2011 | Cases | +E | E | -E | xE |
|---|---|---|---|---|---|
| Ernesto Félix Mur | 1 | 0% | 0% | 0% | 100% |
| Marco Antonio Baldivieso Jinés | 2 | 50% | 50% | 0% | 0% |
| *Average* | | *25%* | *25%* | *0%* | *50%* |
| **Magistrates 2012-2017** | **Cases** | **+E** | **E** | **-E** | **xE** |
| Zenón Hugo Bacarreza Morales | 23 | 9% | 56% | 0% | 35% |
| Macario Lahor Cortez Chávez | 21 | 9% | 48% | 0% | 43% |
| Neldy Virginia Andrade Martínez | 19 | 16% | 37% | 0% | 47% |
| Mirtha Camacho Quiroga | 17 | 12% | 70% | 6% | 12% |
| Efren Choque Capuma (Ind.) | 13 | 15% | 54% | 8% | 23% |
| Juan Oswaldo Valencia Alvarado | 13 | 15% | 54% | 0% | 31% |
| Ruddy José Flores Monterrey | 10 | 30% | 20% | 0% | 50% |
| Ligia Mónica Velásquez Castaños, Soraida Rosario Chánez Chire, Carmen Silvana Sandoval Landivar, Gualberto Cusi Mamani (Ind.) and Blanca Isabel Alarcón Yampasi | 13 | 46% | 23% | 0% | 31% |
| *Average* | | *19%* | *45%* | *2%* | *34%* |
| **Magistrates 2018-early 2020** | **Cases** | **+E** | **E** | **-E** | **xE** |
| Karem Lorena Gallardo Sejas | 13 | 15% | 46% | 8% | 31% |
| Gonzalo Miguel Hurtado Zamorano | 9 | 11% | 89% | 0% | 0% |
| Carlos Alberto Calderón Medrano | 6 | 0% | 50% | 0% | 50% |
| René Yván Espada Navía | 6 | 33% | 50% | 17% | 0% |
| Brígida Celia Vargas Barañado | 5 | 20% | 60% | 0% | 20% |
| Georgina Amusquivar Moller | 5 | 60% | 0% | 0% | 40% |
| Julia Elizabeth Cornejo Gallardo and Orlando Ceballos Acuña | 5 | 20% | 80% | 0% | 0% |
| *Average* | | *23%* | *54%* | *3%* | *20%* |
| **Averages** | | **+E** | **E** | **-E** | **xE** |
| Magistrates 2010-2011 | | 25% | 25% | 0% | 50% |
| Magistrates 2012-2017 | | 19% | 45% | 2% | 34% |
| Magistrates 2018 - early 2020 | | 23% | 54% | 3% | 20% |

*Source:* Self-made.

*Note*: Abbreviations: more effective (E+), effective (E), less effective (-E), and ineffective (xE). The percentages were rounded. The names of the magistrates of each generation concern the rapporteur magistrates of the 186 cases that the PCC resolved rendering the indigenous jurisdiction's exercise from more effective to ineffective within the analysis period. Then, for instance, Petronilo Flores Condori does not appear in the third generation's list since he was the president of the PCC during that period, and he could not act as a rapporteur magistrate. Finally, the magistrates have been grouped into a single percentage average when the number of cases per magistrate is equal to or less than the average of the generation to which they belong.

Nonetheless, despite these changes in the selection of magistrates or even the short period of functions of the first generation, the effectiveness granted by the Constitutional Court to the exercise of the indigenous jurisdiction was not affected (cf. Figure 11). On the contrary, Table 31 portrays an increasing trend regarding the effectiveness granted by the Constitutional Court to the exercise of indigenous

jurisdiction, according to the projects of resolutions presented by the rapporteur magistrates[1890] divided by each of the averages of the three generations of the Constitutional Court's magistrates and a decreasing tendency of its ineffectiveness. Thus, whereas the first generation of magistrates rendered the indigenous jurisdiction effective only in 25% of the cases, the second increased to more than 45% and the third to almost 54%. Conversely, the first generation of magistrates made the indigenous jurisdiction ineffective in 50% of the cases, decreasing to almost 34% in the second generation and around 20% in the third one. In other words, the non-existence of indigenous presence in the Constitutional Court (first-generation) or the decrease in its presence (third generation) has not affected the effectiveness of the exercise of indigenous jurisdiction in the period under analysis. Even though the causes of these data are not proven, they may be because the magistrates elected or pre-selected by the ruling party might share, to some extent, its favorable tendency towards indigenous peoples.

By crossing the data of the most frequent constitutional actions[1891] and matters of all indigenous peoples in Bolivia (cf. Figure 3), it is found that Jurisdictional Competency Dispute actions resolved 93 criminal cases (around 85%) and only 14 agrarian matters (near 13%).[1892] It might show, to a certain extent, that indigenous peoples are more interested in preventing their community members from being criminally prosecuted and suffering possible sanctioning consequences, such as prison, than claiming jurisdiction in other matters. Constitutional Amparos, on the other hand, had essentially dealt with discussions raised against the decisions adopted by the indigenous jurisdiction when imposing sanctions (about 62% or 47 cases) or resolving agrarian disputes (almost 29% or 22 cases), where 64 out of 76 cases (or more than 84%) regarded community members' claims.[1893]

Against this backdrop, it is noted that most Amparos encompassed dissatisfied indigenous members claiming against indigenous jurisdiction's decisions, primarily when it concerned sanctions imposed on them. Finally, most of the Consultations of Indigenous Authorities involved jurisdictional decisions to apply indigenous sanctions (13 cases or more than 54%), compared to agrarian cases that were around 29% (or 7 cases) which could confirm, together with the Amparos, that indigenous sanctions are the most conflicting matters to indigenous jurisdiction.

Jach'a Karangas' constitutional claims resolved by the PCC involved only Jurisdictional Competency Disputes (11 cases or about 50%), Constitutional Amparos (9 cases or almost 41% of the cases) and Prior Control of the Constitutionality of an Autonomous Statute (2 cases or about than 9%). Like the proportions referring to all of Bolivia, the Jurisdictional Competency Disputes' actions were essentially for criminal cases (almost 55%), and the rest were agrarian (more than 36%) and civil (around 9%) matters. Likewise, the Amparos were mainly claim by community members against decisions of the indigenous jurisdiction that imposed sanctions[1894] (almost 67%), and the rest was for agrarian issues (little more than 33%).

[1890] It is highlighted that these draft resolutions were approved by the Constitutional Court's chambers and constitute its final decisions. The dissenting votes regard separate documents.
[1891] More detail on frequent cases on Figure 3. Types of cases in which the Plurinational Constitutional Court has decided matters of indigenous jurisdiction (all indigenous peoples, 2010-2020), on page 65, and 'Constitutional Actions' on page 463.
[1892] The rest of the competency disputes concerned two civil actions (cases 2463/2012 and 0073/2017) and one indigenous sanction (case 0414/2013-CA).
[1893] Only four criminal cases concern Amparo actions (or 5,3%) against ordinary jurisdiction's decision to refer them to the indigenous jurisdiction when they voluntarily accepted indigenous authorities' competence claim (cf. 0715/2017-S2, 0610/2019-S1, 0153/2018-S4 and 0211/2018-S4 in Annex B).
[1894] It is noted that two of those cases concern sanctions to communities for land disputes (cf. 1586/2010-R and 0778/2014, Annex B).

*Outcomes*

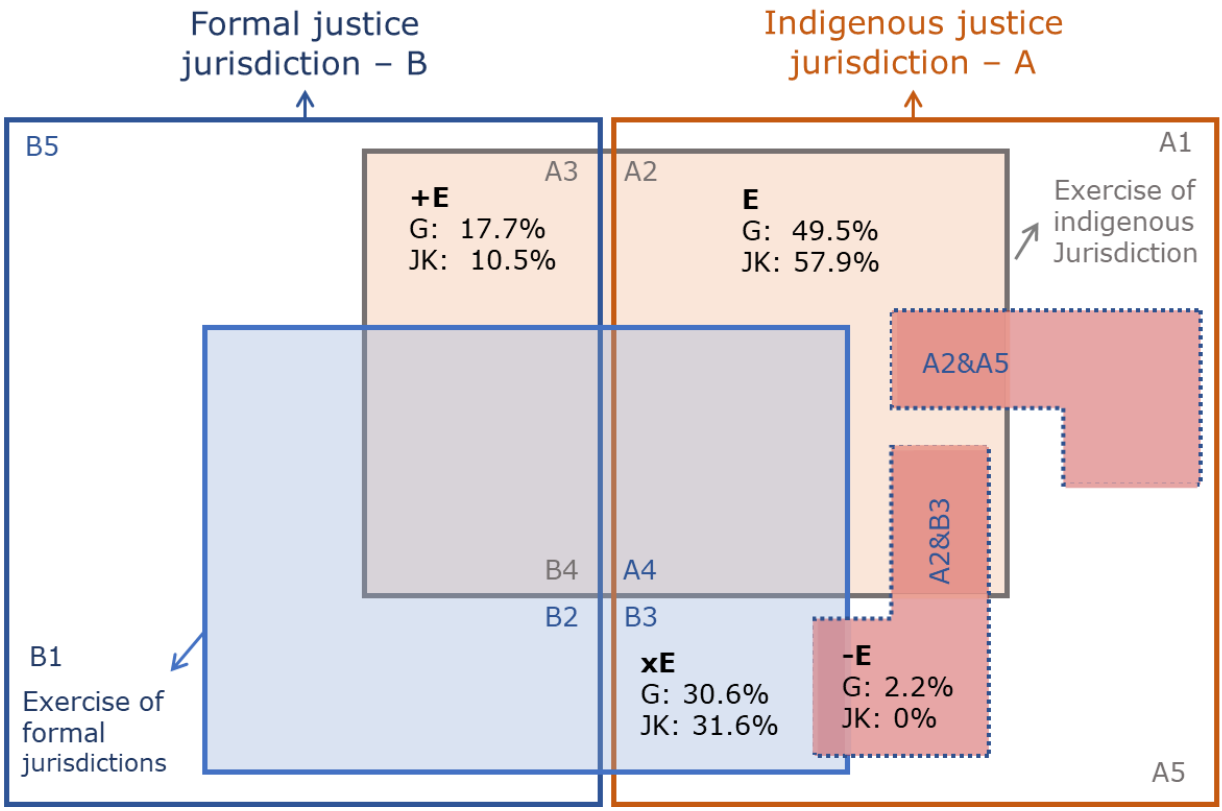
During the analysis period, the PCC decided 226 cases identified as relevant to evaluate the effectiveness of the right to exercise indigenous jurisdiction.[1895] In global amounts, almost 68% of these cases respected the effectiveness of the exercise of indigenous jurisdiction, if one considers that almost 50% made it effective and about 18% made it more effective. In contrast, only around 31% of the PCC's decisions made the exercise of indigenous jurisdiction ineffective, and a little more than 2% made it less effective. The number of cases linked to this last percentage, despite being negligible, implies that the PCC has declared partially in favor of the indigenous jurisdiction and partially against it.

These numbers show, from the outset, that the PCC makes the exercise of indigenous jurisdiction in Bolivia effective for the most part, considering that the selection of cases analyzed covers all the discussions that reached the PCC on the right to exercise indigenous jurisdiction during the assessment period. The general effects of its almost 50% effective decisions regard corrections of the violations of this right or the confirmation and endorsement of its exercise. Likewise, this almost 18% of more effective decisions expands the indigenous jurisdiction's competence by disregarding the law in its favor. Even though it is evident that the PCC has also made this right ineffective in almost a third of the cases reviewed by having decided against the indigenous jurisdiction disregarding the law, this ineffectiveness is minor.

Although PCC's case law regards final decisions that have binding effects on all individuals and collectivities, and it is also applicable to Jach'a Karangas (JK) independently of the indigenous peoples involved in its decisions, this general data is relatively consistent with JK's numbers, which cover more than 8% of all cases resolved by the PCC. Thus, around 68% of the PCC's decisions respected the effectiveness of JK's indigenous jurisdiction considering that more than 10% made it more effective and almost 58% made it effective, while nearly 32% made it ineffective (none of the cases made it less effective). These percentages resulting from the data collected by the outcome and process indicators are represented in Figure 9. These numbers suggest that, compared to indigenous peoples, JK has a lower margin of irreverence to the legal limits established for the exercise of indigenous jurisdiction (10% compared to almost 18% of the generality of indigenous peoples). However, JK also has more cases within legal margins (almost 58% of JK compared to almost 50% of the rest).

[1895] It is remarkable that even though the PCC resolved the relevant matters for this study throughout Bolivia, almost 80% of the cases were from three western departments of Bolivia or its highlands (La Paz, 41%; Oruro, 24%; and Potosí, almost 15%) and the other 20% concerned the rest, being more than 11% the central departments (Chuquisaca, 3,5%; Cochabamba 6,6%; Tarija, 1,3%) and practically 9% the eastern departments or lowlands (Beni, 0,4%; Pando, 2,7%; Santa Cruz, 5,8%). Nonetheless, there is a relative effectiveness consistency among Bolivian and departmental results since, in all departments, the effective values surpass the ineffective ones and maintain a relative proportion.
The study's limits and its collected data do not explain why it is the case. Furthermore, there might exist several reasons that could lead to these results, such as a more effective exercise of indigenous jurisdiction in the departments with lower cases (i.e., there is no opposition to indigenous decisions by indigenous members) or an ineffective exercise in which indigenous peoples are not interested in claiming its indigenous member's disputes. Perhaps the indigenous peoples of the eastern departments, who are not Aymara, did not trust the Bolivian Aymara government and the justice imparted by the PCC. It is also feasible that there are lesser indigenous members' disputes to resolve since indigenous territories in lower lands are more extensive and fertile (considering that most of the agrarian, criminal and indigenous sanctions conflicts in the eastern departments emerged directly or indirectly from land disputes). Consequently, it is not feasible to present a plausible hypothesis to explain this phenomenon with current data.

*Figure 9. Indigenous Jurisdiction's Effectiveness according to Plurinational Constitutional Court's decision (all indigenous peoples and Jach'a Karangas, 2010-2020)*

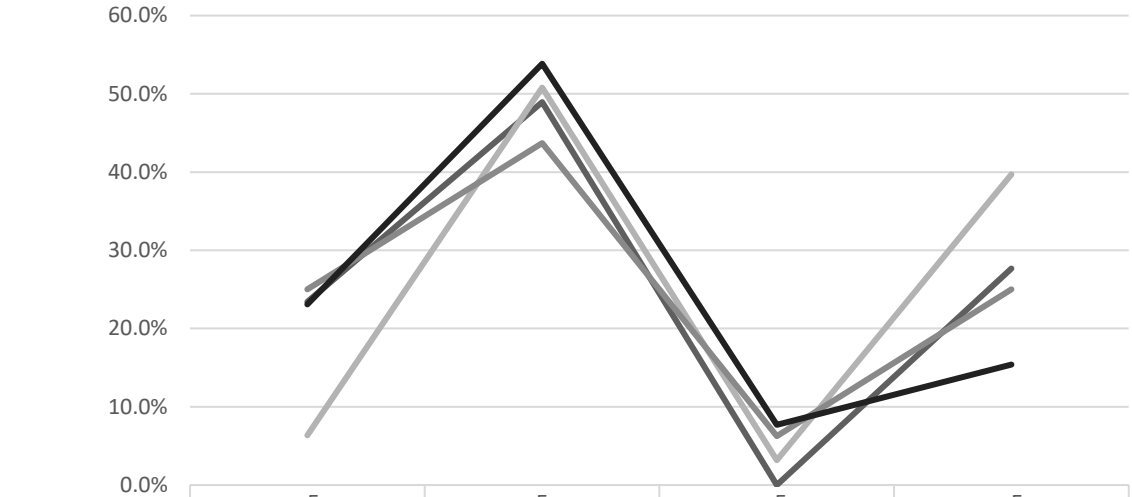



*Source:* Self-made.
*Note:* Abbreviations: more effective (E+), effective (E), less effective (-E), and ineffective (xE), indigenous peoples in general (G), Jach'a Karangas (JK). Given that PCC's decisions are final, the results are embedded A2, A3, B3 and A2&B3 Further description on the analysis graph is described in the research design, on page 68.

If the types of constitutional actions are distinguished with respect to their effectiveness in proportion to the total number of cases resolved by the PCC, it can also be observed that there is a coincidence in the data obtained since there are no notable differences between them. Thus, the lines of Figure 10 run almost parallel, identifying the hill in the percentage of cases that make the indigenous jurisdiction effective (in a fluctuation range of 10 points between almost 44% and 54%) and the valleys in the remaining effectiveness criteria (with around 19 and 24 fluctuation points in more and less effective, and ineffective respectively). Despite this relative coincidence of values, in this Figure, it is possible to observe that Amparo's decisions have the highest incidence of PCC's ineffective decisions (almost 40%) and the lowest one in those granting a more effective outcome (about 6%). It could suggest a subtle tendency of the PCC to favor, to some extent, individual rights of Amparo claimants against the decisions adopted by the indigenous jurisdiction. Indeed, as previously mentioned, the Amparo action safeguards individual rights and, in the cases studied, they have frequently been used to discuss decisions of the indigenous jurisdiction that allegedly affected the individual rights of indigenous members.[1896]

[1896] The other actions aim to exercise and protect collective rights, except for the action of freedom, which has almost no incidence according to the data shown in Figure 3.

*Figure 10. Percentage of cases per constitutional types of action regarding their effectiveness (all indigenous peoples, 2010-2019)*



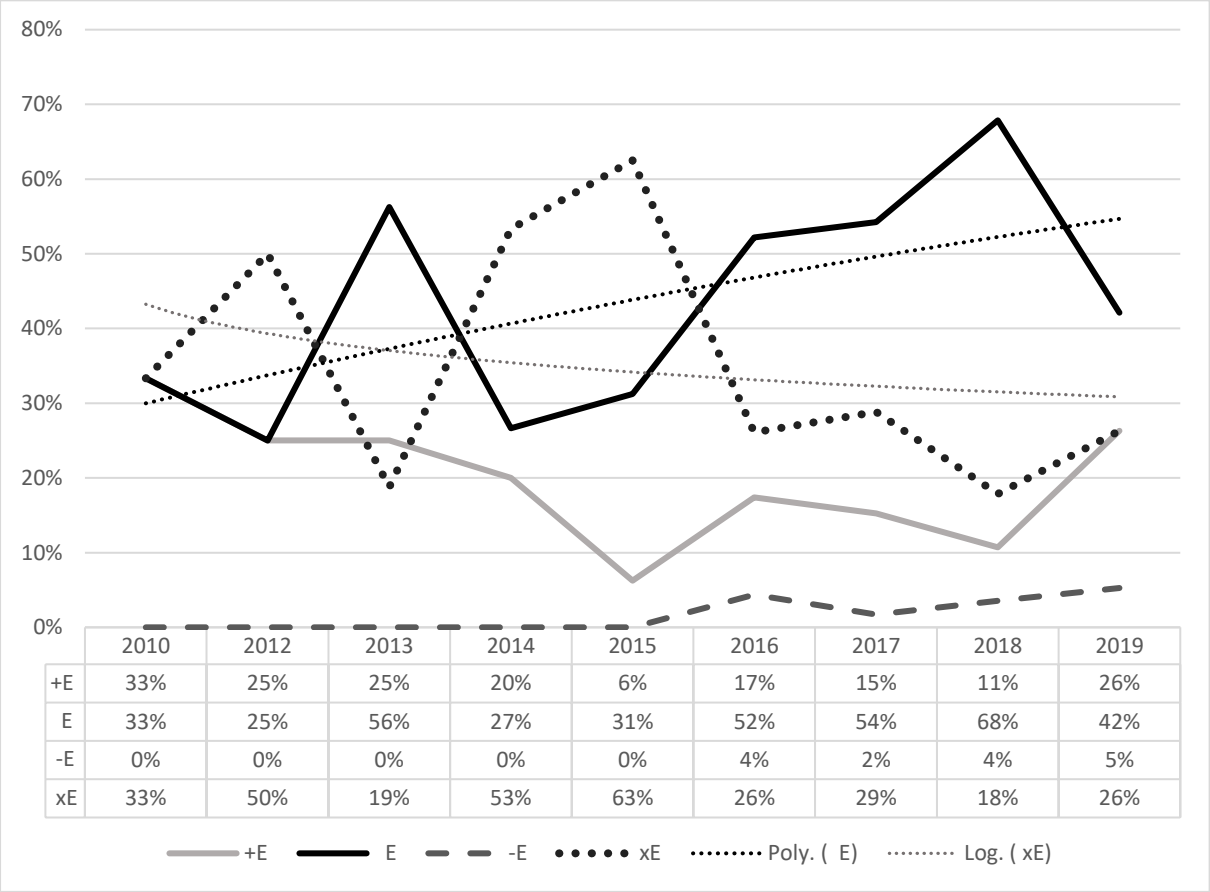

| | +E | E | -E | xE |
|---|---|---|---|---|
| JCD (50.5%) | 23.4% | 48.9% | 0.0% | 27.7% |
| CA (33.9%) | 6.3% | 50.8% | 3.2% | 39.7% |
| CIA (8.6%) | 25.0% | 43.7% | 6.3% | 25.0% |
| Others (7%) | 23.1% | 53.8% | 7.7% | 15.4% |

*Source:* Self-made.
*Note:* Abbreviations: Jurisdictional Competency Disputes (JCD), Constitutional Amparos (CA), Indigenous Authorities Consultations (IAC), More effective (E+), effective (E), less effective (-E), and ineffective (xE). Liberty action, popular action, and prior control of the constitutionality of an autonomous statute correspond to others. The percentage in parentheses is the percentage of each action concerning all analyzed cases.

Considering the annual percentage of cases' recurrences on the four effectiveness indicators from 2010 to 2019, Figure 11 portrays their respective evolution and trends. As a consequence, from a longitudinal perspective, the collected data illustrates that the PCC's decisions tended to increase the effectiveness of the indigenous jurisdiction's exercise[1897] and lessen its ineffectiveness. [1898] Although in 2012 and 2014 the effectiveness line fell to its lowest levels (25% and 27% respectively), fluctuating in 2013 (56%), it later increased to its highest value in 2018 (68%), causing an upward trend. In contrast, the ineffectiveness line only was higher than the effectiveness line in 2012, 2014 and 2015 leveling out since 2016 in a lower position and showing a trend toward decreasing ineffectiveness (cf. logarithmic xE). This Figure also depicts that the PCC has been decreasing the cases in which it renders indigenous jurisdiction more effective, with a rebound in 2019, and the appearance of cases of lesser effectiveness (-E) from 2016 to 2019, but in marginal proportions.

[1897] Cf. the effectiveness (E) small dotted black line in Figure 11 representing the effectiveness' polynomial trend line. 'A polynomial trendline is a curved line that is used when data fluctuates. It is useful, for example, for analyzing gains and losses over a large data set. The order of the polynomial can be determined by the number of fluctuations in the data or by how many bends (hills and valleys) appear in the curve.' Microsoft, 'Choosing the Best Trendline for Your Data' <https://support.microsoft.com/en-us/office/choosing-the-best-trendline-for-your-data-1bb3c9e7-0280-45b5-9ab0-d0c93161daa8> accessed 20 January 2022.
[1898] Cf. the small dotted grey line in Figure 11 representing the logarithmic trend line of ineffectiveness (xE). 'A logarithmic trendline is a best-fit curved line that is most useful when the rate of change in the data increases or decreases quickly and then levels out.' ibid.

*Figure 11. Longitudinal percentages on the effectiveness of the exercise of indigenous jurisdiction granted by the Plurinational Constitutional Court's decisions (all indigenous peoples, 2010-2019)*



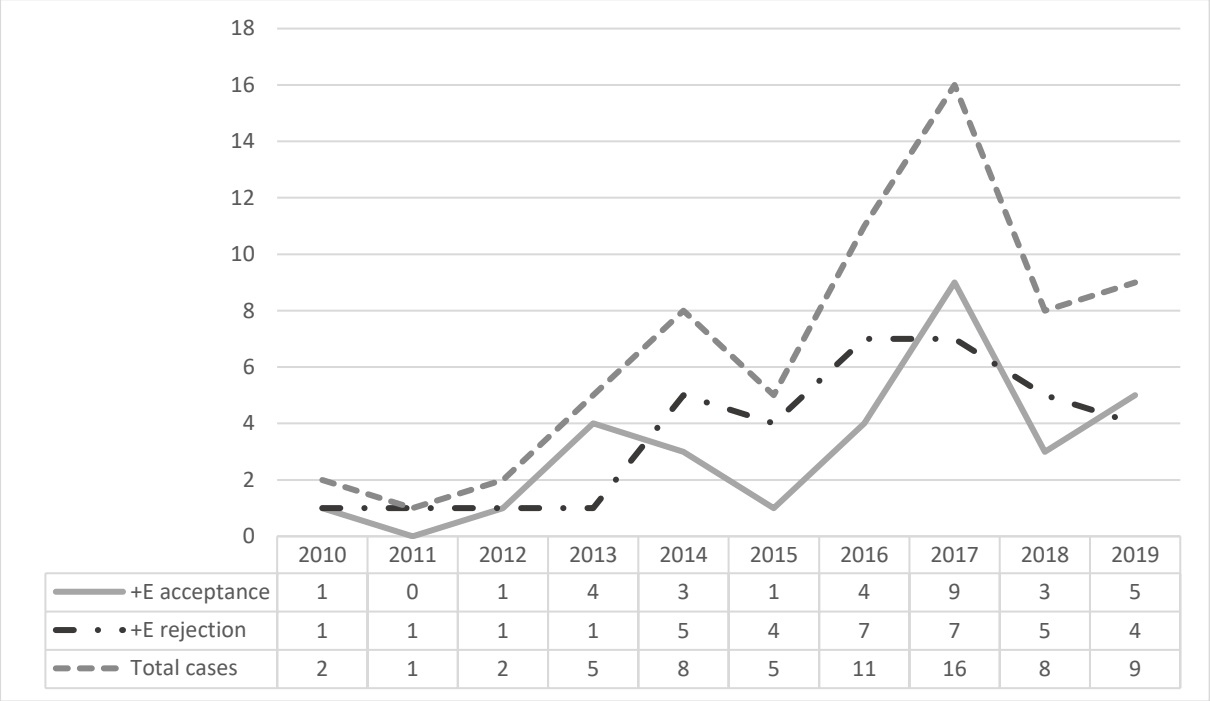

| | 2010 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|---|---|---|---|
| +E | 33% | 25% | 25% | 20% | 6% | 17% | 15% | 11% | 26% |
| E | 33% | 25% | 56% | 27% | 31% | 52% | 54% | 68% | 42% |
| -E | 0% | 0% | 0% | 0% | 0% | 4% | 2% | 4% | 5% |
| xE | 33% | 50% | 19% | 53% | 63% | 26% | 29% | 18% | 26% |

*Source:* Self-made.
*Note:* Abbreviations: more effective (E+), effective (E), less effective (-E), ineffective (xE), polynomial trendline (Poly.) and logarithmic trendline (Log.). According to Figure 3, the annual number of cases during the first years is lower compared to the number of cases since 2013. The relevant cases of indigenous jurisdiction's effectiveness through the PCC's decisions were 183: 3 in 2010, 0 in 2011, 4 in 2012, 16 in 2013, 15 in 2014, 16 and in 2015, 23 in 2016, 59 in 2017, 28 in 2018 and 19 in 2019. The figure disregards 2011 to avoid an unnecessary distortion that misrepresents the effectiveness trends and progressions within the analysis period.[1899]

If there were full compliance with the limits established by the Constitution and the laws, the effectiveness line would be at the top (at 100%), while the others would be at the bottom (0%). Although it is evident that this does not happen in this chart, it is interesting to observe that the lines of effectiveness and ineffectiveness have a general tendency to widen their gap, crossing at the beginning (between the years 2010 and 2015) and separating definitively from 2016 onwards. In other words, the PCC has a propensity to improve its compliance with the legal system, making the indigenous peoples' right to exercise their jurisdiction increasingly effective. All things considered, the PCC rendered indigenous jurisdiction's exercise effective with a general tendency to increase its respect to apply the limits of the Bolivian Constitution and its legal framework.

[1899] Elections for magistrates were held in 2011 to form the PCC that would replace the Constitutional Court, which possibly involved a lower number of cases during that year.

*Figure 12. PCC's acceptance and rejections of more effective indigenous jurisdiction's exercise (all indigenous peoples, 2010-2019)*




| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|---|---|---|---|---|
| +E acceptance | 1 | 0 | 1 | 4 | 3 | 1 | 4 | 9 | 3 | 5 |
| +E rejection | 1 | 1 | 1 | 1 | 5 | 4 | 7 | 7 | 5 | 4 |
| Total cases | 2 | 1 | 2 | 5 | 8 | 5 | 11 | 16 | 8 | 9 |

*Source:* Self-made.
*Note:* Abbreviations: more effective indigenous jurisdiction's exercise (E+).

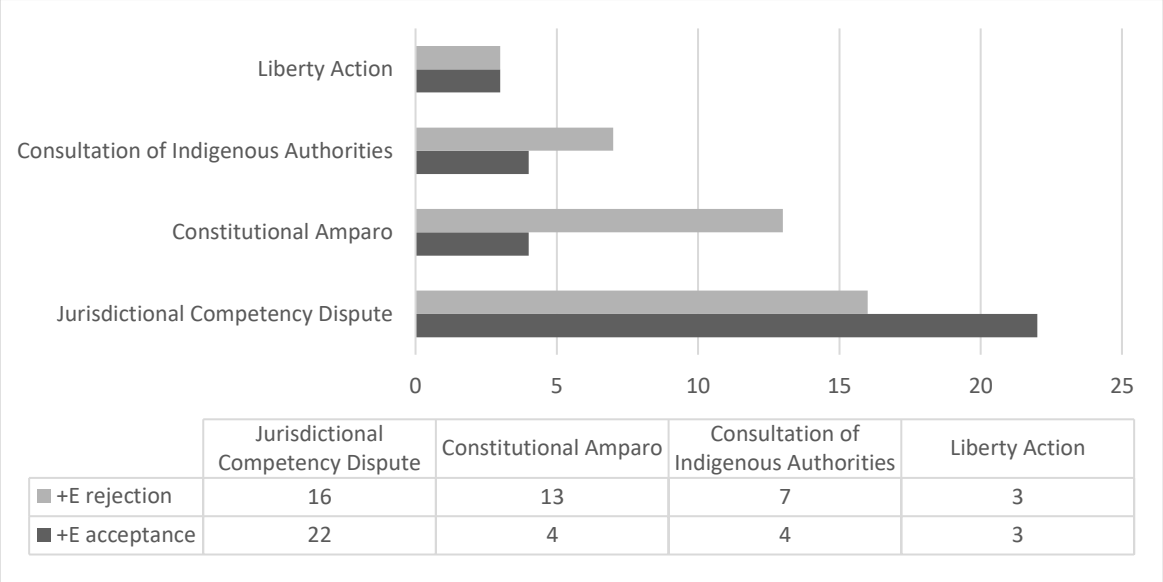
On the other hand, during the analysis period, the PCC resolved 70 cases where the indigenous peoples had a margin of irreverence in claiming or exercising their jurisdiction outside the legal limits, which represents about a third of the related cases. In the beginning, during the years 2010 to 2012, there were almost two of these cases per year. However, as shown in Figure 12, their number has increased steadily (if one considers the unusual rise of cases in 2017, as explained above) until reaching an average of more than eight cases per year between 2013 and 2019. It is worth noting that the PCC has illegally favored the indigenous jurisdiction on more than 47% of the occasions and legally rejected its exercise in little less than 53% of the opportunities, which implies, rounding off the figures, that the PCC has accepted the irreverent exercise of indigenous jurisdiction in one out of every two cases. JK only had three of these cases: one Amparo in 2010 and two Jurisdictional Competency Disputes in 2017. The PCC accepted two of them (a Constitutional Amparo and a Jurisdictional Competency Dispute[1900]), making its indigenous jurisdiction more effective, and legally rejected the other one[1901] without affecting its effectiveness. The SWOT analysis highlights and explains this effect as a favorable opportunity for the exercise of indigenous jurisdiction[1902] and further explains how and in what dimensions the PCC has expanded the personal, material, and territorial validity areas through its case law.[1903]

Taking a closer look at these data and according to Figure 13, most of these cases responded to the actions of Jurisdictional Competency Disputes (almost 53%), in which the PCC has favored chiefly the 'more effective' exercise of the collective right to indigenous jurisdiction (in 59% of cases, compared to

[1900] Cases 2036/2010-R and 0081/2017 (cf. Annex B).
[1901] Case 0032/2017 (cf. Annex B).
[1902] See Table 30, related to opportunity 3 and its justifications.
[1903] See 'Expansion of the Indigenous Jurisdiction's Validity Areas of Competence (O3)' on page 320.

41% in which it was legally rejected). On the other hand, in the Amparo processes, which are the second majority (more than 24%), the opposite occurred: this kind of exercise was only accepted in 24% of the cases and rejected in 76%. Considering that the Jurisdictional Competency Dispute action protects the collective right to exercise indigenous jurisdiction and that the Amparo protects individual rights, it seems plausible to conclude that the PCC mostly favored this collective right when it is not in opposition to individual rights and vice versa.[1904]

*Figure 13. Number and type of PCC cases related to more effective indigenous jurisdiction's exercise (all indigenous peoples, 2010-2019)*




| | Jurisdictional Competency Dispute | Constitutional Amparo | Consultation of Indigenous Authorities | Liberty Action |
|---|---|---|---|---|
| +E rejection | 16 | 13 | 7 | 3 |
| +E acceptance | 22 | 4 | 4 | 3 |

*Source:* Self-made.
*Note:* Abbreviations: more effective indigenous jurisdiction's exercise (E+).

The SWOT analysis shows that the PCC presents some relevant opportunities for indigenous jurisdiction's exercise. Thus, the PCC can request expert opinions to understand indigenous reality better, has expanded the equal hierarchy between all the Bolivian jurisdictions, has established favorable interpretation criteria of indigenous jurisdiction's competence rules with a systematic interpretation of the norms prior to the Constitution and the JDL, among others.[1905] However, the PCC also poses some threats to the exercise of indigenous jurisdiction. Thus, it sometimes decides indigenous disputes directly, requires the indigenous jurisdiction to comply excessively with procedural formalities, or unjustifiably limits the scope of indigenous sanctions. Additionally, the PCC used to reject the indigenous jurisdiction for reasons of its possible impartiality or because the indigenous jurisdiction allegedly claimed its competence extemporaneously.[1906] Although the criteria of impartiality and lack of opportunity seem like precedents corrected to the present, favoring the effectiveness of the indigenous jurisdiction's exercise, they may still be latent threats.

[1904] It should be clarified that, according to the analysis framework, in the case of 'more effective' indigenous jurisdiction's exercise, the favoring of individual rights should be construed as legal, while favoring collective rights is illegal. Indeed, rendering the exercise of indigenous jurisdiction as 'more effective' and 'ineffective' are both extremes contrary to the Bolivian legal framework.
[1905] Cf. Table 30, related to opportunities 2 to 7 and their justifications.
[1906] Cf. Table 30, related to threats 2 to 4 and their explanations.

## *Lower-Ranking Courts*

Two different perspectives are adopted to describe the effectiveness that the lower-ranking courts caused in the indigenous jurisdiction's exercise of JK. The first one corresponds to the cases that these courts resolved as part of the constitutional processes that reached the PCC, following the standards and procedures established in the Bolivian legal framework.[1907] From this perspective, it is also possible to contrast what has happened throughout Bolivia during the analysis period concerning the cases resolved by the PCC compared to the cases carried out in JK. Nonetheless, it should be noted that since these lower-ranking courts' data only embody the cases claimed that reached the PCC, they lean towards affecting the indigenous jurisdiction's exercise. It is especially the case in processes where the indigenous jurisdiction has claimed the competence to resolve disputes because typically, they would only reach the PCC if the formal judges had rejected the indigenous jurisdiction's initial requests.[1908]

Therefore, to avoid a biased perception and further portray the effectiveness assessment of the lower-ranking courts, a closer approximation to the jurisdictional activity of judges, procedural parties, and indigenous authorities involved is also presented through ordinary and agri-environmental courts' cases established in JK not related to constitutional processes. This second perspective uses a non-representative sample of twenty cases, four corresponding to the ordinary jurisdiction and sixteen to the agri-environmental one,[1909] including references to the SWOT analysis for further context. This section begins with the first perspective to give continuity to the analysis of the effectiveness caused by the PCC.

### *Lower-Ranking Court Cases Concerning Constitutional Processes*

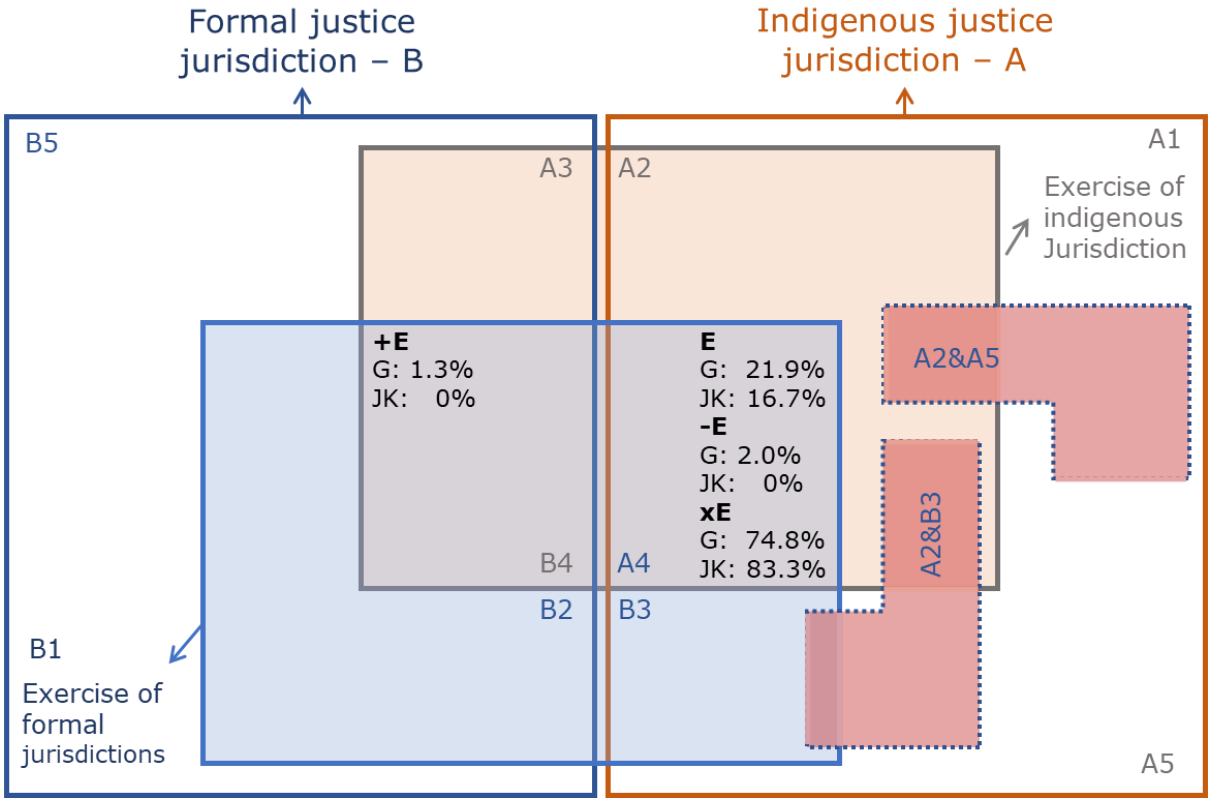
In contrast to the decisions adopted by the PCC, the effectiveness of the indigenous jurisdiction's exercise is notoriously reduced with respect to lower-ranking courts and judges when it was their turn to decide on claims of competence or when they were constituted as courts of constitutional guarantees to decide on Amparo, Liberty or Popular actions.[1910] As Figure 14 portrays, the lower-ranking courts and judges rendered the indigenous jurisdiction ineffective in almost 75% of all the cases that reached the PCC, and only 22% of them made it effective. The indicators of more and less effective have a negligible presence of around 1% and 2% respectively. For its part, the PCC case law related to JK only reported almost 17% of effectiveness[1911] compared to about 83% ineffectiveness.[1912]

These numbers show that the judicial authorities of the lower hierarchy, in most of the cases, acted and decided illegally against the indigenous jurisdiction and rarely favored it outside the legal limits. In practical terms, these judges negated the exercise of the indigenous jurisdiction in three out of four cases

[1907] See Annex B for further analysis of PCC cases.
[1908] Seldom occurred that, despite accepting the indigenous jurisdiction, formal judges mistakenly referred the case to the PCC for review (for instance, case 0026/2013). Additionally, there were eleven JK's Jurisdictional Competency Disputes that the PCC has resolved during the study period (approximately one per year if they are divided by the analyzed years), which may suggest a small number of indigenous competency claims, a small number of judicial rejections or both.
[1909] Cf. 'Agri-Environmental and Ordinary Lower-ranking Courts Cases' on page 64, and Annex C for these cases' summary, analysis, and identification on page 578.
[1910] In accordance with the procedures provided for by the Constitution and the Constitutional Procedure Code referred below on page 461.
[1911] The cases were 2036/2010-R, 1016/2015-S3, and 0721/2018-S4, concerning one indigenous sanction and two agrarian proceedings (cf. Annex B).
[1912] The cases were 1586/2010-R, 1574/2012, 2463/2012, 0778/2014, 0152/2014-S3, 0092/2015, 0007/2016, 0150/2016-S1, 0031/2016, 1160/2016-S2, 0078/2017, 0081/2017, 0005/2018, 0022/2018, and 0156/2019-CA involving five criminal proceedings, five indigenous sanctions, four agrarian proceedings, and one civil matter (cf. Annex B).

regarding all indigenous peoples and four out of five cases concerning JK by accepting or processing disputes outside their competency limits, illegally deciding against the indigenous jurisdiction, or overruling its decisions, among others.

*Figure 14. Indigenous jurisdiction's effectiveness according to lower-ranking courts related to constitutional cases (2010-2019)*




*Source:* Self-made.
*Note:* Abbreviations: more effective (E+), effective (E), less effective (-E), and ineffective (xE), indigenous peoples in general (G), Jach'a Karangas (JK). The analysis graph is described in the research design, on page 68.

From a longitudinal perspective, Figure 15 depicts that only in 2010 and 2012 did lower-ranking judges make the exercise of indigenous jurisdiction relatively effective, in the sense that the 'effective' line surpassed the 'ineffective' one, changing this situation since 2013. As stated above, if the formal jurisdictions were to respect the exercise of indigenous jurisdiction according to the legal framework, the line of effectiveness should be at the upper edge of the figure, while the line of ineffectiveness should remain at the bottom. According to this chart, lower-ranking judges have maintained the opposite trend since 2013, making the indigenous jurisdiction largely ineffective.

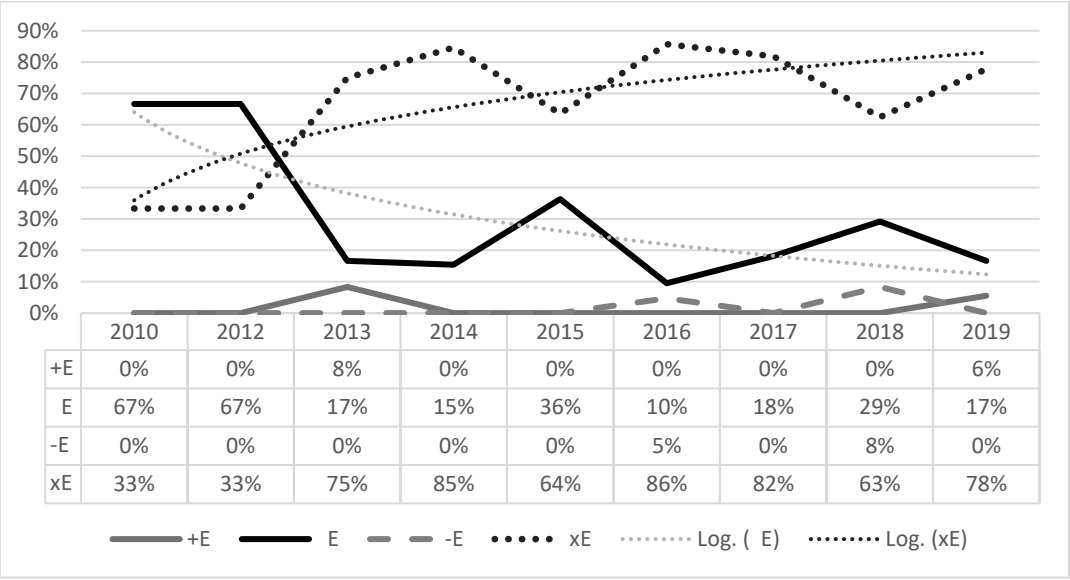
According to the background of the cases resolved by the PCC, the lower-ranking judges mainly used the following alleged reasons to illegally reject the claims of competence that the indigenous authorities made:

- Following a grammatical and unsystematic interpretation of the procedural laws prior to the Constitution and the JDL, judges argued that they were the authorities called by law to resolve the disputes and not the indigenous ones.[1913]

[1913] This position is contrary to the jurisprudential line of the PCC explained in opportunity 5 of the SWOT analysis and its justification.

- Since the indigenous authorities are members of the communities themselves and personally know the parties in dispute, they would be acting in a biased manner and violating the impartiality guarantee.[1914]
- Indigenous authorities did not support their requests with sufficient documentary evidence.[1915] For instance, demonstrating the existence of the indigenous peoples, proving that their jurisdiction would have traditionally resolved such disputes, or even for lacking the signature of a professional lawyer in their requests.
- By first hearing the dispute, judges would have acquired the competence to decide the case (principle of prevention[1916]) and that the indigenous authorities can no longer claim the competence because the opportunity to do so would have allegedly expired. [1917]
- Protection of judges' values forgetting that the indigenous peoples have their worldviews and own laws. [1918]
- The parties to the dispute or the indigenous jurisdiction itself may have voluntarily chosen the formal jurisdictions to resolve the case, that it is a way to exercise cooperation with indigenous jurisdiction, and that leaving the case would result in their illegal functions abandonment.[1919]

*Figure 15. Longitudinal percentages on the effectiveness of the exercise of indigenous jurisdiction granted by the lower-ranking courts related to constitutional cases (2010-2019)*




| | 2010 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|---|---|---|---|
| +E | 0% | 0% | 8% | 0% | 0% | 0% | 0% | 0% | 6% |
| E | 67% | 67% | 17% | 15% | 36% | 10% | 18% | 29% | 17% |
| -E | 0% | 0% | 0% | 0% | 0% | 5% | 0% | 8% | 0% |
| xE | 33% | 33% | 75% | 85% | 64% | 86% | 82% | 63% | 78% |

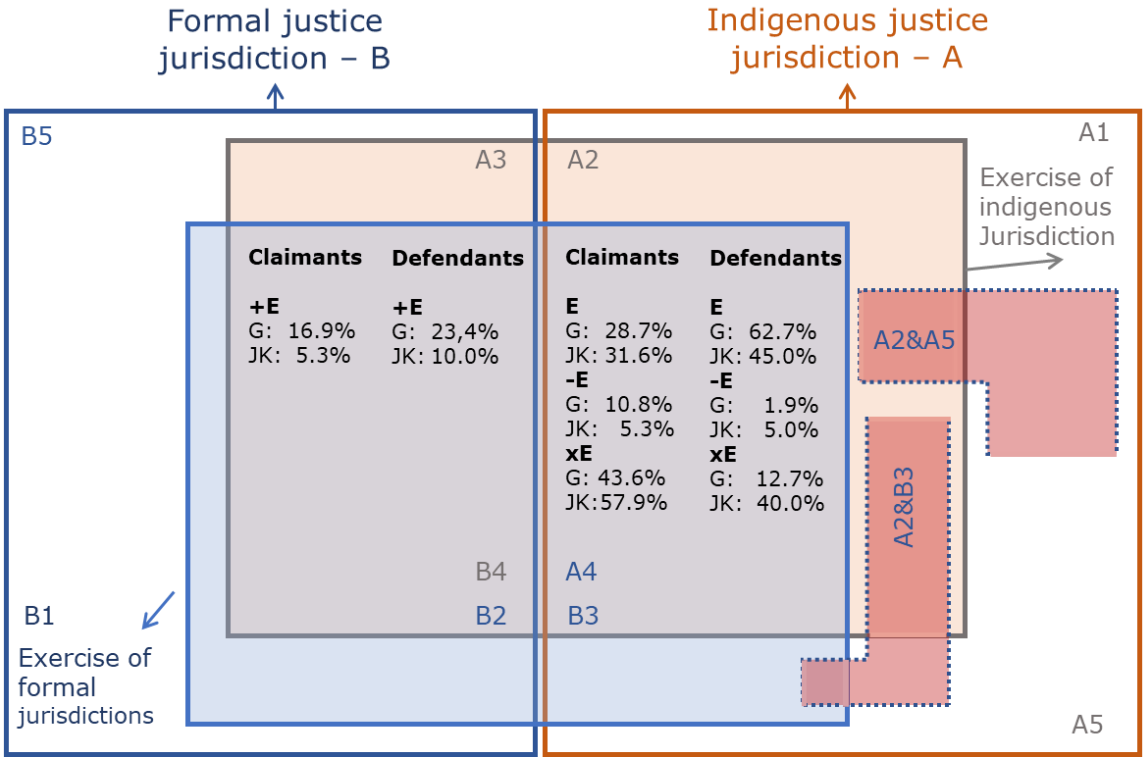
*Source:* Self-made.
*Note:* Abbreviations: more effective (E+), effective (E), less effective (-E), ineffective (xE), logarithmic trendline (Log.). According to Figure 3, the annual number of cases during the first years is lower compared to the number of cases since 2013. The relevant cases of indigenous jurisdiction's effectiveness through the PCC's decisions were 149: 3 in 2010, 0 in 2011, 3 in 2012, 12 in 2013, 13 in 2014, 11 and in 2015, 21 in 2016, 44 in 2017, 24 in 2018 and 18 in 2019. The figure disregards 2011 to avoid an unnecessary distortion that misrepresents the effectiveness trends and progressions within the analysis period.

[1914] Following the overcome PCC's jurisprudential line explained in threat 3 (partiality of the indigenous authorities) of the SWOT analysis in Table 30, and its justification.
[1915] Cf. threat 2 (require excessive compliance with procedural formalities) of the SWOT analysis in Table 30, and its justification.
[1916] That is, the 'right of a judge to take cognizance of an action over which he has concurrent jurisdiction with another judge.' Campbell Black (n 269) sv prevention.
[1917] Cf. threat 3 (extemporaneous claim of competence) of the SWOT analysis in Table 30, and its justification.
[1918] Cf. threats 3 (living well paradigm) and 4 of the SWOT analysis in Table 30, and their explanations.
[1919] Cf. threat 6 of the SWOT analysis in Table 30, and its justification.

*Lower-Ranking Court Cases Not Related to Constitutional Processes*

In the sample of twenty cases analyzed, it was observed that in most of them, lower-ranking courts agreed to resolve disputes belonging to the indigenous jurisdiction. From this sample, the ordinary and agri-environmental judges settled in JK admitted thirteen disputes belonging to this indigenous people, being the remaining seven cases of cooperation with indigenous authorities or indigenous members. Regarding the first group, on the one hand, five of them were assessed as less effective[1920] because, although the judges disregarded the legal limits when admitting the proceedings, they later referred them to the indigenous jurisdiction at the request of its authorities or the defendants. However, on the other hand, eight cases remained in the agri-environmental jurisdiction[1921] because they were not claimed and were not voluntarily referred to the indigenous jurisdiction, nullifying the indigenous possibility of exercising justice and rendering JK's jurisdiction ineffective.

*Figure 16. Indigenous jurisdiction's effectiveness concerning Jach'a Karangas' claimants and defendants contrasted with other indigenous peoples. PCC case law (2010-2019).*




*Source:* Self-made.
*Note:* Abbreviations: more effective (E+), effective (E), less effective (-E), and ineffective (xE), indigenous peoples in general (G), Jach'a Karangas (JK). The analysis graph is described in the research design, on page 68.

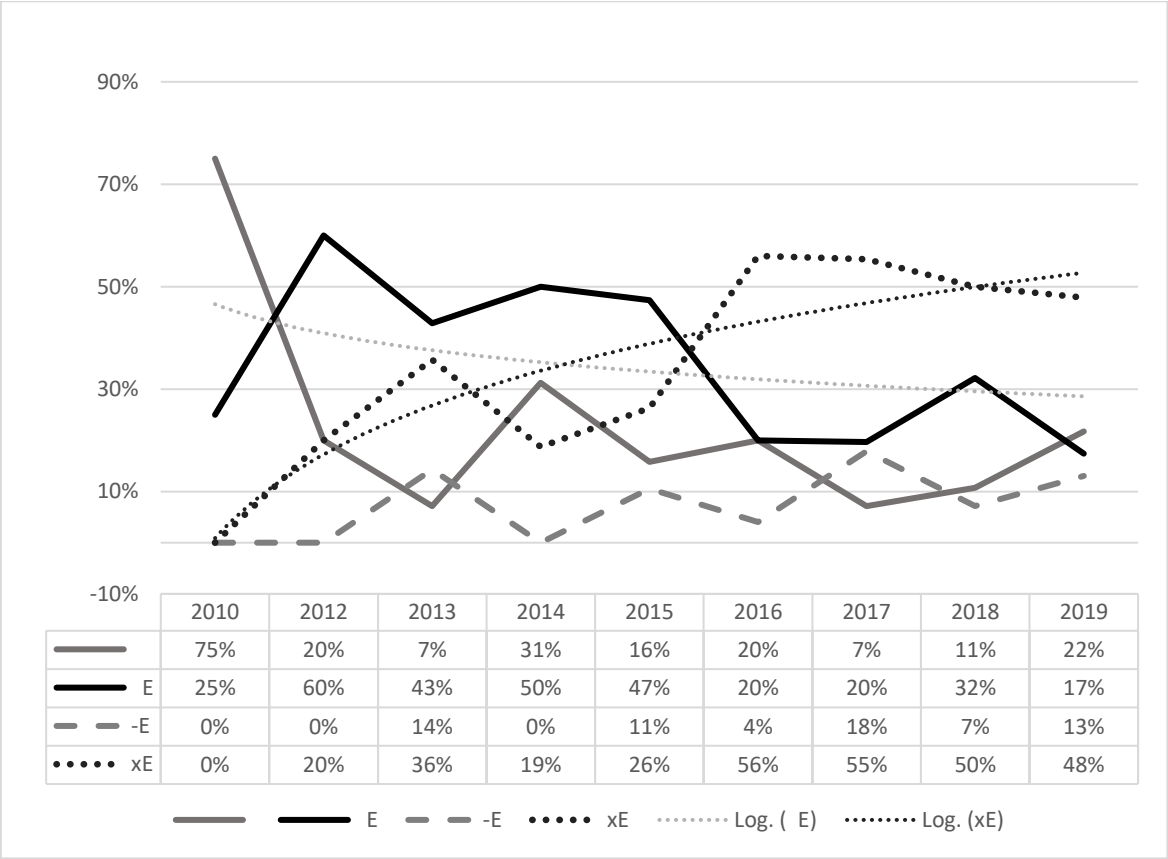
Concerning the second group, the agri-environmental jurisdiction provided technical assistance to the authorities or parties in six processes, making the indigenous jurisdiction effective through

[1920] Cases LRFJ.AE.Curahuara de Carangas 2019.2019.011, LRFJ.O.Totora and San Pedro de Totora 2017.2019.01, LRFJ.O.San Pedro de Totora 2018.2019 .02, LRFJ.O.San Pedro de Totora 2018.2019.03, LRFJ.O.Curahuara de Carangas 2015.2019.04.

[1921] Cases LRFJ.AE.Curahuara de Carangas 2019.2019.007, LRFJ.AE.Curahuara de Carangas 2019.2019.010, LRFJ.AE.Curahuara de Carangas 2019.2019.02, LRFJ.AE.Curahuara de Carangas 2019.2019.03, LRFJ.AE.Curahuara de Carangas 2019.2019.05, LRFJ.AE.Curahuara de Carangas 2019.2019.06, LRFJ.AE.Curahuara de Carangas 2019.2019.008, and LRFJ.AE.Curahuara de Carangas 2017.012019. a, b, and c.

cooperation.[1922] It rendered the indigenous jurisdiction more effective in one case when the indigenous authorities asked the judge to accompany them to a hearing to help them resolve the dispute.[1923] Faced with this situation, the judge attended the hearing with a part of his court staff to provide technical assistance. The JDL refers to cooperation and collaboration in exchanging information and experiences but does not include judges acting in tandem with indigenous authorities to resolve community disputes.

*Figure 17. Longitudinal percentages on the indigenous jurisdiction's effectiveness concerning claimants. PCC case law (2010-2019)*




| | 2010 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|---|---|---|---|
| | 75% | 20% | 7% | 31% | 16% | 20% | 7% | 11% | 22% |
| E | 25% | 60% | 43% | 50% | 47% | 20% | 20% | 32% | 17% |
| -E | 0% | 0% | 14% | 0% | 11% | 4% | 18% | 7% | 13% |
| xE | 0% | 20% | 36% | 19% | 26% | 56% | 55% | 50% | 48% |

*Source:* Self-made.
*Note:* Abbreviations: more effective (E+), effective (E), less effective (-E), ineffective (xE), logarithmic trendline (Log.). According to Figure 3, the annual number of cases during the first years is lower compared to the number of cases since 2013. The relevant cases of indigenous jurisdiction's effectiveness through the PCC's decisions were 195: 4 in 2010, 1 in 2011, 5 in 2012, 14 in 2013, 16 in 2014, 19 and in 2015, 25 in 2016, 56 in 2017, 28 in 2018 and 23 in 2019. The figure disregards 2011 to avoid an unnecessary distortion that misrepresents the effectiveness trends and progressions within the analysis period.

All things considered, only a third of the cases of the lower-ranking courts made the exercise of JK's jurisdiction effective. These findings seem consistent with constitutional cases' findings,[1924] suggesting that lower-ranking courts settled in JK usually render the indigenous jurisdiction's exercise ineffective. Furthermore, the SWOT analysis also supports these findings.[1925] Indeed, formal jurisdictions accepted

[1922] Cases LRFJ.AE.Curahuara de Carangas 2019.2019.01, LRFJ.AE.Curahuara de Carangas 2019.2019 .04, LRFJ.AE.Curahuara de Carangas 2019.2019.009, LRFJ.AE.Curahuara de Carangas 2019.2019.014, LRFJ.AE.Curahuara de Carangas 2019.2019.015, and LRFJ.AE.Curahuara de Carangas 2019.2019.016.
[1923] Case LRFJ.AE.Curahuara de Carangas 2019.2019.013.
[1924] From the data presented in Figure 15, it is found that the judges of lower hierarchy made the indigenous jurisdiction more effective in 3%, effective in 33% and ineffective in 61%.
[1925] According to Table 30, concerning threats 5 to 9 and their justifications.

and processed all the cases that community members filed before them without considering whether the competence belongs to the indigenous jurisdiction, even though the PCC imposed a duty on them to check their competence before accepting cases. [1926] Moreover, although formal judges usually know that the competence belongs to JK's jurisdiction, they prefer to illegally accept the cases and try to justify such trespassing of competence with arguments that disregard the Constitution and the JDL. [1927] This situation seems to worsen concerning the agri-environmental jurisdiction since the vast majority of the cases it resolves, if not all, are disputes over possession of collective lands whose competence belongs to the indigenous jurisdiction. Moreover, they even proactively pursue those cases outside their courts through field visits.[1928] In addition, in most cases, formal jurisdictions did not summon or inform the indigenous authorities to make them aware of the disputes concerning their community members, perhaps to avoid them claiming the competence. However, it is remarkable that agri-environmental courts cooperated with JK's jurisdiction through their free technical support (GPS measurements, satellite images, mapping, among others), and formal jurisdictions generally seem to respect indigenous decisions provided they are aware of them.[1929]

In conclusion, the meddling and invasive action of the formal jurisdictions in matters that correspond to the indigenous jurisdiction both on the Bolivian and JK scales seem to demonstrate that the lower-ranking judges render the exercise of indigenous jurisdiction mainly ineffective.

## *Effectiveness Regarding Indigenous Members as Duty Bearers*

The research design defined that the indigenous members of JK are also duty bearers of the collective right to exercise indigenous jurisdiction. Indeed, they are the ones who have the initial decision to choose before which jurisdiction to claim their rights as plaintiffs or, if they are the defendants, accept the jurisdiction chosen by the claimant or reject this decision by requesting another jurisdiction to resolve the dispute. The analysis of the effectiveness of the exercise of indigenous jurisdiction falls on these decisions of claimants and defendants since they may submit their disputes to indigenous jurisdiction beyond its legal powers, making it more effective, or within the legal framework, making it effective. At the same time, they might submit their disputes to the formal jurisdictions, complying with state law but acting to the detriment of the indigenous jurisdiction, making it less effective or, in the worst-case scenario, making it ineffective by choosing formal jurisdictions when the competence to resolving disputes belongs to the indigenous jurisdiction.

The revised processes comprise different roles of the parties. Although with some nuances, the cases related to JK can be grouped as follows:

- One of the parties may challenge the indigenous jurisdiction's decision through Constitutional Amparo. It is usually the defendant party of the indigenous process. In this case, considering the Amparo, the defendant or the claimant of the indigenous proceeding then assumes the role of the claimant, the indigenous authority that decides the indigenous proceeding, in turn, becomes the defendant, and the other indigenous party may become an interested party.[1930] In this same configuration, it can also happen that the claimant of the indigenous process is the community, since it may have a collective interest in the matter, which then, through its authorities and decision-making bodies, acts as a decision-maker in the indigenous dispute,

[1926] Cf. Table 30, concerning opportunity 6 and its explanation.
[1927] See Table 30, threats 6, 7, 9, and their reasons.
[1928] See Table 30, threat 7 and its justification.
[1929] Cf. to Table 30, concerning opportunities 8 and 9 and their justifications.
[1930] Cases 2036/2010-R, 0150/2016-S1, 1160/2016-S2 and 0721/2018-S4.

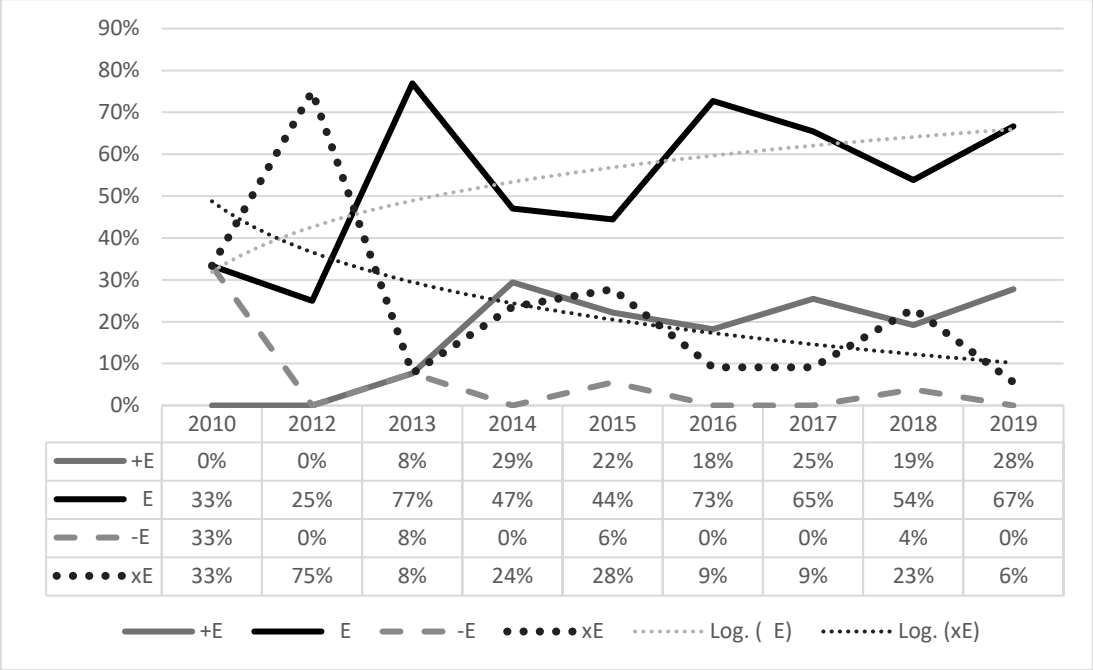
becoming a defendant in the Amparo process.[1931] The parties' roles in the indigenous process were taken into account to evaluate the effectiveness, considering whether the complaining parties resorted to the indigenous or formal jurisdiction and whether the defending parties accepted or rejected the choice of jurisdiction with their subsequent actions.

- In the case of competencies claim between jurisdictions, the claimant initially resorts to the formal jurisdiction and the defendant, on the other hand, usually requests the indigenous authorities to claim the competence to resolve the dispute. Subsequently, the indigenous authorities will later be the claimants in the Jurisdictional Competency Dispute processes before the PCC, and the formal judges will be the defendants.[1932] In this same configuration, there were three exceptional cases: a) the indigenous authorities were, at the same time, the defendants in the formal jurisdiction process,[1933] b) the claimant was not an indigenous member but the public ministry through a public prosecutor,[1934] and c) although the claimant resorted to the formal jurisdiction, the latter gradually rejected and referred the case to its various instances (from the ordinary jurisdiction to the agri-environmental one, then returned to the ordinary one, and it concluded at the PCC) without the case passing to the indigenous jurisdiction.[1935] The parties' roles in the formal processes were taken into account to evaluate the effectiveness, considering that the complaining party resorted to the formal jurisdiction and whether the defending party accepted or rejected the choice of jurisdiction with their subsequent actions.

Among the PCC's cases reviewed, the indigenous members of JK preferentially chose formal jurisdictions when acting as claimants, even though the competence to resolve disputes legally belonged to the indigenous jurisdiction (cf. Figure 19). Thus, in eleven of the nineteen applicable cases,[1936] the claimants' choice made the indigenous jurisdiction ineffective, which corresponds to almost 58% compared to six processes in which they made it effective or almost 32%. In contrast, the defendants mostly made the indigenous jurisdiction effective, although in a minimal proportion. Thus, they only acted ineffectively in eight of the twenty applicable cases (40%) and effectively in nine (45%). It should be noted that Karangas' cases involved only Jurisdictional Competency Disputes and Constitutional Amparos. The data provided by the other indigenous peoples may corroborate these trends: the claimants' choice made the indigenous jurisdiction ineffective in almost 44% and effective in nearly 29%, whereas the defendants made the indigenous jurisdiction effective in 62% of the cases and ineffective in only 26%.[1937] These numbers could suggest that claimants prefer the formal jurisdictions to protect their interests and rights, to the detriment of the indigenous jurisdiction, while the defendants would rather to defend themselves in the indigenous jurisdiction. It is also the case regarding the 'more effective' indicator since the defendants are willing to request their defense within indigenous jurisdiction outside its competence more frequently than claimants do concerning their pleas (cf. Figure 16).

[1931] Cases 1586/2010-R, 1574/2012 and 0152/2014-S3.
[1932] Cases 0092/2015, 0007/2016, 0031/2017, 0032/2017, 0078/2017, 0081 /2017, 0005/2018, 0022/2018, and 0156/2019-CA.
[1933] Case 0031/2016.
[1934] Case 0032/2017.
[1935] Case 2463/2012.
[1936] Cf. Table 3.
[1937] The cases applicable to these numbers include, in addition to the Jurisdictional Competency Dispute (95 cases) and Amparo processes (49 cases), the Consultation of Indigenous Authorities (11 cases), Liberty and Popular Actions (3 cases). These numbers exclude Jach'a Karanga's cases.

*Figure 18. Longitudinal percentages on the Indigenous jurisdiction's effectiveness concerning defendants. PCC case law (2010-2019)*



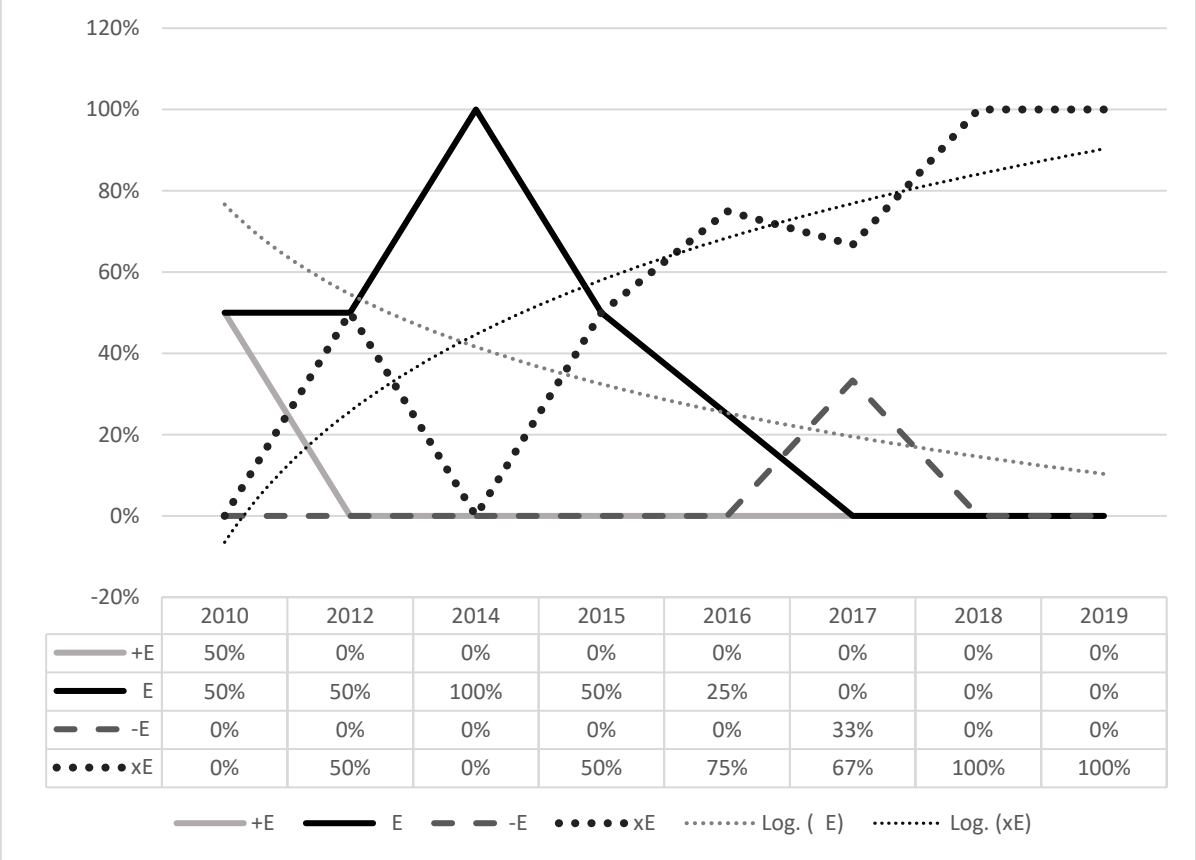

| | 2010 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|---|---|---|---|
| +E | 0% | 0% | 8% | 29% | 22% | 18% | 25% | 19% | 28% |
| E | 33% | 25% | 77% | 47% | 44% | 73% | 65% | 54% | 67% |
| -E | 33% | 0% | 8% | 0% | 6% | 0% | 0% | 4% | 0% |
| xE | 33% | 75% | 8% | 24% | 28% | 9% | 9% | 23% | 6% |

*Source:* Self-made.
*Note:* Abbreviations: more effective (E+), effective (E), less effective (-E), ineffective (xE), logarithmic trendline (Log.). According to Figure 3, the annual number of cases during the first years is lower compared to the number of cases since 2013. The relevant cases of indigenous jurisdiction's effectiveness through the PCC's decisions were 178: 3 in 2010, 0 in 2011, 4 in 2012, 13 in 2013, 17 in 2014, 18 and in 2015, 22 in 2016, 55 in 2017, 26 in 2018 and 18 in 2019. The figure disregards 2011 to avoid an unnecessary distortion that misrepresents the effectiveness trends and progressions within the analysis period.

Looking closely at JK's cases, most of the claimant's ineffectiveness litigations (nine out of eleven) occurred in Jurisdictional Competency Dispute processes (the rest were in Amparo processes, i.e., two out of eleven). Conversely, most of the defendant's ineffectiveness cases (six out of eight) occurred in Amparos (the rest through Jurisdictional Competency Dispute, i.e., two out of eight). Moreover, the claimants mostly made the indigenous jurisdiction's exercise effective through Amparos (six out of six cases), while the defendants did it with Jurisdictional Competency Disputes (seven out of two). These inverse correlations in Jurisdictional Competency Dispute processes could support the suspicion that claimants prefer formal jurisdictions and those defending themselves prefer the indigenous jurisdiction. It is because claimants prefer formal jurisdictions to claim their rights while defendants only resort to formal jurisdictions once they could not previously protect their interests within indigenous jurisdictions. Furthermore, the correspondence of Amparo processes may indicate that those who lost before the indigenous jurisdiction, mostly defendants, challenged the indigenous decisions through Amparos when they found themselves dissatisfied with the outcome, also harming the effectiveness of

the indigenous jurisdiction.[1938] It should be noted that the PCC mostly corrected the ineffectiveness proclivity of the parties through JK's authorities and indigenous individuals claims.[1939]

*Figure 19. Longitudinal percentages on the Indigenous jurisdiction's effectiveness concerning Jach'a Karangas' claimants. PCC case law (2010-2019)*




| | 2010 | 2012 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|---|---|---|
| +E | 50% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| E | 50% | 50% | 100% | 50% | 25% | 0% | 0% | 0% |
| -E | 0% | 0% | 0% | 0% | 0% | 33% | 0% | 0% |
| xE | 0% | 50% | 0% | 50% | 75% | 67% | 100% | 100% |

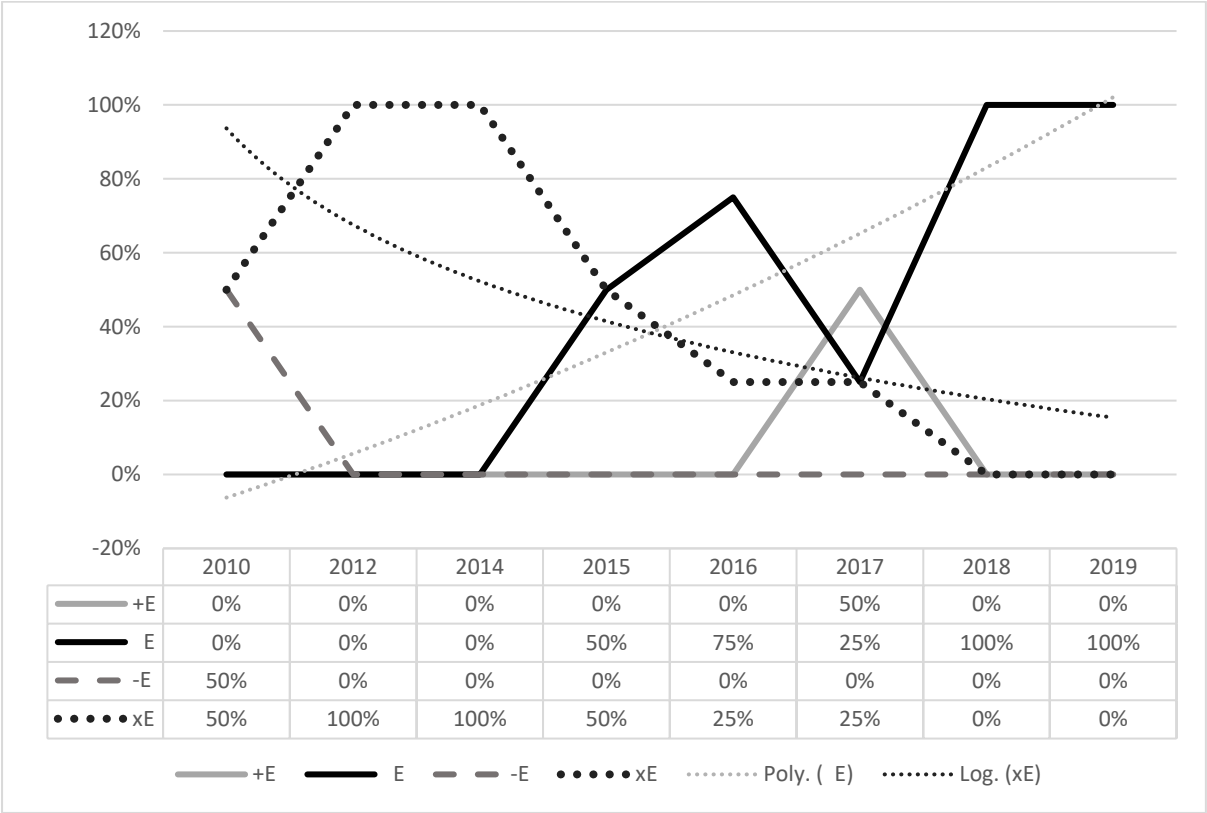
*Source:* Self-made.
*Note:* Abbreviations: more effective (E+), effective (E), less effective (-E), ineffective (xE), logarithmic trendline (Log.). The relevant cases of indigenous jurisdiction's effectiveness through the PCC's decisions were 19: 2 in 2010, 0 in 2011, 2 in 2012, 0 in 2013, 2 in 2014, 2 and in 2015, 4 in 2016, 3 in 2017, 3 in 2018 and 1 in 2019. The figure disregards 2011 and 2013 to avoid an unnecessary distortion that misrepresents the effectiveness trends and progressions within the analysis period.

In a longitudinal perspective portrayed in Figure 17 referring to all indigenous peoples and considering the cases processed by the PCC, it is notorious how the effectiveness caused by the plaintiffs to the indigenous jurisdiction has changed position throughout the analysis period. Thus, the plaintiffs mostly made the indigenous jurisdiction effective from 2010 to 2015 since, in this interim, there were more cases of plaintiffs who made indigenous jurisdiction effective than those who made it ineffective. In

[1938] From a comparative perspective with the behavior of the parties to the rest of the indigenous peoples, although the trend is confirmed for the claimants in both types of processes (they preferred the formal jurisdictions to claim their rights), the same does not happen with respect to the defendants in the Amparos. This divergence, according to data review, arises mainly because the majority of the Amparos' processes were regarding the affectation of individual rights without denying the right to exercise indigenous jurisdiction, which did not occur in Jach'a Karangas's cases.
[1939] In the case of the claimants (Jurisdictional Competency Dispute processes), it rendered the indigenous jurisdiction more effective once, effective on five occasions, and ineffective in three. Two cases were inapplicable for PCC's analysis since it legally rejected the competence of the indigenous jurisdiction. The same thing happened with claimants (in Amparos) when the PCC made it more effective once, effective five times, and ineffective three times.

other words, during these years, the indigenous claimants generally complied with their duty to respect the exercise of indigenous jurisdiction. However, this situation changed in 2016, which began a trend to decrease this effectiveness percentage until reaching its lowest value in 2019.

*Figure 20. Longitudinal percentages on the Indigenous jurisdiction's effectiveness concerning Jach'a Karangas' defendants. PCC case law (2010-2019)*




| | 2010 | 2012 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|---|---|---|
| +E | 0% | 0% | 0% | 0% | 0% | 50% | 0% | 0% |
| E | 0% | 0% | 0% | 50% | 75% | 25% | 100% | 100% |
| -E | 50% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| xE | 50% | 100% | 100% | 50% | 25% | 25% | 0% | 0% |

*Source:* Self-made.
*Note:* Abbreviations: more effective (E+), effective (E), less effective (-E), ineffective (xE), logarithmic trendline (Log.). The relevant cases of indigenous jurisdiction's effectiveness through the PCC's decisions were 20: 2 in 2010, 0 in 2011, 2 in 2012, 0 in 2013, 2 in 2014, 2 and in 2015, 4 in 2016, 4 in 2017, 3 in 2018 and 1 in 2019. The figure disregards 2011 and 2013 to avoid an unnecessary distortion that misrepresents the effectiveness trends and progressions within the analysis period.

At the same time, the cases of ineffectiveness had an almost sustained trend of increase during the analysis period, reaching their peak in 2016 and decreasing slightly until 2019. Moreover, from 2016 to the present, there was a higher percentage of ineffectiveness cases than those of effectiveness. Although there is no precise inverse correlation between the effectiveness and ineffectiveness percentage lines, their cross behavior demonstrates that the plaintiffs initially favored the indigenous jurisdiction and later favored the formal jurisdictions. These findings may suggest that, in the beginning, when the plurinational Constitution was being inaugurated, the plaintiffs had greater confidence in the indigenous jurisdictions, and, as the years went by, this situation reversed. The plaintiffs began to prefer formal jurisdictions over the indigenous ones.

During the analysis period, the plaintiffs have shown a margin of irreverence to the legal limits. Despite its fluctuations, it has maintained an average in which approximately one in five plaintiffs have made

the indigenous jurisdiction more effective. This margin of irreverence occurred when the claimants sued expanding the personal, material, and territorial validity areas.[1940]

On the contrary, according to Figure 16 and Figure 18, the defendants have generally complied with their duty to respect the indigenous jurisdiction. Except for 2012, they preferred the indigenous jurisdiction over formal jurisdictions for the rest of the analysis period. That is, since 2013, the percentage of effectiveness cases was always higher than the cases of ineffectiveness.[1941] On the other hand, the defendants maintained a margin of irreverence relatively equal to the plaintiffs. This margin of irreverence mainly occurred when the PCC, through the defendants, expanded the personal, material, and territorial validity areas.[1942]

Although with more accentuated fluctuations due to fewer cases that occurred during the analysis period, the claimants repeated in JK the tendencies observed in the rest of the indigenous peoples (see Figure 19). Instead, the defendants have behaved differently, as Figure 20 portrays. Thus, the defendants mostly made the indigenous jurisdiction ineffective from 2010 to 2014 since there were more cases of defendants who made the indigenous jurisdiction ineffective than those who made it effective. As a matter of fact, none made it effective during that period, breaching their duty to respect their indigenous jurisdiction. However, this situation changed in 2015, which began a trend to decrease the ineffectiveness percentage until reaching its lowest values in 2018 and 2019. Conversely, since 2015 the effectiveness of the defendants increased until reaching its maximum value in 2018 and 2019, but with an abrupt drop in 2017. In other words, since 2015, the defendants began to fulfill their duties toward the indigenous jurisdiction of JK.

The sample of cases obtained from the lower-ranking courts based in JK displays that the claimants made the indigenous jurisdiction effective in seven cases compared to thirteen in which they made it ineffective. Instead, the defendants made the indigenous jurisdiction equally effective and ineffective with ten cases each. These data are relatively consistent with the PCC cases.

These findings of the behavior of the parties regarding the jurisdiction of JK could be due, among other possible concomitant reasons, to the fact that they identified the benefits of suing and defending themselves through the formal jurisdictions and their indigenous jurisdiction, respectively. According to the SWOT analysis and its explanations,[1943] the indigenous jurisdictions could be attractive since it is concerted, free, and accessible, and the indigenous authorities usually know the community members in dispute. However, it tends to delay dispute resolutions because authorities typically lack legal training and do not last long enough in their positions to resolve them, affecting the continuity of the processes. In addition, authorities sometimes lack interest in exercising indigenous jurisdiction, often have conflicts of interest with one of the parties, and rarely issue a resolution that decides the dispute, preferring that parties reach an agreement without impositions. [1944] Finally, parties may fail to comply with the agreements or decisions since indigenous jurisdiction usually lacks coercion.

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[1940] For example, cases 2010/2010-R, 2036/2010-R, 0041/2014, 0672/2014, 0607/2015-S3, 1336/2016-S2, 0006/2017-S1, 0025/2017, 0573/2017-S1, 0073/2018, 0015/2019-S1, 0306/2019-S1, and 0016/2020 in Annex B.
[1941] On average, the effectiveness cases doubled those of ineffectiveness in a ratio of 54% to 24%. In frequency, there were 107 cases of effectiveness, compared to 28 of ineffectiveness.
[1942] For example, cases 0026/2013, 0874/2014, 1754/2014, 1810/2014, 0007/2015, 0075/2015, 0098/2015, 0029/2016, 0006/2017, 0019/2017, 0045/2017, 0045/2017, 2017, 0047/2017, 0067/2017, 0081/2017, 0093/2017, 0036/2018, 0041/2018, 0023/2019, 0610/2019-S1, 0035/2019, and 0037/2020 in annex B.
[1943] Cf. Table 30, related to strengths 1 to 6, opportunity 11, weaknesses 1, 4 to 9, 11 to 13, and threats 6, 7, 11, 13, 14, 16 to 19, and their justifications.
[1944] It should be clarified that this kind of indigenous process does not happen in urgent cases where the community decides to adopt extreme punitive measures, such as expulsing community members.

On the other hand, community members may perceive that formal jurisdictions, despite being costly, bureaucratic, and possibly corrupt and unfair, are more advanced because judges have studied law, and all their processes will have a coercible final decision. Based on these perceptions, it could be explained, to some extent, that the plaintiffs might prefer formal jurisdictions to try to achieve their justice objectives with greater certainty, and, on the other hand, the defendants could prefer a free, concerted, and delayed solution without impositions.

Nonetheless, in cases where justice is administered in indigenous communities, a different situation exists. In effect, the indigenous acts show that most plaintiffs and defendants make the indigenous jurisdiction effective. From the sample of 44 acts, 40 claimants and 36 defendants made the indigenous jurisdiction effective, and only three claimants and five defendants made it ineffective. One claimant and one defendant made it more effective expanding the material validity area to a corruption crime.[1945] Although these numbers do not correspond to a representative sample of cases resolved by the indigenous jurisdiction, they indicate that the indigenous jurisdiction is not only valid but also has community members who submit to it and fulfill their duty toward their JK.

All things considered, it is possible to conclude that the effectiveness of the indigenous jurisdiction varies in the context in which the parties claim or defend their disputes. Starting with the latest data presented, when the indigenous jurisdiction is exercised in Jach'a Karangas' communities, the plaintiffs and the defendants mostly comply with their duty, submitting to the indigenous jurisdiction. On the other hand, the situation is different when it comes to processes initiated in formal jurisdictions. It is observed that, in this case, the majority of the plaintiffs illegally prefer formal jurisdictions, making the indigenous jurisdiction ineffective. The defendants, for their part, prefer to resort to indigenous jurisdiction, making it effective.

However, how is it that these two realities can coexist in parallel? In the SWOT analysis, it is observed that there is a belief that the parties should resort to the indigenous jurisdiction in the first instance and that, if a solution is not found, they would be supposedly authorized to present their claims to formal jurisdictions.[1946] This situation could explain, to some extent, that the parties' actions in indigenous contexts could constitute the initial and relatively common situation. On the other hand, when the parties present their claims to formal jurisdictions, they could be construed as a subsequent instance, given the plaintiffs' sense of frustration with the responses of their authorities. Perceiving formal jurisdictions' greater efficiency compared to the indigenous jurisdiction, as commented before, could be one of the reasons to explain these decisions.

Although in this investigation it has not been possible to verify the number of cases in which these initial and later stages occur, their frequency, or even the number of cases in which the parties resort directly to the formal jurisdictions, the data obtained suggest that this conjecture could be plausible to some extent. Hence, within this framework of interpretation, it could be argued that the parties to the dispute would initially make the indigenous jurisdiction effective and that, in the absence of a resolution of the dispute through an agreement or indigenous decision sufficiently favorable or reasonable, some of the claimants would make the indigenous jurisdiction ineffective by filing their claims in the formal jurisdictions. At the end, it could be plausible to assume that not all indigenous parties result frustrated or even resort to formal jurisdictions.

[1945] See case A.2013.03.02 in Annex E, which is related to the PCC case 0152/2014-S3 (see Annex B).
[1946] See Weakness 3 and threat 20 in Table 30 and their explanations.

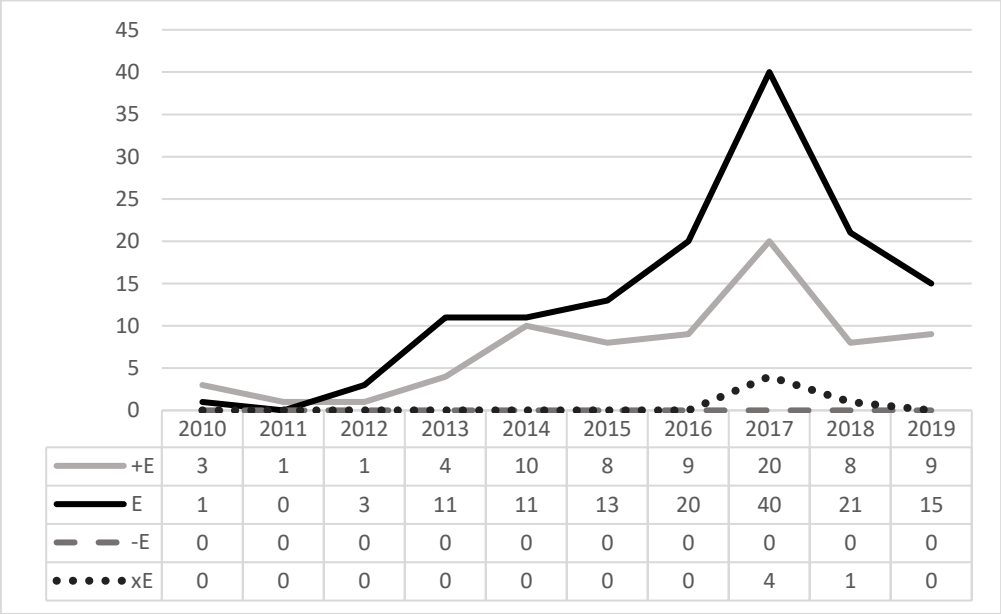
# Section 6.2: Right Holder

Recalling that the identified planned effect is the possibility that JK's indigenous jurisdiction has in resolving indigenous disputes, this section aims to describe to what extent JK accomplishes such purpose in reality. To that end, two different perspectives have been determined. The first is to assess to what extent JK exercises its indigenous jurisdiction according to the content and limits established in the Bolivian legal framework. The second approach is assessing to what extent JK has the interest to ground duties on its duty bearers regarding its right to exercise indigenous jurisdiction. The following lines attempt to answer these questions based on the research findings.

## *Exercise of Jach'a Karangas Jurisdiction*

Regarding all the indigenous peoples that inhabit Bolivia, and whose processes reached the PCC, a large majority of the indigenous authorities accepted to hear the disputes that were presented to them by their community members. Indeed, of the 217 cases relevant to this indicator, 136 (or 63%) were accepted by these authorities within the framework of the competencies provided for by the Constitution and the JDL, making their jurisdictional exercise effective. It is remarkable that the indigenous authorities accepted 76 cases (or 35%) outside their competencies, making the indigenous jurisdiction more effective; and that, instead, they had only illegally rejected 5 cases (2%). On average, it can be said that the indigenous jurisdiction agreed to decide outside of its legal competence in one out of every three cases.

*Figure 21. Longitudinal effectiveness by the number of cases of the indigenous jurisdiction concerning the acceptance of disputes. (PCC case law 2010-2019)*

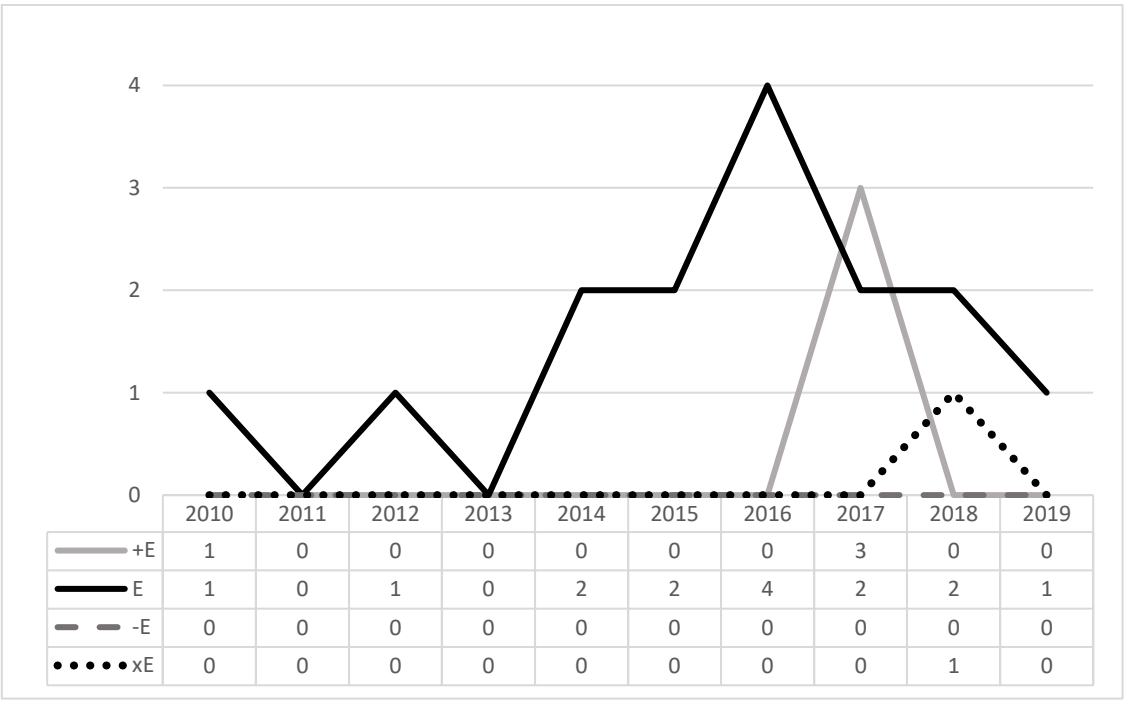



| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|---|---|---|---|---|
| +E | 3 | 1 | 1 | 4 | 10 | 8 | 9 | 20 | 8 | 9 |
| E | 1 | 0 | 3 | 11 | 11 | 13 | 20 | 40 | 21 | 15 |
| -E | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| xE | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | 1 | 0 |

*Source:* Self-made.
*Note:* Abbreviations: more effective (E+), effective (E), less effective (-E), ineffective (xE). According to Figure 3, the annual number of cases during the first years is lower compared to the number of cases since 2013. The relevant cases of indigenous jurisdiction's effectiveness were 217: 4 in 2010, 1 in 2011, 4 in 2012, 15 in 2013, 21 in 2014, 21 in 2015, 29 in 2016, 64 in 2017, 30 in 2018 and 24 in 2019

From a longitudinal perspective, as can be seen in Figure 21, the cases of ineffectiveness only occurred in 2017 (4 cases[1947]) and 2018 (1 case), being non-existent in the rest of the analysis period. On the other hand, it can be seen that, except in the years 2010 to 2011, effective cases have predominated throughout the analysis period, followed by more effective cases, although both were few during the first years.[1948] These numbers display that the indigenous jurisdiction not only has accepted and exercised the vast majority of cases, but it has a margin of irreverence concerning the disputes it admitted beyond its jurisdiction.

*Figure 22. Longitudinal effectiveness by the number of cases of Jach'a Karangas' jurisdiction concerning the acceptance of disputes. (PCC case law 2010-2019)*




| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|---|---|---|---|---|
| +E | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 |
| E | 1 | 0 | 1 | 0 | 2 | 2 | 4 | 2 | 2 | 1 |
| -E | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| xE | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |

*Source:* Self-made.
*Note:* Abbreviations: more effective (E+), effective (E), less effective (-E), ineffective (xE). According to Figure 3, the annual number of cases during the first years is lower compared to the number of cases since 2013. The relevant cases of indigenous jurisdiction's effectiveness were 20: 2 in 2010, 0 in 2011, 1 in 2012, 0 in 2013, 2 in 2014, 2 in 2015, 4 in 2016, 5 in 2017, 3 in 2018 and 1 in 2019.

In JK, something similar happened regarding the cases that came to the PCC concerning effectiveness and ineffectiveness. Thus, as can be seen in Figure 22, except for the years 2011 and 2013, in which there were no cases recorded by JK, in the rest of the period, there was at least one case per year in which the indigenous authorities agreed to exercise jurisdiction within its competencies, making the indigenous jurisdiction effective. Finally, in 2018, only one ineffective case was registered.[1949] Of the 20 cases relevant to this indicator, 15 (or 75%) were accepted by JK authorities within the framework of their competencies,[1950] making their jurisdictional exercise effective. Only four cases (or 20%) were

[1947] Cases 0068/2017, 0909/2017-S3, 0049/2017, and 0171/2017-CA (see Annex B).
[1948] The number of cases in the first three years is notoriously lower due to the circumstances of the Constitutional Court after the entry into force of the Constitution and until the PCC began in 2012 (cf. 'Introduction,' page 355).
[1949] Case 0721/2018-S4 (see Annex B).
[1950] Cases 1586/2010-R, 1574/2012, 0778/2014, 0152/2014-S3, 0092/2015, 1016/2015-S3, 0007/2016, 0150/2016-S1, 0031/2016, 1160/2016-S2, 0031/2017, 0078/2017, 0005/2018, 0022/2018, and 0156/2019-CA (cf. Annex B).

related to disputes outside their competencies, making the indigenous jurisdiction more effective (one case in 2010[1951] and three in 2017 exceeding the number of effective cases on that occasion.).[1952] On average, it can be said that JK jurisdiction tended to decide outside of its legal competence in one of every four cases.

The comparison of the jurisdictional activity of JK with the data obtained from all the indigenous peoples that inhabit Bolivia, suggests that JK has a greater propensity to comply with the margins of its legal competencies (75% compared to 63% of all the indigenous peoples) and, consequently, a smaller margin of irreverence to decide disputes that are not within its competence (20% compared to 35% of all the indigenous peoples). However, these findings also suggest that indigenous authorities render the exercise of JK's jurisdiction effective and more effective concerning their acceptance of cases in a relatively similar fashion to other Bolivian indigenous peoples in a general perspective.

Considering the sample of cases collected from the lower-ranking courts located in JK, it is observed that the authorities accepted and tried to exercise jurisdiction within the framework of their competencies in thirteen of the eighteen relevant cases for this indicator, having partially accepted one[1953] and illegally rejected four.[1954] Given that it is counterintuitive to obtain information demonstrating the effectiveness of the indigenous jurisdiction from a source in which formal jurisdictions carry out the processes, it is interesting to describe the two situations in which they have occurred. Thus, the first identified corresponds to the fact that the indigenous authorities would have accepted to resolve the cases and then required cooperation from the agri-environmental jurisdiction through its technical support or presence in indigenous hearings.[1955] In some cases, it seems indigenous authorities could have used the technical report of the agri-environmental jurisdiction to resolve the disputes after the parties to the process would have required the agri-environmental jurisdiction's technical support.[1956] In a second situation identified, the indigenous authorities would have accepted the resolution of the disputes by claiming the competence to resolve them, either directly[1957] or when they had previously tried to resolve the dispute, and then claimed the competence to the agri-environmental jurisdiction when the claimant resorted to the latter, considering that the indigenous jurisdiction could not resolve their problem.[1958] Be that as it may, in this unrepresentative sample of cases, in most cases, the indigenous authorities made the indigenous jurisdiction effective.

Regarding the indigenous minutes analyzed, it is possible to observe that this same consistency of effectiveness is maintained in the exercise of indigenous jurisdiction. Thus, in none of them, it is observed that the indigenous authorities had refused to exercise jurisdiction, except for one case in

[1951] Case 2036/2010-R.
[1952] Cases 0032/2017, 0072/2017, and 0081/2017 (See Annex B). Case 0072/2017 concerns the PCC rejecting Corque Marka's Statutes from including corruption matters under the competence of its jurisdiction.
[1953] Cf. case LRFJ.AE.Curahuara de Carangas 2019.2019.02 in Annex C.
[1954] Cf. cases LRFJ.AE.Curahuara de Carangas 2019.2019.05, LRFJ.AE.Curahuara de Carangas 2019.2019.007, LRFJ.AE.Curahuara de Carangas 2019.2019.008, LRFJ.AE.Curahuara de Carangas 2017.2019.012 (a, b, and, c) (case related to 2018.0022-CC-SC in Annex C.
[1955] This occurred in the cases LRFJ.AE.Curahuara de Carangas 2019.2019.01, LRFJ.AE.Curahuara de Carangas 2019.2019.04, LRFJ.AE.Curahuara de Carangas 2019.2019.013, and LRFJ.AE.Curahuara de Carangas 2019.2019.014 in Annex C.
[1956] Cf. cases LRFJ.AE.Curahuara de Carangas 2019.2019.009, LRFJ.AE.Curahuara de Carangas 2019.2019.010 (related to LRFJ.AE.Curahuara de Carangas 2019.2019.011), LRFJ.AE.Curahuara de Carangas 2019.2019.015, and LRFJ.AE.Curahuara de Carangas 2019.2019.016. in Annex C.
[1957] See cases LRFJ.O.Totora and San Pedro de Totora 2017.2019.01, LRFJ.O.San Pedro de Totora 2018.2019.02, LRFJ.O.San Pedro de Totora 2018.2019.03 (related to A.2019.09.04b), and LRFJ.O.Curahuara de Carangas 2015.2019.04 (related to A.2019.09.04a) in Annex C.
[1958] This occurred in the case LRFJ.AE.Curahuara de Carangas 2019.2019.011 (related to LRFJ.AE.Curahuara de Carangas 2019.2019.010 in Annex C.

which, although a dispute was initially partially accepted,[1959] later they resolved the whole matter.[1960] Instead, in 41 minutes, the indigenous authorities agreed to resolve the disputes that were presented to them, making the indigenous jurisdiction effective. Further, in one of the cases, the authorities and the community resolved a dispute over corruption, making the indigenous jurisdiction more effective since this crime is not within their jurisdiction.[1961]

Despite the effectiveness demonstrated in these sources, the interviews conducted with former authorities, community members, and indigenous members who have been party to processes in the formal and indigenous jurisdictions, reveal that indigenous authorities might refuse to exercise jurisdiction. The SWOT analysis portrays that sometimes the authorities totally or partially reject the disputes presented to them due to lack of legal training and because they consider that they have fewer competencies than those genuinely granted by law. Sometimes, they lack interest in getting involved in challenging and complex disputes or because they are compromising, given that their family, friendship, or other relationships could cause them conflicts. Likewise, they could ignore the requests for justice due to a lack of time and commitment, as their positions are brief and discontinuous, or they could prefer cultural and economic activities in their communities. Finally, indigenous authorities could also disregard their exercise of jurisdiction by residing outside their communities and returning to them sporadically. [1962] Although the opinions gathered by the interviews do not provide certainty of the frequency with which the authorities would totally or partially reject the exercise of indigenous jurisdiction, the contrast with the other sources previously presented suggests that it would be a relatively occasional situation that could be subsequently corrected to some extent by the following authorities or by hierarchical indigenous authorities.[1963]

In sum, the research findings suggest that, on the one hand, JK seems to constantly and persistently exercise its indigenous jurisdiction according to the content and limits established in the Bolivian legal framework, making it effective. On the other hand, it is observed that JK keeps a margin of irreverence against the jurisdictional limits imposed by the Constitution and the laws, occasionally making its jurisdiction more effective.

## *Jach'a Karangas Claims the Competence to Resolve Disputes*

When someone has a right, it is said that she also has the possibility of claiming it.[1964] Thus, whoever feels that his or her right is being affected by others, has the possibility of demanding them to abide it. In other words, rights holders can assert their rights against their duty bearers to compel recognition of their duties. To this end, the State has devised legal mechanisms through its justice system that right holders can use to the extent of their interests and possibilities. In the particular case of the collective right to exercise indigenous jurisdiction, indigenous peoples have within their reach the constitutional process of the Jurisdictional Competency Dispute.[1965] This process begins with the indigenous authorities' request to the judges who are processing disputes that, in their opinion, do not concern them (or vice versa) and could reach the PCC under the caveat that the judges reject or not respond to them in a timely manner. This section aims to assess whether JK is interested in claiming the competence to

[1959] The indigenous jurisdiction accepted to resolve a land dispute and refused to admit the death threats. Cf. minutes A.2010.03.18 in Annex E.
[1960] Cf. minutes A.2010.03.19 in Annex E.
[1961] Cf. Table 21, and minutes A.2013.03.02 in Annex E, related to PCC case 0152/2014-S3 in Annex B.
[1962] Cf. Table 30, related to weaknesses 1, 2, 4 to 8, 10, and their justifications.
[1963] Cf Table 30, strength 5 and its justification.
[1964] See ‘Effectiveness of the Rights’ on page 27.
[1965] See ‘The Jurisdictional Competency Dispute’ on page 463.

resolve the disputes that correspond to it and, consequently, oblige its duty bearers to respect its right's exercise.

From the general point of view obtained by the PCC case law, it is observed that indigenous peoples have mostly claimed processes that corresponded to their jurisdiction (71 cases out of 116, or a little more than 61%) and have even done so in cases where they had no competence (40 of 116 cases, or more than 34%). In contrast, the indigenous peoples would have waived[1966] or disregarded claiming[1967] their competence only in a minority fraction (5 of 116 cases or a little more than 4%). On average, it can be said that the indigenous jurisdiction claims its competence outside legal boundaries in one out of every three cases.

Even though the law explicitly states that indigenous jurisdiction may claim competence against ordinary and agri-environmental jurisdictions and vice versa, there is no single case in which the formal jurisdictions would have claimed competence against the indigenous jurisdiction within the analysis period. Such a fact could be explained, among other reasons, by simply arguing that indigenous jurisdiction has seldom invaded the competencies of the other jurisdictions. Indeed, whereas indigenous jurisdiction invaded the formal jurisdiction's competencies in 35% of cases,[1968] formal jurisdictions did it in more than 67% of Jurisdictional Competency Dispute's cases and almost 73% concerning JK's indigenous jurisdiction. However, another cause of explanation might be a sense of insignificance towards the indigenous jurisdiction's relevancy, capabilities, and scope among the State's formal judges that make them skeptical about such a chance.

> *'For example, if it is a matter of theft, it belongs to the ordinary justice system. However, it is not my competence if it is a theft of chickens, an issue that has always been resolved in the communities. It would have to be resolved directly by the indigenous peoples.'* [1969]

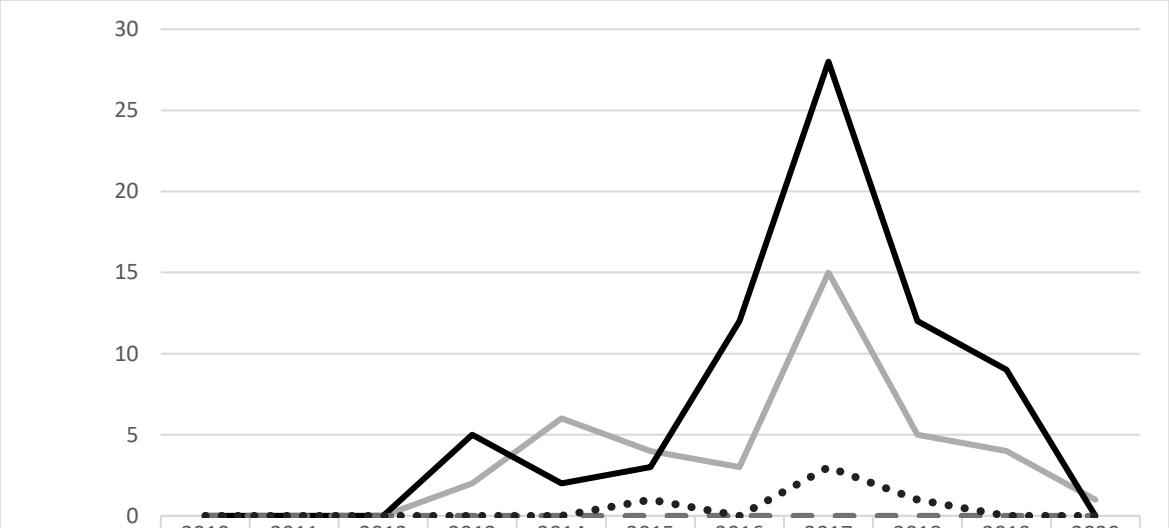
The quotation also demonstrates the judge's lack of precision regarding the boundaries between jurisdictions since theft (or even aggravated robbery) is not excluded from the indigenous competency.[1970] Moreover, these data could support the conjecture that the formal judges are not using the coordination mechanisms in the exchange of information to know the cases that the indigenous jurisdiction is resolving.

In a longitudinal reading, as can be seen in Figure 23, the PCC began to resolve Jurisdictional Competency Disputes in 2013 with an average of seven cases per year until 2016, when they increased to fifteen until reaching their peak in 2017 with 46 cases. In 2018 and 2019, with the entry of the new PCC magistrates' generation, the number of cases returned to eighteen and fifteen cases per year, respectively (cf. Figure 23). It is noted that this annual number of cases seems relatively low to the number of processes that, on average, are resolved by formal jurisdictions in all the provinces of Bolivia.[1971] Furthermore, it can be seen that, except in the years 2014 to 2015, the 'effective' cases have predominated throughout the analysis period, followed by more effective cases.

[1966] Cf. Annex B, cases 0068/2017 and 0171/2017-CA.
[1967] Cf. Annex B, cases 0049/2017, 0315/2015-CA, and 0018/2018.
[1968] Cf. 'Exercise of Jach'a Karangas Jurisdiction,' page 379.
[1969] Ordinary judge interview, G-2019-41.
[1970] Cf. Table 22.
[1971] According to official data, only the lower-ranking ordinary courts settled in the territory of JK admitted 356 cases in 2017, 193 cases in 2018, and 193 in 2020. Tribunal Supremo de Justicia, Órgano Judicial de Bolivia, *Rendición Pública de Cuentas 2017 del Tribunal Supremo de Justicia* (2017) 53; Tribunal Supremo de Justicia, Órgano Judicial de Bolivia, *Rendición Pública de Cuentas 2018 del Tribunal Supremo de Justicia* (2018) 112–113; Tribunal Supremo de Justicia, Órgano Judicial de Bolivia, *Rendición Pública de Cuentas Final 2020 del*

Although on a different scale, in JK, 'effective' cases also prevailed, followed by 'more effective' cases. There were none 'less effective' or 'ineffective cases.' As seen in Figure 21, the first registered case of effectiveness was in 2015, increasing to two per year from 2016 to 2018, then reducing to one in 2019.[1972] Only in 2017 there were two 'more effective' cases.[1973] Of the ten cases in which JK claimed the competence to resolve disputes during the analysis period, only two were more effective (or 20%), and the rest were effective (or 80%). On average, it can be said that JK tended to claim outside of its legal competence in one of every five cases.

*Figure 23. Longitudinal effectiveness by the number of cases of indigenous jurisdiction concerning disputes claimed. (PCC case law 2010-2019)*




| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| +E | 0 | 0 | 0 | 2 | 6 | 4 | 3 | 15 | 5 | 4 | 1 |
| E | 0 | 0 | 0 | 5 | 2 | 3 | 12 | 28 | 12 | 9 | 0 |
| -E | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| xE | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 3 | 1 | 0 | 0 |

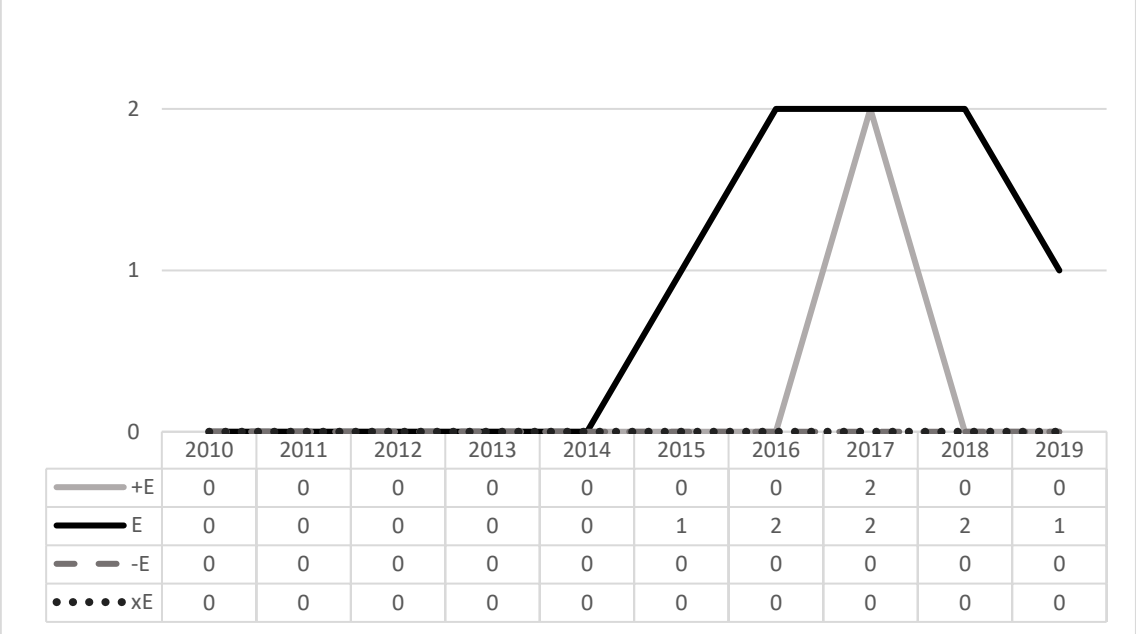
*Source:* Self-made.
*Note:* Abbreviations: more effective (E+), effective (E), less effective (-E), ineffective (xE). According to Figure 3, the annual number of cases during the first years is lower compared to the number of cases since 2013. The relevant cases of indigenous jurisdiction's effectiveness were 116: 0 from 2010 to 2012, 7 in 2013, 8 in 2014, 8 in 2015, 15 in 2016, 46 in 2017, 18 in 2018 and 13 in 2019.

The comparison of the claiming activity of JK with the rest of the indigenous peoples that inhabit Bolivia suggests that JK has a greater propensity to comply with the margins of its legal competencies (80% compared to 61% of all the indigenous peoples) and, consequently, a smaller margin of irreverence to decide disputes that are not within it (20% compared to almost 35% of all the indigenous peoples). These data are consistent with the findings identified in the exercise of indigenous jurisdiction, in which there was a similar proportion regarding its effective and more effective assessment.[1974] However, these findings also suggest that indigenous authorities rendered the exercise of JK's

*Tribunal Supremo de Justicia* (2020) 121. It is noted that there is no published data for other years, although these 'Rendición Pública de Cuentas' have been published since 2013.) There is also no such detail of processes in the agri-environmental jurisdiction, despite publishing their 'Rendición Pública de Cuentas' since 2018.
[1972] Cf. cases 0092/2015, 0007/2016, 0031/2016, 0031/2017, 0078/2017, 0005/2018, 0022/2018, and 0156/2019-CA in Annex B.
[1973] Cf. cases 0032/2017 and 0081/2017 in Annex B.
[1974] Cf. 'Exercise of Jach'a Karangas Jurisdiction,' page 379.

jurisdiction effective and more effective concerning their claim of cases in a relatively similar manner to other Bolivian indigenous peoples in the general perspective.

*Figure 24. Longitudinal effectiveness by the number of cases of the Jach'a Karangas jurisdiction concerning disputes claimed. (PCC case law 2010-2019)*




| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|---|---|---|---|---|
| +E | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 |
| E | 0 | 0 | 0 | 0 | 0 | 1 | 2 | 2 | 2 | 1 |
| -E | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| xE | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

*Source:* Self-made.
*Note:* Abbreviations: more effective (E+), effective (E), less effective (-E), ineffective (xE). According to Figure 3, the annual number of cases during the first years is lower compared to the number of cases since 2013. The relevant cases of indigenous jurisdiction's effectiveness were 10: 30 from 2010 to 2014, 1 in 2015, 2 in 2016, 4 in 2017, 2 in 2018 and 1 in 2019.

Although the effectiveness results displayed above are helpful to demonstrate that indigenous peoples in general, and JK in particular, are claiming their collective right to exercise jurisdiction, it should be noted that the revised data concerns mainly the claiming competence cases that reached the PCC. Therefore, the effectiveness results presented above have a clear tendency to principally exhibit the indigenous claims of competence. Hence, it is essential to consider JK's activity of claiming competencies through other research sources. To this effect, on the one hand, in the processes of the lower-ranking courts, it can be observed that JK only claimed the competence in six[1975] of the ten cases that are relevant for this matter. Consequently, JK's authorities made the indigenous jurisdiction ineffective in the remaining four.[1976] On the other hand, the indigenous minutes show that JK has made the indigenous jurisdiction more effective once[1977] by claiming the competence beyond its legal limits, effective on four occasions[1978] because its claims followed the law, and ineffective on one occasion by not having claimed it.[1979] These data demonstrate, in contrast to those obtained by the PCC, that JK's

[1975] See cases LRFJ.AE.Curahuara de Carangas 2019.2019.011, LRFJ.O.Totora y San Pedro de Totora 2017.2019.01, LRFJ.O.San Pedro de Totora 2018.2019.02, LRFJ.O.San Pedro de Totora 2018.2019.03, LRFJ.O.Curahuara de Carangas 2015.2019.04, and LRFJ.AE.Curahuara de Carangas 2017.2019.012 (a, b, and, c) in Annex C.
[1976] Cf. cases LRFJ.AE.Curahuara de Carangas 2019.2019.007, LRFJ.AE.Curahuara de Carangas 2019.2019.02, LRFJ.AE.Curahuara de Carangas 2019.2019.05, and LRFJ.AE.Curahuara de Carangas 2019.2019.008 in Annex C.
[1977] See case A.2013.03.02 in Annex E.
[1978] See cases A.2013.08.30, A.2015.01.28, A.2019.04.26, and A.2019.09.04a in Annex E.
[1979] Cf. case A.2019.05.20 in Annex E.

jurisdiction sometimes does not request the competence to resolve the disputes that formal jurisdictions illegally admit.[1980]

According to the SWOT analysis and its justifications, the indigenous authorities usually claim competence to resolve disputes when one of the parties to the formal process requires it.[1981] Normally, the party who feels losing in a process before the formal jurisdiction or who is about to be imprisoned resorts to his indigenous authorities so that they may claim the competence to resolve the dispute. It might also be that an indigenous authority has been sued in the formal jurisdiction and requests his hierarchical authority to claim the competence or, even, he may claim it directly.[1982] Interviews and minutes reflect that indigenous authorities do not visit formal jurisdictions' courts to review the cases they are hearing nor require case reports to formal judges applying their access to information prerogative through inter jurisdictions coordination.

In these situations, it is observed that the claim of competence is not made to resolve the dispute or have the possibility of resolving it, as is foreseen in the planned effect that governs this analysis of effectiveness. On the contrary, authorities would be claiming the competence to help indigenous members struggling in formal jurisdictions or at risk of being imprisoned. As a result, even if there would be claims of competence, they would be not effective concerning the objective of having the possibility of exercising jurisdiction since they will be directed to other purposes. For example, they will be effective in helping and safeguarding the freedom of the involved community member but not for having the possibility to resolve the dispute. It is underscored that if the reasons are different from those established in the planned effect, although there will be a coincidence in the behavior (claiming the exercise of the right to jurisdiction), it will not serve the purpose to render effective the right since its aim is different. There is no effectiveness since the defined purpose is not reached.[1983]

In short, although the indigenous jurisdiction claims the competence to resolve disputes of its indigenous members, it seems that these claims generally respond to purposes other than the mere possibility of resolving the dispute of their community members. This finding could explain, to a certain extent, why the indigenous authorities do not continuously and consistently make claims of competence against formal jurisdictions in the cases in which it corresponds. At the same time, even though the indigenous authorities do not assert JK's right to exercise jurisdiction and the duty of its duty bearers to submit to their jurisdiction, their sporadic claims of jurisdiction could nonetheless tenuously enforce the duties of formal jurisdictions and community members.[1984] Therefore, it seems that JK is rendering less effective and ineffective its possibility to assert its right to exercise jurisdiction and ground duties on its duty bearers.

[1980] It is highlighted that the research data collected does not allow to determine the number of cases in which the indigenous jurisdiction did not claim competence since the cases reviewed by the judges and the indigenous minutes are non-representative samples.
[1981] Cf. SWOT opportunity 10 and its justification.
[1982] It could happen because the exercise of indigenous jurisdiction is judicialized or criminalized, according to SWOT threat 15 and its analysis.
[1983] See 'Effectiveness of the Rights,' page 27. Then maybe that is why the indigenous authorities of JK do not review the processes conducted by the ordinary and agri-environmental jurisdictions in a regular basis to claim competence in the cases that belong to the indigenous jurisdiction, as shown in SWOT weakness 5 and its justification. It is also possible that it is due to other causes or their combination. E.g., SWOT analysis in weaknesses 1-4, 7, and 8, among others.
[1984] See SWOT analysis, strength 6 and its justification.

## Intermediate Conclusions

This chapter had evaluated the effectiveness of the right to exercise indigenous jurisdiction by JK (referred to below simply as the effectiveness) based on the data collected from the various sources chosen. In this sense, in the first section, the research findings were organized in a SWOT analysis (Strengths, Weaknesses, Opportunities, and Threats), presented in a Two-by-Two Matrix, differentiating the actors involved (right holder and duty bearers). Then, an extensive description and analysis of the main reasons and causes that explain the behavior of the right holder and the duty bearers were made, following the order proposed in the SWTO analysis. During this process, the investigation sources were referred to and commented on, disaggregating the actors involved in each case. This section aimed to provide the content and foundation to assess the effectiveness.

Based on these elements, in the second section of the chapter, the effectiveness of each actor was analyzed, starting with duty bearers and then concluding with the right holder. The first duty bearer analyzed was the State through its PCC and the lower-ranking judges located in Karangas. Then, continuing with duty bearers, this effectiveness was also evaluated from the perspective of the indigenous members of JK in their dual role as plaintiffs and defendants. Finally, the effectiveness was evaluated from the position of the right holder, that is, the activity carried out by JK at the time of deciding disputes and claiming its competence against formal jurisdictions.

These intermediate conclusions offer a synoptic of the extension of JK's effectiveness in the exercise of its indigenous jurisdiction in contrast to the rest of the indigenous peoples that inhabit Bolivia. In the next chapter, a general review of the research conclusions will be made, making sense of the results obtained and offering some recommendations.

Starting with duty bearers, the PCC rendered the exercise of indigenous jurisdiction in Bolivia mostly effective (50%) and more effective (18%), compared to its ineffective (30%) and less effective decisions (2%). The outcome for JK is relatively consistent with this general data: 10% of the PCC's decisions made it more effective, 58% effective, and 32% ineffective. These data suggest that, compared to the rest of the indigenous peoples, JK has a subtle lower margin of irreverence to the legal limits established for the exercise of indigenous jurisdiction and, at the same time, slightly more cases deemed as effective. Furthermore, the PCC has a propensity to improve its compliance with the legal system, making the indigenous peoples' right to exercise their jurisdiction increasingly effective and lessening its ineffectiveness throughout the assessment period.

The lower-ranking courts rendered the exercise of indigenous jurisdiction in Bolivia ineffective for the most part during the assessment period concerning constitutional processes that reached the PCC (1% of more effective and 22% of effective decisions compared to around 2% of less effective decisions and 75% of ineffective decisions). This general data is consistent with JK's situation (almost 17% of effective judgments compared to 83% of ineffective decisions). In cases not related to constitutional processes, judges settled in JK also normally rendered JK jurisdiction ineffective since they admitted all the cases presented to them without discerning if they belonged to the indigenous jurisdiction. Although they generally accepted the claims of jurisdiction made by the indigenous authorities or the parties to the process, they did not voluntarily refer the processes to the indigenous jurisdiction, despite the fact they may know their lack of competence. Finally, the agri-environmental jurisdiction made cooperation with the indigenous jurisdiction effective, as it was always willing to assist the indigenous authorities and parties with technical support.

Concerning indigenous members within formal jurisdictional settings, the findings suggest that claimants prefer the formal jurisdictions to protect their interests and rights, to the detriment of the indigenous jurisdiction, while the defendants would rather defend themselves in the indigenous jurisdiction. In general, the plaintiffs made the indigenous jurisdiction mostly ineffective (44%) than effective (29%), and the defendants, on the other hand, made the indigenous jurisdiction mostly effective (62%) than ineffective (26%). In JK, the claimants made its jurisdiction mostly ineffective (58%) than effective (32%), and the defendants, on the other hand, made the indigenous jurisdiction mostly effective (45%) than ineffective (40%). Although the general data are relatively consistent with JK, it is observed that in the latter, there is a greater tendency in favor of formal jurisdictions by plaintiffs and, especially, by defendants. Thus, in general, 4 out of 10 plaintiffs made the indigenous jurisdiction ineffective, while in JK, 6 out of 10 made it ineffective. The defendants made the indigenous jurisdiction ineffective in general in 3 out of 10 cases, whereas in JK, it was in 4 out of 10. Both findings suggest that JK members possibly have less confidence in their jurisdiction than the rest of the indigenous Bolivian population.

Furthermore, the claimants of all indigenous peoples mostly made the indigenous jurisdiction effective from 2010 to 2015 and ineffective since 2016 to the present, which suggests that at the beginning of the Constitution the plaintiffs had greater confidence in the indigenous jurisdictions than later. The defendants, on the contrary, had generally complied with their duty to respect the indigenous jurisdiction throughout the assessment period. Whereas the JK's plaintiffs relatively repeated the behavior of their peers in Bolivia, the defendants only began rendering the JK's jurisdiction effective since 2015. Be that as it may, the plaintiffs' trends show a growing ineffectiveness that indigenous peoples and JK, in particular, must try to reverse. For instance, they could systematically claim their competence asserting their indigenous right to exert jurisdiction or sensitize community members on this collective right. Under the SWOT analysis, these findings could be explained, to some extent, considering that the plaintiffs might prefer formal jurisdictions to try to achieve their justice objectives with greater certainty, and, on the other hand, the defendants could prefer a free, concerted, and delayed solution without impositions, like the one predominantly provided by the indigenous jurisdiction.

Concerning JK's indigenous members within indigenous jurisdictional settings, through the indigenous minutes reviewed, the findings suggest that both parties to the process rendered indigenous jurisdiction mostly effective. Through a conjecture partially supported by the SWOT analysis, it could be interpreted that both parties to the process made the indigenous jurisdiction effective in indigenous contexts in most cases and that, if a solution to their claims is not found, most of the plaintiffs would make the indigenous jurisdiction ineffective by filing their claims in the formal jurisdictions. In any case, it is also possible that the plaintiffs might file their claims directly with formal jurisdictions, rendering the indigenous jurisdiction ineffective from the outset.

Despite the above, it is noted that plaintiffs and defendants of all indigenous peoples had a margin of irreverence to legal limits, making the indigenous jurisdiction more effective approximately in one out of five cases. Nonetheless, JK lags in these numbers since it is estimated that in approximately 1 out of every 20 cases, the parties to the processes would make their indigenous jurisdiction more effective. However, these data are consistent with JK's lower tendency toward irreverence concerning the other indigenous peoples, as was previously observed for the PCC.

Concerning JK as the right holder, two different perspectives have been determined. The first assessed to what extent JK exercises its indigenous jurisdiction according to the content and limits established in the Bolivian legal framework. The findings displayed that JK accepted most of the cases presented to it within the framework of its competencies (75% effectiveness) and outside of them (20% of more

effectiveness). The information collected from the sample of cases from the lower-ranking judges and the indigenous minutes confirms these tendencies. JK's jurisdictional activity is relatively consistent with the rest of indigenous authorities, since the vast majority of them accepted the disputes that were presented to them by the members of their communities within the framework of their legal competencies (effectiveness of 63%) and outside the framework of their competencies (more effectiveness of 35%).

The second approach evaluated to what extent JK has the interest to ground duties on its duty bearers regarding its right to exercise indigenous jurisdiction. The findings showed that JK had claimed the competence to resolve disputes against formal jurisdictions during the analysis period. In contrast, the formal jurisdictions had not claimed a single case during the assessment period. According to the SWOT analysis and its justifications, JK authorities usually claim jurisdiction to resolve disputes when one of the parties to the formal process requires to eschew its foreseeable negative results, such as imprisonment. Nevertheless, then, the authorities would be claiming the competence to help indigenous members avoid the hardships of formal jurisdictions instead of aiming to resolve the dispute or have the possibility of resolving it, i.e., asserting the exercise of the collective right to exercise indigenous jurisdiction. As a result, since the purpose is usually different from the planned effect, even if authorities claimed the competence, such competence claims did not render the exercise of indigenous jurisdiction effective. In simple terms, there is no effectiveness since the defined purpose was not reached. In principle, there is no effectiveness in this exercise because the claims of competence are not raised to achieve the goal planned collectively, that is, to have the possibility of resolving disputes between JK members, but to assist individual requests for equally individual interests.[1985] Although it is evident that there still are claims of jurisdiction, and they, in turn, favorably affect JK's exercise of jurisdiction, they could be characterized as lacking regularity and consistency. As a result, JK's claims of competence render its assertion of jurisdiction merely an occasional accessory. Therefore, JK was mainly ineffective when claiming its competence to resolve disputes.

[1985] That is, the causality proposed in the research design for evaluating the right's effectiveness is broken when the right holder seeks a different aim than the initially proposed one.

# Chapter 7: Conclusion

*Gutta cavat lapidem*

*-Ovid* [1986]

The intensity of indigenous peoples' will to remain despite the various and constant difficulties that they historically overcome in the contexts in which they exist has allowed them to gradually and to varying degrees gain recognition and respect for the qualities that distinguish them. In other words, indigenous peoples' perseverance, both in their ability to adapt and in the reconfiguration of legal, political, social, and economic circumstances, may have enabled them to transform their collective moral rights into legal rights recognized by the international community and, to varying degrees, in the countries in which they live. As Hersch Lauterpacht, a former member of the United Nation's International Law Commission and International Court of Justice, soundly argued, 'the vindication of human liberties does not begin with their complete and triumphant assertion at the very outset. It commences with the recognition in *some* matters, to *some* extent, for *some* peoples, against *some* organ of the state.' [1987]

The rights' effectiveness analysis framework proposed by this dissertation could measure the pulse of progress and setbacks, achievements, and pitfalls in the exercise of rights in localized contexts. It was designed to explain the degree of the practical realization of a legal system and its causes regarding the perspective of the coexistence of two legally mediated forces, that is, the fulfillment or frustration of right holders' empirical goals in front of the duty bearers' performance.

This research used this analysis framework to evaluate the effectiveness of the right to exercise indigenous jurisdiction through a case study regarding Jach'a Karangas (JK) in Bolivia between 2009 and 2019. This case study concerns Bolivia because, since 2009, it has become a plurinational State with an egalitarian plural justice system model. Thus, the analysis period covers this legal model's first decade of experience allocating the indigenous peoples' right to exercise jurisdiction. Furthermore, the right to exercise indigenous jurisdiction has been chosen because it is sensitive to the interest of continuity and persistence of indigenous peoples through their self-determination, cultures, laws, and the validity of their authorities and institutions. To the extent that indigenous peoples assert these aspects, they can effectively decide the disputes of their members. Finally, JK is a thousand-year-old indigenous people that existed before the Spanish colonial invasion and the creation of the Bolivian State, with a solidly established system of organization and institutions that traditionally exercises jurisdiction in resolving disputes among its members.

Analyzing rights' effectiveness within the dissertation's conceptual framework involves assessing the extent of the right holder's proposed achievements through three crucial elements: a cause, a planned effect, and the actual effects attained. The contrast of such effects results in the effectiveness assessment: if the actual effect achieved is similar to the planned effect, the right is effective; if it exceeds expectations, it is more effective; and, conversely, to the extent that it is less than the planned

[1986] Publius Ovidius Naso's inspiring quote from Epistulae Ex Ponto, IV, x, 5. This quote was translate from Latin to English in 'Ovid (43 BC–17) - Ex Ponto: Book IV' (n 708). as 'drops of water carve out stone.' However, it is commonly translated as 'dripping water hollows out stone, not through force but through persistence.'
[1987] Lauterpacht (n 710) 56–57.

effect, it will be less effective or ineffective. Then, to achieve this assessment, the study identified the cause, the planned effect, and the actual effects. Following these elements and the purpose proposed in this case study, the content of this conclusion is designed based on the elements of effectiveness and its assessment.

## The cause

The cause amounts to JK's collective right to exercise its jurisdiction. Through the Bolivian legal framework, it determines the extent and limit of the indigenous peoples' prerogatives to exercise jurisdiction. At the same time, this right involves the duties that Bolivia and the members of JK must fulfill in favor of JK. These duties correspond, essentially, to respecting the jurisdictional prerogatives of JK. On the one hand, the formal jurisdictions of the State, which are the ordinary and agri-environmental ones, have the negative duty of not invading indigenous competencies; that is, resolving disputes that the law reserves exclusively to indigenous jurisdiction. The egalitarian nature of the Bolivian justice system also implies that the decisions adopted by the indigenous jurisdiction cannot be modified by the formal jurisdictions, except for constitutional rights violations through constitutional processes under the Plurinational Constitutional Court (CCP) jurisdiction. On the other hand, JK members must submit the resolution of their disputes to JK jurisdiction, according to the indigenous competencies established by law.

The Bolivian legal framework on the exercise of indigenous jurisdiction is essentially contained in the ILO Convention 169 (C169), to which Bolivia is a party, the declarations on indigenous rights of the United Nations (UNDRIP) and the Organization of American States (OASDRIP), the Bolivian Constitution of 2009 (Constitution), and the Law of Judicial Organ and the Jurisdictional Demarcation Law (JDL). In addition, Bolivia made UNDRIP a national law, and its PCC ordered that human rights declarations have binding effects when they are more favorable than the standards established by the Constitution as if they are its components [termed 'constitutionality block' in the Constitution but only regarding human rights recognized in international treaties and conventions ratified by the Legislative Assembly[1988]].

As a consequence of this normative logic, the most favorable standards have been identified in the international and local legal frameworks to establish the legal framework that governs the exercise of indigenous jurisdiction in Bolivia. For example, the State's duties are to promote and strengthen indigenous justice, assist and comply with their decisions, and respect their binding nature. Among these norms, others are intended to support them while protecting the rights of others. Thus, the UNDRIP and the OASDRIP declare that the restrictions that the State may impose on indigenous rights: a) may not be discriminatory, b) shall be strictly necessary to ensure due recognition and respect for the rights and freedoms of others, c) shall not violate international human rights obligations, and d) shall be compatible with a democratic society.

[1988] The Bolivian Constitution asserts that human rights recognized in international treaties and conventions ratified by the Legislative Assembly shall prevail over internal law. Although constitutional article 410.II acknowledges that the Constitution is the supreme norm of Bolivia, it recognizes as a component of the Constitution [termed by Constitution's article 410.II in Spanish as *'bloque de constitucionalidad'* or 'constitutional block' in its literal translation] 'the international Treaties and Conventions in the matter of human rights and the norms of Communitarian Law, which have been ratified by the country', in accordance with the Constitution translation of Elkins, Ginsburg and Melton (n 233). Furthermore, article 256.II imposes that the constitutional rights shall be interpreted according to international human rights treaties when the latter provides more favorable norms. The content of both norms did not exist in previous Bolivian constitutions.

Following these restrictions, the Bolivian Constitution has established seven main limitations to the right to exercise indigenous jurisdiction. Three of them refer to the indigenous jurisdiction's personal, territorial, and material validity areas that serve as criteria to establish its competencies, i.e., indigenous peoples shall decide disputes between their members, existing within their territories and concerning matters legally defined. While the Constitution defines the personal and territorial areas, it leaves the content of the material validity area to the JDL. The other four limitations state that only indigenous authorities will exercise indigenous jurisdiction by applying indigenous laws on indigenous matters and respecting constitutional rights (to life, defense in court, and others). Of these seven constitutional limitations, only one of them has been identified as less favorable to the exercise of indigenous jurisdiction. It is the territorial validity area that, without an acceptable justification, overly limits the indigenous jurisdiction's competence compared to the other jurisdictions, affecting the egalitarian legal pluralism by excluding indigenous jurisdiction within legitimate settings outside their territories and causing it to be less effective.

Bolivian laws, for their part, have established standards favorable to indigenous jurisdiction. Thus, indigenous peoples can apply their laws and resolve cases sanctioning their community members to temporary or definitive expulsion from their communities and the loss of possession of land to protect the community and recover its harmony and balance to live well. Given that these sanctions are specifically permissible for the indigenous jurisdiction, it is understood that it is more favorable to it. Likewise, it is established that the formal Bolivian jurisdictions have the negative duties of not hearing indigenous matters and not reviewing indigenous decisions. In addition, it establishes that the indigenous jurisdiction can decide disputes on the internal distribution of lands within their collective territory, family law, child and adolescent law, commercial law, contract law, inheritance law, and torts law. Finally, regarding criminal matters, although the indigenous jurisdiction can resolve various criminal types as established by the JDL, there is a general provision that authorizes indigenous peoples to end any criminal action provided that the crime is committed within an indigenous community by one of its members against another, their authorities have resolved the conflict following their law, and the resolution is not contrary to constitutional rights.

In contrast, there are also legal provisions that are unfavorable to indigenous peoples. Some of these restrictions are permissible under the frameworks mentioned above, such as the exclusion of the indigenous jurisdiction from hearing labor law, social security law, tax law, administrative law, mining law, hydrocarbon law, computer law, public and private international law, forestry law, and agrarian law. Nonetheless, some limitations unjustifiably affect indigenous jurisdiction, such as the prohibition of hearing disputes over current or modern issues compared with traditional and historical matters to which they have explicit competence, several crime types in which indigenous peoples may have a legitimate interest, and property disputes over movable assets.

These limitations, however, seen from a broader perspective, are minor and less relevant than the favorable standards, so the final balance is considered relatively positive in favor of the indigenous peoples' collective right to exercise jurisdiction. Evoking the research design, the effectiveness of the right to exercise indigenous jurisdiction is closely related to the favorability of the legal framework, that is, a more favorable one concedes greater effectiveness to this right and a more restricted one diminishes it. Consequently, in the Bolivian case, there is a relatively favorable and broad regulatory framework to assess the effectiveness of the exercise of indigenous jurisdiction.

## The planned effect

For this study, the planned effect was identified among the objectives JK defined in its Organic Statute and was construed as the possibility it has to resolve or contribute to resolving indigenous disputes among its members. It is emphasized that JK's Organic Statute represents the legitimate collective will of JK since it has been adopted by this indigenous people through its organs and following its internal procedures.

## The actual effects

From a specific perspective, each actor's effectiveness was surveyed,[1989] i.e., the PCC, the lower-ranking judges based in JK, and JK members as duty bearers, and JK as the right holder. Accordingly, the jurisdictional activity of the PCC related to the effectiveness of the indigenous jurisdiction could be simplified into three prominent roles, despite the greater variety of types of processes identified in this research. The first refers to deciding which is the competent jurisdiction to resolve a dispute, the second to resolve the claims that the indigenous members present against the decisions of the indigenous jurisdiction, and the third to answer the queries of the indigenous authorities about the consistency of their own norms with the Constitution. Although the effectiveness degree varies in each of these roles, the PCC has predominantly made the indigenous jurisdiction effective in all of them. Furthermore, it is worth highlighting the cases in which the PCC has expanded the indigenous exercise of jurisdiction concerning the limits established in the Constitution and the JDL, making it more effective. Although many cases correspond to other indigenous peoples' claims, they also benefit JK due to the binding effect of the PCC's rulings.

Formal judges settled in JK, with few exceptions, continue to admit all the indigenous people's claims without discriminating competencies and usually without spontaneously notifying or inviting the indigenous authorities to the processes or coordinating with them to know the background of these disputes. In the case of the agri-environmental jurisdiction, it was also found that its judges seek cases in field visits to resolve them through conciliation. In other words, it seems that they intentionally invade indigenous competencies and limit the possibility that indigenous authorities know about them so that they can exercise their respective claims. These jurisdictional activities of the judges based in Karangas rendered the indigenous jurisdiction ineffective. However, when the indigenous jurisdiction claims the competence to resolve disputes, it is observed that sometimes judges voluntarily accept them. Otherwise, it is the PCC that eventually corrects the invasions of jurisdiction. However, there are still several cases that remain in the formal jurisdictions despite invading the indigenous competence.

It should be noted that agri-environmental and ordinary jurisdictions have not claimed competence over the indigenous jurisdiction of JK or of any other indigenous people in Bolivia during the analysis period. This reality might demonstrate that formal jurisdictions do not have genuine interests in the indigenous jurisdictional activities and possibly consider disputes resolved by indigenous peoples to be of little relevance. On the other hand, it is highlighted that inter-jurisdictional cooperation and collaboration are essentially unidirectional since mainly indigenous peoples request them. Nonetheless, indigenous authorities request cooperation and collaboration especially from the agri-environmental jurisdiction and not from the ordinary jurisdiction, the police, or the prosecutor's office. It may be because most

[1989] For a comprehensive analysis on the matter, see Section 5.1: SWOT Analysis on page 294 and the following ‘Section 5.2: Internal Factors’ and ‘Section 5.3: External Factors’ on pages 298 and 318 respectively.

disputes occur over land possession, becoming useful to have technical and technological assistance to define limits through georeferenced mapping.

Community members, for their part, have different tendencies if they are the plaintiffs or the defendants. Thus, when they act as plaintiffs, they tend to sue before the formal jurisdictions, with the possible beliefs, not necessarily well-founded, that their demands will be better served than in the indigenous jurisdiction since they will most certainly receive a final decision that, in addition, could be revised in the future in case any of the parties forgets its terms. They are interested in obtaining a relatively predictable, definitive, and enforceable solution to their legal problems, which is not always possible through JK's indigenous jurisdiction. It could be the case not only because indigenous justice is normally delayed due to the various hearings held between the parties in the dispute without reaching an agreement but also because JK authorities typically prefer not to resolve them. Besides, the claimants tend to underestimate the set of powers that the law establishes in favor of the indigenous jurisdiction, so the plaintiffs sometimes mistakenly believe that to resolve their disputes, they must proceed through formal jurisdictions. Furthermore, many JK members reside in the cities and are only temporarily in indigenous territory, which produces an effect of uprooting, reducing the authority of their indigenous institutions. In short, plaintiffs seem to prefer formal jurisdictions to resolve their disputes.

On the other hand, the opposite trend has been identified concerning the defendants since they allegedly prefer to refer their cases to the indigenous jurisdiction, possibly considering that they could obtain a better solution through a transaction guided by their authorities. Paradoxically, the accused usually do not attend indigenous hearings. However, this situation and their preference for the indigenous jurisdiction could be explained by understanding that, in the end, they are not seeking to comply faithfully with their authorities, the indigenous jurisdiction, or the plaintiffs, but rather, on the contrary, they intend to prolong as much as possible the resolution of disputes in a community procedural environment that is essentially amicable.

Indigenous authorities, for their part, also have different behaviors concerning their willingness to accept or claim the competence to resolve disputes. Authorities usually accept the cases to solve them. However, sometimes they prefer to reject cases or postpone them until they conclude their indigenous positions, rendering the indigenous jurisdictions ineffective. Occasionally, when they reject cases, they refer them directly to formal jurisdictions without giving higher-ranking indigenous authorities of the *Ayllu*, *Marka*, or *Suyu* the chance to resolve them, rendering the indigenous jurisdiction ineffective. It is interesting to note that the duration of their positions is annual and does not allow them to internalize the cases unresolved by past authorities and to know enough about the current disputes to conclude them during their functions. When their positions are concluded, the brief duration also makes them liable to possible physical or moral reprisals by the losing procedural parties. Furthermore, it is often difficult for them to decide on disputes because of JK's worldview of reconciling the parties to restore harmony between community members and because, in addition, one or both parties in conflict are usually their relatives or acquaintances, which causes the parties to complain about their impartiality. In addition, their positions imply overloaded and multiple cultural, economic, social, and political functions, leaving them little availability for the exercise of the administration of justice. This situation worsens since many authorities reside in cities, limiting their available time. On the other hand, indigenous authorities' positions are honorary and depend on the *Sara Thaqui*[1990] for their training which may serve to some extent for indigenous laws and procedures but currently are insufficient to understand the Bolivian Justice System. Additionally, they do not receive State support as happens with formal

[1990] It is the hierarchical course of positions instituted by the communal system, from lowest to highest, in which they learn indigenous laws and customs.

judges even though all of them constitute the Bolivian Judicial Organ. Consequently, indigenous authorities do not have the resources to administer justice and are generally unaware of the prerogatives and competencies the State law grants them to exercise jurisdiction and claim against formal jurisdictions.

Regarding the claim of processes against formal jurisdictions that have invaded their jurisdiction, the indigenous authorities do not periodically review the cases in the courts and do not systematically and consistently claim their jurisdiction. On the contrary, the authorities allegedly claim competence when the losing parties sporadically ask them, according to their convenience and interests. As a result, although the exercise of indigenous jurisdiction is not definitively set aside, such behavior does not end up causing the expected effect of grounding duties on the indigenous members and the formal jurisdictions. Nonetheless, when there is a claim of competence and the indigenous authorities win, they affirm their authority and legitimacy, and community members and lower-ranking judges recognize their duty toward the right of JK to exercise jurisdiction. As for community members, there is an effect that could be called a 'rebound feeling': why go to agri-environmental or ordinary jurisdictions if, in the end, one must return to the indigenous jurisdiction. Then, indigenous authorities' task for grounding duties in community members and judges, and the PCC's rectifying participation through its decisions are crucial to achieving the effectiveness of the exercise of indigenous jurisdiction.

Nonetheless, a series of material, economic, social, and emerging difficulties of JK's internal organization affect the effectiveness of the exercise of its jurisdiction. These shortcomings make it unrealistic and disproportionate to demand a greater jurisdictional exercise from these authorities since they, despite everything, administer justice to the extent possible. Indeed, they accepted most of the cases JK's members claimed and aided the parties in reaching a solution, and JK's hierarchical authorities structure secured that lower authorities perform their functions. Finally, whenever JK's members requested the highest hierarchical authorities to claim the competence to resolve a dispute, they did not hesitate to assert JK's competence.

As a result, the findings reveal favorable trends concerning the PCC[1991] and the defendants[1992] as duty bearers, and JK and indigenous peoples in general[1993] during the analysis period from 2009 to 2019. Notwithstanding, this is not the case of lower-ranking courts[1994] and indigenous claimants[1995] which present negative trends suggesting that they are mostly reluctant to perform their duties, rendering indigenous jurisdiction increasingly ineffective.

However, it is necessary to point out the limitations of this case study regarding research data. Specifically, the sources consulted concerning the lower-ranking judges settled in the territory of JK are very limited since only twenty cases were accessed, most of which correspond to 2019 and the agri-environmental jurisdiction.[1996] As a result, it was not possible to assess more cases of the ordinary jurisdiction and the cases of both jurisdictions during the rest of the analysis period. The same thing happens with the indigenous minutes reviewed for this case study because, although they cover the analysis period, they essentially correspond to some of the cases attended by the highest authorities of JK or Apu Mallkus.[1997] This limitation implies not knowing about the effectiveness of the exercise of the jurisdiction by the lower-ranking indigenous authorities corresponding to the Markas, Ayllus, and

[1991] See Figure 11.
[1992] Cf. Figure 18 and Figure 20.
[1993] Cf. Figure 21, Figure 22, Figure 23, and Figure 24.
[1994] See Figure 15.
[1995] See Figure 17 and Figure 19.
[1996] Cf. ‘Agri-Environmental and Ordinary Lower-ranking Courts Cases’ on page 64
[1997] Cf. ‘Indigenous Minutes and Documents’ on page 67.

Sapsis or JK communities. Both aspects limit knowing in greater depth about the fulfillment of duties by formal jurisdictions and JK's jurisdiction exercise, which, in turn, restrict displaying trends in these regards. However, the number of interviews conducted with the different actors involved with JK justice and the information obtained from the PCC's jurisprudence allow, in some way, to partially supply these data and understand the general panorama.

Another limitation of this research is that the comparison made between JK and the indigenous peoples only covers those whose claims have reached the PCC, excluding from this study those that have not. Despite this, the comparison covers the indigenous peoples who achieved a higher standard of effectiveness by claiming their collective right to exercise jurisdiction.

# Connecting the Dots

## *The Typical Case*

It is possible to establish approximately the following scheme considering the standard situations related to the exercise of the indigenous jurisdiction under the data collected and analyzed in this case study. Indigenous claimants resort to their authorities to claim against some indigenous members for some reasons. The authorities summon the parties in conflict to hold hearings in which both parties, with the help of the authorities and related persons, may reach an agreement as brothers and sisters, resolving their dispute without winners or losers and restoring their community's balance and harmony. However, in the absence of agreement, a chain of hearings begins without conclusive results for the claimant's interests, and, on several occasions, the hearings are adjourned because the defendants do not attend. Then some claimants, exhausted from not settling a solution with the other party despite the long time passed in which even their authorities have changed due to the annual rotation of positions and because they do not adopt a final decision on the problem or seem biased with the other party, resort to formal jurisdictions demanding a solution.

Following this, lower-ranking judges accept cases, although they belong to the competence of the indigenous jurisdiction, and summon defendants, habitually avoiding summoning indigenous authorities. In the meantime, parties incur expenses as they must pay their lawyers and some processing fees. Agri-environmental courts, when it comes to peacemaking processes, sometimes make the claimants' written requests to avoid expenses. If these proceedings conducted by formal jurisdictions do not end in conciliation or by party abandonment due to costs, the parties often continue it until one of them feels that they are losing the case, are in difficulties, or could face imprisonment. Under these circumstances, they urge indigenous authorities to claim the competence to resolve their disputes. In the case that indigenous authorities accept to claim competence, judges usually accept them if the processes are not advanced, they understand that the indigenous jurisdiction can resolve the dispute without affecting constitutional guarantees, and, besides, believe that it is a minor dispute that indigenous authorities can handle. However, when judges reject the requests of the indigenous authorities, the latter usually present a claim of competence before the PCC.

If indigenous authorities or the community decide the dispute directly, either because no agreement has been reached between the parties or because of the case's urgency, as occurs with crimes that generate immediate community reactions, the party that loses or is sanctioned could prosecute the indigenous decision through a criminal action in the ordinary jurisdiction or claim an Amparo in the constitutional jurisdiction before the PCC. It is regularly the case when the losing party receives the community's

expulsion or loss of land sanctions. If the indigenous authorities are criminalized, to avoid the negative consequences of the process, they generally claim the competence to resolve the dispute or, if they are no longer authorities, they urge the current ones to do so. Faced with these claims of competence, the judges usually reject them, and the case is sent to the PCC. Finally, it is also possible for the indigenous authorities to consult the PCC if their decisions on the dispute are consistent with the Constitution, trying to prevent the judicialization of their decisions by the losing parties.

Be that as it may, due to conflicts of jurisdiction, Amparos, or indigenous consultations, the PCC is the one who ends up deciding these conflicts and, in general, resolves them in favor of the indigenous jurisdiction. After these outcomes, the cases are sent to the indigenous jurisdiction, which is finally validated in its prerogatives by the Bolivian plural justice system. In this task, the PCC plays a paramount role in correcting community members' and lower-ranking judges' distortions. However, it is worth noticing that these outcomes would not be possible if, at the same time, the indigenous peoples did not have the strength to support their interests, maintain their positions, and claim their competence to resolve disputes, act as defendants when indigenous members judicialize their decisions or consult the applicability of their norms.

## *Effectiveness of Jach'a Karangas' exercise of indigenous jurisdiction*

In the framework of analysis proposed in this case study, it is argued that the effectiveness is the result of contrasting the planned effect with the actual effects achieved. Then, the question remains about how effective JK is in exercising its indigenous jurisdiction, considering that its intended effect is to have the possibility of resolving or contributing to resolving indigenous disputes among its members.

Through the findings of this investigation, it is observed that JK does not fully comply with its planned effect since there are disputes of its members over which it does not exercise jurisdiction and, consequently, it does not have the possibility of resolving them. It could happen either because the controversies were never submitted to its jurisdiction or because, submitted to it, they were later taken to the formal jurisdictions. In this context, the main actors that affect JK's effectiveness in exercising its collective right to exercise jurisdiction are the plaintiffs, as JK members, lower-ranking judges based in its territory, and its indigenous authorities, as explained in the actual effects.

Still, despite these drawbacks, JK achieves, to some extent, its intended effect. In fact, according to the data obtained in this case study, JK is more often than not successfully resolving its members' disputes through the exercise of its jurisdiction. Not only does this indigenous people, as holder of the right, regularly exercise its jurisdiction when it is within its reach, but it also has an experience gained over the years from which it is learning to assert this right against its duty bearers. Given that JK's members, authorities, and community in general respect their own Law and their internal organic structure, the indigenous jurisdiction commonly knows and resolves the existing conflicts. In addition, community members are confident that their indigenous jurisdiction will be able to resolve their disputes with some fairness, not only because the authorities may know the parties and their way of behaving in the community, but also because it is a justice that is public, accessible, simple, and lacking bureaucracy. In addition, the community construes that the indigenous jurisdiction is preferable to formal jurisdictions because, unlike the latter, it is direct, concerted, and seeks to restore the balance of the community. It is also preferable because, from their point of view, whoever has greater economic power or resources does not win, as is understood to happen in formal jurisdictions.

Although it is true that there are many challenges to overcome and that the indigenous jurisdiction of JK is not exercised and respected with all the fullness that is expected, in a general balance, it is possible to conclude that its exercise of the collective right to indigenous jurisdiction is moderately effective.

Furthermore, from a comparative perspective with the other indigenous peoples who exercise this same collective right, according to the data obtained by the PCC's jurisprudence, it is observed that JK is relatively consistent with the average effectiveness of the other indigenous peoples. However, JK has a greater tendency to respect the legal limits established by the Bolivian legal framework since it claims more frequently its interests within legal limits than outside them.

Be that as it may, this case study covers a transition period with the profound changes Bolivia has experienced from the new internal legal framework since the 2009 Constitution, which inaugurated its plural and egalitarian justice system. While, at present, JK is still adapting to this relatively new legal framework, the generality of JK's authorities and community members seems to have a superficial and intuitive knowledge of the prerogatives and powers JK has. For this reason, it seems that JK is not yet quite using them to its advantage to make the exercise of its jurisdiction more effective, which may open up a promising perspective for the future if the favorable effectiveness trends continue to evolve.

Some JK's indigenous members also consider their indigenous justice system is adapting and recovering thanks to its constitutional recognition: *'I believe that indigenous justice has been progressively strengthened since the new Constitution.'*[1998] However, JK has significant challenges to meet, as explained and summarized by an indigenous authority in the following testimony:

> *'With the new Constitution [the indigenous jurisdiction] is strengthened; what is lacking here is to be actors. Of course, we must be consistent and act accordingly, but we are progressing in its construction. What we want is an indigenous justice managed by true indigenous.'* [1999]

## *Moral Self-Preservation and a Margin of Irreverence*

From a general perspective, it is possible to maintain that Bolivian indigenous peoples are in a transition stage initiated by the 2009 Constitution concerning the egalitarian plural justice system establishment and the recognition of the right to exercise indigenous jurisdiction through specific regulations that determine its scope and limits. It is also the case of the formal Bolivian jurisdictions. Due to the relative novelty of the Bolivian Constitution and its normative development, indigenous peoples progressively recognized the validity and legitimacy of their collective right to exercise jurisdiction and the powers and mechanisms they possess to enforce it against their duty bearers. In turn, some duty bearers also undertook the progressive path to understand the extent of their duties towards indigenous peoples. The research findings portray that this continuous maturation in the exercise of rights and duty performance correlates with the growing effectiveness of the right to exercise indigenous jurisdiction identified in the analysis period.

The typical case presented before demonstrates that both indigenous peoples' actions and the corrective work of the PCC play an essential role in upholding the exercise of indigenous peoples' jurisdiction and, indirectly, to some extent, their self-preservation. Since collective persons are non-reducible moral entities distinct from the members that constitute them,[2000] their subsistence depends on asserting their cultures and structures, which, in turn, are protected by their rights. As Jhering noted, all the rights in

[1998] Indigenous lawyer interview, G-2019-06.
[1999] Indigenous authority interview, G-2019-06.
[2000] See 'The Subject of Collective Rights' on page 158.

the world should have been acquired through struggle and claims to impose them on those who did not accept them, for which reason every right, both the right of a people and the right of an individual, assumes that the individual and the people are willing to defend them.[2001] This German jurist prominently stated the following principle of resistance to injustice that accounts for the core sense of self-preservation argued here: 'the resistance to wrong in the domain of law, is a duty of all who have legal rights, to themselves –for it is a commandment of moral self-preservation– and a duty to the commonwealth.' [2002] As a result, exercising and claiming rights can not only lead indigenous peoples, as rights holders, to achieve their practical goals but, in a broader perspective, can contribute to the perseverance of their continuity.

The findings and conclusions of this case study show that indigenous peoples living in Bolivia, and JK, in particular, not only exercise their rights but are also willing to defend and claim them to assert them against others. Moreover, the case study also demonstrates that these indigenous peoples have a power expansion tendency of their collective right to exercise indigenous jurisdiction through its exercise and their claims reaching the PCC. This trend exhibits their compelling and pressing interest in further exercising their self-determination to safeguard and preserve their cultures and laws by breaking some of the limitations that the State has imposed on them. Thus, on some occasions, representing approximately a third of all the relevant cases that have reached the PCC, indigenous peoples have claimed their right to exercise jurisdiction beyond legal limits. Surprisingly, in approximately half of these cases, the PCC has endorsed this compelling interest of the indigenous peoples.

Although JK seems to lag slightly in this tendency, performing a more respectful attitude to legal limits in the exercise of its jurisdiction than the average of the other indigenous peoples, the favorable expansive effect that all of them have achieved concerning this right is notorious. Without ceasing to recognize the PCC's supportive role concerning indigenous peoples' rights, this would not be possible without the natural force of reaffirmation that strong and resilient communities have. Following the research proposition, these findings may demonstrate that JK conserves a *healthy margin of legal irreverence* displaying its interest in remaining and continuing as a self-determining and autonomous indigenous people. Although this phenomenon turns out to be a truism when compared to the history of indigenous peoples who have managed to obtain greater recognition, protection, and prerogatives over the years, this case study on the effectiveness of the collective right to exercise the indigenous jurisdiction suggests that this is the current state of JK and the indigenous peoples in the framework of the plural justice of the Plurinational State of Bolivia.

## Recommendations

This case study offers some general recommendations that could strengthen the collective right to exercise indigenous jurisdiction to some extent, based on its findings and reflections. Below are listed some key challenges identified concerning JK and Bolivia.

JK could streamline its justice system to increase the trust its members have in it, prevent plaintiffs from resorting to formal jurisdictions, and assert its collective right to exercise jurisdiction.

- To this end, its decision-making bodies could consider resolving some of the weaknesses identified in the administration of its justice, such as its continuity, expedited dispute resolution,

[2001] Rudolf von Jhering, 'La Lucha Por El Derecho' in Adolfo González Posada (tr), *3 Estudios jurídicos* (1a edición, Editorial Atalaya, Arengreen 975 1947) 164.
[2002] Rudolf von Jhering, *The Struggle for Law* (2nd ed, Lawbook Exchange 1997) 30.

preferential or exclusive dedication, and fear of reprisals through, for example, permanent justice mechanisms constituted by its ex-authorities (*pasiris*) and sages (*amautas*) throughout its communities, *Ayllus*, *Markas* and *Suyu*. Thus, indigenous authorities could refer their cases to these mechanisms provided they failed to reach an agreement to settle a dispute within a reasonable time or a certain number of hearings. Although occasionally it has been observed that authorities warn the parties that they will decide the case directly in the absence of conciliation, it seems advisable to establish predictable parameters in this regard.

- Also, in case of conflict of interest or possible partiality of authorities, they could establish to send the case to other authorities or those of higher hierarchy, such as, for example, the *Awatiri* to the *Mallku of Marka*.
- In addition, to strengthen their authority and knowledge about the exercise of indigenous jurisdiction and its relationship with formal jurisdictions, they could organize a short practical training that provides them with the minimum tools before starting their positions. For example, the content of this course could be prepared by experienced indigenous authorities and professional indigenous lawyers through recordings to more easily cover their constant need for training, given the annual rotation of positions.
- To consistently assert their collective right to exercise their jurisdiction, they could organize regular visits to the formal courts located in JK and request case reports from the judges, taking advantage of the coordination and cooperation mechanisms provided by law. Thus, they can claim jointly and in batches the competence of the cases corresponding to JK's jurisdiction.
- Finally, to retrieve information from former cases and secure the administration of justice continuity, JK could organize its minute books by creating specific ones to record the exercise of its jurisdiction based on an order criterion appropriate to its practices, establishing a file system that allows their retrieval when necessary, or even digitizing them for deposit.

The State could perform its international duty to strengthen and support the indigenous peoples' right to exercise jurisdiction by adopting the following measures:

- Eliminate the territorial validity area that limits the indigenous jurisdiction exercise.
- Specify the material validity area with a detailed list of the subjects included in the indigenous competencies.
- The limitation establishing that indigenous peoples can only hear disputes that they have traditionally and historically resolved shall be excluded. Likewise, the limitations that exclude the indigenous jurisdiction from deciding crimes over which they may have a legitimate interest and the ownership of movable property must be eliminated.
- Communicate and organize joint practical training courses for indigenous peoples and lower-ranking courts on the plural and egalitarian justice system, the powers and prerogatives of their jurisdictions, and the means available to claim their powers.
- Provide resources to the indigenous jurisdiction for its proper exercise.

## Future Research Suggestions

This case study allows for at least two possibilities for future research since it proposed a framework for analyzing rights' effectiveness and developed an assessment of the indigenous jurisdiction's effectiveness on JK. In the first case, it is a matter of deepening even more in assessing the effectiveness of the collective right to exercise indigenous jurisdiction, for instance, by applying the case study to

other indigenous people in Bolivia or another country with a different justice system and comparing them.

In the second case, on the other hand, it is suggested to implement the analysis framework for other rights, whether collective, diffuse, or individual, to identify the main reasons on which the effectiveness of each of them depends—for example, knowing the effectiveness of rights related to a healthy environment, or to access to water, among others.

Finally, the jurisprudential analysis developed opens the possibility of keeping it updated and published so that other researchers can obtain more data to analyze Bolivia's plural and egalitarian justice system and its various derivations.

# Annex A: Interinstitutional Agreement, Research Authorization, and Normative Documents of Nación Originaria Suyu Jach'a Karangas

Interinstitutional Agreement Between Nación Originaria Suyu Jach'a Karangas and Universidad Católica Boliviana "San Pablo"

UNIVERSIDAD CATÓLICA BOLIVIANA
"SAN PABLO"

**CONVENIO MARCO DE COOPERACIÓN INTERINSTITUTIONAL ENTRE LA UNIVERSIDAD CATOLICA BOLIVIANA "SAN PABLO", Y LA NACION ORIGINARIA SUYU JACH´A KARANGAS**

**PRIMERA: (Partes)**

Intervienen en la suscripción del presente Convenio Marco de Cooperación:

1. La **UNIVERSIDAD CATOLICA BOLIVIANA "SAN PABLO"**, que para fines del presente Convenio se denominará en adelante la **"UNIVERSIDAD"** representada por su Rector Nacional, Mgr. Marco Antonio Fernández Calderón, con domicilio en la Av. 14 de Septiembre No. 4807, de la ciudad de La Paz.

2. La **NACION ORIGINARIA SUYU JACH´A KARANGAS** que para fines del presente Convenio se denominará en adelante "**JACHA´A KARANGAS"**, con domicilio en la calle Bullain Nº-150 y Tomas Frías , representada legalmente por Amadeo Nina Mamani con CI 3611648 Cbba y Miguel Soto Sajama CI 3040489 Or.

Para efectos del presente Convenio serán denominados en forma conjunta como "**PARTES**".

**SEGUNDA: (Antecedentes)**

Los antecedentes de las partes que intervienen en este convenio son:

La **UNIVERSIDAD** es una institución de Educación Superior dependiente de la Conferencia Episcopal Boliviana, con personería jurídica propia reconocida por Ley de la República No. 1545 del veintiuno de marzo de 1994. Tiene como misión fundamental la constante búsqueda de la verdad, mediante la investigación, conservación y comunicación del saber para el bien de la sociedad. Contempla en su Estatuto el principio de relación con el entorno y la colaboración con Instituciones que faciliten su labor educativa, así como el intercambio y la difusión de conocimiento científico y cultural.

LA **NACION ORIGINARIA SUYU JACH´A KARANGAS** constituido en fecha 20 de diciembre del 1990 , con Personería Jurídica No.208507, otorga por el Presidente Constitucional de la Republica Jaime Paz Zamora, cuyo ESTATUTO ORGANICO establece: **Articulo 3.** (Marco Legal). El Concejo Occidental de Ayllus Jach'a Karangas se constituye sobre la base de los derechos nacionales que amparan a los Pueblos Indígenas y Originarios , en los principios y normas contenidas en los Artículos 30 inciso 11, numeral 4, 9, inciso III, Artículo 190,Art, 292,296 de la Nueva Constitución Política del Estado. Los capítulos 19, 20 y 23 de la Declaración Universal de los Derechos Humanos y el Convenio 169/89 de la Organización Internacional de Trabajo y en la Ley Marco de Autonomías y Descentralización en sus artículos 1, 5 incisos 6 y 7, artículos 6, 9, 42, 44 y 45, la Ley de Deslinde Jurisdiccional en sus artículos 7 y 12. **Artículo 4.** (Visión).- La "Nación Originaria





UNIVERSIDAD CATÓLICA BOLIVIANA
"SAN PABLO"

Suyu Jach'a Karangas" retoma y fortalece la identidad ancestral milenaria, su cosmovisión, cosmogonía , la biodiversidad y territorialidad , implementa su propio modelo de desarrollo a partir de los valores y principios de la matriz cultural, en los diferentes ámbitos : económico, social , cultural y político, Sara thaqui, suma qamaña, chattalan , chambalansarapathaquipa.

**Artículo 5.** (Fines).- La finalidad esencial del "la Nación Originaria de Jach'a Karangas" es retomar el Sara Thaqui, político, económico, cultural y social a partir de los valores éticos y morales ancestrales para forjar una comunidad, en equilibrio con la naturaleza y que el acceso a los recursos naturales brinden oportunidades para su realización espiritual, material, familiar y colectiva, que conduzca al suma qamaña .

**TERCERA. MARCO DEL CONVENIO**

La **UNIVERSIDAD** conjuntamente con el Consorcio de Universidades Flamencas de Bélgica (VLIR-UOS) ejecuta el Programa: *Desarrollo inclusivo y comunitario para mejorar la calidad de vida de las poblaciones vulnerables a través de Comunidades Trans-disciplinarias de Aprendizaje en alianzas estratégicas.* El objetivo del Programa es aumentar la capacidad de las comunidades urbanas y rurales para responder a problemas locales complejos relacionados con los cambios económicos, sociales, normativos, climáticos y ambientales de una manera integradora, con el objetivo de mantener y mejorar la calidad de vida para todos sus miembros.

El Programa está integrado por seis Proyectos, siendo uno de ellos el referido a ***Los Derechos de los Pueblos Indígenas y transformación de conflictos (P.4)*** que tiene como objetivo incidir en mejorar la aplicación y práctica de los Derechos de los Pueblos Indígenas y los derechos humanos en el marco del proceso de construcción de la Justicia Plural en Bolivia. Para el logro de este objetivo se realizarán procesos de capacitación para formar Promotores Indígenas de Derechos para orientar el ejercicio de los derechos indígenas y la difusión de lo aprendido en sus propias comunidades; la investigación de campo para identificar obstáculos y buenas prácticas en la relación entre la Jurisdicción estatal Ordinaria y Agroambiental y la Jurisdicción Indígena. Este proceso estará acompañado por una estrategia de fortalecimiento de las capacidades de investigación y conocimiento de las Carreras de Derecho y de Ciencias Políticas (La Paz) de la UNIVERSIDAD de sus cuatro Regionales (La Paz, Cochabamba, Santa Cruz y Tarija).

Estas actividades se desarrollarán con organizaciones de los Pueblos Indígenas de Tierras Altas y de Tierras Bajas, así como con organizaciones de mujeres en Cochabamba, luego de un proceso de consulta directa sobre su participación.

**CUARTA: (Objeto).**
Luego de acuerdos tomados conjuntamente en dos Talleres con las autoridades de las Markas y Ayllus, las **PARTES** han decidido desarrollar las acciones del Proyecto indicado en la Cláusula TERCERA con el **SUYU JACH´A KARANGAS** entendiendo que sus actividades y resultados contribuyen a los objetivos de las PARTES.

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REGIONAL TARIJA Calle Colón Nº 0734, entre Bolivar e Ingavi • 591(4) 6640192 – 6663522 • Fax 6647971 • Casilla 231 • www.ucbtja.edu.bo

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En consecuencia LAS PARTES convienen en que el objeto del presente Convenio es la conformación en **KARANGAS** de un grupo motor de líderes capacitados y comprometidos en tanto Promotores Indígenas de Derechos, con capacidad de facilitar y apoyar a sus organización y comunidades en el ejercicio y cumplimiento de los derechos que la Constitución y las Leyes les otorgan, en el marco de la construcción de la Justicia Plural.

Será parte del presente Convenio un *PLAN OPERATIVO* para la identificación y puesta en ejecución de las acciones de formación y capacitación, especificando las actividades, resultados y productos en el que se establecerán las responsabilidades de ambas partes para su desarrollo.

**QUINTA: (Implementación del Proyecto).**

Para la implementación del Proyecto, JACH´A KARANGAS se compromete a designar a las personas que seguirán las actividades de capacitación en tanto *Promotores Indígenas de Derechos,* garantizando su compromiso y constancia en el proceso de capacitación. De igual manera proporcionará a la UNIVERSIDAD los nombres de los profesionales DEL

SUYU **KARANGAS** que seguirán los cursos que esta realizará en el marco de sus Reglamentos de titulación para profesionales.

Asimismo, JACH´A KARANGAS se compromete a brindar las condiciones organizacionales necesarias que permitan incorporar en sus mecanismos y estructuras organizativas, los conceptos, metodologías y herramientas proporcionados en el proceso de capacitación/formación, a través de los Promotores Indígenas y de otros mecanismos que desarrollará el Proyecto.

La **UNIVERSIDAD** se compromete a garantizar el pleno desarrollo del proceso de formación y capacitación para lo cual pondrá a disposición del proceso a profesionales altamente especializados así como personal de apoyo técnico para la institucionalización de los contenidos, metodologías y herramientas del proceso de capacitación y formación.

En este marco, la **UNIVERSIDAD** evaluará la metodología, características y alcances de los cursos y del proceso de capacitación y formación tomando en cuenta las características educativas de los/las participantes, con el objetivo de lograr un proceso exitoso.

Al finalizar las actividades de capacitación la **UNIVERSIDAD** otorgará una certificación a las personas hubiesen cumplido con todos los requisitos establecidos por ella y la otorgación de los títulos a los profesionales según el tipo de curso académico.

Ambas partes mantendrán contacto periódico para la planificación, seguimiento y coordinación de manera de lograr la ejecución eficiente del presente Convenio.

**SEXTA: (Responsabilidad en las prestaciones)**





UNIVERSIDAD CATÓLICA BOLIVIANA
"SAN PABLO"

La **UNIVERSIDAD**, se compromete en garantizar todo el proceso de capacitación en los términos y alcances establecidos en el presente Convenio.

JACH´A KARANGAS compromete a apoyar el desarrollo de las actividades de formación y capacitación, la presencia en las actividades de los miembros que hubiese designado. EL presente convenio no representa ningún compromiso de gasto económico por parte de JACH´A KARANGAS

**SÉPTIMA: (Contacto y Coordinación)**
Con el fin de facilitar la comunicación entre ambas instituciones, las **PARTES** nombrarán formalmente a las personas de contacto:

**JACH´A KARANGAS** nombra a las siguientes personas (al menos dos):

Nombre: Amadeo Nina Mamani
Cargo: Apu Mallku de Urinsaya

Tel. Celular: 71414706

Nombre: Miguel Soto Sajama
Cargo: Apu Mallku de Aransaya
Tel. Celular: 72096807

La **UNIVERSIDAD:**

Ramiro Molina Barrios
Coordinador del Instituto para la Democracia.
Facultad de Derecho y Ciencias Políticas
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Int. 2842
Teléfono Celular: 772 62067

**OCTAVA: (Vigencia, Resolución y Modificación).**

Este Convenio Marco de Cooperación entrará en vigor en el momento de su firma y su vigencia será hasta el año 2021.

En caso de que cualquiera de las partes decidiera resolver el Convenio antes del plazo mencionado, dará aviso justificado y en forma escrita con tres meses de anticipación.

El presente Convenio podrá ser modificado por consentimiento de las partes intervinientes, mediante comunicación escrita y aceptación mutua.

UNIVERSIDAD CATÓLICA BOLIVIANA
"SAN PABLO"

**NOVENA: (Conformidad).**

Las PARTES manifiestan su plena conformidad con todas y cada una de las cláusulas que preceden al presente Convenio, obligándose a su fiel y estricto cumplimiento, en fe de lo cual suscriben al pie, en la ciudad de La Paz, a los treinta días del mes de abril del año dos mil dieciocho.

**Marco Antonio Fernández C.**
**RECTOR NACIONAL**
**UNIVERSIDAD CATÓLICA BOLIVIANA**
**"SAN PABLO**

**Amadeo Nina Mamani**
**APU MALLKU INSTITUCIÓN**
**JACH´A KARANGAS**

CONSEJO OCCIDENTAL DE AYLLUS DE JACH'A CARANGAS
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APU MALLKU APU T'ALLA
PARCIALIDAD URINSAYA

CONSEJO OCCIDENTAL DEL AYLLUS
Oruro Bolivia
APU MALLKU APU T'ALLA
PARCIALIDAD ARANSAYA

Miguel Soto Sajama
TATA APU MALLKU ARANZAYA
SUYU JACHA KARANGAS
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CONSEJO DE MALLKUS DE JACH'A CARANGAS
CAPITAL SANTIAGO DE HUAYLLAMARCA
PROV. NOR CARANGAS
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Guillermo Tola Mamani
MALLCU DE CONSEJO
HUAYLLAMARCA MARKA

ia Mamani Bazan
A THALLA DE CONCEJO
HUAYLLAMARCA MARKA

CONSEJO DE AYLLUS DE CURAHUARA MARKA
MALLKU DE CONSEJO
PROV. SAJAMA
SUYO
JACHA CARANGAS

MALLKU DE CONSEJO
PARCIALIDAD ARANSAYA
MUNICIPIO CURAHUARA DE CARANGAS
ORURO - BOLIVIA
2018

CONSEJO DE AYLLUS DE JACH'A CARANGAS
MALLKU DE CONSEJO DE CORQUE MARKA
DEL SUYO
JACH'A CARANGAS
ORURO - BOLIVIA

TATA EDUARDO LÓPEZ VÉLIZ
Mallku de Consejo
Corque Marka

CONSEJO OCCIDENTAL DE AYLLUS DE JACH'A CARANGAS
MAYASHTASITA
MARKANAKA
C.O.A.J.C.

Severino Apaza Choque
MALLKU DE CONSEJO DE
MAYASHT'ASITA MARCANACAS

Correspondence between Nación Originaria Suyu Jach'a Karangas and Universidad Católica Boliviana "San Pablo" (Faculty of Law, Institute for Democracy, and PhD Researcher)- Research and Data Collection Authorization

**UNIVERSIDAD CATÓLICA BOLIVIANA "SAN PABLO"**
Unidad Académica Regional La Paz

La Paz, 20 de agosto de 2018
IpD- UCB 028/2018

Señores
Amadeo Nina – **APU MALLKU DE URINSAYA , JACH´A KARANGAS**
Teodoro Huarachi Pajxi – **APU MALLKU DE ARANSAYA, JACH´A KARANGAS**

De nuestra consideración:

En el marco de nuestro Convenio entre la Universidad Católica Boliviana "San Pablo" y la Nación *Suyu* Jach´a Karangas que tiene como objetivo principal potenciar a la Nación Jach´a Karangas, este mes se iniciará el programa de capacitación de Promotores Indígenas de Derechos. Junto a esta actividad y a cargo de Benjo Alconz se ha iniciado también la investigación en terreno sobre el ejercicio de sus derechos como Nación Indígena, autonomía y justicia, así como las relaciones con las distintas instancias del Órgano Judicial y otras del Estado Plurinacional de Bolivia, con la finalidad de identificar tanto obstáculos como buenas prácticas y así prestar la colaboración académica que se encuentre a nuestro alcance para mejorar el ejercicio de estos derechos.

Por estas razones, nos resultaría de altísimo valor y utilidad contar con información suficiente para llevar a cabo estas tareas de la mejor manera posible. Esta información quisiéramos obtenerla de dos maneras distintas: una, a través de entrevistas a ser llevadas por el señor Benjo Alconz y ,otra, a través de los documentos que J'acha Karangas tiene bajo la responsabilidad de los Apu Mallkus, principalmente.

El motivo de esta nota es para solicitarles autorización para acceder a esta información en el marco de las condiciones que ustedes consideren convenientes-

En lo operativo y práctico, este pedido de autorización significa lo siguiente:

Respecto de la información documental:

1. Digitalizar toda la documentación existente a través de un escáner y fotografías.
2. Organizar la información digitalizada de manera cronológica y temática.
3. Entregarles a ustedes una copia completa de esta información para que tengan respaldo de toda esta información y no sea susceptible de perderse.
4. Actualizar esta información de manera periódica.
5. Utilizar esta información con absoluta reserva y confidencialidad.

Respecto de la información lograda a través de las entrevistas:

1. Generar una base de datos de las entrevistas, manteniendo la confidencialidad.
2. Organizar esta información de manera cronológica y temática.
3. Actualizar esta información de manera periódica.



**UNIVERSIDAD CATÓLICA BOLIVIANA "SAN PABLO"**
Unidad Académica Regional La Paz

Los estudios y análisis académicos realizados en base a estas dos fuentes de información serán entregados a las autoridades de Jach´a Karangas en eventos especialmente organizados para ello .

Estaremos gustosos de absolver toda consulta que ustedes pudiesen tener sobre este pedido y de reunirnos en el caso que lo estimen conveniente.

Con toda atención

Javier Murillo de la Rocha
DECANO
FACULTAD DE DERECHO Y CIENCIAS POLÍTICAS
UNIVERSIDAD CATÓLICA BOLIVIANA "SAN PABLO"

Ramiro Molina Barrios
COORDINADOR
INSTITUTO PARA LA DEMOCRACIA (IpD)
UNIVERSIDAD CATÓLICA BOLIVIANA "SAN PABLO"

La Paz, Bolivia: Av. 14 de Septiembre Nº 4807, Obrajes - 591 (2) 2782222 - 2785152 - Fax 2786707 - 2786749 - Casilla 4805 - lpz.ucb.edu.bo

La Paz, 18 de septiembre de 2019


Señor
Tata Patricio Huarachi Paxi
**Apu Mallku del Suyu Jach'a Karangas**
**Parcialidad Aransaya**

*Ref.: Entrega primer material digitalizado*

De mi mayor consideración:

En el marco del convenio que tiene suscrito la Nación Originaria Suyu Jach'a Karangas y la Universidad Católica Boliviana "San Pablo", así como del trabajo de digitalización iniciado, me cumple hacerle entrega del primera material digitalizado correspondiente a 12 libros de actas y tres procesos penales con declinatoria de competencia aceptada. Sírvase encontrar este material en el DVD adjunto a la presente.

Sin otro particular, reciba mis más cordiales saludos,

**Leonardo Villafuerte**
Docente tiempo completo
Universidad Católica Boliviana

La Paz, 28 de agosto de 2019

NACIÓN ORIGINARIA AYMARA
JACHA KARANGAS
N O A.J.K
RECIBIDO
Fecha 28-08-2019 Hrs 18:00 P.M.
FIRMA

Señores

**Mallkus**
**J'acha Karangas**

*Ref.: Solicitud de autorización para ordenar documentación y continuar la realización de entrevistas*

De nuestra consideración:

Junto con saludarles y desearles éxitos en sus actividades, les escribimos en el marco de nuestro convenio, y de acuerdo con la aceptación que ustedes gentilmente nos han concedido.

Como ustedes saben, la Universidad Católica Boliviana "San Pablo" está llevando a cabo investigaciones y cursos de formación en Derecho para conocer con profundidad la situación que tienen los pueblos indígenas en el ejercicio de sus derechos, autonomía y justicia, así como las relaciones de coordinación y cooperación que tienen con el Estado Plurinacional de Bolivia. Por otra parte, tenemos el deseo de prestar la colaboración académica que se encuentre a nuestro alcance para mejorar el ejercicio de estos derechos.

Por estas razones, nos resultaría de altísimo valor y utilidad contar con información suficiente para llevar a cabo estas tareas de la mejor manera posible. Esta información quisiéramos conseguirla de dos maneras distintas: continuando con las entrevistas que se iniciaron desde el año pasado y a través de los expedientes, actas, sentencias y documentos de la justicia indígena en general que tiene J'acha Karangas.

El motivo de esta nota es para solicitarles autorización para acceder a esta información. Si ustedes nos conceden su permiso, realizaríamos esta actividad en el marco de las condiciones que ustedes consideren convenientes (por ejemplo, en el lugar y horarios que ustedes consideren oportuno) y bajo su supervisión.

En lo operativo y práctico, este pedido de autorización significa lo siguiente. Respecto de la información documental:

1. Digitalizar toda la documentación existente a través de un escáner y fotografías.
2. Organizar la información digitalizada de manera cronológica y temática.
3. Entregarles a ustedes una copia completa de esta información para que tengan respaldo de toda esta información. Esto les permitirá a ustedes tener el archivo escaneado y conservarlo lejos de peligros como pérdida, destrucción (por fuego, agua, etc.). Además, les permitirá tener el archivo ordenado y en formatos digitales que podrán servir a las autoridades que asumen cargos para consultarlos y de ejemplo de cómo se resolvieron los litigios, sin necesidad de utilizar los originales que, en todo caso, continuarán archivados como es costumbre y bajo la responsabilidad de los Mallkus.
4. Actualizar esta información de manera periódica.
5. Utilizar esta información con absoluta reserva y confidencialidad.

Respecto de la información lograda a través de las entrevistas:

1. Generar una base de datos de las percepciones de todas y todos los entrevistados.
2. Organizar esta información de manera cronológica y temática.
3. Actualizar esta información de manera periódica.
4. Utilizar esta información con absoluta reserva y confidencialidad.
5. El objetivo final es fortalecer la justicia indígena originaria. Esto significa que luego de concluida la investigación se harán exposiciones en las que se aconsejarán algunas medidas puntuales para mejorar y se identificarán algunos inconvenientes que afectan su fortalecimiento.

Estaremos gustosos de absolver toda consulta que ustedes pudiesen tener sobre este pedido y de reunirnos en el caso que lo estimen conveniente.

Por otra parte, queremos comentarles que queremos continuar con los cursos de capacitación que hemos iniciado el año pasado. Estamos en preparación para iniciarlos en un nuevo diseño pedagógico que permitirá ampliar enormemente el número de personas capacitadas, lo que sería imposible con la modalidad de cursos presenciales por su alto costo. Entendemos como fecha tentativa para iniciar su puesta en marcha a partir de octubre de 2019.

Reciban ustedes nuestros saludos cordiales,

**Ramiro Molina Barrios**
Instituto para la Democracia
Universidad Católica Boliviana

**Leonardo Villafuerte**
Docente tiempo completo
Universidad Católica Boliviana

UNIVERSIDAD CATÓLICA BOLIVIANA LA PAZ

La Paz, 19 de mayo de 2020

Señores
**Apu Mallkus y Mama T'allas**
**Nación Suyu J'acha Karangas**

*Ref.: Actividades vinculadas al convenio Nación Suyu Jach'a Karangas y Universidad Católica Boliviana "San Pablo"*

De nuestra consideración:

Junto con saludarles y desearles éxitos en sus actividades, les escribimos en el marco de nuestro convenio y las actividades que venimos desarrollando. Sabemos que prontamente existirá la rotación de autoridades, así que nos dirigimos a las autoridades actuales y a las nuevas que serán posesionadas.

**Antecedentes**

La Universidad Católica Boliviana "San Pablo" (UCB) ejecuta desde el año 2017 un Programa con la Cooperación Inter Universitaria Flamenca (VLIR-UOS) en dos fases, una primera de 5 años: 2017 al 2021, y una segunda por otros 5 años pasado ese periodo. El Programa VLIR UOS trabaja en cinco áreas temáticas específicas y nosotros pertenecemos a la que se refiere a los Derechos de los Pueblos Indígenas y transformación de conflictos sociales (Proyecto 4).

El Proyecto 4 está a cargo del Instituto para la Democracia de la Facultad de Derecho y Ciencias Políticas de la UCB y tiene tres componentes principales: **1**) Formación de Promotores Indígenas de Derechos; **2**) Investigación aplicada en las tres regiones de estudio; **3**) Fortalecimiento Académico a profesores de las Carreras de Derecho de la UCB y otros profesionales.

Durante el año 2018 la UCB a través del Proyecto 4 llevó a cabo tres cursos presenciales temáticos orientados a la formación de Promotores/as Indígenas de Derecho, temáticas que son parte de un conjunto de otras y que se implementarán este y el próximo año y que fueron discutidas en dos reuniones con Mallkus y autoridades de las Markas y Ayllus que se llevaron a cabo en la sede de su organización en la ciudad de Oruro.

También se inició la investigación sobre el funcionamiento de la Jurisdicción Indígena y su relación con la Jurisdicción Agroambiental y Ordinaria en el marco de la Justicia Plural



UNIVERSIDAD CATÓLICA BOLIVIANA LA PAZ

establecida por la Constitución Política vigente, con el objetivo de identificar buenas prácticas así como obstáculos en la relación entre Jurisdicciones. Con este fin se realizaron entrevistas y la digitalización de documentos. Todo esto en el marco del convenio marco de cooperación interinstitucional que suscribimos con ustedes a los 30 días del mes de abril de 2018.

**Cursos de formación**

Respecto de los cursos, como indicamos antes, tuvimos la oportunidad de llevar a cabo tres cursos presenciales temáticos a los que asistieron 72 personas. Estos cursos no pudieron ser continuados en el segundo semestre de 2019 como estaba programado por las elecciones nacionales y las razones políticas que todos conocemos. Al presente, la emergencia sanitaria por el Covid-19 y la pandemia que se ha generado desde inicios de este año, tiene cerradas no solamente las fronteras internacionales, departamentales, provinciales y hasta de las ciudades y poblaciones en general, sino también a nuestra Universidad. Sin embargo, ya se tienen preparados los contenidos de cuatro componentes temáticos. Por este motivo, no es posible hasta el presente dar continuidad a estos cursos. Sin embargo, respecto del primer módulo y para poder concluirlo adecuadamente, aún quedan pendientes las respectivas réplicas que debían realizar las personas capacitadas.

Queremos manifestarles que es nuestro interés y deseo continuar con estas actividades de formación cuando concluya la emergencia sanitaria y así sea posible administrativamente para nuestra Universidad. Como se manifestó en anterior nota de 28 de agosto de 2019, se tiene previsto el cambio de modalidad de enseñanza a distancia para llegar a un grupo mayor de capacitados, en los términos que se indican en el documento anexo a la presente. Es importante señalar que, aunque cada curso tiene un numero de 30 asistentes, estos cupos por cursos no deben generar preocupación, toda vez que al ser cursos virtuales, pueden iniciarse nuevamente apenas terminados los anteriores. Estos y otros detalles están ampliados y explicados en el **anexo a esta carta**.

Esperemos que todas estas actividades se puedan reconducir debidamente y podamos reiniciarlas durante el segundo semestre de este año y continuar durante el 2021.

**Investigación: entrevistas y digitalización documental**

Gracias a la importantísima ayuda que brindaron el Apu Mallku Tata Patricio Huarachi Paxi y todas las personas que prestaron su tiempo en entrevistas, cuyos nombres sería muy largo de referir acá, es que se pudo avanzar en las investigaciones. Cabe recordar que el tata Benjo Alconz nos ha prestado constantemente su ayuda haciendo estas entrevistas a profundidad, por lo que también le quedamos agradecidos. En estas entrevistas se están conociendo los desafíos y complejidades que hoy en día tiene la justicia indígena de Jach'a Karangas con la finalidad de encontrar mecanismos para ayudar a fortalecerla. Ahora, existe mucho interés en conocer cómo se están afrontando estos problemas frente al virus Covid-19 y la cuarentena impuesta por la emergencia sanitaria. Lamentablemente, las entrevistas también se han visto interrumpidas por las mismas razones referidas anteriormente.

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Las investigaciones también se han llevado a cabo mediante la digitalización de documentos contenidos en los Libros de Actas de Jach'a Karangas. Esta actividad también puede resultar de valor para ustedes pues los documentos así digitalizados les serán entregados a ustedes para que puedan tener un archivo y respaldo digital ordenado, conservado lejos de peligros de pérdida o destrucción y que pueda ser útil a las autoridades que asumen cargos para consulta y ejemplo, sin necesidad de utilizar los originales que, en todo caso, continuarán archivados como es costumbre y bajo la responsabilidad de los Mallkus. Tal fue nuestro compromiso en anterior nota que presentamos en fecha 28 de agosto de 2019 y queremos aclarar que el avance que se logró fue presentado al tata Patricio Huarachi el 18 de septiembre de 2019.

Cabe recordar que esta actividad se desarrolló cuando el profesor Leonardo Villafuerte se presentó en las oficinas de Jach'a Karangas para realizar la digitalización en ese lugar y le fueron facilitados los documentos respectivos. Sin embargo, por el gran volumen de los documentos, se empezó a prestar algunos libros para que la tarea sea ejecutada en oficinas de la Universidad y hasta se realizó un envío de documentos por encomienda. En todos los casos, se documentaron las entregas para seguridad de Jach'a Karangas. Lamentablemente no pudimos cubrir sino una parte de la documentación de Jach'a Karangas, quedando aún pendiente la mayoría.

**Solicitud**

Con la finalidad de dar continuidad a la capacitación así como a la investigación antes referida, y una vez que se reanuden las actividades y todo vuelva a una relativa normalidad, queremos solicitarles respetuosamente lo siguiente:

*Cursos*

- Nos puedan hacer conocer de las **réplicas** que hubiesen realizado las personas capacitadas en la anterior gestión. Esto quedó como una actividad pendiente en muchos casos.
- Empiecen a identificar a los estudiantes que inicialmente tendrían interés y que cumplan con las condiciones que se señalan en el anexo. En este marco, se les remitirá una ficha de inscripción para las y los estudiantes que se inscriban.

*Investigación*

- Con la finalidad de proseguir en la digitalización de los documentos, les pedimos que nos puedan realizar envíos de libros de actas, empadronamientos y todos aquellos documentos de Jach'a Karangas. Estos envíos podrían ser en grupos o lotes, para preservar los documentos y su seguridad. Por nuestra parte, devolveremos prontamente a ustedes los documentos una vez que hubiesen sido digitalizados, y tal como se ha realizado en anteriores ocasiones.
- Nos autoricen y apoyen en continuar con las entrevistas y grabaciones respectivas para profundizar en la investigación. Estas actividades deberán ser coordinadas y organizadas cuando sea posible.



UNIVERSIDAD CATÓLICA BOLIVIANA LA PAZ

- Podamos organizar una reunión en los próximos meses para comunicar los hallazgos que se tienen en la investigación hasta el presente a las autoridades de Jach'a Karangas, y a quienes ustedes estimen conveniente.

Sin otro particular, esperamos que la Nación Suyu Jach'a Karangas pase esta etapa de pandemia con mucha salud y airosa en sus diversas actividades.

Reciban un saludo cordial.

**Ramiro Molina Barrios**
Instituto para la Democracia
Líder Nacional del Proyecto 4
Universidad Católica Boliviana

**Leonardo Villafuerte**
Docente investigador - Carrera de Derecho
Miembro del Proyecto 4
Universidad Católica Boliviana

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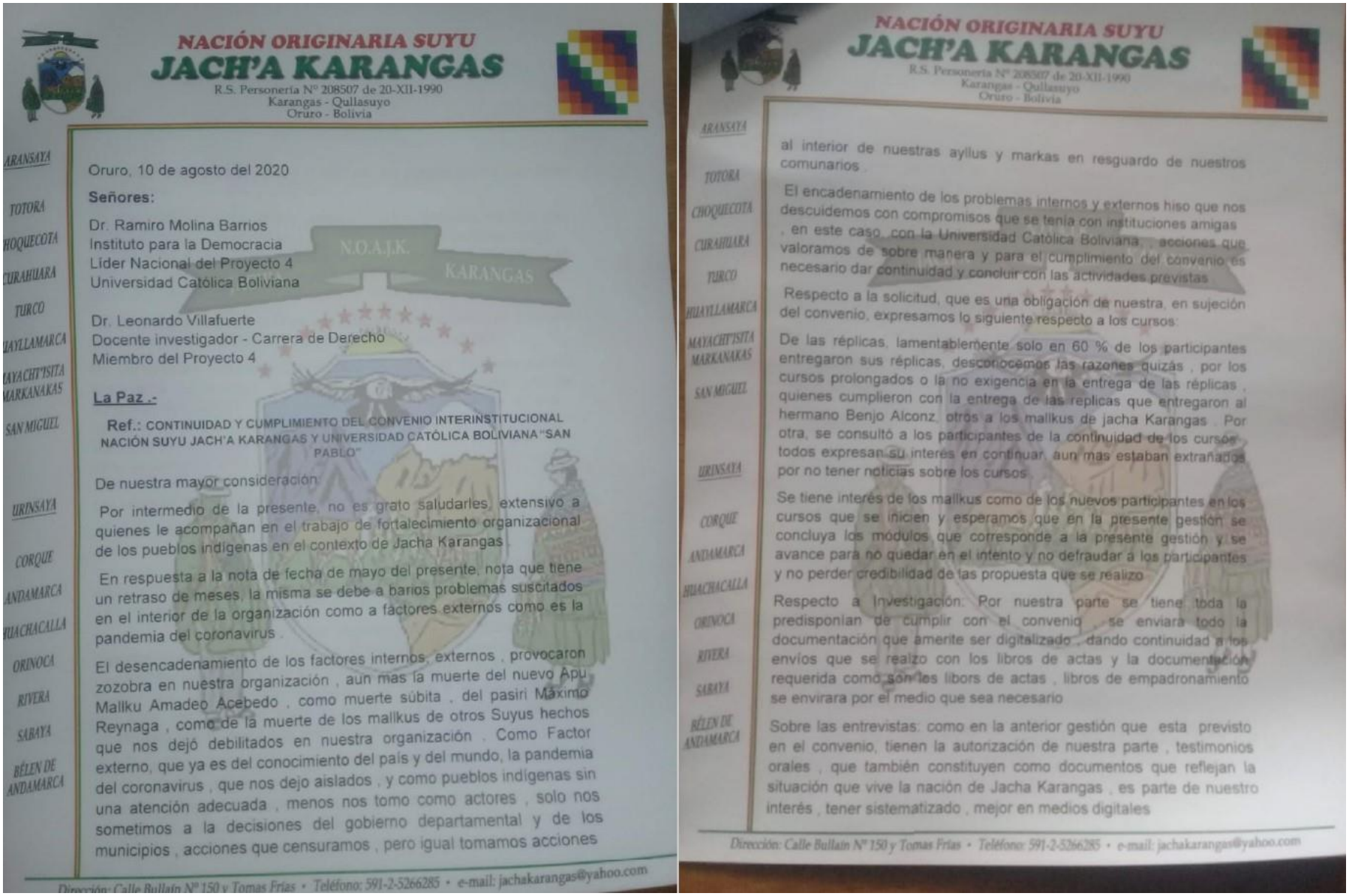

NACIÓN ORIGINARIA SUYU
JACH'A KARANGAS
R.S. Personería N° 208507 de 20-XII-1990
Karangas - Qullasuyo
Oruro - Bolivia

ARANSAYA
TOTORA
CHOQUECOTA
CURAHUARA
TURCO
HUAYLLAMARCA
MAYACHI'SITA MARKANAKAS
SAN MIGUEL
URINSAYA
CORQUE
ANDAMARCA
HUACHACALLA
ORINOCA
RIVERA
SABAYA
BÉLEN DE ANDAMARCA

Oruro, 10 de agosto del 2020

**Señores:**

Dr. Ramiro Molina Barrios
Instituto para la Democracia
Líder Nacional del Proyecto 4
Universidad Católica Boliviana

Dr. Leonardo Villafuerte
Docente investigador - Carrera de Derecho
Miembro del Proyecto 4

**La Paz .-**

**Ref.:** CONTINUIDAD Y CUMPLIMIENTO DEL CONVENIO INTERINSTITUCIONAL NACIÓN SUYU JACH'A KARANGAS Y UNIVERSIDAD CATÓLICA BOLIVIANA "SAN PABLO"

De nuestra mayor consideración:

Por intermedio de la presente, no es grato saludarles, extensivo a quienes le acompañan en el trabajo de fortalecimiento organizacional de los pueblos indígenas en el contexto de Jacha Karangas.

En respuesta a la nota de fecha de mayo del presente, nota que tiene un retraso de meses, la misma se debe a varios problemas suscitados en el interior de la organización como a factores externos como es la pandemia del coronavirus.

El desencadenamiento de los factores internos, externos, provocaron zozobra en nuestra organización, aun mas la muerte del nuevo Apu Mallku Amadeo Acebedo, como muerte súbita, del pasiri Máximo Reynaga, como de la muerte de los mallkus de otros Suyus hechos que nos dejó debilitados en nuestra organización. Como Factor externo, que ya es del conocimiento del país y del mundo, la pandemia del coronavirus, que nos dejo aislados, y como pueblos indígenas sin una atención adecuada, menos nos tomo como actores, solo nos sometimos a la decisiones del gobierno departamental y de los municipios, acciones que censuramos, pero igual tomamos acciones

Dirección: Calle Bullain N° 150 y Tomas Frías • Teléfono: 591-2-5266285 • e-mail: jachakarangas@yahoo.com

NACIÓN ORIGINARIA SUYU
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al interior de nuestras ayllus y markas en resguardo de nuestros comunarios.

El encadenamiento de los problemas internos y externos hiso que nos descuidemos con compromisos que se tenía con instituciones amigas, en este caso, con la Universidad Católica Boliviana, acciones que valoramos de sobre manera y para el cumplimiento del convenio es necesario dar continuidad y concluir con las actividades previstas.

Respecto a la solicitud, que es una obligación de nuestra, en sujeción del convenio, expresamos lo siguiente respecto a los cursos:

De las réplicas, lamentablemente solo en 60 % de los participantes entregaron sus réplicas, desconocemos las razones quizás, por los cursos prolongados o la no exigencia en la entrega de las réplicas, quienes cumplieron con la entrega de las replicas que entregaron al hermano Benjo Alconz, otros a los mallkus de jacha Karangas. Por otra, se consultó a los participantes de la continuidad de los cursos todos expresan su interés en continuar, aun mas estaban extrañados por no tener noticias sobre los cursos.

Se tiene interés de los mallkus como de los nuevos participantes en los cursos que se inicien y esperamos que en la presente gestión se concluya los módulos que corresponde a la presente gestión y se avance para no quedar en el intento y no defraudar a los participantes y no perder credibilidad de las propuesta que se realizo.

Respecto a Investigación: Por nuestra parte se tiene toda la predisponían de cumplir con el convenio, se enviara todo la documentación que amerite ser digitalizado, dando continuidad a los envíos que se realizo con los libros de actas y la documentación requerida como son los libors de actas, libros de empadronamiento se envirara por el medio que sea necesario.

Sobre las entrevistas: como en la anterior gestión que esta previsto en el convenio, tienen la autorización de nuestra parte, testimonios orales, que también constituyen como documentos que reflejan la situación que vive la nación de Jacha Karangas, es parte de nuestro interés, tener sistematizado, mejor en medios digitales

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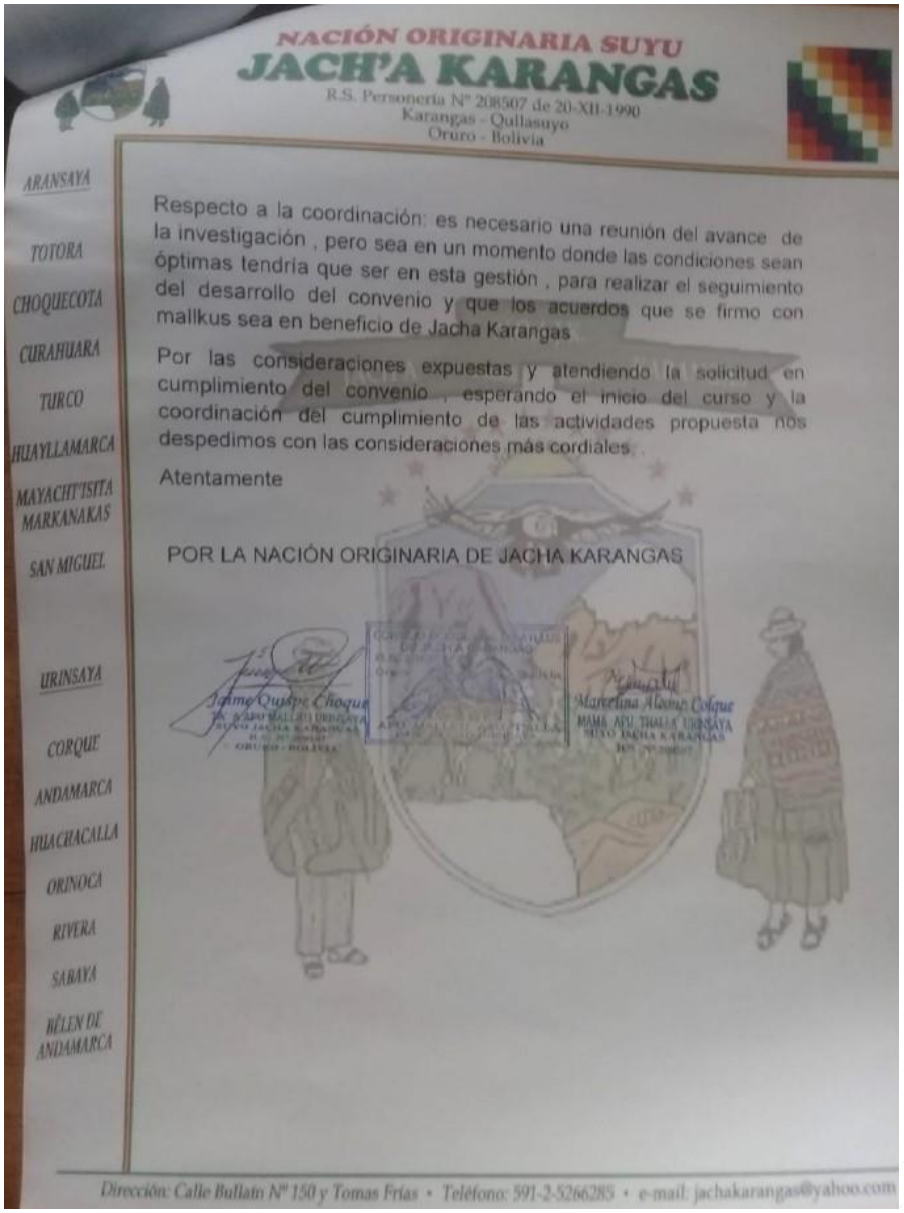

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HUACHACALLA
ORINOCA
RIVERA
SABAYA
BELÉN DE ANDAMARCA

Respecto a la coordinación: es necesario una reunión del avance de la investigación , pero sea en un momento donde las condiciones sean óptimas tendría que ser en esta gestión , para realizar el seguimiento del desarrollo del convenio y que los acuerdos que se firmo con mallkus sea en beneficio de Jacha Karangas

Por las consideraciones expuestas y atendiendo la solicitud en cumplimiento del convenio , esperando el inicio del curso y la coordinación del cumplimiento de las actividades propuesta nos despedimos con las consideraciones más cordiales .

Atentamente

POR LA NACIÓN ORIGINARIA DE JACHA KARANGAS

Jaime Quispe Choque
APU MALLKU URINSAYA
SUYU JACHA KARANGAS
ORURO - BOLIVIA

Marcelina Alanoca Colque
MAMA APU THALLA URINSAYA
SUYU JACHA KARANGAS

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GOBIERNO ORIGINARIO DE LA NACIÓN ORIGINARIA SUYU JACH'A KARANGAS

C O N V O C A T O R I A

CONSEJO DE MALLKUS DE LA NACIÓN ORIGINARIA
SUYU JACH'A KARANGAS
(VIERNES 12 DE AGOSTO DE 2022)

TEMARIO:

1. ACTO RITUAL.
2. CONTROL DE ASISTENCIA.
3. LECTURA DEL ACTA ANTERIOR Y CORRESPONDENCIA.
4. INTENSION DE FIRMA DE CONVENIO MARCO DE COOPERACION INTERINSTITUCIONAL ENTRE LA UNIVERISIDAD CATOLICA BOLIVIANA "SAN PABLO" Y LA NACION ORIGINARIA SUYU JACH'A KARANGAS.
5. TALLER DE LIDERAZGO E INCIDENCIA PÚBLICA A CARGO DE CIPCA.
6. INFORME DE LOS APU MALLKUS DE AMBAS PARCIALIDADES
7. PRESENTACION DE LOS WAWAKALLUS PROFESIONALES NACION ORIGINARIA SUYU JACH'A KARANGAS
8. ASUNTOS VARIOS

PARTICIPAN: Autoridades originarias: Mallkus de Consejo y Mama T'alla de Consejo, Mallkus de Marka y Mama T'alla de Marka, Tata y Mama Awatiris de los Ayllus y Markas de las Catorce Markas del Suyu Jach'a Karangas e invitados especiales.

LUGAR Y FECHA.- La SESION DEL CONSEJO DE MALLKUS DE LA NACIÓN ORIGINARIA SUYU JACH'A KARANGAS, se llevara a cabo el día Viernes 12 de agosto de 2022 en los ambientes de la Nación Originaria Suyu Jach'a Karangas, ubicada en la calle "Bullain" No. 150 entre "Tomas Frías" y "Rengel", desde Hrs. 09:00 a.m., por la importancia del temario se insinúa puntual asistencia. Mayores informes Tata Apu Mallku Ramón Cáceres Cel. 67205078 y Tata Apu Mallku Arsenio Yavi Condori Cel. 71886290

POR EL GOBIERNO ORIGINARIO DEL SUYU JACH'A CARANGAS

CONSEJO OCCIDENTAL DE AYLLUS DE JACH'A CARANGAS R.S. 208507 Oruro Bolivia
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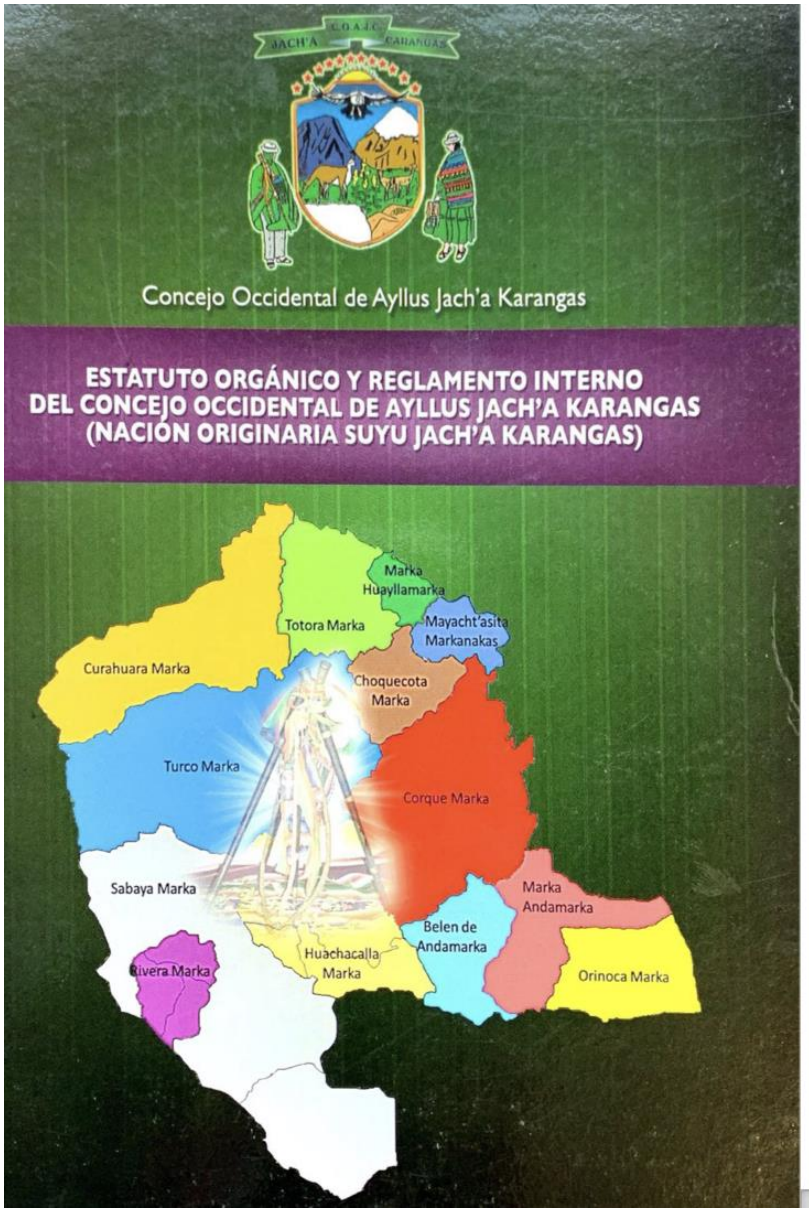
# Estatuto Orgánico Nación Originaria Suyu Jach’a Karangas and Reglamento Interno Concejo Occidental de Ayllus Jach’a Karangas




# Estatuto Orgánico

## Nación Originaria Suyu Jach'a Karangas

**Elaboración:**
Concejo de Gobierno del Suyu Jach'a Karangas

**Coordinación:**
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**MAMA APU T'ALLA ARANSAYA**

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**MAMA APU T'ALLA URINSAYA**

**Sistematización:**
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**El presente Estatuto Orgánico y el Reglamento Interno es Producto de la implementación de Talleres para la constitución del Estatuto y Reglamento Interno del Suyu Jach'a Karangas, del Proyecto de FORTALECIMIENTO AL GOBIERNO ORIGINARIO DEL SUYU JACH'A KARANGAS (PROFOGOS – JK), Financiado por el Fondo de Desarrollo para Pueblos Indígenas Originarios y Comunidades Campesinas – FDPPIOYCC.**

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## *ESTATUTO ORGÁNICO*
## *CONCEJO OCCIDENTAL DE AYLLUS JACH'A KARANGAS*
## *(Nación Originaria Suyu Jach'a Karangas)*

### *PREÁMBULO*

*Desde tiempos pretéritos, en la morada de Llumpaka Tayka Pacha Mama y con el calor de Willka Tata Inti surgimos desde el seno de nuestros deidades, como Tata Sajama, Mama Anallajchi protectores de Mama Qillu, Tata Qillu. Tata Sabaya, Mama Qariqima guardianes de Quri Pilpinto, Qulque pilpinto. Nos constitúimos en pastores por excelencia, y hemos forjado un sistema para la crianza de camélidos, la que constituye el patrimonio natural, base de la economía alimento principal, vestimenta y medio de trasporte de los Karankas que nos permitió tener domino en los diferentes pisos ecológicos y que facilito el intercambio de productos de los pisos ecológicos .*

*Nuestros antepasados poblaron esta madre tierra respetando las diversidades formas de vida y culturas diferentes, asentado diferentes Suyus del vasto Qullasuyu, realizaban ferias de intercambio de diferentes productos producidos en cada región mediante la Chakana, los Karangas de Urinsaya – Aransaya, constituimos una unidad sociopolítica históricamente desarrollada, con organización, cultura, instituciones, derechos, ritualidad, idioma. Nos encontramos asentados en un territorio ancestral organizado en Ayllus, Markas y Suyu, organizado sobre pilares fundamentales como son los principios y valores que constituyen faros que nos guían al suma qamaña.*

*Los Karangas somos originarios, precoloniales, desde tiempos inmemoriales, somos descendientes y herederos de la gran cultura milenaria aymará, quienes fuimos forjadores del Qullasuyu y del gran Tawantinsuyu durante el incario. En esta santa tierra Pachamama, madre protectora de nuestras vidas, hemos construido nuestra cultura y civilización, desde nuestras Sayañas, Ayllus, Markas, concebimos la vida en los siguientes niveles: el Kawki Pacha, Alax Pacha, Aka Pacha, Manqha Pacha, hábitat natural donde nos desarrollamos al calor del Tata Qullana Apu Inti, Llumpaqa Tayka Pacha Mama, Paxsi Mama y hemos vivido en comunicación y relación cotiniana con nuestras deidades protectores espirituales, Pukaras, Achachilas, Wak'as, Illas, con la protección forjamos nuestras organizaciones económicas, sociales, políticas y culturales a partir de la pareja fundante del núcleo familiar – Chacha – Warmi buscando un equilibrio en la biodiversidad que nos depara la armonía integral.*

*El territorio ancestral de los Karankas cuenta con "Taquintas", o territorios discontinuos y continuos al interior de cada Marka, en los diferentes pisos ecológicos de los valles de Chuquisaca, Inquisivi, Quime, Cochabamba lo que*

*hoy es Quillacollo, han sido cedidos por el Inka Huayna Kápac a los de Karankas como reconocimiento al aporte de los karankas y en los valles de la costa del océano pacifico como: Arica, Arequipa, Isluwa, Asapa, Chiapa. El territorio de los Karankas, era unos de los suyus, mas importantes del Qullasuyu, y del Tawantinsuyu.*

*En el awi Ayala, en nombre de la civilización y de la fe cristiana, se destruyeron todo un sistemas de conocimiento científico y sabiduría ancestral, de principios y valores, economía y organización social comunitarias, de tecnologías, sistemas de producción y manejo territorial.*

*La Colonia ocasiono la pérdida de los espacios o "islas" de valle que se aprovechaban en el periodo pre-colonial. Sin embargo, a diferencia de otros Suyus, los Karangas lograron mantener sus tierras ubicadas en el altiplano, hasta el presente.*

*Históricamente, los habitantes de Karangas sumergidas en la leyenda de los Aymaras, que formamos una gran nación aguerrida y rebelde que resistiendo al avance de los incas, protegiendo nuestro territorio en la colonia, impidiendo el avance de las haciendas durante la República. Libre de cualquier forma de opresión no se conoció el pongueaje por la lucha de heroica de nuestros antepasados, lucha por tierra y territorio, dignidad por vivir sin opresión hizo que se comprara los títulos de la Corona de España y de Atocha. Por esta nos enfrentamos con valor y coraje a la dominación de toda forma de opresión colonial, nunca fuimos sometidos y esclavizados por los patrones y criollos que intentaron apoderarse de nuestras tierras y recursos naturales.*

*El Estado colonial y neo colonial con la división político administrativo del territorio fragmentaron el territorio ancestral en: Departamentos, provincias, cantones, municipios, distritos municipales, gracias al gran sacrificio y lucha de los antepasados ha sido posible que el Suyu Karangas mantenga hasta hoy día su territorio, y con ello también el propio sistema de organización y de autoridades, los dioses y la cultura.*

*Jach'a Karangas desde 1991 viene impulsando el ejercicio a la libre determinación de los pueblos indígenas en el marco del Convenio 169 de la Organización Internacional de Trabajo (OIT), asi mismo impulsa el derecho al Autogobierno o Autonomía en el marco de la declaración universal de los Derechos de los Pueblos Indígenas y la Constitución Política del Estado, los Karangas manifestamos nuestro compromiso con el territorio del Suyu de los Karangas, y fe en la construcción y consolidación del Estado Plurinacional de Bolivia.*

*Jallalla wiñaykama*

## CONTENIDO

## CAPÍTULO I

## GENERALIDADES

**Artículo 1. (Constitución).-** El Concejo Occidental de Ayllus Jach'a Carangas – Nación Originaria Jach'a Karangas cuya territorialidad abarca 28.517Km.2, es territorio ancestral, cuya jurisdicción alcanzaba desde las costas del pacifico, hasta los valles interandinos. La Nación Originaria Jach'a Karangas, existe con anterioridad a la pre colonia, y se constituye en una de las culturas primigenias del Collasuyu antecesores a la cultura y civilización Tihuanacota.

El Concejo Occidental de Ayllus Jach'a Karangas para fines jurídicos se reconstituye el 11 de junio del 1987, en Turcu Marka legalmente reconocido mediante Resolución Suprema y Personería Jurídica No. 208507 de 20 de diciembre de 1990, inicio que reafirma el legado del patrimonio histórico, y que partir de la resolución del XXV Jach'a Mara Tantachawi realizado en la Marka Andamarca el 20 de junio 2011 y en adecuación a la Nueva Constitución Política del Estado, adquiere la denominación de Nación Originaria Suyu Jach´a Karangas para forjar días promisorios para las futuras generaciones venideras.

**Artículo 2. (Situación geográfica y limites).-** El Concejo Occidental de Ayllus Jach'a Karangas - Nación Originaria de Jach'a Karangas dada la existencia pre colonial, con dominio ancestral sobre sus territorio originario, cuya jurisdicción alcanzaba desde las costas del pacifico hasta los valles interandinos, hoy cuya territorialidad aun se mantiene. Los límites de Jach'a Karangas son: Al este con el Suyu Sura, (Provincia Saucari), al sur con el SuyuJatun Quillakas Asanakis (Provincia Ladislao Cabrera), al norte con las provincias de Pacajes ,Aroma y Gualberto Villarroel del departamento de La Paz y al oeste con la república de Chile.

**Artículo 3. (Marco legal).-** El Concejo Occidental de Ayllus Jach'a Karangas - Suyu Jach'a Karangas, se constituye sobre la base de los derechos nacionales que amparan a los Pueblos Indígenas y Originarios, en los principios y normas contenidas en los Artículos 30 inciso II, numeral 4, 9, inciso III, Artículo 190, Art. 292, 296 de la Nueva Constitución Política del Estado. Los capítulos 19, 20 y 23 de la Declaración Universal de los Derechos Humanos y el Convenio 169/89 de la Organización Internacional de Trabajo y en la Ley Marco de Autonomías y Descentralización en sus artículos 1, 5 incisos 6 y 7, artículos 6, 9, 42, 44 y 45, la Ley de Deslinde Jurisdiccional en sus artículos 7 y 12.



**Artículo 4. (Visión).-** La "Nación Originaria Suyu Jach'a Karangas" retoma y fortalece la identidad ancestral milenaria, su cosmovisión, cosmogonía, la biodiversidad y territorialidad, implementa su propio modelo de desarrollo a partir de los valores y principios de la matriz cultural, en los diferentes ámbitos: económico, social, cultural y político, Sara thaqui, suma qamaña, chattalan, chambalansarapathaquipa.

**Artículo 5. (Fines).-** La finalidad esencial del "la Nación Originaria de Jach'a Karangas" es retomar el Sara Thaqui, político, económico, cultural y social a partir de los valores éticos y morales ancestrales para forjar una comunidad, en equilibrio con la naturaleza y que el acceso a los recursos naturales brinden oportunidades para su realización espiritual, material, familiar y colectiva, que conduzca al suma qamaña.

Así mismo el presente estatuto orgánico tiene como finalidades los siguientes:

- **(Pueblo o Nación).-** Somos la nación Aymara de Jach'a Karangas, hoy nos encontramos en los estados latinoamericanos, reconocidos por la Organización de Estados Americanos (OEA), nuestro ideal es recuperar los verdaderos atributos de la nación originaría con dignidad y soberanía en el marco de la democracia donde se respete nuestros derechos en base a nuestras normas y procedimientos propios.

- **(Identidad Nacional).-** Con la invasión europea hemos sido discriminados racialmente porque psicosomáticamente somos diferentes culturalmente de las familias europeas y otros continentes, por lo tanto tenemos la conciencia de llevar con orgullo nuestra identidad nacional Aymara y todo el Kollasuyo Marka tenemos nuestros propios valores, filosofía, cosmovisión, lengua, historia, política y derecho.

- **(Tierra y Territorio).-** El territorio Aymara ancestral era un conjunto de Ayllus. Este territorio tenía otros espacios que le fueron usurpados, en la razón de la geografía política de Bolivia. Tenemos que reconstituir nuestro territorio a la cabeza del gobierno de las autoridades originarías hombres y mujeres.

- **(Historia Nacional).-** Recuperación de nuestra historia gloriosa del pasado Qollana y de la resistencia crítica del pueblo Aymara durante los más de 500 años de colonialismo y neocolonialismo: La participación

del ejercito Aymara bolivianizado en la batalla de la confederación Perú Boliviana 1835 – 1839, en la guerra de las barricadas contra las tiranías militares, en la guerra del Pacífico 1879 y 1880, en la guerra del Acre 1899, en la revolución federal 1990, en la guerra del Chaco 1932 – 1935, en la revolución traicionada de 1952 (Reforma agraria), en la guerra de la defensa del gas (febrero – octubre negro 2003).

- **(Política Nacional).-** El gobierno y la administración del Ayllu y la Marka pertenece a la política nacional y al pueblo Aymara. La política es una ciencia y arte, es un derecho y un deber. No ocupar nuestra política sería para que la "política ajena se ocupe de nosotros". La política de la autoridad originaría está basada en la antigüedad en el turno y la compulsa de méritos; sin embargo participamos en la política del país, terciando en las elecciones municipales y nacionales generales con candidatos originarios propios incluyente en la diversidad.

- **(Autonomía).-** El Suyu Jach'a Karangas organizado en comunidades, ayllus y Markas tenemos el dominio sobre nuestro territorio ancestral, por lo tanto se debe garantizar la libre determinación y el autogobierno, en función de nuestras normas y procedimientos propios respaldados por la Constitución Política del Estado (CPE), la Ley Marco de Autonomías y Descentralización (LMAD) y Deslinde Jurisdiccional. La organización de Jach'a Karangas, tiene carácter independiente y tiene su propia ideología y política basada en la cultura aymara para administrar nuestros propios recursos, elaborar nuestras propias leyes y normas y autogobernarnos nosotros mismos en una sociedad cada vez más heterogénea y diversa.

- **(Libre determinación).-** Las Comunidades y Ayllus originarias deben organizarse y fortalecer su democracia interna en función al ejercicio pleno de nuestros derechos para fortalecer nuestro autogobierno en función a nuestros procedimientos propios basados en nuestras costumbres.

- **(Desarrollo rural integral sostenible).-** Las Comunidades, Ayllus y Markas deben fomentar el desarrollo rural integral en base a la construcción de infraestructura productivas, sanidad animal, vegetal, mejoramiento genético, producción agroecológica, protección del medio ambiente, cuidado de la madre tierra y recuperación de saberes ancestrales.



**Artículo 6. (Objetivos).-** El presente Estatuto Orgánico de la Nación Originaria Suyu Jach´a Karangas, tiene como objetivos los siguientes:

- Normar y regular la estructura política y administrativa de la Nación Originaria Suyu Jach'a Karangas.
- Ejercer los derechos, deberes y obligaciones de los pueblos originarios.
- Fortalece la organización de la estructura del gobierno originario.
- Promover las formas de elección y participación equitativa de hombres y mujeres en base a los procedimientos propios.
- Promueve la participación y control social en la organización originaria.
- Administrar la justicia originaria en coordinación con la justicia ordinaria.
- Regular las estructuras territoriales ancestrales.
- Promover las relaciones de coordinación con instituciones públicas, privadas y gobiernos originarios.
- Promover la defensa y aprovechamiento sostenible de los recursos naturales y la tierra y territorio.
- Establecer los mecanismos de organización y funcionamiento del Gobierno de la Nación Originaria Aymara Suyu Jach'a Karangas.
- Promover la implementación de las autonomías indígenas originario campesinos de los diferentes municipios de la jurisdicción del Suyu Jach'a Karangas.

**Artículo 7. (Domicilio legal).-** La capital política, económica y administrativa de la Nación Originaria Suyu Jach'a Karangas es Corque Marka Taypi constituyéndose como el centro articulador de todo el Suyu, bajo el antecedente histórico de haber sido desde la pre colonia capital ancestral del Suyu de Jach'a Karangas, Se establece una oficina en la ciudad de Oruro para realizar diferentes actividades y coordinaciones con instituciones públicas, privadas u otras organizaciones afines.

**Artículo 8. (Principios).-** Los principios de la Nación Originaria Jach'a Karangas, están basados en los conocimientos ancestrales, la realidad socio cultural de una sociedad originaria y las leyes vigentes y son los siguientes:

a) **(Jan jayramti, jan k'arimti y jan lunt"atamti).-** Son principios ancestrales, que mide la convivencia con la naturaleza y con las personas. Es una obligación mantener el buen comportamiento de las personas de manera transparente, trabajo colectivo o individual y pacífico, mirando el pasado, el presente y el futuro, para el Vivir Bien (SUMA QAMAÑA).

b) **(Democracia comunitaria).-** Sujetarse en el ejercicio pleno de la democracia participativa, inclusiva y representativa. Reconocer el pluralismo, respetar la diversidad de identidades culturales, sociales, políticas y religiosas. Las personas con todos los derechos y deberes, compartimos el mismo espacio público y habitamos en un mismo territorio, lo que nos hace iguales tanto a hombres como a mujeres.

c) **(Chacha - Warmi).-** Asumir el valor del ejercicio de cargo igualitario entre hombres y mujeres, respetando la filosofía de la Nación Aymara y ejercer la paridad y alternancia en todos los ámbitos de gestión y desarrollo.

d) **(Género y generacional).-** Mantener los principios de alternancia, paridad y complementariedad en la participación de hombres, mujeres, jóvenes, niñas y niños en todos los ámbitos necesarios de decisión, gestión, ejecución y representación, respetando los derechos, deberes y obligaciones individuales y colectivos.

e) **(Igualdad de oportunidades).-** Tomar en cuenta las iniciativas de hombres y mujeres en equivalencia en la representación, participación, decisión en los espacios de desarrollo integral de la sociedad, en la organización y en la comunidad, para una convivencia equilibrada e integral.

f) **(Equidad).-** Asumir y practicar valorando a cada persona hombre, mujer, joven, niña, niños sin diferenciar, condición social, sexual, cultural, religión, económica. Todos los seres humanos merecemos respeto e igualdad.

g) **(Legalidad y legitimidad).-** Es práctica cotidiana y desde los ancestros, se debe respetar la legalidad y legitimidad en base al



cumplimiento de las decisiones de las comunidades, Ayllus y Markas y el respeto a la CPE y las leyes nacionales.

h) **(Pluralismo).-** Se respeta y garantiza la convivencia, complementariedad, independencia, visiones y creencias de las personas y diferentes culturas.

i) **(Interculturalidad).-** Convivir respetando los diferentes usos y costumbres. La cultura aymara debe respetar y ser respetada por otras culturas, garantizando la interculturalidad.

j) **(Equilibrio).-** Adquirir el sentido de regulación, articulador, receptivo, consiente, de interconexión para una dirección equilibrada y posesionada del comportamiento de la sociedad y de la naturaleza.

k) **(Rotación de cargos - muyu).-** Ejercer las funciones teniendo en cuenta la rotación de cargos, respetando las normas internas de la organización.

l) **(Cumplimiento de cargos).-** Una vez nombrado en el cargo debe cumplir los deberes y obligaciones, por tener derecho a la tierra y por pertenecer a la comunidad.

m) **(Cosmovisión Aymara).-** Desarrollar en la vida diaria, las practicas milenaria de la Nación Aymara, con respeto, equilibrio y armonía. En ella no hay lucha de contrarios ni destrucción, sino complementariedad de opuestos para generar el VIVIR BIEN en armonía entre las personas y la naturaleza.

n) **(Solidaridad).-** Practicar la solidaridad con las personas y las familias de acuerdo a los usos y costumbres de la Nación Aymara. Debe ser tomada como compromisos y apoyo mutuo entre las personas, bases y autoridad para cumplir y hacer cumplir derechos y deberes velando el "VIVIR BIEN" de los habitantes.

o) **(Consenso).-** Generar acuerdos mutuos de menor a mayor o viceversa.

p) **(Justicia social).-** Mantener la justicia social con igualdad de condiciones para todos y todas respetando los derechos individuales y colectivos.

q) **(Pachamama, Tata Inti o Tata Willka).-** Es lo más sagrado, por cuanto es fundamento de nuestra existencia como pueblo, en ellos vemos beneficios reales como la producción que nos da la madre tierra y la semilla que hace brotar al padre sol.

r) **(La Moral).-** Esta constituida por normas y reglas de conductas propias a una vida colectiva, comunitaria social e individual. La moral equivale a la amistad y a la fraternidad respecto a los miembros de la comunidad, expresado en amor reciproco de la familia, ayuda mutua entre el hombre y la mujer, confianza mutua entre padres e hijos.

s) **(Principio de consolidación institucional).-** En el marco del respeto a la Constitución Política del Estado, que asume competencias legislativas, normativas y administrativas, de los órganos del autogobierno en los niveles Suyu, Marka y Ayllu.

t) **(Coordinación y lealtad institucional).-** En los niveles gubernativos Nacional, Departamental y Originarios, tienen la obligación de coordinar entre sí y de cooperarse mutuamente para lograr el Suma Qamaña.

u) **(Relaciones de reciprocidad y complementariedad).-** Las responsabilidades deben ser mutuas y compartidas para el intercambio simbólico, económico, social, político entre la Nación Originaria Jach'a Karangas, el Taypi la ciudad de Oruro y las Naciones Jatun Killakas Asanajaqi, Suras y Urus Chipayas, Muratos.



## CAPÍTULO II

## ESTRUCTURA ORGÁNICA DEL SUYU JACH'A KARANGAS

**Artículo 9. (Estructura del gobierno de la Nación Originaria Suyu Jach'a Karangas).-** El gobierno de la Nación Originaria de Jach'a Karangas, está conformado según la estructura territorial en los diferentes niveles.

**Artículo 10. (Estructura de autoridades originarias).-** La estructura del Gobierno de la Nación Originaria Suyu Jach'a Karangas, son en orden jerárquico ascendente, las mismas se rigen estrictamente en el ejercicio dualitario del chacha-warmi. Los niveles organizativos son los siguientes:

| NIVEL ORGANIZATIVO | CARGOS |
|---|---|
| Comunidad o sapsi | Sullkka Tamani o Sullka Awatiri (Chacha - Warmi), de acuerdo a denominación de las Markas. |
| Ayllu | Tata awatiri o Tamani – Mama Awatiri o Tamani, de acuerdo a denominación de las Markas. |
| Marka | Mallku de Marka – Mama T'alla de Marka.<br>Mallku de Concejo – Mama T'alla de Marka. |
| Suyu Jach'a Karangas | Apu Mallku del Concejo de Gobierno – Apu T'alla del Concejo del Gobierno – (Parcialidad Aransaya y Parcialidad Urinsaya) |

**Artículo 11. (Estructura orgánica).-** La estructura orgánica de Jach'a Karangas es la siguiente:

1. **El Suyu.-** Se estructura territorialmente por articulación de Markas con origen común, dividida territorialmente en dos parcialidades que son: Urinsaya y Aransaya, estructurado sobre el manejo del territorio de la dualidad, cuatripartición sobre la base del modelo social del Ayllu, que es la organización fundamental sobre la cual se estructura los demás niveles y donde las máximas autoridades del Suyu son los Apu Mallkus y Apu T'allas de las parcialidades Urinsaya y Aransaya.

2. **La Marka.-** Como entidad territorial y de gobierno dentro de la Nación Originaria Aymara Suyu Jach'a Karangas, está conformada por sus respectivas Markas que a su vez se subdividen en dos parcialidades bajo la lógica dual del Urinsaya y Aransaya. La parcialidad de las Markas es una entidad territorial que está conformada por Ayllus que se encuentran asentadas en un territorio determinado cohesionados por un taypi ritual y social, es el conjunto de ayllus unidos por una relación ritual, costumbres ancestrales y es la unidad social, cultural y territorial, siendo la máxima Autoridad el Mallku y Thalla de la parcialidad.

3. **El Ayllu.-** Como entidad territorial y célula de la estructura territorial del Suyu, está conformado por comunidades o sapsis que se encuentran asentadas en un territorio determinado cohesionados por centros rituales y sociales que mantienen instancias organizativas, instituciones y organizaciones propias, es la unidad económica, social, cultural y territorial, siendo la máxima Autoridad el Tamani o Awatiri (Chacha-Warmi).

4. **La comunidad o sapsi.-** Es el conjunto de familias unidos por una relación de consanguinidad, es la unidad económica, social, cultural y territorial del Ayllu cohesionados por un centro ritual y social mantiene instancias organizativas propias.

5. **Sayaña.-** Es la unidad territorial familiar y constituye la célula territorial Originario.

| PARCIALIDAD | MARKA |
|---|---|
| URINSAYA | Corque |
| | Andamarca |
| | Huachacalla |
| | Orinoca |
| | Rivera |
| | Sabaya |
| | Belén de Andamarca |



| | |
|---|---|
| ARANSAYA | Totora |
| | Choquecota |
| | Curahuara |
| | Turco |
| | Huayllamarca |
| | Mayacht'asita Markanakas |

El territorio de la Nación Originaria Suyu Jach'a Karangas, se declara indivisible, imprescriptible, inembargable, inalienable e irreversible, cualquier intento de división del territorio ancestral del Suyu Jach'a Karangas será sancionado de acuerdo al Estatuto Orgánico y las Normas y Procedimientos Propios de la Nación Originaria Suyu Jach'a Karangas.

**Artículo 12. (Participación de jóvenes).-** Se debe promover la participación de las y los jóvenes en la estructura organizacional de Jach´a Karangas para generar nuevos líderes y líderesas con conocimientos ancestrales y capacidad de generación de propuestas estratégicas acordes a la coyuntura cultural, social, económica y política de la región, departamento y país.

**Artículo 13. (Derechos de los comunarios y comunarias).-** El Concejo de autoridades originarias de Jach'a Karangas garantiza el ejercicio de los derechos humanos, y contemplados en la legislación internacional y establecidos en la Constitución Política del Estado Plurinacional. Los derechos son:

a) Garantizar la vigencia y convivencia de los derechos y libertades en el contexto sociocultural de los Karangas de los comunarios y las comunarias que se encuentran en el territorio de la Nación originaria de los Karangas.

b) Promover la participación en el thaqui político, económica, social y cultural de la nación Originaria.

c) Encausar por mejores condiciones de vida en educación, salud, trabajo, seguridad a los comunarios, comunarias que viven en las comunidades, Ayllus y Markas.

d) Responder por la conservación, uso sostenible de la diversidad biológica, protección del medio ambiente en las comunidades, Ayllus y Markas, para el beneficio de los comunarios, comunarias de esta generación y de generaciones futuras.

e) Impulsar el rescate de los saberes ancestrales, lenguas, culturas y formas de organización económica, política y ritual.

f) Fortalecer las manifestaciones rituales, que permita el reencuentro permanente con el Ajayu de los antepasados.

g) Derecho a existir libremente.

h) Derecho a la gestión territorial y al uso y aprovechamiento exclusivo de los recursos naturales renovables existentes en su territorio.

i) Derecho a su identidad cultural, creencia religiosa, prácticas y costumbres acordes a su propia cosmovisión.

j) Derecho a la libre determinación y territorialidad.

k) Derecho a la titulación colectiva de tierras.

l) Derecho a la participación en los órganos e instituciones del Estado.

**Artículo 14. Derechos fundamentales.-** La Nación Originaria Jach'a Karangas, en el ámbito de sus competencias, adopta todas las medidas necesarias para los comunarios, comunarias que habitan dentro y fuera y tengan los siguientes Derechos:

a. Los hombres y mujeres que viven en la Nación Originaria Jach'a Karangas, sin distinción de sexo, idioma, religión, opinión, origen, condición económica, social, discapacidad o de cualquier otra índole, gozan de los derechos establecidos en la Constitución Política del Estado, los tratados sobre Derechos Humanos, convenio 169 de la OIT, Declaración de Naciones Unidas sobre Derechos de los Pueblos Indígenas ratificada por ley N° 3760 suscritos por Bolivia y aquellos que estipule el estatuto orgánico.

b. Participación comunitaria en la vida política originaria, económica, social y cultural de Nación Originaria Jach'a Karangas.



c. Respeto a la identidad cultural de los Karangas dentro y fuera del territorio del Suyu.

d. Garantizar la vigencia efectiva de los derechos y libertades fundamentales en el contexto sociocultural de los Karangas de los habitantes de la Nación Originaria.

e. Garantizar la conservación, uso sostenible de la diversidad biológica y la protección del medio ambiente en todo el territorio de la Nación Originaria Jach'a Karangas, para el beneficio de esta generación y de las generaciones futuras.

**Artículo 15.-** De los Derechos de los comunarios y comunarias.-

a) Respetar, mantener, resguardar y fortalecer todos los derechos de origen ancestral contemplados en las normas comunales, del Ayllu y Markas del Suyu.

b) Respetar, mantener, resguardar y fortalecer manteniendo la memoria de la identidad cultural de la Nación Originaria Autónomo Jach´a Karangas, sin discriminación.

c) En el marco de la Constitución Política del Estado Plurinacional y el Estatuto Orgánico de acuerdo a sus normas y procedimientos propios, fortalece la práctica de los derechos comunitarios como legado ancestral:

d) Al acceso a la Sayaña, para la producción agropecuaria a los pisos ecológicos de los valles los Departamentos de: Cochabamba, Chuquisaca, Potosí y Tarija, como de los valles de la costa del Pacifico para garantizar la seguridad alimentaria.

e) A la producción económica comunitaria respetando el ciclo vital de la tierra, territorio y la Pachamama y la biodiversidad del ecosistema de los ayllus, Markas.

f) A relacionarse con las deidades de las comunidades, ayllus, Markas y el Suyu mediante celebraciones rituales, sociales y culturales.

g) A pertenecer a las estructuras territoriales y políticas, del Ayllu, Marka y el Suyu como cuna de la identidad cultural.

h) Además de todos los derechos comunitarios políticos, sociales, económicos y espirituales de acuerdo a su cosmovisión ancestral de la Nación Originaria.

i) A respetar la decisión libre de los comunarios, comunarias recurrir a la medicina tradicional y espiritual o la occidental para la atención de las necesidades sin ser excluidos de beneficios que van ligados a los servicios de salud pública.

j) Toda la población tiene derecho a contar con un ambiente sano, protegido y equilibrado, uso planificado de sus recursos y defensa del medio ambiente.

k) Todos los derechos establecidos en la Constitución Política del Estado, específicamente en el artículo 30.

**Artículo 16.-** De los Derechos de las personas de la Tercera edad.

a) A ser protegido, cuidado, alimentado hasta su deceso por sus herederos o hijos (as) como responsabilidad directa.

b) A ser protegido por la comunidad en caso de abandono.

c) A tener sembradío en un sector de la chacra del comunario, comunaria en la comunidad al que pertenece.

d) Estar exentos de los trabajos comunales y prestaciones de servicios.

e) No ser despojadas, expulsadas, sancionadas con la perdida de tierras.

f) Transferir la contribución territorial a sus herederos de acuerdo a sus normas y procedimientos propios.

g) Usufructuar los sembradíos de las parcelas de la comunidad, según sus necesidades.

h) Cuidar por el ganado con que cuenta por los miembros de la comunidad según procedimientos propios de las comunidades y Ayllus.

**Artículo 17.-** De los Derechos de la niñez, adolescencia y la juventud



a) A tener una familia.

b) A una identidad sociocultural, de género y generacional.

c) A la protección.

d) A la participación en el desarrollo productivo.

e) A la salud.

f) A la educación.

g) A no ser explotado.

h) A participar en espacios de decisión y participación política.

**Artículo 18.-** De los Derechos de las personas con capacidades diferentes y especiales

a) Al amparo en salud, educación a la comunicación en el lenguaje alternativo, trabajo, según las potencialidades.

b) Protección comunitaria a las personas con capacidades especiales de las comunidades, Ayllus y Markas, la misma de cumplimiento obligatorio y regulado de acuerdo a procedimientos propios por las autoridades originarias.

c) A ser considerado en el trabajo comunal y aporte económico.

d) Ser considerado en el cumplimiento de los cargos de la comunidad.

**Artículo 19.-** Del Derecho a la consulta

a) El derecho a la consulta se ciñe estrictamente en el marco del convenio 169 de la OIT, y la declaración de las Naciones Unidas referidos en los artículos de consulta y participación en la explotación de los Recursos Naturales.

b) Se ejercerá el derecho a la consulta previa e informada por el Estado, sobre los recursos naturales renovables y no renovables conforme los

Artículos: 2; 3; 21; 30; 32; 343; 352 y 353 de CPE, toda vez que se prevea medidas legislativas o administrativas susceptibles de afectarlos, participara y concertara en la elaboración de mecanismos y procedimientos apropiados, en todos los niveles de decisión en el derecho a la consulta y a través de sus propias normas y procedimientos propios.

c) Ninguna medida legislativa o administrativa que afecte a la Nación Originaria Aymara Suyu Jach'a Karangas podrá implementarse en su territorio, si es que el Estado no ha efectuado previamente la consulta conforme menciona la Constitución Política del Estado, el Convenio 169 de la OIT y la declaración de las NN.UU.

**Artículo 20. (Deberes y obligaciones de los comunarios y comunarias).-** Son deberes y obligaciones de los habitantes de la Nación Originaria Autónoma Suyu Jach'a Karangas los establecidos en la Constitución Política del Estado Plurinacional y leyes del Estado:

a) Cumplir y hacer cumplir el Estatuto Orgánico y reglamento interno de Jach'a Karangas y las leyes ancestrales de los Ayllus y Markas del Suyu.

b) Respetar las normas y procedimientos propios de las comunidades, ayllus y Markas.

c) Conocer y cumplir la Constitución Política del Estado Plurinacional, el presente Estatuto Orgánico, las Leyes y resoluciones emanadas de los Apu Mallkus, Mallkus de Urinsaya y Aransaya del Suyu.

d) Conocer y cumplir las Resoluciones, mandatos emanados por los Jach'a Tanthachawis, Jisk'a Thantachawis y Concejo de Mallkus.

e) Contribuir con el Tributo por la tenencia de la Sayaña conforme a la extensión y carga animal de acuerdo con las leyes consuetudinarias y vigilar por el uso transparente y responsable de todos los fondos provenientes de la contribución de los comunarios y recursos públicos.

f) Reconocer y asumir los principios y valores proclamados en este Estatuto Orgánico del Suyu Jach'a Karangas.



g) Formarse en el sistema educativo, intra e intercultural y fundamentalmente intracultural en los diferentes niveles.

h) Conservar, respetar y hacer respetar los símbolos del Ayllu, Marka y Suyu declarados en el Estatuto Orgánico y la Constitución Política del Estado.

i) Practicar y promover la defensa de los derechos de los comunarios, comunarias para una convivencia armoniosa.

j) Participar activamente en el desarrollo de las actividades económicas, sociales, rituales, para el desarrollo de los Ayllus y Markas.

k) Fomentar la participación y control social en todas las instancias públicas, privadas y organizativas.

l) Conservar y fortalecer a la familia en su integridad y contexto de la realidad socio cultural de los Karankas como unidad básica del Ayllu.

m) Privilegiar la salud para el bienestar propio, de la familia, comunidad para constituir una comunidad armoniosa y productiva, con valores sobre la que se fundamenta el desarrollo humano e integral en las comunidades, Ayllus, Markas y el Suyu.

n) Preservar y defender por sobre todas las cosas la unidad y integridad territorial ancestral y no permitir bajo ningún argumento la desmembración del territorio de la Nación Originaria Autónomo del Suyu Jach'a Karangas.

o) Promover y defender el sistema político originario del Sara thaqui en el que se funda la dignidad, identidad, soberanía y la cosmovisión de los comunarios, comunarias del Ayllu, Marka y del Suyu.

p) Proteger y defender los recursos naturales y el uso sostenible de las mismas.

q) La protección y defensa del medio ambiente sano en todo el territorio del Suyu en concordancia con Constitución Política del Estado y la Leyes vigentes.

r) El comunario y comunaria debe cumplir con la función económica, social y ritual que implica la posesión de las sayañas.

s) El sayañero debe presentar recibo de contribución de cada gestión a los Awatiris del Ayllu, Mallkus de Marka y Apu mallku del Suyu.

t) Promover e implementar las autonomías indígena originario campesino, de acuerdo a su jurisdicción en el marco de la Constitución Política del Estatuto y la Ley Marco de Autonomías y Descentralización.

**Artículo 21. (Requisitos para asumir cargos en Jach´a Karangas).-** Toda persona natural podrá ejercer cargos de acuerdo a la estructura orgánica del Suyu Jach'a Karangas siempre y cuando cumpla con los requisitos establecidos en el presente estatuto y el reglamento.

No podrán ser elegidos como autoridades originarias, los funcionarios y servidores públicos que ocupasen cargos políticos, excepto aquellos que hayan sido elegidos por consenso de su comunidad, Ayllu, Marka y Suyu.

**Articulo 22. (Requisitos para el cargo de Sullca Jilaqata y Mama Jilaqata).-** El Sullka Tamani y Sullka Mama Tamani de acuerdo a la denominación propia de cada Marka, se constituye en la máxima autoridad de la comunidad y la duración de su gestión es de un año calendario. Los requisitos para Sullka Tamani, o para la autoridad de una comunidad son los siguientes:

- Ser casado y conformar una vida familiar (excepto casos especiales, previa autorización de la comunidad).
- No tener responsabilidades económicas con la comunidad.
- Estar identificado en el manejo de los usos y costumbres en la comunidad.
- No tener conflictos ni antecedentes inmorales en la comunidad, el Ayllu, Marka.
- Radicar durante la gestión del cargo en la comunidad.
- Durante la gestión cada Sullca Tamani deberá renunciar al partido político al que pertenece.



**Artículo 23. (Competencias y obligaciones del Sullca Jilaqata y Mama Jilaqata).-**

a) Cumplir y hacer cumplir el estatuto orgánico y reglamento interno de Jach'a Karangas.

b) Representar a la comunidad ante la autoridad del Ayllu y el Concejo de Autoridades Originarias de la Marka.

c) Socializar los derechos de los pueblos originarios.

d) Conocer y solucionar en primera instancia los conflictos entre comunarios de la comunidad con otras comunidades.

e) Dirigir los cabildos ordinarios y extraordinarios.

f) Realizar actos rituales según establecido por la comunidad.

g) Firmar convenios con instituciones públicas y privadas en coordinación con el Awatiti del Ayllu.

h) Informar a los comunarios las resoluciones adoptadas en las instancias superiores.

i) Cuidar la unidad de los comunarios, comunarias y cumplir costumbres establecidas.

j) Evitar la partidización en la comunidad.

k) Promover e implementar las autonomías indígena originario campesino, de acuerdo a su jurisdicción en el marco de la Constitución Política del Estatuto y la Ley Marco de Autonomías y Descentralización.

**Artículo 24. (Tata Jilaqata, Mama Jilaqata).-** El Tata Jilaqata y la Mama Jilaqata de acuerdo a la denominación propia de cada Marka, es la máxima autoridad, social, política, económica del Ayllu y guía espiritual de la comunidad y del Ayllu; la duración de su gestión es de un año calendario.

**Artículo 25.-** La autoridad originaria del Ayllu, según las Markas, recibe las siguientes denominaciones

a) Awatiri Auqui, Awatiri Tayka

b) Tamani Auqui, Tamani Tayka

c) Marani Awqui, Marani Tayka

d) Marka Awqui, Marka Tayka

e) Tata Tamani, Mama Tamani

f) MallKu llanto

g) Awatiri Jiliri, Mama Jiliri

h) Jilaqatas Awqui, Jilaqata Mama

i) La denominación propia de cada Marka

**Artículo 26. (Requisitos para el ejercicio de Tata y Mama Jilaqata).-**

a) Ser casado ante la comunidad (Chacha – Warmi) y constituir un hogar estable y debe ser ejemplo de vida en la familia.

b) Haber cumplido cargos festivos, rituales, según usos y costumbres del calendario festivo, ritual del Ayllu según procedimientos propios de cada Marka.

c) Previamente haber ejercido el cargo de acuerdo al Artículo 22 del presente Estatuto Orgánico.

d) No tener responsabilidades económicas con la comunidad y Ayllu.

e) Estar identificado con prácticas culturales del Ayllu.

f) Tener respeto en manejo y representación de los símbolos originarios.

g) No tener conflictos ni antecedentes inmorales en la Comunidad, el Ayllu y la Marka.

h) Si el cargo es designado por usos y costumbres como: Ira - pawilo, es de cumplimiento obligatorio, por respeto a los ancestros, como a la norma consuetudinario.



i) Si dentro de la rotación recae el cargo, es deber y obligación de cumplirlo, aun sea de la religión Cristiana, es cumplimiento obligatorio, como sayañero agradecimiento por la sayaña que se tiene como posición familiar.

j) Radicar en el Ayllu durante el ejercicio del cargo y realizar gestiones en diferentes niveles del gobierno central.

k) Durante el ejercicio del cargo, deberá renunciar al partido político al que pertenezca. El ejercicio del cargo es personal, no se puede recurrir a suplencias temporales ni transferencias (lanthis). En cuanto a la edad se respeta las disposiciones de cada Ayllu, Marka, (en caso de que se ejerza el cargo con su Padre o Madre.

l) Ser elegido en un cabildo según procedimientos de cada Ayllu.

m) No ejercer la dualidad de autoridad en la comunidad, en el Ayllu.

n) Tener suficiente predisponían de relacionamiento con organismos públicos y privados en beneficio del Ayllu.

**Articulo 27. (Competencias y obligaciones del Tata – Mama Jilaqata).-** Una de las funciones fundamentales es ejercer el rol de padre, madre del Ayllu, y entre otras tiene las siguientes competencias:

- Realizar las Muyt'as por el Ayllu según usos y costumbres para velar las colindancias.
- Realizar las Muyt'as por las comunidades, visitando a las familias y realizando actos rituales y encargando el buen comportamiento a las familias.
- Realizar Muyt'as visitando a comunarios de los Ayllus, Markas que radican en las ciudades.
- Velar por el bienestar y el buen comportamiento de los comunarios, comunarias en el Ayllu.
- Orientar a los comunarios y comunarias por el buen comportamiento al interior de las familias y entre familias en la comunidad.

- Intervenir en conflictos intra e interfamiliares en la comunidad.
- Celebrar actos rituales relacionados con actividades agropecuarias y acontecimientos sociales de la comunidad y del Ayllu.
- Administrar justicia aplicando normas y procedimientos propios en el Ayllu.
- Conciliar los hogares desavenidos.
- Corregir a los negligentes.
- Realizar actos rituales según el calendario ritual, social, agropecuario según patrones culturales establecidos, pidiendo un buen año o para atenuar las consecuencias de los fenómenos climáticos como; sequias, heladas, granizadas.
- Cumplir y hacer cumplir el Estatuto Orgánico de la Nación Originaria Suyu Jach´a Karangas.
- Cumplir y hacer cumplir el mandato recibido por la comunidad y el Ayllu.
- Usar de manera permanente los símbolos de autoridad originaria en acontecimientos rituales, sociales.
- Respetar y hacer respetar los símbolos de Autoridad Originaria.
- Cumplir y hacer cumplir los actos rituales, dentro el calendario de la ritualidad de la comunidad, Ayllu, Marka y el Suyu.
- Solucionar los conflictos sobre colindancias, aplicando los procedimientos de la justicia consuetudinaria.
- Velar por el bienestar de las familias de la comunidad, el Ayllu, visitando y orientando periódicamente para evitar conflictos hogareños.
- Registrar el número de nacimientos de niños, niñas, durante la gestión en la comunidad y el Ayllu.
- Registrar el número de fallecimientos de los comunarios, comunarias, durante el ejercicio del cargo.



- Hacer cumplir el aporte de la contribución sobre las sayañas, la misma debe ser destinada a la comunidad, a la Marka y el gobierno originario del Suyu.
- Representar al Ayllu ante el Concejo de Autoridades Originarias de la Marka.
- Conocer y solucionar en primera instancia los conflictos entre Comunarios del Ayllu.
- Dirigir los Cabildos ordinarios y extraordinarios en sus Comunidades y del Ayllu.
- Firmar convenios con instituciones públicas y privadas, fundaciones para el benéfico de los comunarios, comunarias del Ayllu.
- Fiscalizar el manejo administrativo del Concejo de Autoridades Originarias de la Markas.
- Informar a los comunarios las resoluciones adoptadas en las instancias superiores en forma transparente.
- Realizar el empadronamiento, evitando la desaparición de las Sayañas.
- Participar en la elaboración del POA y PDM del Municipio y hacer el control social ante las instancias públicas locales.
- Promover e implementar las autonomías indígena originario campesino, de acuerdo a su jurisdicción en el marco de la Constitución Política del Estatuto y la Ley Marco de Autonomías y Descentralización.

**Artículo 28. (Principios y valores).-** El Awatiri Tamani debe encarnar los siguientes principios y valores.

- No ser flojo.
- No ser ladrón.
- No ser mentiroso.
- No ser libertino.
- Comportamiento ejemplar durante el ejercicio del cargo.
- Respeto a las y los comunarios.

- Cumplimiento en las tareas designadas.
- Puntualidad.
- Honestidad.
- Justicia social.
- Igualdad de oportunidades.
- Complementariedad.
- Inclusión.

**Artículo 29.-** Para un buen desempeño sobre la planificación del Sara Thaki del Ayllu, el Awatiri debe planificar sobre las directrices del calendario agrícola, ganadera, social, ritual, política originaria del Sara Thaki, priorizando en los siguientes temas:

- Desarrollo humano (Educación, salud, deportes)
- Desastres naturales (Sequia, heladas, granizos)
- Protección y trasmisión de saberes y conocimientos ancestrales para la adaptación y mitigación del cambio climático.
- Desarrollo rural integral sostenible para proteger la madre tierra.
- Administración de la justicia originaria en base a la resolución pacífica de conflictos.
- Avanzar en las autonomía originarías en base a la libre determinación y autogobierno de los pueblos originarios.

**Artículo 30.-** El Jilaqata debe velar el conocimiento ancestral, para lo cual debe realizar seguimiento a los indicadores naturales y movimiento de los astros celestiales y lectura de los siguientes fenómenos naturales como:

- Lectura del tiempo leyendo el movimiento de los astros celestes del cosmos.
- Lectura del movimiento de los fenómenos naturales akapacha.
- Realizar lectura y seguimiento de los indicadores naturales de las aves.
- Realizar lectura y seguimiento de los indicadores naturales de las plantas.



- Realizar lectura y seguimiento de los indicadores naturales de animales silvestres.
- Realizar lectura y seguimiento de los indicadores naturales del movimiento y comportamiento de las estrellas, la luna, el sol, nubes, viento y de las plantas.

**Artículo 31.-** Transmisión de mando. La consagración de autoridad originaria está precedida con ceremonias rituales, sociales y se realista según establecido en el Ayllu, Marka en la siguiente época.

- En el mes de junio en ocasión del Año Nuevo Aymara.
- Entre los meses diciembre y enero.
- Recibe el informe del jilacata cesante, referente a la administración, más un balance de los recursos humanos de la comunidad:

  - Números de embarazos.
  - Nacimientos.
  - Defunciones.
  - Comunarios negligentes.
  - Número de contribuyentes.
  - Número de nuevos matrimonios.
  - Número de estudiantes en todos los niveles.
  - Otros de acuerdo a usos y costumbres de cada Ayllu.

**Artículo 32. (Requisitos para ser Mallku y T'alla de Marka).-** Se constituyen en la Máxima Autoridad de la Marka, representados por parcialidades Aransaya - Urinsaya de acuerdo al Muyu establecido por cada Marka; la duración de su gestión es de un año o dos años calendario de acuerdo a usos y costumbres de cada Marka.

a) Estado civil casado (Chacha-Warmi)

b) Previamente haber ejercido el cargo de acuerdo al Artículo 22 y 26 del presente Estatuto Orgánico.

c) No tener responsabilidades económicos pendientes al Ayllu al que pertenece y la Marka.

d) La edad para el cargo de Mallkus, Thalla determinara el Ayllu, Marka, siempre cuando este con facultades plenas para el ejercicio del cargo.

e) No tener militancia en partido político partidista, durante el ejercicio del cargo.

f) No tener conflictos de inmoralidad en el Ayllu y la Marka.

g) No tener antecedentes reñidos con el buen comportamiento del Ayllu, Marka.

h) Tener aval del Ayllu y de su Marka.

i) Cumplir y hacer cumplir el Estatuto orgánico de Jach'a Karangas.

j) No pertenecer a organizaciones que van en contra de los pueblos indígenas originarios.

**Artículo 33. (Competencias del Mallku de Marka–T'alla de Marka duración un año).-**

a) Cumplir y hacer cumplir el estatuto orgánico de Jach'a Karangas.

b) Realizar la Muyt'a por los Ayllus de la Marka al que corresponda

c) Representar a la Marka ante otras instancias de gobierno nacional y subnacionales y Naciones indígenas originarias de tierras Altas y bajas.

d) Participar del Concejo de Mallkus, Gobierno del Suyu, Tantachawis del Suyu, CONAMAQ, y otras organizaciones Originarias.

e) Participar del Concejo de Gobierno Territorial de los Cuatro Suyus en el Departamento de Oruro.

f) Cumplir y hacer cumplir la Constitución Originaria del Suyu Jach'a Karangas en la Marka al que corresponde.

g) Firmar convenios con instituciones Gubernamentales, ONGs., Fundaciones para el beneficio de la Marka, con consentimiento de los comunarios wawa qallus.



h) Participar en la elaboración del POA y PDM del Municipio y hacer el control social ante las instancias públicas locales, nacionales (alcaldías, Subprefecturas, Prefectura, Nacional)

i) Solucionar conflictos sociales y territoriales.

j) Mantener una relación de coordinación, con los Awatiris para solucionar conflictos de los comunarios sobre tierras.

k) Atender conflictos de Sayañeros de la jurisdicción de la Marka, previo informe de sus autoridades comunales.

l) Hacer cumplir las decisiones orgánicas emanadas por el Concejo de Gobierno del Suyu, Concejo de Autoridades Originarias y los Cabildos de la Marka.

m) Informar a los Tata Tamanis y Mama Tamanis, resoluciones adoptadas en las instancias superiores en forma transparente.

n) Reemplazar al Mallku de Concejo en caso de ausencia.

o) Asumir competencias del Estatuto Orgánico.

p) Promover e implementar las autonomías indígena originario campesino, de acuerdo a su jurisdicción en el marco de la Constitución Política del Estatuto y la Ley Marco de Autonomías y Descentralización.

**Artículo 34. (Requisitos para ser Mallku de Concejo y T'alla de Concejo).-** Se constituyen en la Máxima Autoridad de la Marka, representados por parcialidades Aransaya - Urinsaya de acuerdo al Muyu establecido por cada Marka; la duración de su gestión es de un año o dos años calendario de acuerdo a usos y costumbres de cada Marka.

a) Los requisitos establecidos en el Artículo 32 del presente Estatuto Orgánico.

b) Previamente haber ejercido el cargo de acuerdo al Artículo 22, 26 y 32 del presente Estatuto Orgánico.

**Artículo 35. (Competencias del Mallkus de Concejo y T'alla de Concejo).-**

a) Las competencias establecidas en el Artículo 33 del presente Estatuto Orgánico.

b) Asistir a los concejos de gobierno del Suyu Jach'a Karangas de manera obligatoria.

c) Informar al concejo de gobierno originario de su Marka las resoluciones y conclusiones del concejo de gobierno del Suyu Jach'a Karangas.

d) Cumplir y hacer cumplir los mandatos, instructivos y comunicados emanados por el Suyu Jach'a Karangas.

e) Promover e implementar las autonomías indígena originario campesino, de acuerdo a su jurisdicción en el marco de la Constitución Política del Estatuto y la Ley Marco de Autonomías y Descentralización.

**Artículo 36. (Requisitos para ser Apu Mallku y Apu Thalla).-** El Gobierno de la Nación Originaria Suyu Jach'a Karangas recae en la Autoridad Ancestral Originaria Dual (Chacha – Warmi) Tata Apu Mallku y Mama Apu T'alla representados por las parcialidades Urinsaya – Aransaya, la duración de la gestión es de dos años calendario, siendo el cambio de los mismos por rotación de parcialidades en gestiones intercaladas.

a) Estado civil casado (Chacha-Warmi).

b) Previamente haber ejercido el cargo de acuerdo al Artículo 22, 26, 32 y 34 del presente Estatuto Orgánico.

c) Haber cumplido todos los cargos inferiores al que asume – "Sara Thaki".

d) Tener aval orgánico de Ayllu, Marka y parcialidad de Suyu.

e) No tener responsabilidades económicas pendientes en el Ayllu, Marka al que pertenece.

f) Tener un alto grado de vocación de servicio al Ayllu, Marka y Suyu.

g) Tener pleno conocimiento de las políticas de reivindicación de los Pueblos Originarias.



h) La edad para el cargo de Apu Mallku estará sujeto de acuerdo al cumplimiento del sarat'aquí de las Markas.

i) No ser militante de un partido político, durante el desempeño del cargo.

j) No tener antecedentes de inmoralidad en el Ayllu y la Marka al que pertenece.

k) No estar ejerciendo cargos por designación partidaria.

l) No pertenecer a organizaciones que van en contra de los pueblos indígenas originarias.

**Artículo 37.-** Competencias de los Apu Mallkus y Apu T'allas

a) Cumplir y hacer cumplir el estatuto orgánico de Suyu Jach'a Karangas.

b) Realizar la Muyt'a por las Marka por lo menos una vez al año.

c) Representar al Suyu ante otras instancias de gobierno nacional y subnacionales e instituciones externas e indígenas originarias de tierras Altas y Bajas.

d) Convocar al Concejo de Gobierno del Suyu y Tantachawis de la Nación Originaria.

e) Programar y planificar, políticas sociales, Económicas y culturales.

f) Participar y liderar el Concejo de Gobierno Territorial de los Cuatro Suyus en el Departamento de Oruro.

g) Firmar convenios con instituciones Gubernamentales, ONGs., para el beneficio de las 13 Markas, con consentimiento del Concejo de Gobierno.

h) Participar en la elaboración del PDD del departamento y delegar control social ante las instancias públicas locales, regionales y departamentales.

i) Solucionar conflictos sociales y territoriales en la jurisdicción del Suyu.

j) Atender conflictos de Sayañeros de la jurisdicción del Suyu previo informe sustanciado del Mallku de Marka y la parcialidad al que corresponde.

k) Hacer cumplir las decisiones orgánicas emanadas por el Concejo de Gobierno del Suyu, Concejo de Autoridades Originarias y los Cabildos de las Markas.

l) Informar a las Markas de las resoluciones adoptadas en las instancias superiores en forma transparente.

m) Ser actor principal del proceso del Saneamiento de tierras Comunitarias de Origen y defensa de su territorio.

n) Asumir las competencias de definición de políticas de desarrollo del Suyu, conforme la Constitución Política del Estado.

o) Promover e implementar las autonomías indígena originario campesino, de acuerdo a su jurisdicción en el marco de la Constitución Política del Estatuto y la Ley Marco de Autonomías y Descentralización.

p) Representar al Suyu ante el CONAMAQ, Estado Plurinacional y todas las instancias que amerite tanto a nivel nacional e internacional.

**Artículo 38. (Requisitos para consagrarse Mallku de Concejo del CONAMAQ).-** La Nación Originaria del Suyu Jach'a Karangas tiene su representación en el Concejo Nacional de Ayllus y Markas del Qullasuyu – CONAMAQ–B el mismo recae en la Autoridad Ancestral Originaria Dual (Chacha – Warmi) Tata Mallku y Mama T'alla representados por las parcialidades Urinsaya – Aransaya. Los requisitos para ser consagrado Mallku y T'alla al CONAMAQ–B están establecidos en el Estatuto Orgánico del CONAMAQ–B, asimismo deberán cumplir los siguientes requisitos:

a) Estado civil casado (chacha-warmi).

b) Previamente haber ejercido el cargo de acuerdo al Artículo 22, 26, 32, 34 y 36 del presente Estatuto Orgánico.

c) Haber cumplido todos los cargos inferiores al que asume – "Sara Thaki".



d) Tener aval orgánico de Ayllu, Marka y parcialidad de Suyu.

e) No tener responsabilidades económicas pendientes en el Ayllu, Marka al que pertenece.

f) Tener un alto grado de vocación de servicio al Ayllu, Marka y Suyu.

g) Tener pleno conocimiento de las políticas de reivindicación de los Pueblos Originarias.

h) La edad para el cargo de Apu Mallku estará sujeto de acuerdo al cumplimiento del Sarat'aquí de las Markas.

i) No ser militante de un partido político, durante el desempeño del cargo.

j) No tener antecedentes de inmoralidad en el Ayllu y la Marka al que pertenece.

k) No estar ejerciendo cargos por designación partidaria.

l) No pertenecer a organizaciones que van en contra de los pueblos indígenas originarias.

**Artículo 39.-** Competencias de los Apu Mallkus y Apu Thallas

a) Cumplir y hacer cumplir el estatuto orgánico del CONAMAQ-B y el Estatuto del Concejo Occidental del Ayllu Jach'a Karangas.

b) Realizar la Muyt'a por las Marka por lo menos una vez durante su gestión.

c) Representar al Suyu ante otras instancias de gobierno nacional y subnacionales e instituciones externas e indígenas originarias de tierras Altas y Bajas.

d) Asistir al Concejo de Gobierno del Suyu y Tantachawis de la Nación Originaria.

e) Programar y planificar, políticas sociales, Económicas y culturales.

f) Participar del Concejo de Gobierno Territorial de los Cuatro Suyus en el Departamento de Oruro.

g) Gestionar convenios con instituciones Gubernamentales, ONGs., para el beneficio de las 13 Markas, con consentimiento del Concejo de Gobierno.

h) Participar en la elaboración del PND del departamento y delegar control social ante las instancias públicas locales Nacionales.

i) Solucionar conflictos sociales y territoriales en la jurisdicción del Qullasuyu.

j) Hacer cumplir las decisiones orgánicas emanadas por el CONAMAQ-B.

k) Informar al Suyu Jach'a Karangas de las resoluciones adoptadas en las instancias superiores en forma transparente.

l) Asumir las competencias de definición de políticas de desarrollo del Suyu, conforme la Constitución Política del Estado.

m) Representar al Suyu ante Estado Plurinacional y todas las instancias que amerite tanto a nivel nacional e internacional.

n) Promover e implementar las autonomías indígena originario campesino, de acuerdo a su jurisdicción en el marco de la Constitución Política del Estatuto y la Ley Marco de Autonomías y Descentralización.

**Artículo 40.-** Requisitos para consagrarse Amawta del Suyu Jach'a Karangas. El Amawta es el sabio de la Nación Originaria Suyu Jach'a Karnagas, el ejercicio del mismo es desde su consagración y de manera indefinida.

a) Haber ejercido con todos los cargos de la estructura orgánica del Suyu Jach'a Karangas.

b) Haber ejercido cargos en el Concejo Nacional de Ayllus y Markas del Qullasuyu CONAMAQ-B.

c) Persona íntegra con altos niveles de formación dentro la cosmovisión y filosofía originaria.



d) Ser pasiri de autoridad originaria.

e) Tener conocimiento profundo de los conocimientos ancestrales.

f) Tener conocimiento profundo de las estructuras y políticas económicas, culturales, políticas y sociales.

g) Tener un conocimiento de la realidad económica, política, social de la región, departamento y el país.

h) Conocer los derechos de los pueblos indígenas originarios y campesinos.

i) Haberse destacado en el ejercicio de autoridad llegando a tener reconocimiento.

j) Que no tenga filiación político ni partidaria.

k) Propuesto por su Marka o ayllu.

l) No tener juicios en su contra ni tener antecedentes penales.

m) Reconocida experiencia y compromiso con el Suyu.

**Artículo 41.-** Competencias de los Amawtas

a) Cumplir y hacer cumplir el estatuto orgánico de Suyu Jach´a Karangas.

b) Asesorar en el ámbito religioso, espiritual, legislativo, administrativo y ejecutivo a los Apu Mallkus Apu T'allas, Mallkus –T'allas de las Markas y Awatiris de los Ayllus y Comunidades.

c) Cumplir las funciones establecidas en el reglamento.

d) Promover e implementar las autonomías indígena originario campesino, de acuerdo a su jurisdicción en el marco de la Constitución Política del Estatuto y la Ley Marco de Autonomías y Descentralización.

## CAPÍTULO III

## INSTANCIAS DE DECISIÓN Y CONCERTACIÓN DE SUYU JACH'A KARANGAS

**Artículo 42. (Órganos del Gobierno).-** La estructura del Gobierno de la Nación Originaria de Jach'a Karangas está conformado de la siguiente manera:

- Tantachawinka - Órgano de Decisión comunitaria.
- Amuyt'irinaka - Órgano Legislativo.
- Jilirinaka - Órgano Ejecutivo.

**Artículo 43. (Tatachawinaka - Órgano de Decisión comunitaria).-** Tantachawinaka es una instancia de decisión comunitaria que es la máxima instancia de decisión del Gobierno de la Nación Originaria Autónomo Jach'a Karangas y se conforma por tres Asambleas de acuerdo al siguiente orden ascendente:

- Mara Tantachawi (Asamblea anual)
- Jisk'a Tantachawi (Asamblea anual)
- Concejo de mallkus (Asamblea mensual)
- Marka Tantachawi (Asamblea en las Markas)
- Ayllu tantachawi (Asamblea en los Ayllus)
- Tantachawi de comunidad (Asambleas en las Comunidades)

Las decisiones emanadas en las diferentes instancias de decisión son de cumplimiento obligatoria para los Órganos de la Nación Originaria de Jach'a Karangas; concejo de amawtas e Instancias de Apoyo técnico, logístico y político (Órgano Legislativo) y el Apu Mallkus, Thallas y autoridades originarias de las Markas Ayllus y comunidades (Órgano Ejecutivo) de acuerdo a sus atribuciones.

El Mara Tantachawi de manera directa y comunitaria ejerce su función en forma ascendente en sus tres instancias de toma de decisiones de gestión pública, referidas ellas a los planes, programas y proyectos en el marco de sus atribuciones, ejerciendo los mecanismos de fiscalización, control y evaluación, promoviendo acciones y sanciones a quienes quebranten el presente estatuto orgánico. Estos espacios de participación son de carácter público y participativo.



**Artículo 44. (El gobierno del Suyu).-** El Gobierno de la Nación Originaria Aymara de Jach'a Karangas recae en la autoridad ancestral originaria dual (Chacha -- Warmi) Apu Mallku y Apu T'halla de las parcialidades Urinsaya y Aransaya, concejo de gobierno acompañado de Mallkus de Concejo, Mallkus y T'hallas de las Markas según la jerarquía conformado por el Concejo de Gobierno de la Nación Originaria.

**Artículo 45. (El Gobierno de la Marka).-** Son máximas autoridades de la entidad socio espacial territorial el Mallku – T'halla de Concejo; Mallku – T'halla de Marka y conformado por Awatiris y Mama Awatiris de los Ayllus según la jerarquía establecida ancestralmente, cuyo accionar está sujeto a las decisiones de los Tantachawis, cabildos de la Marka.

**Artículo 46. (Autoridades del Ayllu).-** Son autoridades del Ayllu el gobierno dual de Tata Tamani – Mama Thamani, y conformado por Sullca Tamanis de las comunidades como instancias orgánicas de gestión y control social, cuyo accionar obedece a las decisiones de los cabildos del Ayllu y de las comunidades.

**Artículo 47. (Autoridades de la Comunidad).-** Los Sullca Tata y Mama Tamanis-Awatiris son autoridades máximas de las comunidades o sapsis: y son elegidos de acuerdo a normas y procedimientos propios.

**Artículo 48.** Quedan eliminados las denominaciones de autoridades con nombres coloniales como corregidores titulares, corregidores cantonales, corregidores auxiliares, agentes cantonales y otros de origen colonial.

**Artículo 49. (Amuyt'irinaka - Concejo Supremo de Amautas).-** El concejo de Amawtas es la autoridad cuyo accionar es el asesoramiento a los Apu Mallkus Apu T'allas, Mallkus – T'allas de las Markas, Awatiris de los Ayllus, cuya función es orientar la gestión de Gobierno Originario, velando por el cumplimiento de las normas y procedimientos propios en las diferentes instancias del gobierno originario para un accionar integral del gobierno originario, se constituye el Concejo de Amautas en las siguientes instancias: Ritual, Educación, Político, Social y Económico.

Así mismo tienen la función de proponer modificaciones, e interpretar el presente Estatuto Orgánico, al Reglamento y las normas y procedimientos de las Markas en cuanto a conflictos en su interpretación y aplicación.

**Artículo 50. (Instancias de gobernabilidad y decisiones políticas).-** Las instancias de gobernabilidad y toma de decisiones en los 3 niveles organizativos de la estructura orgánica de Jach'a Karangas son de la siguiente manera:

| SUYU | MARKA | AYLLU | COMUNIDAD |
|---|---|---|---|
| Jach'a Mara Tantachawi | Thantachawi de Marka anual | Asambleas anuales | Asambleas anuales |
| Jisk'a Mara Tantachawi | Cabildos mensuales | Asambleas mensuales | Asambleas mensuales |
| Concejo de Gobierno de la Nación de Jach'a Karangas | | Asambleas quincenales | Asambleas quincenales |

**Artículo 51.-** El gobierno de la Nación Originaria Suyu Jach'a Karangas, asume como forma de gobierno el sistema político integral del Sara Thaqui ancestral, sobre la base del derecho a la libre determinación y autogobierno, expresada en las formas de elección propia, en el ejercicio dual, rotación del cargo según corresponde, ejercer la responsabilidad de autoridad en la comunidad, Ayllu, Marka y Suyu, que rige de acuerdo a normas, mecanismos y procedimientos propios. Autoridades que tienen atribuciones y funciones de decisión en diferente ámbitos: Legislativas, ejecutivas, administración de justicia originaria, Participación y Control Social.

**Artículo 52. (Amuyt'irinaka - Instancias de asesoramiento y orientación).-** Esta compuesta por el Concejo de Amautas:

- Pasiris Apu Mallkus – Apu T'hallas
- Pasiris Mallkus – T'hallas
- Pasiris Tata Awatiris- Mama Awatiri
- Comunarios y comunarias lideres con profundo conocimiento de saberes ancestrales.



**Artículo 53. ( Amuyt'irinaka - Instancias de Apoyo técnico, logístico y político).-** Compuesta por diferentes representantes del territorio y las instituciones que trabajan en el mismo.

- Técnicos individuales y de instituciones públicas y privadas (ONGs)
- Investigadores, líderes y líderesas dedicados en la investigación de saberes ancestrales de los pueblos originarios.
- Jóvenes de los Ayllus identificados con la causa de los pueblos originarios.
- Jóvenes de los Ayllus comprometidos con la lucha por la causa de los pueblos originarios.
- Profesionales, técnicos identificados y comprometidos con las reivindicaciones de los pueblos originarios.

## CAPÍTULO IV

## BASES IDEOLÓGICAS Y CULTURALES DE JACH'A KARANGAS

**Artículo 54. (Religiosidad y Espiritualidad).-** El Concejo de autoridades originarias de Jach'a Karangas se basa en el pensamiento filosófico aymara que emana del universo (Araxpacha) de la constelación del sur, de la vía láctea, de la Pacha Mama y se fundamenta en la libre determinación, autogobierno y la autonomía plena de los pueblos originarios.

| RELIGIOSIDAD Y ESPIRITUALIDAD | | |
|---|---|---|
| **Araxa Pacha** | **Aka pacha (Deidades)** | **Antepasados** |
| • Tata Inti Willka<br>• Phaxi mama<br>• Jacha Qana<br>• Wara Waranaka<br>• Muru Qarwa<br>• Qutu<br>• Apachiururi<br>• Qhantatiururi<br>• Qarwakunka<br>• Qarwanayra<br>• Chakana | • Illa<br>• Wak'as<br>• Samiri<br>• Uywiri<br>• La wiphala blanca<br>• Chiwiqallu<br>• Kunturi Mallku<br>• Wari<br>• Allpachu<br>• Titi<br>• Achachila<br>• Awicha<br>• Tata willka<br>• Phaxi mama | • Marka alamanaka<br>• Ayllu almanaka<br>• Jacha almanaka<br>• Jiska almanaka<br>• Juntu almanaka<br>• Achachila almanaka<br>• Chantalanaka alamanaka<br>• Chammala alamanaka<br>• Wawa almanaka |
| **Símbolos emanadores de energía espiritual** | **Símbolos de territorialidad** | **Símbolos de productividad** |
| • Apachetas<br>• Wak'aqala<br>• Sajama<br>• Samiri<br>• Tata Sabaya | • Sapsi<br>• Ayllu<br>• Urinsaya – Aransaya<br>• Marka<br>• Urinsaya . Aransaya<br>• Suyu<br>• Liquina<br>• Taypi | • Illa<br>• Wak'as<br>• Samiri<br>• Uywiri |



| Símbolo de Manqa Pacha |
|---|
| • Katari<br>• Asiru<br>• Jampatu |

**Artículo 55. (Intraculturalidad e Interculturalidad).-** El Concejo de autoridades originarias de Jach'a Karangasgarantiza la libertad de pensamiento, religión y de creencias espirituales, ideologías, creencias de acuerdo a lo establecido por la Constitución Política del Estado Plurinacional y nuestros procedimientos propios en el marco de fortalecer la intraculturalidad y la interculturalidad con otras personas y culturas.

**Artículo 56. (Idiomas oficiales del Suyu).-** El idioma ancestral y oficial de la Nación Originaria Suyu Jach'a Karangas es el Aymara, siendo nuestro idioma ancestral, así como el quechua, UruChipaya, que gozan de respeto, protección y enseñanza, además del castellano como idioma oficial del Estado Plurinacional. Se desarrollara políticas para la protección de los idiomas aymara, Uru Chipaya y Quechua, promoviendo su uso, difusión en los medios de comunicación y su enseñanza, obligatoria en el sistema escolar, los documentos y actos oficiales en las entidades públicas y privadas de la administración autonómica de Jach'a Karangas serán redactados, celebrados y publicados en idiomas oficiales del Suyu.

**Artículo 57. (De los Símbolos).-** La simbología en el contexto de la Nación Originaria Aymara Suyu Jach'a Karangas, corresponde a los tres niveles de la vida como: Los símbolos que son manejados y se identifican en los diferentes niveles de cosmovisión y son reconocidos en el contexto de la Nación Originaria Suyu Jach'a Karangas y son los siguientes:

| Araxa Pacha (Cosmología) | Aka Pacha (cosmogonía) | Símbolos de productividad |
|---|---|---|
| • Qutu<br>• Apachiururi<br>• Qhantatiururi<br>• Qarwakunka<br>• Qarwanayra<br>• Chakana | • Kunturi Mallku<br>• Wari<br>• Allpachu<br>• Titi<br>• Achachila<br>• Awicha<br>• Tata willka<br>• Phaxi mama | • Illa<br>• Wak'as<br>• Samiri<br>• Uywiri<br>• La wiphala blanca<br>• Chiwiqallu |

| Símbolos emanadores de energía espiritual | Símbolos de territorialidad | Símbolos de productividad |
|---|---|---|
| • Apachetas<br>• Wak'aqala<br>• Sajama<br>• Samiri<br>• Tata Sabaya | • Sapsi<br>• Ayllu<br>• Urinsaya – Aransaya<br>• Marka<br>• Urinsaya – Aransaya<br>• Suyu<br>• Liquina<br>• Taypi | • Illa<br>• Wak'as<br>• Samiri<br>• Uywiri |
| **Símbolo de Manqa Pacha** | | |
| • Katari<br>• Asiru<br>• Jampatu | | |



## CAPÍTULO V

## DEL PATRIMONIO TANGIBLE E INTANGIBLE

**Artículo 58. (Del patrimonio).-** El presente estatuto orgánico reconoce como patrimonio las siguientes:

- El patrimonio sociocultural es la población de la Nación Originaria Jach'a Karangas, que constituyen el fundamento de la vida comunitaria.

- El Jaqi es la persona que se matrimonia y se convierte en Chacha-Warmi de la comunidad, del Ayllu, Marka, es la riqueza patrimonial fundamental y vital de la Nación Originaria.

El patrimonio intangible de Jach'a Karangas es el siguiente

- La Cosmovisión Originaria
- Mitos
- Leyendas
- Cuentos
- Canciones
- Saberes ancestrales
- Celebraciones culturales
- Celebraciones rituales
- La memoria oral de nuestros antepasados
- La propiedad intelectual colectiva de sus saberes
- Conocimientos ancestrales
- Composiciones propias de los Ayllus, Markas.
- Cantos y danzas ancestrales
- Los procedimientos propios (usos y costumbres) de las comunidades son patrimonio intangible de nuestra cultura.

El patrimonio tangible de Jach'a Karangas es el siguiente:

| NATURAL | HISTÓRICO | RITUAL | CULTURAL |
|---|---|---|---|
| La biodiversidad | Sitios, arqueológicos | Sitios sagrados: | Instrumentos musicales de jallu pacha. |

| | | | |
|---|---|---|---|
| El territorio y los recursos naturales<br><br>Tierra Territorio, que comprende el Alax Pacha, Aka Pacha y Mankha Pacha.<br><br>la genética vegetal y animal en sus diversas especies.<br><br>Recursos Naturales Renovable y no Renovable-m.<br><br>La diversidad y variedad de Flora y fauna La medicina ancestral | Arte, textil<br><br>Tecnología ancestral<br><br>Sitios arqueológicos<br><br>Sitios sagrados: Chullpares<br><br>Jilaratas de las comunidades, ayllu, markas y del Suyu<br><br>Documentaciones y archivos históricos<br><br>Construcciones pre coloniales y coloniales Caminos pre coloniales y coloniales<br><br>Cuadros y pinturas.<br><br>Quillas, terrazas precolombinas.<br><br>Sitios paleontológicas<br><br>Saberes y conocimientos ancestrales. | Marka Qullus, Pucaras, Illas y fuentes sagradas de aguas.<br><br>Apachetas.<br><br>Centros Arqueológicos.<br><br>Los centros ceremoniales.<br><br>Simbología que identifica a las autoridades originarias. | Instrumentos musicales de awti pacha.<br><br>La indumentaria de las Autoridades Originarias.<br><br>Tejidos multicolores propios de las Markas.<br><br>Cuadros y pinturas.<br><br>La música y la variedad de tonadas de los ayllus y Markas.<br><br>La diversidad de instrumentos musicales de jallu y awtipacha. |



## CAPÍTULO VI

## DESARROLLO Y GESTIÓN TERRITORIAL EN SUYU JACH'A KARANGAS

**Artículo 59. (La tierra).-** La tierra en su macro significado es el recurso natural del planeta para el desarrollo de la vida humana y vegetal, por su tamaño, su distancia al sol, su heliósfera, su atmósfera, hidrosfera y por el ritmo de sus movimientos dentro del sistema planetario solar cósmica.

- En su Micro significado los pueblos del planeta han tenido su solar nativo llamado tierra y territorio.
- La Marka y los ayllus están situados dentro del gran territorio ancestral Qullana; ya que el convenio 169 de la OIT (Organización Internacional del Trabajo) reconoce los territorios de los pueblos indígenas originarias.

**Artículo 60. (Territorio).-** El territorio es un espacio infinito del planeta tierra. En el concepto espacial comprende el MANQHAPACHA (subsuelo magmático), el AKAPACHA (Suelo terrestre), ALAXPACHA (el cielo) DE LA NACIÓN AYMARA. El Territorio se extiende juntamente con el pueblo que lo habita y el Territorio de Jach'a Karangas, es nuestro solar privado dentro del espacio colectivo de la tierra. La tierra y el territorio forman el regazo de la Pachamama del pueblo Aymara.

**Artículo 61. (Valor de la Tierra).-** El territorio de Jach'a Karangas, tiene VALOR pero no tiene PRECIO. Tiene un valor histórico y sentimental, por lo tanto es inalienable, irreversible, inembargable, imprescriptible e inexpropiable, es la mayor estima que el pueblo Aymara tributa a la tierra y el territorio. Los Ayllus y Markas han sido usurpados por el gamonalismo de la república. Inclusive después de la Revolución del 52, ha sido minifundizada para cada familia, saqueados sus recursos no renovables por empresas transnacionales.

**Artículo 62. (Administración de la tierra).-** Las autoridades de Jach'a Karangas deberán administrar la política territorial de todas sus ayllus y comunidades originarias, basada en el respeto filial a la Pachamama y a los Achachilas y normas comunales no puede pasar ningún problema a los juzgados sin el conocimiento de las autoridades originarias del concejo y de las

Markas y de los Ayllus. El uso y acceso a la tierra deberá hacerse de manera planificada con una buena gestión territorial para el buen aprovechamiento de los recursos naturales.

**Artículo 63. (Enajenación, Expropiación y Concesión).-** Por la filosofía de la naturaleza, la tierra es la Pachamama, por tanto: No es objeto de compra y venta de carácter lucrativo, ninguna persona deberá establecer un negocio lucrativo sobre la base de la tierra, tampoco se permite la usurpación de tierras de la Sayaña familiar; en caso de venta la prioridad deberán ser familiares, personas del mismo Ayllu originario. Los Mallkus deben hacer control social de la venta de los recursos naturales tanto a empresas privadas y públicas.

**Artículo 64.-** Cada Ayllu en función de sus usos y costumbres decidirá como usufructuar. No se permiten las concesiones que realiza el Estado a manos de los empresarios pequeños y grandes sin el consenso del concejo y de las Markas y los Ayllus Originarios.

**Artículo 65.-** Se debe realizar gestiones para que las fábricas que contaminan el medio ambiente tributen en los Municipios y a los Ayllus originarios previa autorización de las autoridades originarias, para que este pueda preservar mejor el medio ambiente. A las empresas que contaminan se exigirá certificación de salud ambiental, en caso que omitan estas normativas se procederá a la expulsión como manda las leyes.

**Artículo 66. (Ley de la herencia).-** No hay tierra para distribuir ni para vender; por sucesión generacional se la hereda a los hijos e hijas. Los hijos varones y mujeres tienen el mismo derecho a la herencia, siempre que cumplan la función social de acuerdo a las normas de los ayllus (usos y costumbres) y no hayan despreciado, renunciado, abandonado ni haberse cambiado el apellido de sus progenitores. Peor si tiene la intención de enajenar la sayaña en manos de personas que no conocen ni honran la memoria ancestral aymara.

**Artículo 67. (Extinción).-** En el caso de extinguirse la familia y no haber heredado, el traspaso se hace a favor de parientes colaterales más cercanos que hayan respetado y honrado a los heredantes con previa consulta a las autoridades originarias y comunarios.

**Artículo 68. (Sayaña).-** Las autoridades originarias, deben hacer respetar que la saya es la propiedad originaria y familiar dentro del territorio de los Ayllus; es el domicilio inviolable de la familia aymara.



**Artículo 69. (Sayaña abandonada u otros casos).-** Ante el abandono de la Sayaña por familias que migran hacia los centros urbanos y a otras partes. Las Autoridades de las Markas y los Ayllus Originarios, deben concertar soluciones a conflictos, migraciones, permisos, muertes, etc.

**Artículo 70. (Jawira – río).-** Son las corrientes de agua que pasan por las comunidades y son de propiedad colectiva, ellas conservan la vida de las aves, de los peces, regeneran el pasto acuático que beneficia la alimentación animal. Por otro lado, los ríos son considerados bajo la obligación y lucha en contra de la contaminación, debiendo realizar acuerdos entre municipios y comunidades afectadas. Nadie puede apropiarse o privar de este recurso natural a otros comunarios. El agua que corre es la propiedad comunal, nadie tienen derecho de privarle a nadie.

**Artículo 71. (Thakhi – Camino).-** Es la vía de comunicación terrestre: La tradición del Thakhi viene del ancestro Qullana, porque la circulación humana y animal es un derecho. Por tanto se tiene que mejorar constantemente con el objetivo de evitar el pisoteo de la parcela cultivada. El desmembramiento del ancho de las vías será castigado por los Mallkus, debiendo mantener en los caminos de herradura. Por ningún motivo podrán caminar por los sembradíos – pástales con o sin animales.

**Artículo 72. (Daños).-** Los caminos carreteros que también pasan por la comunidades, levantando polvo, causando la contaminación ambiental; además en algunos lugares causa inundación por falta de drenajes o puentes. Las autoridades originarias tendrán que presentar a los gobiernos locales y departamentales y empresas que trabajan en las Markas que causen daño a los comunarios, para que indemnicen a los afectados cuando el daño es mayor y constante.

**Artículo 73. (Desarrollo Rural Integral Sostenible).-** Las autoridades originarias en coordinación con las autoridades públicas deben impulsar el desarrollo rural integral sostenible (económico, cultural, social, ambiental, organizativo y político) en Jach'a Karangas en función del aprovechamiento de las potencialidades económicas de las comunidades, promoviendo una gestión territorial y aprovechamiento adecuado de los recursos naturales en las comunidades, Ayllus y Markas.

**Artículo 74. (Agricultura).-** Los gobiernos locales deben gestionar el seguro agrícola para los productores del municipio y debe fomentar el apoyo mediante

planes, programas y proyectos para la agricultura con una producción agroecológica. Las autoridades originarias deben controlar la rotación de tierras con el apoyo técnico de las instituciones públicas y privadas pero combinadas con los conocimientos ancestrales del pueblo aymara. También se debe cumplir con el calendario agrícola para la buena gestión del territorio en coordinación con las autoridades originarias y productores de las comunidades.

**Artículo 75. (Ganadería).-** Las autoridades originarias en coordinación con el gobierno departamental y local deben fortalecer el manejo del ganado camélido, ovino y vacuno en función de las potencialidades de cada comunidad y cada Ayllu impulsando la implementación de infraestructura productiva, alimentación y aprovechamiento del agua para el mejoramiento del ganado.

**Artículo 76. (Transformación y comercialización de productos).-** En función de las potencialidades económicas se debe impulsar la transformación de productos como el charque de llama y apoyo en la comercialización de los productos mediante la creación de asociaciones de productores. Así mismo se debe gestionar presupuestos del POA municipal y departamental para fortalecer a las asociaciones de productores y gestionar la asistencia técnica de las instituciones públicas y privadas.

**Artículo 77. (Gestión del Agua).-** El agua es líquida de vital importancia donde debe ser para todos los seres vivientes, utilizando en la salud de los humanos, animales, plantas, en riego energía y transporte automotor, se regirá bajo los siguientes puntos:

- Conservar las fuentes, vertientes de agua en todo el territorio de Jach'a Karangas.
- Construir muros de contención, represa, amurallado para depósito de agua y luego emplear para el consumo humano, micro riego y consumo de los animales donde, la gestión sea democrática y comunal.
- Promover perforación de pozos subterráneos para las comunidades que no tienen agua bajo realización de convenios con el gobierno municipal, gobernación y gobierno central y las instituciones privadas.
- Exigir el cumplimiento de la Ley 2821 de 27 de agosto de 2004, que tiene por objeto el aprovechamiento de energía eólica y solar para la extracción de agua subterránea destinada a micro riego en lugares predeterminados.



- Promover juntamente con instituciones públicas y privadas la instalación de agua potable domiciliaria en todas las comunidades.
- El agua debe ser administrada por las autoridades originarias con derecho consuetudinario de acuerdo a usos y costumbres. Los ojos y vertientes de agua no deben ser atajados por los comunarios puesto que es un derecho universal el consumo de agua y su aprovechamiento colectivo.
- No se debe permitir la apropiación privada del recurso agua menos por personas públicas y privadas externos a la comunidad, ya que el agua es un bien social comunitario y la gestión debe realizarse de manera comunal.
- Participar en la elaboración de la ley de aguas en cualquier instancia estatal para que la misma sea a favor de los productores y el campesinado en su conjunto. Hacer derogar las leyes, decretos y rechazo de propuestas que no están a favor de los ayllus originarios.
- Evitar de toda contaminación de agua, de fábricas, cooperativas mineras y ciudades, en caso que hubiera que recurrir a las normas para su respectivo proceso legal correspondiente en coordinación de autoridades de medio ambiente.
- Promover la construcción de represas, atajados y aljibes para el consumo humano y animal en las comunidades.
- Impulsar la ejecución del POA municipal y de los PDMs en donde ya se cuenta con planes, programas y proyectos sobre la gestión del agua en los municipios.

**Artículo 78. (Objetivos de la Gestión Territorial).-** El concejo de autoridades originarias de Jach'a Karangas tiene como objetivo, resguardar límites del territorio , de la Sayaña, del Ayllu, Marka y Suyu. Se debe fomentar la gestión del territorio en base a un manejo adecuado de los recursos naturales, además se debe cumplir con la función ritual, social, cultural, productiva y ambiental en los Ayllus, Markas en la jurisdicción de su territorio, para su conservación y manejo sustentable, en condiciones equitativas entre mujeres y hombres.

Para tal efecto se debe llevar adelante una actualización de datos de empadronamiento de los titulares Sayañeros de los Ayllus y Markas de todo el territorio del Suyu Jach'a Karangas cada 10 años, debiendo realizarse el mismo de forma obligatoria, como también tienen las Autoridades Originarias la potestad de realizar su saneamiento interno de acuerdo al Art. 3 de la ley 1715, una vez que su territorio sea saneado en la modalidad de TCOs. o TIOCs.

**Artículo 79. (Ocupación del territorio).-** El concejo de autoridades originarias de Jach'a Karangas apoya los asentamientos comunales en los Ayllus, Markas, respetando derechos propietarios comunales, familiares. El concejo de autoridades originarias de Jach'a Karangas resguarda la delimitación de la espacialidad del Ayllu, Marka de acuerdo a los territorios ancestrales, impulsando la vocación productiva agrogadera, turística y actividades económicas.

**Artículo 80. (Ordenamiento territorial y uso del suelo).-** El concejo de autoridades originarias de Jach´ a Karangas diseña y ejecuta, en el marco de la Política General de Uso de Suelo, el Plan de Uso de Suelos de la Entidad Territorial en coordinación con instancias departamentales y estatales, conforme sus competencias. Cada posición del territorio, familiar, comunal deberá presentar planes de manejo integral de la sayaña, debidamente aprobado, conforme a ley.

**Artículo 81. (Creación de nuevos Ayllus y Markas).-** El concejo de autoridades originarias de Jach'a Karangas dispondrá la creación de nuevos Ayllus y Markas mediante un acta de concertación y decisión de las autoridades originarías que lo soliciten previa justificación documentada y con ciertos criterios legales y coherentes como es el criterio de población, territorio, estructura orgánica y otros.



## CAPÍTULO VII

## PARTICIPACIÓN Y CONTROL SOCIAL

**Artículo 82. (Participación).-** El concejo de autoridades originarias de Jach'a Karangas deberá promover la participación equitativa de hombres, mujeres y jóvenes en los espacios de concertación y toma de decisiones de las comunidades, Ayllus y Markas, además de fomentar la participación en instancias públicas y comisiones circunstanciales para una buena gestión en beneficio de las comunidades.

**Artículo 83. (Control social).-** El concejo de autoridades originarias de Jach'a Karangas realizara el control social en base a lo establecido en la CPE en los artículos 241 y 242 y la Ley de Participación y Control Social Nro. 341 que establece que el control social es un derecho constitucional de carácter participativo y exigible, mediante el cual todo actor social supervisará y evaluará la ejecución de la Gestión Estatal, el manejo apropiado de los recursos económicos, materiales, humanos, naturales y la calidad de los servicios públicos y servicios básicos, para la autorregulación del orden social."

## CAPÍTULO VIII

## DISPOSICIONES GENERALES DE SUYU JACH'A KARANGAS

**Artículo 84. (Disposición primera).-** El concejo de autoridades originarias de Jach´a Karangas dispone que el estatuto orgánico y reglamento interno son normas internas elaboradas de forma participativa y legitimadas en la máxima instancia del gobierno originario de Jach'a Karangas, por lo tanto se debe dar cumplimiento estricto a estas normas internas que fueron elaboradas en base a la normativa nacional y nuestros procedimientos propios.

**Artículo 85. (Disposición segunda).** El concejo de autoridades originarias de Jach'a Karangas dispone que toda modificación y ajuste al estatuto orgánico y reglamento interno se lo realizara en la máxima instancia de organización de autoridades originarías de Jach'a Karangas (mara tantachawi y/o cabildo ordinario) en donde deben participar más del 50% de participantes para que puedan modificar y ajustar estas normativas internas.



# Reglamento Interno Concejo Occidental de Ayllus Jach'a Karangas

## Nación Originaria Suyu Jach'a Karangas

## CONTENIDO



## CAPÍTULO I

## GENERALIDADES

**Artículo 1. (Reglamento interno).-** El presente Reglamento Interno, complementa al Estatuto Orgánico de Jach'a Karangas, que constituye el instrumento legal que permitirá el cumplimiento de normas basadas en faltas y sanciones.

**Artículo 2. (De la vigencia y cumplimiento).-** El presente Reglamento Interno entrara en vigencia a partir de su aprobación por el Jach'a Tantachawi y estarán obligados a su fiel cumplimiento todos las y los comunarios y comunarias de Jach'a Karangas sin excepción alguna en forma indefinida.

**Artículo 3. (De su modificación).-** De ser necesario, el presente reglamento interno, será modificado parcial o totalmente cumpliendo los requisitos que exige el Estatuto Orgánico.

**Artículo 4. (Interpretación).-** Si existen problemas de interpretación del presente Reglamento Interno quien define es el concejo de autoridades originarias de Jach'a Karangas a través de una Resolución en el concejo de gobierno mensual, para su inclusión y modificación del Reglamento Interno.

**Artículo 5. (Conocimiento obligatorio).-** Ninguna autoridad originaria de Jach'a Karangas u otra comunario, puede argumentar el desconocimiento de las normas del presente Reglamento Interno, el cumplimiento del presente instrumento legal es obligatorio.

**Artículo 6. (Objetivo).-** El objetivo del reglamento interno es regular el funcionamiento de la organización originaría y cumplimiento de los roles y funciones de las autoridades originarias y todas las bases de las Markas y los Ayllus originarios.

## CAPÍTULO II

## REUNIONES Y ASAMBLEAS

**Artículo 7. (Reuniones del Concejo de Gobierno).-** Las reuniones del concejo de autoridades originarias de Jach'a Karangas se realizara mensualmente (cada primer viernes de cada mes) en la sede ubicada en la ciudad de Oruro, para planificar, hacer seguimiento y evaluación de trabajo y cronograma de trabajos con diferentes organizaciones originarías y sociales e instituciones públicas y privadas.

**Artículo 8. (Atribuciones y quorum del Concejo de Gobierno).-** Cumplir y legislar sobre todas las materias de competencia exclusiva del Suyu, de acuerdo a la Constitución Política del Estado, las leyes vigentes y el presente estatuto orgánico.

a) El concejo de autoridades originarias sesionará con un quórum mínimo de la mitad más uno de sus miembros y adoptará sus resoluciones por consenso de las autoridades presentes excepto los casos expresamente establecidos por la presente norma interna.

b) Es atribución del concejo de autoridades originarias, proponer y presentar normas, ante los Apu Mallkus del Suyu, atribución que podrá ser ejercida también por las autoridades originarias de las Markas y Ayllus.

c) Dictaminar sobre la conveniencia y necesidad de gestionar proyectos para los Ayllus, Marka y el Suyu, créditos conforme a las disposiciones legales vigentes.

d) Dictaminar sobre la suscripción de acuerdos y/o convenios con fundaciones, ONGs, Instituciones públicas y privadas, con gobiernos locales de otros Suyus de interés comunitario para el Suyu.

e) Salvaguardar e inventariar y llevar un registro del patrimonio tangible e intangible de los Ayllus, Markas y el Suyu Jach'a Karangas para un buen manejo transparente en la organización.

f) Promover la participación y control social comunitario con participación de las autoridades originarias de las Markas, Ayllus y Comunidades.



g) Preservar y proteger el medio ambiente de acuerdo a los saberes y conocimientos ancestrales, dentro del marco constitucional vigente.

h) Promover la capacitación y formación de líderes hombres, mujeres y jóvenes del Suyu Jach'a Karangas.

i) Impulsar proyectos de adaptación y mitigación del medio ambiente en los Ayllus, Markas y el Suyu Jach'a Karangas.

j) Promover propuestas y políticas públicas a favor de las comunidades originarias en temas estratégicos como el medio ambiente, desarrollo rural producción agroecológica, genero, recursos naturales, autonomías, etc.

k) Hacer cumplir el derecho a la consulta previa e informada en concordancia con las normas del Estado Plurinacional, sobre temas relativos a los pueblos originarios.

l) Promover la inventariación y registro de los recursos naturales del Suyu Jach'a Karangas.

**Artículo 9. (De las sesiones y asambleas - tantachawis).-** Las sesiones podrán ser:

**a) Ordinarias:** por el tiempo de trabajo fijado por el Concejo de autoridades originarias y bajo un orden y cronograma establecido el mismo se llevara cada mes.

**b) Extraordinarias:** Cuando sea estrictamente necesario a convocatoria de los Apu Mallkus del Suyu, mediante una convocatoria de por lo menos de 24 horas de anticipación, donde se contemplará el contenido del temario a ser desarrollado, fecha y hora.

**Artículo 10.- (Comisiones del concejo de autoridades originarias).-** Para un trabajo efectivo y operativización del Concejo de autoridades originarias se deberá realizar de manera anual un plan o agenda estratégica de trabajo, así mismo se deberá conformar diferentes comisiones para una buena gestión organizativa:

a) Orgánica y Política

b) Organización Territorial y Autonomía Indígena Originaria Campesina.
c) Justicia Plural y Justicia Indígena Originaria Campesina.
d) Desarrollo Social (Género, Generacional, Educación, Salud y Deportes).
e) Planificación y Desarrollo Económico Rural y Productivo.
f) Tierra y Territorio Recursos Naturales y Medio Ambiente.
g) Seguridad y Soberanía Alimentaria.
h) Otras Comisiones Pertinentes y Necesarias.

**Artículo 11. (Resoluciones del concejo de gobierno originarias).-** Las resoluciones emitidas por los Apu Mallkus y Apu T'hallas, Mallkus y T'hallas de las Markas serán denominadas como DECRETOS DEL CONCEJO DE GOBIERNO ORIGINARIO SUYU JACHA KARANGAS y éstas serán aprobadas bajo la modalidad de consenso por los Mallkus – T'hallas de Concejo.

**Artículo 12. (Jach'a Mara Tantachawi).-** El Jach'a Mara Tantachawi de Jach'a Karangas es la instancia máxima de deliberación y decisión, en donde se reúnen todas las autoridades originarios, nuevas autoridades originarias entrantes, ex autoridades, amautas, lideres, lideresas y autoridades políticas administrativas municipales, judiciales, educativas y comunarios de base o wawaqallus de las Markas del Suyu acreditados oficialmente; sus decisiones serán ejecutadas por el concejo de gobierno del Suyu, Mallkus de Concejo, Mallkus de Marka, Awatiris y Sullka Awatiris.

El Jach'a Mara Tantachawi del Suyu se llevará a cabo anualmente y se realizará en la Marka donde asume el nuevo APU MALLKU y APU T'ALLA, ya sea de la parcialidad Aransaya y/o Urinsaya, en ocasión de celebrarse el año nuevo Aymara (19, 20 y 21 de junio) y es una instancia de información, evaluación, planificación, aprobación y decisión de políticas generales, que tiene carácter resolutivo y de cumplimiento.

**Artículo 13. (Conformación del Jach'a Mara Tantachawi).-** El Jach'a Mara Tantachawi de la Nación Originaria Aymara Suyu Jach'a Karangas se encuentra conformado por Autoridades Originarias: Tata y Mama Apu Mallus de Jach'a Karangas de las parcialidades Urinsaya – Aransaya; Tata y Mama Mallkus de Concejo; Tata y Mama Mallkus de Marka; Tata y Mama Mayores de las trece Markas; Amautas, lideres originarios, lideresas, Tata amautas, Mama Amautas, autoridades políticas administrativas, representantes de organizaciones y/o instituciones públicas y privadas.



El Jach'a Mara Tantachawi estará presidido por los Apu Mallkus y Apu T'hallas del Suyu y los Mallkus y Mama T'hallas de Concejo de las Markas y Amautas.

Atribuciones del Jach'a Mara Tantachawi

a) Conocer y aprobar la planificación y el informe de las actividades del Concejo de gobierno, de Apu Mallkus – Mama T'hallas.

b) Conocer el informe económico y balance de la gestión.

c) Conocer el plan de trabajo o agenda estratégica, programas y proyectos.

d) Elegir a los dos Jiliris Apu Mallkus de Urinsaya - Aransaya.

e) Conocer y considerar los diferentes problemas de las Markas.

f) Definir y aprobar las estrategias de desarrollo en los ámbitos económico, social, político, cultural y medio ambiental.

g) Definir y aprobar planes de gestión territorial originaria de acuerdo a la cosmovisión andina.

h) Considerar y aprobar los informes de gestión y administración del concejo de gobierno.

i) Considerar y aprobar el balance general y estados financieros.

j) Conocer y aprobar el plan anual operativo con base en su plan territorial.

k) Determinar mediante normas y procedimientos propios la complementación, modificación o reforma del estatuto orgánico y su reglamento interno.

l) Conocer y Aprobar la designación de futuras autoridades originarias.

m) Control social de todas las acciones del gobierno del Suyu.

n) Promover la participación equitativa de hombres y mujeres y ejercer el control social a las autoridades públicas.

**Artículo 14. (Del Jach'a Mara Tantachawi Ordinario).-** El Jach'a Mara Tantachawi es la máxima instancia de participación, cuyas decisiones son de carácter vinculante, esta instancia de participación puede ser ordinaria y extraordinaria. El Jach'a Mara Tantachawi tratara temas estratégicos de desarrollo y de resolución de conflictos entre las markas y ayllus originarios.

**Artículo 15. (Del Jach´a Mara Tantachawi Extraordinario).-** El Jach'a Mara Tantachawi Extraordinario, será convocado previa aprobación de 2/3 del voto del total de los y las miembros del concejo de gobierno del suyu y podrá ser solicitado a petición de cualquiera de las Markas, a iniciativa de los Apu Mallkus, y a partir de iniciativa ciudadana con la aprobación de su Marka y solo se podrá plantear para los casos de:

a) Propuesta de modificaciones y reformas del estatuto orgánico y su reglamento interno, previa presentación y análisis del proyecto de reforma en el Mara Tanthachawi.

b) Tomar decisiones orgánicas por problemas sociales u otros de interés de la NOJK.

c) Concertar temas políticos que afectan a la estructura orgánica de Jach´a Karangas.

**Artículo 16. (Jisk'a Mara Tantachawi).-** El Jisk'a Mara Tantachawi de la Nación Originaria Jach'a Karangas es la instancia intermedia de deliberación, decisión, control social y definición de lineamientos políticos y económicos, manejo medio ambiental y de recursos naturales, sociales y culturales del Suyu. Esta instancia se reunirá con carácter ordinario y extraordinario.

**Artículo 17. (Conformación del Jisk'a Mara Tantachawi).-** El Jisk'a Mara Tantachawi de Jach'a Karangas y autoridades originarias: Tata y Mama Apu Mallus de Jach'a Karangas de las parcialidades Aransaya y Urinsaya; Tata y Mama Mallkus de Concejo; Tata y Mama Mallkus de Marka; Tata y Mama Mayores, nuevas autoridades entrantes, Tata Amautas Ama Amautas, lideres, lideresas de las doce Markas, autoridades político administrativas, representantes de organizaciones y/o instituciones productivas y comunarios que puedan asistir al mismo. El Jisk'a Mara Tantachawi de Jach'a Karangas estará presidido por los Apu Mallkus y Apu T'hallas y los Mallkus y T'hallas de Concejo de las Markas del Suyu acreditados oficialmente.



**Artículo 18. (Atribuciones del Jisk'a Mara Tantachawi).-**

a) Definir y aprobar políticas y estrategias para salvaguardar la unidad territorial y cultural de la Nación Originario Suyu Aymara Jach'a Karangas.

b) No permitir bajo ninguna circunstancia, la fragmentación del territorio ancestral de la Nación Originaria de Jach'a Karangas.

c) Determinar mediante normas y procedimientos propios la complementación, modificación o reforma del estatuto orgánico y su reglamento interno.

d) Elaborar planes y estrategias de desarrollo territorial.

e) Elaborar políticas públicas, planes, programas y estrategias en recursos naturales, producción agroecológica, gestión territorial, igualdad de oportunidades, género, control social, autonomías y otros.

f) Planificar y gestionar la búsqueda de apoyo institucional y económico de instituciones públicas y privadas.

**Artículo 19. (Conformación del Concejo de Gobierno de la Nación Suyu Jach'a Karangas).-**

a) El concejo de gobierno del Suyu Jach'a Karangas, se halla conformado por autoridades originarias (chacha – warmi); Apu Mallkus y Apu T'hallas de las parcialidades Urinsaya – Aransaya; Tata Mallkus y mama T'hallas de concejo de las Markas.

b) El concejo de gobierno de autoridades originarias se estructura según los principios de relación y orden jerárquico, para el cumplimiento de sus competencias.

c) Podrán adscribirse mediante solicitud al Concejo de Gobierno del Suyu Jach'a Karangas los Mallkus y T'hallas de Marka, los Awatiris de Ayllu y Sullka Awatiris de Comunidad.

d) Los adscritos al concejo de Gobierno del Suyu Jach'a Karangas solo tendrán derecho a voz y no tendrán derecho a voto, solo podrán

ejercer el derecho a voto si cuentan con acreditación oficial por ausencia del Mallku y T'halla de Concejo.

**Artículo 20. Atribuciones del Concejo de autoridades originarias de Jach'a Karangas.-** Organizar, dirigir, concertar en el marco de las normas y procedimientos propios los temas estratégicos y circunstanciales que compete a la organización, algunas atribuciones se describen a continuación:

a) Cumplir con las normas y procedimientos propios y cumplir con el estatuto orgánico y reglamento interno.

b) Dar lineamiento político ideológico a la organización originaría.

c) Impulsar el desarrollo integral sostenible en las Markas de Jach'a Karangas.

d) Administrar la justicia originaría en coordinación con la justicia ordinaria y otras instancias correspondientes.

e) Promover propuestas y políticas públicas integrales a favor de las comunidades, Ayllus y Markas.

f) Promover la elaboración y aprobación planes de gestión territorial originaría, programas y proyectos de desarrollo integral con identidad.

g) Promover, revalorizar y hacer cumplir los derechos colectivos de los Pueblos Indígenas, en coordinación con el concejo de amautas y con las instancias del Estado Plurinacional.

h) Fomentar y planificar las actividades de recreación y deporte, en todas las unidades territoriales del Suyu.

i) Resguardar y dirigir el mantenimiento y administración de los sistemas de riego, agua, servicios básicos en coordinación con las autoridades de las Markas y Ayllus.

j) Controlar y coordinar con las instituciones y organizaciones externas que desarrollan actividades en la jurisdicción territorial.

k) Gestionar y administrar los recursos naturales renovables y no renovables, de acuerdo a normas y procedimientos propios.



l) Preservar y proteger el medio ambiente, de acuerdo a los saberes y conocimientos ancestrales.

m) Aprobar planes y proyectos de mitigación ambiental en el territorio de la jurisdicción.

n) Planificar en coordinación con las entidades del Estado Plurinacional, el ejercicio del derecho a la consulta previa e informada sobre temas relativos al interés del Suyu.

o) El concejo debe llevar adelante procesos de aprobación y suscripción de convenios de cooperación estratégica con otras autonomías e instituciones públicas y privadas.

p) El concejo de autoridades tendrá facultades de legislar y fiscalizar la administración de recursos económicos y financieros asignados al Suyu.

q) Promover la inventariación y registro del patrimonio tangible e intangible en los ayllus, Markas y el Suyu.

r) Cumplir las resoluciones, determinaciones y mandatos asumidos en el Jach'a Mara Tantachawi y Jisk'a Mara Tantachawi del Suyu.

s) Considerar y aprobar la planificación presupuestaria de cada gestión.

t) Organizar e incorporar de la Nación Originaria SuyuAymara Jach'a Karangas un equipo técnico de acuerdo nuestra cosmovisión originaria para el apoyo a la planificación, ejecución y gestión al cumplimiento de las atribuciones del gobierno originario del Suyu.

**Artículo 21. (Instalación del Concejo de autoridades originarias de la Nación Originaria de Jach'a Karangas).-** El Concejo de autoridades originarías de la Nación Originaria de Jach'a Karangas se reunirá de manera obligatoria mensualmente. En caso de que se encontrasen en peligro los intereses de la Nación Originaria, el Concejo será convocado cuantas veces sea necesario.

**Artículo 22. (El Concejo de autoridades originarias de las Markas).-** El concejo de autoridades originarías de las Markas y Ayllus tiene facultades

reglamentarias y ejecutivas de los intereses de las parcialidades de Urinsaya – Aransaya de cada Marka.

**Artículo 23. (Conformación del Concejo de Autoridades de la Marka).-**

a) El concejo de autoridades de las markas se halla conformado por autoridades originarias (chacha – warmi), Mallku y T'halla de Urinsaya – Aransaya, Tata y Mama Tamanis de los Ayllus y comunidades.

b) El concejo de autoridades originarías de las markas se estructura según principios de relación y orden jerárquico según las normas consuetudinarias para el cumplimiento de sus competencias y atribuciones.

c) Cada Marka deberá establecer los mecanismo de gobierno de acuerdo a sus normas y procedimientos propios en concordancia con el Estatuto Orgánico del Suyu y el Reglamento Interno.

**Artículo 24. (Instalación del Concejo Autoridades originarías de la Marka).-** El concejo de autoridades originarías de las Markas se reunirá de manera obligatoria según procedimientos propios de cada Marka. En el caso de que se encontrasen en peligro los intereses de la Marka el concejo será convocado cuantas veces sea necesario.

**Artículo 25. (Tantachawis).-** Los Tantachawis se llevarán a cabo cada mes para tratar temas de estricta incumbencia para el desarrollo de la Marka, de los Ayllus y sus Comunidades, bajo un orden del día que debe ser aprobada por la mayoría de las Markas presentes.

**Artículo 26. (Conformación de los Tantachawis de Marka).-**

a) Los Tantachawis de las Markas se hallan conformados por autoridades originarias (chacha – warmi), Mallku – T'halla de Urinsaya – Aransaya, tata y mama tamanis, tata amautas, mama amautas, lideres, lideresas de los Ayllus, autoridades políticas, administrativas, representantes de organizaciones y/o instituciones productivas, comunarios de base que puedan asistir al mismo.

b) Los Tantachawis de Marka estarán presididos por los Mallkus – T'hallas de Concejo y Marka.



**Artículo 27. (Atribuciones de los Tantachawis de Marka).-** Las atribuciones y competencias son las siguientes:

a) Definir las estrategias de desarrollo en los ámbitos económico, social, organizativo, político, cultural y medio ambiental.

b) Definir planes de gestión territorial indígena de acuerdo a la cosmovisión originaria.

c) Emitir resoluciones orgánicas para el cumplimiento obligatorio de sus afiliados.

d) Coordinar con instituciones públicas y privadas temas estratégicos de desarrollo.

e) Generar propuestas y políticas públicas a favor de las comunidades, Ayllus y Markas.

f) Gestionar proyectos y firmar convenios interinstitucionales.

**Artículo 28.- (Instalación del Concejo de los ayllus originarios).-** El concejo de autoridades originarías de los Ayllus se reunirá de manera obligatoria, semanalmente, quincenalmente o mensualmente, según normas y procedimientos establecidos en cada Ayllu. En el caso de emergencia o situaciones de riesgo para el Ayllu el concejo del Ayllu será convocado cuantas veces sea necesario.

**Artículo 29. (El Concejo de autoridades del Ayllu).-** El concejo de autoridades del Ayllu tiene facultades reglamentarias y ejecutivas de los intereses de las comunidades.

**Artículo 30. (Conformación del concejo de autoridades del Ayllu).-** Esta conformado por:

a) El Tata Awatiri – Mama Awatiri (chacha – warmi).

b) Sullka Tata Tamani – Sullka Mama Tamani de las comunidades.

c) Autoridades elegidas según normas y procedimientos propios del Ayllu.

d) El Concejo de autoridades del Ayllu se estructura según normas y procedimientos propios establecidos y el Thaqui de cumplimiento de cargos para el cumplimiento de sus competencias.

**Artículo 31. (Atribuciones del Concejo de autoridades del Ayllu).-**

a) Elaborar normas internas.

b) Solucionar conflictos internos entre las comunidades a través de la administración de la justicia originaria.

c) Fomentar la producción agroecológica.

d) Proteger los recursos naturales en el marco de la protección del medio ambiente y la madre tierra.

e) Gestionar y generar propuestas y políticas públicas a favor de las y los comunarios.

**Artículo 32. (Instalación del Concejo autoridades del Ayllu).-** El concejo de autoridades originarías del Ayllu se reunirá de manera obligatoria una vez a la semana. En el caso de que se encontrasen en peligro los intereses del Ayllu el concejo será convocado cuantas veces sea necesario.

**Artículo 33. (Tantachawis del Ayllu).-** Los Tantachawis del Ayllu se llevarán a cabo cada semana para tratar temas de estricta incumbencia para el desarrollo del Ayllu y las comunidades.

**Artículo 34. (Conformación de los Tantachawis del Ayllu).-** Los Tantachawis del Ayllu se hallan conformados por autoridades como él: Tata Awatiri – Mama Awatitri (chacha-warmi), Tata Sullkatamani – Mama Sullkatamani, Tata Amautas, Mama Amautas, lideres, lideresas de los Ayllus, representantes de organizaciones y/o instituciones productivas y comunarios que puedan asistir al mismo y los Tantachawis del Ayllu estarán presididos por el Tata Awatiri – Mama Awatiri.

**Artículo 35. (Cabildos de las comunidades).-** Es instancia de consulta y decisión a nivel de las comunidades o sapsis.

**Artículo 36. (Conformación de los Cabildos).-** La participación en el cabildo de la comunidad está conformado por la totalidad de los comunarios



sayañeros, agregados, contribuyentes de todas las edades de la comunidad, sin exclusión de instituciones que trabajen en la comunidad, excepto algunas en consideración y el cabildo es presidido por las autoridades originarias (chacha – warmi).

**Artículo 37. (Atribuciones de los cabildos de las comunidades).-** Definir las estrategias de desarrollo en los ámbitos: Económico, social, político, organizativo, cultural y medio ambiental de la comunidad y organizar la forma de trabajo colectivo, recuperando los valores ancestrales como de reciprocidad, ayni y la minka.

**Artículo 38. (Procedimientos de gestión y planificación comunitaria).-**

a) Muyt'as, instancia de consulta comunitaria anual y según tema de interés.

b) Jach'a Mara Tantachawi de Jach'a Carangas de consulta y planificación comunitaria a nivel de las parcialidades Urinsaya – Aransaya del Suyu y de las Markas.

c) Jisk'a Mara Tantachawi de consulta y planificación y operativización comunitaria a nivel de las parcialidades Urinsaya – Aransaya del Suyu y de las Markas.

d) Tanchawi de las Markas de consulta, planificación, operativización de los trabajos relacionados con el desarrollo de las comunidades del ayllu.

e) Cabildo de consulta, planificación, operativización comunitaria de los trabajos relacionados con la comunidad.

## CAPÍTULO III

## CONSTITUCIÓN DE AUTORIDADES ORIGINARIAS DE LA NACIÓN ORIGINARIA JACH'A KARANGAS

**Artículo 39. (Autoridades de Nación Originaria Jach'a Karangas).-** Son autoridades originarias las autoridades que ejercen cargo en base a los principios de rotación, thaqui, complementariedad, chacha - warmi, asumiendo responsabilidades según competencias establecidas por este estatuto orgánico y reglamento interno.

**Artículo 40. (La autoridad máxima de la Nación Originaria).-** La autoridad máxima del Suyu esta ejercido por:

a) Los Apu Mallkus de las parcialidades Urinsaya - Aransaya elegidos por rotación y thaki.

b) El Concejo de autoridades originarías de la Nación Originaria, que se asume por rotación y el thaki. Solo la segunda autoridad de la organización, en ausencia de la primera autoridad asume las responsabilidades y obligaciones que deja el primero.

**Artículo 41. (Sara thaki de la autoridad originaria).-** Las normas y procedimientos propios define el camino que deben seguir las autoridades originarías.

a) Las autoridades del territorio son designados de acuerdo al sara-thaki-ira y normas y procedimientos propios de cada comunidad, Ayllu, Marka y Suyu.

b) La designación de las autoridades está determinado por los usos y costumbres, asumidos por los pasiris, amautas y comunarios.

c) La designación de autoridades se sujeta a las normas y procedimientos propios de acuerdo a la consideración de los méritos logrados al servicio de la comunidad, Ayllu, Marka de los comunarios postulantes.

d) La designación se realizará de acuerdo a los principios de rotación, complementariedad, dualidad y thaki.



**Artículo 42. (Periodo del ejercicio de los cargos).-**

a) La duración del cargo de las autoridades originarias, Apu Mallkus y Apu T'hallas es de 2 años.

b) La duración del cargo del concejo de autoridades originarías de la Nación originaria es de dos años.

c) Mallku de Concejo es de 1 a 2 años.

d) Mallku de Marka es de 1 año.

e) La duración del cargo de Tata Awatiri – Mama Awatiri del Ayllu es de 1 año.

f) La duración del cargo de autoridades originarias, Sullkatamani es de 1 año.

g) Según el cumplimiento de los valores y principios que rigen en la Nación, los cargos de autoridades originarias no podrán ser repetidos ni alargados en su gestión por ninguna causa.

## CAPÍTULO IV

## EL CONCEJO DE AMAUTAS

**Artículo 43. (El Concejo de Amautas).-** El concejo de amautas, se constituye en la más alta autoridad de ética y moral en el marco de la cosmovisión andina originaria que orienta los lineamientos políticos y genera políticas públicas, de sanción moral a las autoridades originarias y todas quienes cumplan un cargo público y privado siendo parte directa real, efectiva en la toma de decisiones de la Nación Originaria.

**Artículo 44. (Composición).-** El concejo de amautas está conformado por autoridades que han concluido con el Thaki (cargos cumplidos) es de carácter colegiado, la conformaran también los profesionales de reconocida trayectoria en conocimientos ancestrales, como del contexto de la realidad local, regional, departamental y nacional.

**Artículo 45. (Requisitos para acceder al Concejo de Amautas).-** Los requisitos son los siguientes:

- Ser pasiri de autoridad originaria.
- Tener conocimiento profundo de los conocimientos ancestrales.
- Tener conocimiento profundo de las estructuras y políticas económicas, culturales, políticas y sociales.
- Tener un conocimiento de la realidad económica, política, social de la región, departamento y el país.
- Conocer los derechos de los pueblos indígenas originarios y campesinos.
- Haberse destacado en el ejercicio de autoridad llegando a tener reconocimiento.
- Que no tenga filiación político ni partidaria.
- Propuesto por su Marka o Ayllu.
- No tener juicios en su contra ni tener antecedentes penales.



- Reconocida experiencia y compromiso con el Suyu.
- Haber ejercido con todos los cargos de la estructura orgánica del Suyu Jach'a Karangas.
- Haber ejercido cargos en el Concejo Nacional de Ayllus y Markas del Qullasuyu CONAMAQ-B.
- Persona íntegra con altos niveles de formación dentro la cosmovisión y filosofía originaria.

**Artículo 46. (Periodo de funciones de las /los Amautas).-** La duración del cargo de los/as Amautas es de carácter indefinido, siempre cuando cumplan con las tareas encomendadas según las normas y procedimientos propios de las comunidades, Ayllus, Markas y el Suyu.

**Artículo 47. (De las atribuciones de los/as amautas).-** Los Amautas cuentan con las siguientes atribuciones:

a) Resguardo de los centros rituales de las comunidades, de los Ayllus, Markas y el Suyu.

b) Orientar y dar lineamientos a las políticas y lineamientos que sean emprendidas por el concejo de autoridades originarías del Suyu.

c) Orientar las funciones de las autoridades originarias en el cumplimiento y durante el ejercicio de gobierno de las autoridades originarias de los Ayllus, Markas y el Suyu.

d) Orientar la elaboración y aprobación de planes de gestión territorial indígena, programas y proyectos de desarrollo integral con identidad cultural.

e) Promover la difusión y socialización de los derechos de los pueblos indígenas originarios.

f) Orientar y generar políticas públicas de coordinación con las instancias del Estado Plurinacional.

g) Realizar el control social y seguimiento de las funciones de los Gobiernos Originarios en los Ayllus, Markas y el Suyu, para el

cumplimiento según normas y procedimientos estatuidos en el Ayllu, Marka y el Suyu.

h) Promover la coordinación con instituciones y organizaciones externas que desarrollan actividades en la jurisdicción territorial del Ayllu, Marka y el Suyu.

i) Asesorar y promover en la gestión, administración de los recursos naturales renovables y no renovables, de acuerdo a normas y procedimientos propios.

j) Promover la protección y preservación del medio ambiente, la biodiversidad de los Ayllus, Markas y el Suyu de acuerdo a los saberes y conocimientos ancestrales.

k) Dar seguimiento y acompañamiento en la ejecución de planes y proyectos de mitigación ambiental en el territorio de la jurisdicción del Suyu.

l) Asesoramiento, seguimiento y acompañamiento en planificación y coordinación con las entidades del Estado Plurinacional, el ejercicio del derecho a la consulta previa e informada sobre temas en defensa del medio ambiente y los recursos naturales del Suyu.

m) Promover procesos de aprobación y suscripción de convenios de cooperación estratégica con instituciones públicas, privadas y de cooperación internacional.

n) Acompañamiento, asesoramiento y seguimiento en la legislación, fiscalización, administración de recursos económicos y financieros asignados al Suyu.

o) Promover la inventariación y registro del patrimonio tangible e intangible en los Ayllus, Markas y el Suyu.

p) Seguimiento en el cumplimiento de las resoluciones, determinaciones y mandatos asumidos en el Jach'a Mara Tantachawi y Jisk'a Mara Tantachawi del Suyu.



q) Calificar y promover la incorporación de amautas, líderes originarios y equipo técnico de acuerdo a nuestra cosmovisión originaria para el apoyo a la planificación, ejecución y gestión del gobierno originario del suyu.

**Artículo 48. (Participación de líderes, lideresas, técnicos y profesionales).-** La participación de los líderes, lideresas y profesionales en Jach´a Karangas, tiene la función de apoyar técnica y políticamente a las autoridades originarias en la generación de propuestas, planes, proyectos y políticas públicas, practicando los principios y valores, constituyéndose en un ejemplo de comportamiento ético y moral en el marco de la cosmovisión originaria.

**Artículo 49. (Características de los líderes, lideresas, profesionales y técnicos).-**

a) Ser sayañero o descendiente de los sayañeros hasta el último grado de consanguinidad.

b) Estar identificado con las deidades de la comunidad, Ayllu, Marka y el Suyu.

c) Conocer y difundir los derechos de los Pueblos indígenas originarios contemplados en la legislación internacional y la Constitución Política del Estado Plurinacional.

d) Pasar un cargo originario o religioso en la comunidad y Marka Qullu.

e) Tener un comportamiento ejemplar y disciplina en las actividades en pro de la Comunidad, Ayllu y Marka.

f) Haberse destacado en el trabajo técnico y político en el apoyo a las autoridades originarias y trabajo con organizaciones originarías.

g) Tener reconocimiento por sus actividades realizadas en favor de la comunidad, Ayllu, Marka y Suyu.

h) Que no tenga filiación político y partidaria.

i) Tener compromiso y asumir los valores y principios de la cultura Aymara.

j) Tener voluntad para el conocimiento de saberes ancestrales de la comunidad, Ayllu, Marka y el Suyu.

k) Tener un conocimiento de la realidad económica, política, social de la región, departamento y país.

l) Conocer los derechos colectivos de los pueblos indígenas originarios.

m) Haberse destacado en el apoyo a las autoridades originarias, llegando a tener reconocimiento.

n) No tener juicios en su contra ni tener antecedentes penales.

o) Capacidad de generar proyectos, planes, programas y propuestas de políticas públicas a favor de las comunidades.

p) Capacidad de organizar eventos, seminarios, talleres y otras actividades de fortalecimiento a la organización originaría.



## CAPÍTULO V

## ADMINISTRACIÓN DE LA JUSTICIA ORIGINARIA

**Artículo 50. (Faltas).-** Las faltas e infracciones de las autoridades originarias serán sancionadas por el presente Reglamento Interno, de acuerdo a la gravedad del hecho con la aplicación de la justicia Indígena Originaria Campesina (IOC) de Jach'a Karangas, respetando los derechos humanos establecidos por leyes del Estado.

Las faltas e infracciones de los comunarios y autoridades originarias de Jach'a Karangas, son imputable a los comunarios de base o autoridades originarias de acuerdo a la gravedad del mismo con la aplicación de la justicia Indígena Originaria Campesina de acuerdo al presente Reglamento Interno. Las faltas están tipificadas en:

a) Jisk'a Jucha (Falta leve)
b) Jach'a Jucha (Falta grave)
c) Sinti Jach'a Jucha (Falta muy grave)

Las infracciones previo sumario y cotejo del concejo de autoridades originarias serán registrado en los libros de actas correspondientes, refrendados para la constancia del pueblo originarios y será como un antecedente negativo para la persona, ayllu y saya de acuerdo al reglamento interno.

**Artículo 51. (Faltas leves).-** Se considera a las siguientes:

a) Ausencia en los cabildos (chacha – warmi)

b) Ausencia en actos que reviste importancia para el Ayllu (chacha – warmi)

c) Atrasos injustificados en las actividades programadas (reuniones, talleres, etc.)

d) Faltas en los trabajos y actividades programadas.

e) No informar las resoluciones de los Cabildos, Tantachawis y/o comunarios.

f) No guardar respeto a los símbolos de autoridad originaria.

g) Realizar acciones sin consultar a los comunarios u otras autoridades originarías.

**Artículo 52. (Faltas Graves).-** Se consideran a las siguientes:

a) Abandono del cargo sin justificación.

b) No llevar la indumentaria de autoridad originaria y de los símbolos.

c) Ir en contra de los intereses de las comunidades, ayllus y markas.

d) No respetar y hacer respetar la autonomía de la organización Originaria.

e) Hacer cumplir el contenido del estatuto orgánico y su reglamento interno.

f) No atender y resolver los conflictos de los comunarios.

g) Inasistencia injustificada a las movilizaciones reivindicativas por el derecho de los pueblos originarios.

h) No convocar a cabildos establecidos de carácter resolutivo.

i) Cumplir con los lineamientos de la organización matriz de Jach'a Karangas y el CONAMAQ.

j) Subalternisar las reivindicaciones, ante los partidos políticos.

k) Tomar decisiones sin consultar a los comunarios del Ayllu, Marka y que vayan en contra de los derechos contemplados en la normativa Internacional y la CPE.

l) Tomar decisiones sin consultar ni consensuar con los pasiris y líderes comprometidos con la causa originaría y de trayectoria en la vida de organización originaría.

m) Reincidencia a las faltas leves, hasta dos veces consecutivas.



n) No cumplir con los roles y funciones de las autoridades originarías.

**Artículo 53. (Faltas muy graves).-** Se considera a las siguientes:

a) Utilizar a la organización para fines personales ya sea políticos, económicos u culturales.

b) Abuso de autoridad en beneficio personal, familiar o grupal.

c) Apropiación indebida de bienes de la organización.

d) Negociar con instancias públicas sin el consentimiento del concejo de Apu Mallkus – Apu T'hallas.

e) Traicionar las reivindicaciones de los pueblos indígenas originarios.

f) Prestarse a actividades política partidarias.

g) Relacionarse con organizaciones contrarias a las reivindicaciones de los Pueblos Indígenas (sindicatos)

h) Reincidencia a las faltas graves.

i) No rendir cuentas de su gestión siendo autoridad.

j) No cumplir con las normas y procedimientos propios de la organización.

k) No conocer ni defender los derechos de los pueblos indígenas originarios.

**Artículo 54. (De las sanciones).-** Las sanciones se deben aplicar de acuerdo a las faltas cometidas y su cumplimiento será analizado, debatido, consensuado por el concejo de autoridades originarias, en caso de ser muy graves la consulta debe ser a nivel del concejo de Mallkus.

Sanciones a faltas leves

a) Llamadas de atención por la primera vez por el Apu Mallku – Apu T'hallas, de acuerdo a normas y procedimientos propios.

b) En segunda instancia se da paso la sanción correspondiente bajo consideración del Concejo de Mallkus – T'hallas.

c) En caso de incumplimiento a las sanciones el caso pasar a instancias de falta graves.

Sanciones a faltas graves

a) Las sanciones serán consideradas por el concejo de Mallkus – T'hallas, de acuerdo a normas y procedimientos propios.

b) Se quitara el cargo de autoridad originaria.

c) En caso de incumplimiento a las sanciones establecidas se procederá a sanciones más severas.

Sanciones a faltas muy graves

a) Alejamiento de la comunidad.

b) Aplicación de Justicia Originaria, de acuerdo a normas y procedimientos propios.



## CAPÍTULO VI

## DISPOSICIONES GENERALES

**Artículo 55. (Disposición primera).-** El concejo de autoridades originarías y los amautas y pasiris deben hacer cumplir el reglamento interno especificando las faltas y sancionándolas con la aplicación de la justicia originaría.

**Artículo 56. (Disposición segunda).-** Jach'a Karangas se constituyen una organización originaría con base en los principios y valores ancestrales para avanzar al vivir bien, es así que se debe informar, sensibilizar y concientizar sobre la administración de la justicia originaría y ver su alcances y limitaciones y sobre todo hacer cumplir las faltas y sanciones al interior de la organización tanto para las autoridades originarias de las comunidades, Ayllus y Markas y también para los líderes y comunarios que se encuentran en el territorio de Jach'a Karangas.

**Artículo 57. (Disposición tercera).-** Cualquier modificación y ajuste al reglamento interno se lo realizara en el mara Tantachawi de Jach'a Karangas con la participación y toma de decisiones de más del 50% de las autoridades originarías.

# Anexos

**CONCEJO OCCIDENTAL DE AYLLUS**
**JACH'A CARANGAS**
R.S. Personeria Nro. 208507 de 20 - XII - 1990 Karangas - Qullasuyu
Oruro - Bolivia

**RESOLUCIÓN ORIGINARIA DEL CONCEJO OCCIDENTAL DE AYLLUS JACH'A CARANGAS**
**Nº 035/2011**

a, 19 de diciembre de 2011

**Vistos y Considerando.-**

Que, en el marco del ejercicio de los derechos consuetudinarios, dentro el marco de la libre determinación, amparado legalmente con reconocimiento de la Personería Juridica Nº 208507/90 del Concejo Occidental de Ayllus Jach'a Karangas.

Que, La Constitución Política del Estado, en sus artículos 2, 30, 190, 191 y 192, de la constitución política del estado reconoce, protege y respeta los derechos sociales, económicos y culturales, la territorialidad y aplicación de normas propias en los pueblos indígenas originarios.

Que, el Convenio 169 de la Organización Internacional de Trabajo (OIT), ratificado por ley de la república Nº 1257 y la Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas, ratificado como Ley de la república Nº 3760; establecen la gobernabilidad territorial de las naciones originarias art. 4°.- "Los pueblos Indígenas, en ejercicio de su libre determinación, tienen derecho a la autonomía o el autogobierno en las cuestiones relacionadas con sus asuntos internos y locales, así como a disponer de los medios para financiar sus funciones autónomas".

Que, el proyecto de Estatuto Orgánico del Concejo Occidental de Ayllus Jach'a Carangas, se estructura de la siguiente manera:
CAPITULO I - GENERALIDADES
CAPITULO II - ESTRUCTURA ORGANICA DEL SUYU JACH'A KARANGAS
CAPITULO III - INSTANCIAS DE DECISIÓN Y CONCERTACION DE SUYU JACH'A KARANGAS
CAPITULO IV - BASES IDEOLOGICAS Y CULTURALES DE JACH'A KARANGAS
CAPITULO V - DEL PATRIMONIO TANGIBLE E INTAGIBLE
CAPITULO VI - DESARROLLO Y GESTION TERRITORIAL EN SUYU JACH'A KARANGAS
CAPITULO VII - PARTICIPACION Y CONTROL SOCIAL
CAPITULO VIII - DISPOSICIONES GENERALES DE SUYU JACH'A CARANGAS

Que, el proyecto del Reglamento Interno del Concejo Occidental de Ayllus Jach'a Carangas está estructurado de la siguiente manera:
CAPITULO I - GENERALIDADES
CAPITULO II - REUNIONES Y ASAMBLEAS
CAPITULO III - CONSTITUCIÓN DE AUTORIDADES ORIIGNARIAS DE LA NACION ORIGINARIA JACH'A KARANGAS
CAPITULO IV - EL CONCEJO DE AMAUTAS
CAPITULO V - ADMINISTRACION DE LA JUSTICIA ORIGINARIA
CAPITULO VI - DISPOSICIONES GENERALES

*Av. España Nro. 794 entre Presidente Montes Telefono /Fax 5257793 e - mail.: jachakarangas@yahoo.com*

**CONCEJO OCCIDENTAL DE AYLLUS**

# JACH'A CARANGAS

R.S. Personeria Nro. 208507 de 20 - XII - 1990 Karangas - Qullasuyu
Oruro - Bolivia

Que en el Jisk'a Tantachawi del Suyu Jach'a Karangas gestión 2011, se reunieron las autoridades originarias de las trece Markas, los Mallkus de Concejo y Mallkus de Marka conjuntamente con los Apu Mallkus, para tratar en detalle el Estatuto Orgánico y el Reglamento Interno del Concejo Occidental de Ayllus Jach'a Carangas.

**POR TANTO:**

El Consejo de Gobierno del Suyu Jach'a Karangas reunido en el Jisk'a Tantachawi del Suyu Jach'a Karangas gestión 2011.

**Resuelve:**

**PRIMERO:** Se aprueba y entra en vigencia el Estatuto Orgánico con 85 Articulos y el Reglamento Interno con 57 Articulos, del Concejo Occidental de Ayllus Jach'a Carangas.

**SEGUNDO:** Quedan encargados de la socialización y cumplimiento del Estatuto Orgánico y el Reglamento Interno del Concejo Occidental de Ayllus Jach'a Carangas, los Apu Mallkus y Apu T'allas, Mallkus y T'allas de Concejo, Mallkus y T'allas de Marka y Jilaqatas y Sullca Jilaqatas de las 13 Markas del Suyu Jach'a Karangas.

**Es dado a los 19 días del mes de diciembre de 2011 en la Casa Grande del Gobierno Originario del Suyu Jach'a Karangas.**

**Por el Gobierno Originario del Suyu Jach'a Karangas**

Maximo Reynaga Quispe
APU MALLKU
SUYU JACHA CARANGAS
R.S. Nº 208507
ORURO-BOLIVIA

CONSEJO OCCIDENTAL DE AYLLUS DE JACH'A CARANGAS
R.S. 208507
Oruro Bolivia
APU MALLKU APU T'ALLA
PARCIALIDAD URINSAYA

Luis Anselmo Huanca Tito
APU MALLKU
SUYU JACH'A CARANGAS

Sonia F. Rocha Llampa
MAMA APU T'ALLA
SUYO JACH'A CARANGAS
R.S. 208507
ORURO-BOLIVIA

CONSEJO OCCIDENTAL DE AYLLUS DE JACH'A CARANGAS
R.S. 208507
Oruro Bolivia
APU MALLKU APU T'ALLA
PARCIALIDAD ARANSAYA

Irenia Bustos de Huanca
APU T'ALLA
SUYU JACH'A CARANGAS

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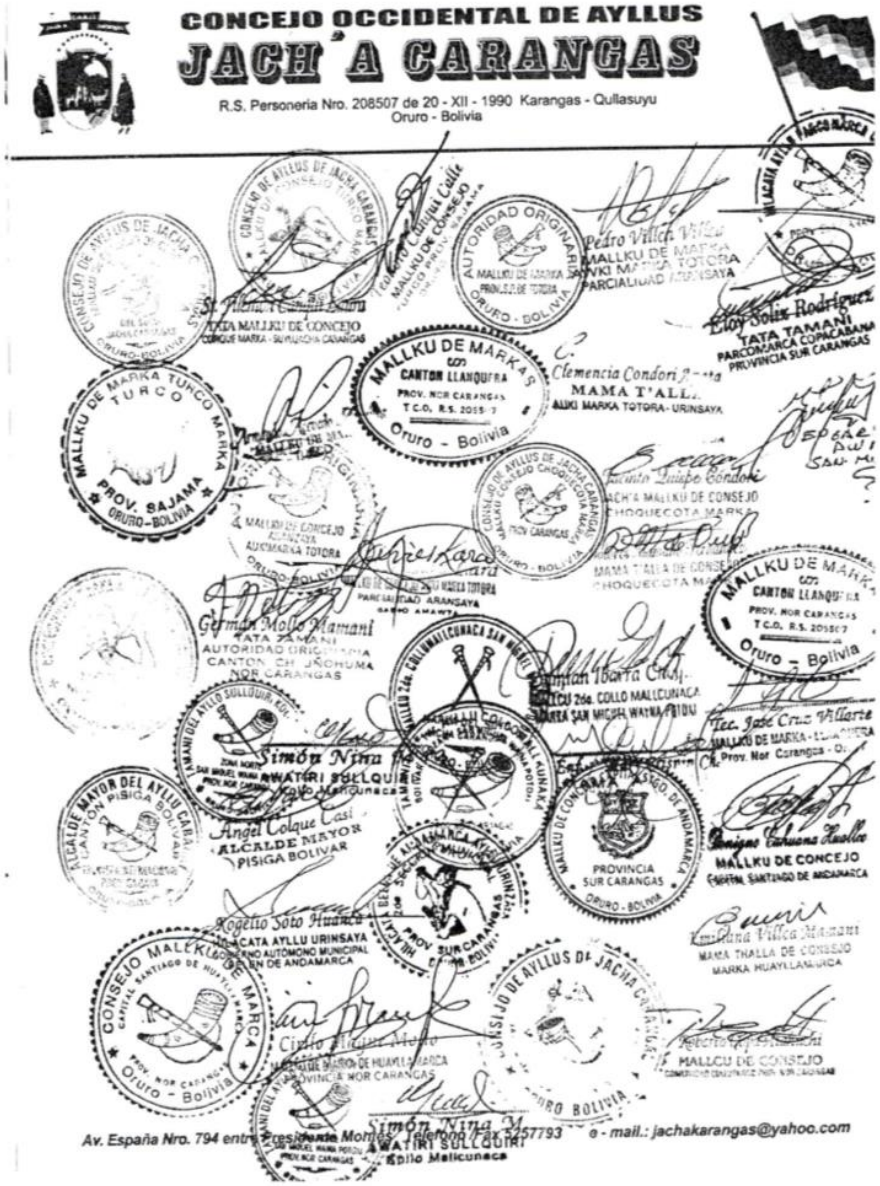
**CONCEJO OCCIDENTAL DE AYLLUS**

# JACH'A CARANGAS

R.S. Personeria Nro. 208507 de 20 - XII - 1990 Karangas - Qullasuyu
Oruro - Bolivia

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COPIA LEGALIZADA

Presidencia de la República
BOLIVIA

Resolución Suprema 208507
La Paz, 20 diciembre 1990

Vistos y Considerando:

La solicitud del Consejo Occidental de Ayllus "JACHA CARANGAS", para reconocimiento de personalidad jurídica, aprobación de su Estatuto Orgánico y Reglamento protocolizado en la Notaría de Hacienda y Gobierno bajo el No. 199/90 de fecha 27 de septiembre de 1990.

Que del estudio de antecedentes se establece que el Consejo Occidental de Ayllus "JACHA CARANGAS", tiene como principales objetivos mantener los lazos de consaguinidad, tradiciones religioso-culturales de todos los asociados de la región, además de promover constantemente seminarios, talleres de investigación, cursillos, paneles y otros que capaciten a sus componentes de base en trabajos propios de la región.

Que la referida Institución ha cumplido con todos los requisitos exigidos por el artículo 58 del Código Civil, por lo que en observancia del artículo 7 inciso c) de la Constitución Política del Estado y de acuerdo con el Dictamen afirmativo del Fiscal de Gobierno de fecha 19 de octubre de 1990.

S E R E S U E L V E:

Reconocer la personalidad jurídica del CONSEJO OCCIDENTAL DE AYLLUS "JACHA CARANGAS", con domiciliolegal en la población de Corque y aprobar su Estatuto Orgánico, contenido en VI capítulos, 14 artículos y uno transitorio así como su Reglamento, redactado en V capítulos, 15 artículos y uno transitorio.

Regístrese, comuníquese y archívese.

FDO. JAIME PAZ ZAMORA
PRESIDENTE CONSTITUCIONAL DE LA REPUBLICA

Fdo. Mauro Bertero Gutiérrez
MINISTRO DE ASUNTOS CAMPESINOS Y AGROPECUARIOS

ES COPIA FIEL DEL ORIGINAL

JEFE UNIDAD DE ARCHIVO GENERAL
PRESIDENCIA DEL ESTADO PLURINACIONAL DE BOLIVIA

Estado Plurinacional de Bolivia

MDRyT
Ministerio de Desarrollo Rural y Tierras
Agricultura Sostenible para la Soberanía Alimentaria

Ministerio de Desarrollo Rural y Tierras

FDPPIOYCC

Fondo de Desarrollo para Pueblos Indígenas Originarios y Comunidades Campesinas

# Annex B: Plurinational Constitutional Court's Case Law Analysis

## Introduction

Before addressing the analysis of the jurisprudence of the Plurinational Constitutional Court (PCC), an explanation of its legal framework and the constitutional actions relevant to the investigation is presented, from the most common to the least, with greater incidence in the three that were most frequent, i.e., the actions of Jurisdictional Competency Dispute, Constitutional Amparo, and Consultation of Indigenous Authorities on the Application of their Legal Norms to a Specific Case. [2003]

### *Plurinational Constitutional Court's Legal Framework*

The PCC and its jurisdictional exercise are under the legal framework of the Constitution, the Law 027 of the Plurinational Constitutional Court, and Law 254 or the Constitutional Procedural Code.[2004] Initially, in 2010, law 027 established the regime of the PCC in its structure, functions, and constitutional procedures. However, two years later, this law was partially repealed for constitutional processes and procedures by law 254, and in 2017 it was partially modified regarding the number and type of magistrates that conform the PCC. Internally, and until the 2017's reform, the structure of the PCC had a Commission of Admission and three chambers, each made up of two magistrates and chaired by one. Then, law 929 included the fourth chamber. Additionally, the PCC has a Plenary Chamber that shall decide the cases of unconstitutionality, Jurisdictional Competency Disputes between indigenous, ordinary, and agri-environmental jurisdictions, and Prior Control of the Constitutionality of an Autonomous Statute, among other attributions. The Plenary Chamber decides the cases through the favorable vote of the absolute majority of its magistrates regarding the projects prepared by magistrate rapporteurs. On the other hand, each chamber shall decide the Liberty, Amparo, and Popular Actions, among others, by unanimity following the projects prepared by its magistrate rapporteurs. It should be noted that only one of the chambers, named specialized chamber,[2005] is exclusively in charge of responding to the Consultation of Indigenous Authorities on the Application of their Legal Norms to a Specific Case. The PCC's chair, who is not part of any chamber, has the deciding vote in the event of a tie in the plenary or the chambers,[2006] and he or she cannot act as a rapporteur magistrate.

[2003] Cf. Plurinational Constitutional Court Case Law, page 60.
[2004] Constitución Política del Estado Plurinacional de Bolivia; Ley 027 del Tribunal Constitucional Plurinacional [Law 027 of the Plurinational Constitutional Court]; Ley 254 Código Procesal Constitucional [Law 254 Constitutional Procedural Code].
[2005] The Specialized Chamber (article 130 of law 254) is of plural composition, made up of magistrates identified as indigenous and non-indigenous, which implies a guarantee of balance and interpretation, in accordance to *Declaración Constitucional Plurinacional 0015/2013* [2013] Tribunal Constitucional Plurinacional Expediente: 04599-2013-10-CAI, Neldy Virginia Andrade Martínez III.1.
[2006] This situation can be favorable if the PCC's chair is indigenous and has the conviction of favoring the exercise of indigenous jurisdiction, as happened sometimes with Judge Petronilo Flores Condori in the third generation of 2018 (for example, in case 0076/2018 -S1), and it did not happen in the second generation of 2012.2017 (for example, in the case 0028/2013).

The Admission Commission comprises three magistrates on a rotating and mandatory basis. It reviews the compliance with procedural requirements, assigns cases to chambers and rapporteur magistrates, and may order precautionary measures. Furthermore, the PCC has a body of assessors and can order complementary information when appropriate to resolve a case through an expert opinion.

The PCC ensures the supremacy of the Constitution, exercises control of constitutionality, and safeguards the respect and validity of constitutional rights and guarantees[2007] through three kinds of resolutions: a) constitutional judgments to decide lawsuits and actions, b) constitutional declarations to respond to the Consultation of Indigenous Authorities on the Application of their Legal Norms to a Specific Case, and Prior Control of the Constitutionality of an Autonomous Statute, and c) constitutional orders [Auto Constitucional Plurinacional] to decide the admission or rejection, withdrawal, compliance, and others issued within the process's development and prior to its ruling. [2008]

According to the Constitutional Procedural Code, the PCC's judgments, declarations, and orders are mandatory for the parties involved in a constitutional process, except those issued in actions of unconstitutionality and recourse against taxes that have a general effect.[2009] However, the same Procedural Code orders that opinion or legal reasons that found all the PCC's decisions constitute jurisprudence and are binding for the Organs of the public power, legislators, authorities, courts, and individuals.[2010]

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[2007] Constitución Política del Estado Plurinacional de Bolivia, article 196.I.

[2008] The PCC had acknowledged its function and finalities in *SCP 0300/2012* (n 31) para III.1.2. The case regards an unconstitutionality case against two different laws that allegedly would affect indigenous peoples' rights and territories in the TIPNIS (an acronym for Territorio Indígena y Parque Nacional Isiboro Securé, according to its wording in Spanish) through road construction. It established that:

> 'The Constitution, based on the plurinational character of the State and the principle of interculturality, has designed constitutional justice, and especially the PCC, as an institution in charge of exercising control over all jurisdictions and bodies of public power. The PCC establishes an intercultural dialogue since it represents the two systems of justice, the ordinary and the indigenous…
>
> Thus, the PCC takes legal pluralism on a new meaning and extension, reconceptualizing it from the relationship and permanent influence of both systems and their coordination and cooperation… The judicial function's principle of unity, recognized by article 179 of the Constitution and under which all jurisdictions must respect and obey the Constitution, finds consonance in the binding and final PCC's constitutional interpretation.
>
> In this sense, the Constitution has designed a plural constitutionality control system over State and indigenous' laws. In addition, the PCC knows the conflicts of competencies between the different Bolivian jurisdictions and reviews the resolutions of the indigenous jurisdiction when it is considered that they affect constitutional rights and guarantees …
>
> Accordingly, the PCC exercises control of constitutionality in three dimensions:
>
> 1) Control of fundamental rights and constitutional guarantees' respect (or protection scope) by the authorities, public officials, and individuals. This control encompasses the actions for Liberty, Constitutional Amparo, Protection of Privacy, Compliance, and Popular Defense. The claim against the Legislative Organ's resolutions is also within this scope of control.
>
> 2) Control of competencies. Within this scope of protection, the PCC knows conflicts of competencies and attributions between organs of the public power; the conflicts of competencies between the plurinational government, the autonomous and decentralized territorial entities, direct annulment action; and the conflicts of jurisdiction between the indigenous, ordinary and agri-environmental jurisdictions.
>
> 3) The constitutionality control, by which the PCC verifies the constitutional formal and material validity conditions of laws. The normative control of constitutionality is exercised through different actions, one of which is the unconstitutionality action.'

[2009] Article 15.I of Ley 254 Código Procesal Constitucional [Law 254 Constitutional Procedural Code].

[2010] Article 15.II of ibid, in accordance with article 203 of the Constitution.

## *Constitutional Actions*

### *The Jurisdictional Competency Dispute*

In Bolivia, the Jurisdictional Competency Dispute's constitutional process began with the Constitution of 2009. It is logical that in the coexistence of different jurisdictions as part of the same general legal/jurisdictional system, jurisdictional disputes arise when knowing and resolving specific problems. This is why both the Constituent Assembly and the legislator instituted the so-called 'Jurisdictional Competency Dispute' as a constitutional procedure that aims to determine the authority to which the knowledge and resolution of a particular case correspond.[2011] Furthermore, this type of inter-jurisdictional conflict puts one of the essential due process' components on trial, such as the right to a natural judge.[2012] Natural judge means that the law will determine who judges each class of potentially existing controversies, provided that this determination is prior to the matter to be judged, is impartial, and does not affect the right to equality.[2013] In other words, the right to a natural judge is fulfilled if the law defines in advance and impartially the criteria for appointing judges and distributing the cases among them (competencies).[2014] However, if a judge acts unfairly and with partiality against one of the parties favoring the other, it is not a violation of the right to a natural judge but against a fair trial.[2015] Then, such impartiality or equality when judging should not be confused with the aim of the 'Jurisdictional Competency Dispute' process since it only encompasses defining which is the competent judge. In this sense, the PCC clarified that although this type of constitutional process protects the natural judge's guarantee, settling a competency controversy raised between two or more jurisdictions, it does not seek to protect other fundamental rights and constitutional guarantees (as due process).[2016] They correspond to other constitutional actions, for example, the Constitutional Amparo.

Law 254 describes the procedure for the Jurisdictional Competency Dispute as follows.[2017] Whenever the ordinary, agri-environmental, or indigenous jurisdictions perceive that one of the others is hearing a case that belongs to it, it can request the assumed incompetent jurisdiction to withdraw from knowing the case. Then, if the requested jurisdiction accepts the claim, it shall send the case to the requesting jurisdiction concluding the process. However, if it rejects the petition or does not answer it within seven days, the requesting jurisdiction has the chance to claim the competence directly to the PCC. When the claim accomplishes all the formal requirements, the PCC's Commission of Admission receives the case

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[2011] *Sentencia Constitucional Plurinacional 0008/2018* [2018] Plurinational Constitutional Court Expediente 19843-2017-40-CCJ, Gonzalo Miguel Hurtado Zamorano [III.1].
[2012] ibid.
[2013] Alberto M Binder, *Introducción al Derecho Procesal Penal* (2. ed. actualizada y ampliada, AD-HOC 1999) 141–148. This author maintains that the guarantee to the natural judge can be advantageous to denounce and understand, for example, the ideological applications of law or the enormous gap that exists between judges, which respond to the interests or the valuations of certain social classes, and that they must judge people who have other valuations or conceptions of life. It becomes evident when judging minorities governed by their stringent cultural values, different from the 'official' culture of a given society. ibid 142.
[2014] Article 120.I of the Constitution states '[e]very person has the right to be heard by a competent, impartial and independent jurisdictional authority, and may not be tried by special commissions or submitted to other jurisdictional authorities other than those established prior to the time the facts of the case arose' in words of Elkins, Ginsburg and Melton (n 233), article 120.I.
[2015] Véscovi (n 239) 54.
[2016] *SCP 0026/2013* (n 1096) para III.2; *Sentencia Constitucional Plurinacional 0013/2018* [2018] Tribunal Constitucional Plurinacional Expediente: 21295-2017-43-CCJ, Carlos Alberto Calderón Medrano [III.2]. Although the PCC established this criterion, it also acted against it, as seen later, for example, in judgment 0029/2016. First, it quotes SCP 0026/2013 but later it decides against it, denying jurisdiction to indigenous peoples because allegedly there would be no impartiality.
[2017] Ley 254 Código Procesal Constitucional [Law 254 Constitutional Procedural Code], articles 100-103.

granting fifteen days to the requested jurisdiction to argue its stance. Then, with or without its response, the PCC shall decide the case in forty-five days. Finally, the case shall remain suspended until the PCC decides on the competent authority.

The PCC has interpreted and complemented this procedure. First, it stated that it is not an inter-jurisdictional conflict but rather a mechanism for protecting indigenous peoples' rights to participate in State's institution, self-determination, cultural identity, political-legal systems, and preserve themselves from undue jurisdictional invasions by ordinary or agri-environmental authorities.[2018] The PCC construed it also seeks to guarantee the constitutional supremacy of equal, collaborative, and non-invasive legal pluralism to prevent the parties from illegally resorting to an incompetent judicial authority to decide their dispute and an incompetent judge to resolve it.[2019] Accordingly, the PCC established that it is an autonomous legal claim that should not be confused with the inhibitory claim[2020] or the exception of incompetence provided by ordinary procedural laws.[2021] Second, the PCC has interpreted the following specific procedural subrules. Since Jurisdictional Competency Dispute is an autonomous and constitutional process, it only involves the requesting and requested judges and indigenous authorities, who are the only ones entitled to participate in this process.[2022] Thus, since the process parties' participation is not foreseen when a judge or indigenous authority requests the competence to decide a dispute, they cannot argue or oppose the competence request or even appeal against the resolution issued by the requested judge or authority.[2023] Furthermore, in the event of an erroneous appeal and its subsequent resolution, they will not be considered. If the judge or authority admits the request, there is no conflict of jurisdiction, and if they reject it, the PCC is the only competent to resolve the case.[2024] Consequently, the required judge or authority must decide the case directly without receiving the parties' arguments.

## *The Action of Constitutional Amparo*

According to Fix-Zamudio, the Mexican Writ of Amparo originated in 1841 in the Constitution of the State of Yucatán and has inspired the instruments of the same name in Bolivia and other countries, such as Argentina, Costa Rica, Spain, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay,

[2018] *Auto Constitucional 0255/2014-CA* [2014] Tribunal Constitucional Plurinacional Expediente: 07828-2014-16-CCJ, Commission of Admission [II.3]. The same reasoning was followed by other decisions, such as 0243/2016-CA, and *SCP 0051/2017* (n 1003) para III.1. A lawyer with indigenous background asserted that indigenous authorities claim the competence aiming simply to resolve disputes within the Ayllu or the community (interview G-2020-01).

[2019] *SCP 0067/2017* (n 1666).

[2020] If the case does not correspond to a jurisdiction, but it is wrongly hearing it for any reason, the parties might claim the competent judge to ask the incompetent judge for the case or, instead, demand that the incompetent judge refer the case to the competent judge. Articles 18 and 19 of the Ley 439 Código Procesal Civil [Law 439 Civil Procedural Code] term 'inhibitory' [inhibitoria] and 'declinatory' [declinatoria] to these possibilities.

[2021] *Sentencia Constitucional Plurinacional 0055/2016* [2016] Tribunal Constitucional Plurinacional Expediente: 09279-2014-19-CCJ, Efren Choque Capuma [III.3].

[2022] *SCP 0017/2015* (n 1720) ch III.3.

[2023] *Sentencia Constitucional Plurinacional 0610/2019-S1* [2019] Tribunal Constitucional Plurinacional Expediente 27682-2019-56-AAC, Georgina Amusquivar Moller [III.1 and III.2]. In addition, to claim jurisdiction, the person must have the status of indigenous authority in exercise and be an integral part of the indigenous jurisdiction that has the jurisdictional power to decide the case. *SCP 0017/2015* (n 1720) III.2.

[2024] *Sentencia Constitucional Plurinacional 0211/2018-S4* [2018] Plurinational Constitutional Court Expediente 22025-2017-45-AAC, Gonzalo Miguel Hurtado Zamorano [III.2]; *Auto Constitucional 0299/2018-CA* [2018] Tribunal Constitucional Plurinacional Expediente: 25463-2018-51-CCJ, Commission of Admission [II.3].

Peru, Uruguay, and Venezuela.[2025] Historically, it was designed as a brief and straightforward procedure of two instances, the first with federal judges and the second with the Supreme Court of Justice, to protect all the fundamental rights except for the personal liberty safeguarded by the *habeas corpus*.[2026]

In Bolivia, the Constitution of 1967 was the first to include it under the name of Constitutional Amparo, following the two Mexican instances. The first instance was before the Superior Courts in the capitals of the Department or before lower courts [Juzgados de Partido] in the provinces[2027] in a summary process. The second instance concerned the mandatory Supreme Court of Justice's revision.[2028] When the Constitutional Court was created with the 1994 constitutional amendments, the Amparos revisions passed under its jurisdiction. Finally, the Constitution of 2009 named it Action of Constitutional Amparo, which, together with law 254, describes its scope of protection and procedure.[2029]

The Action of Amparo takes place 'against the illegal or unjustified acts or omissions of public servants or of individuals or collectives, who restrict, suppress or threaten to restrict or suppress rights recognized by the Constitution and the law.'[2030] In contrast with Jurisdictional Competency Disputes, Consultation of Indigenous Authorities, and the Popular Action that protect collective rights, the Amparo action aims to safeguard individual rights.[2031]

The Constitution mandates that the action of Amparo shall be presented to any judge or court provided that there is no other standard means or legal recourse for the immediate protection of restricted, suppressed, or threatened rights and guarantees (the constitutional case law refers to it as the principle of subsidiarity). It means that the plaintiff must have previously exhausted all the ordinary and extraordinary processes and resources that the law makes available to them in a timely manner. Therefore, in accordance with articles 53 and 54 of Law 254, the Constitutional Amparo Action will not proceed a) against acts or resolutions if there is another specific constitutional action to protect the interests affected or legal means of defense that may modify them, b) against acts freely and expressly consented to, or when the effects of the claimed act have ceased, or c) against resolutions whose appeals were not presented on time. However, article 54 of Law 254 clarifies it is feasible to make an exception to the subsidiarity principle if the protection under regular procedures could arrive too late or there is the imminence of irremediable and irreparable damage to occur if the Amparo protection is not granted. Furthermore, the Amparo shall be presented within six months of the alleged violation of the right or the notification of the final administrative or judicial decision. After this period, the Amparo will be rejected.

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[2025] Héctor Fix-Zamudio, *Ensayos sobre el Derecho de Amparo* (Universidad Nacional Autónoma de México - Instituto de Investigaciones Jurídicas 1993) 20 and 26.
[2026] ibid 20.
[2027] Bolivia is politically divided into nine departments, and each department, in turn, is divided into provinces.
[2028] Galindo de Ugarte (n 825) 57–58.
[2029] Constitución Política del Estado Plurinacional de Bolivia, articles 128-129; Ley 254 Código Procesal Constitucional [Law 254 Constitutional Procedural Code], articles 29-45 and 51-57. Remarkably, this law and the Constitution had incorporated the case law's subrules of the Constitutional Court since 1994. For instance, the subsidiarity principle and the six months' term to present the Amparo, among others.
[2030] Elkins, Ginsburg and Melton (n 233), article 128.
[2031] María Elena Attard Bellido, *Sistematización de jurisprudencia y esquemas jurisprudenciales de pueblos indígenas en el marco del sistema plural de control de constitucionalidad* (Konrad Adenauer Stiftung & Fundación Construir 2014) 61 and 209.
In the review of the Amparo cases relevant to the investigation, it is observed that most of them corresponded to claims made by one of the parties that felt his or her rights were harmed by an indigenous jurisdiction's decision, when it resolved his or her dispute. See Plurinational Constitutional Court, page 356.

In its procedure, the Constitutional Amparo shall be presented before the ordinary jurisdiction where the alleged right violation was committed. Specifically, in the departmental capitals,[2032] it is presented before the Departmental Courts or the Public Matter Courts; and if it is not in the departmental capitals, it is presented before the Public Matter Courts. The Public Matter Courts are the courts of the lower judicial hierarchy, and the Departmental Courts are courts of appeal. Once the action has been presented, the Judge or Court will designate the day and time to summon a public hearing, which shall take place within forty-eight hours after the action has been filed. At this hearing, the Amparo claim will be decided through a resolution sent by the judge or court to the PCC within 24 hours for its review. Subsequently, the CCP will issue a second resolution confirming or revoking the first resolution in whole or part.

### *The Consultation of Indigenous Authorities on the Application of their Legal Norms to a Specific Case*

Law 254 describes the scope and procedure of the Consultation of Indigenous Authorities on the Application of their Legal Norms to a Specific Case.[2033] It aims to guarantee that the application of indigenous regulations to specific cases is compatible with the principles, values, and purposes set forth in the Constitution.[2034] Indigenous authorities shall present their consultation requests directly to the PCC a) provided that they are in charge of knowing a concrete dispute or case, b) explaining the circumstances, facts and doubts over the appliance, and constitutionality of the indigenous norm, and c) describing the indigenous peoples' identification, geographical location, and the authority's identity. The indigenous authorities shall present their consultation directly to the PCC, whose specialized chamber is in charge of answering it after the Commission of Admission reviews the formal compliance with its procedural requirements. The law mandates that the PCC's response be written in Spanish and the consultant's indigenous language. Finally, the PCC will declare the applicability or not of the indigenous legal norm with binding and obligatory effects for the indigenous authorities that made the consultation.[2035]

The PCC had interpreted and complemented this procedure through its case law, especially when it responded to one of the firsts cases of consultation.[2036] The case was related to the Aymara community 'Cahua Grande' of Zongo that had decided to expel and evict a mining businessman from its territory for environmental reasons through the Central Agrarian Union of Zongo. After this determination, the community submitted a query to the PCC on applying its regulations to a specific case. As a result, the PCC decided that the indigenous judgment was legal and applicable. Accordingly, the PCC interpreted the following subrules for the consultation process within this context.

a) For the highlands, a 'consultation' corresponds with the timeless Aymara's community procedure under the terms 'aymarajiskt'a,' which means 'question,' and 'jist'aña,' which implies 'asking.' Within its worldview, the consultation cannot have an expiration period for its activation or be interpreted as a preventive mechanism for prior control of constitutionality. As a result, the PCC extended the scope of this action to situations in which the indigenous jurisdiction had already adopted a decision (as happened

[2032] Or the nine major cities of Bolivia: Cobija, Cochabamba, La Paz, Oruro, Potosí, Santa Cruz, Sucre, Tarija or Trinidad.
[2033] Ley 254 Código Procesal Constitucional [Law 254 Constitutional Procedural Code], articles 128-132.
[2034] To a certain degree, a parallel could be drawn with article 64 of the American Convention on Human Rights, which allows the member states of the OAS to consult the Inter-American Court of Human Rights regarding the interpretation of the convention or treaties related to the protection of human rights in the American states.
[2035] Ley 254 Código Procesal Constitucional [Law 254 Constitutional Procedural Code], Article 132.
[2036] *DCP 0006/2013* (n 774) para III.4 and III.5.

in the case that led to this consultation). Subsequently, it resulted in indigenous peoples submitting consultations to avoid possible actions or recourses against their decisions (especially Constitutional Amparos) and the PCC rejecting them with some frequency. Possibly because this expansion of the consultation would have distorted its nature, the PCC had to state that it cannot replace other procedural mechanisms to protect fundamental rights[2037] or elucidate jurisdictional competency disputes,[2038] i.e., it cannot avoid the parties claiming their rights through other constitutional procedures. Nonetheless, the PCC has not clarified the boundaries between the consultation and other related constitutional processes[2039] and has not decided regularly on the matter. [2040]

b) The consultation should open spaces for intercultural dialogue between indigenous authorities and the PCC to restore and strengthen indigenous jurisdiction and plural justice. Therefore, the PCC might summon public hearings involving an intercultural meeting and dialogue with the consulting authorities, visit the communities, require expert opinions from its Decolonization Unit, or any other.

c) The consultation and its process must be direct, open, and flexible. Therefore, it must respect the diversity of each community, and it can be oral or written. Later, the PCC interpreted that the minimum requirements that the consultation should meet according to the law do not ignore informality's principle but allow the Court to contextualize the consultation, with the possibility of its complementation during the intercultural dialogue stage with the visit of the magistrates to indigenous peoples.[2041]

Additionally to the subrules mentioned above, the PCC construed the consultation process shall not nullify the indigenous peoples' norms, as this would imply force assimilation by mandate of a judgment,[2042] nor should it resolve the merits of the specific indigenous case since it corresponds to the indigenous jurisdiction.[2043] Consequently, the PCC adopted a protecting position with indigenous peoples' legal systems and jurisdictional exercise.

## *Other Constitutional Actions*

The constitutional actions that had eight or fewer cases during the analysis period of the investigation are briefly explained below.

### *The Prior Control of the Constitutionality of an Autonomous Statute*

According to the Bolivian autonomy law, [2044] indigenous peoples and citizens of territorial entities can freely and voluntarily exercise the right to access autonomy to distribute the political-administrative functions of the State under the provisions of the Constitution and the law. It is highlighted that indigenous peoples already enjoy self-determination, territory, institutionality, and others, regardless of

[2037] *Declaración Constitucional Plurinacional 0028/2013* [2013] Tribunal Constitucional Plurinacional Expediente: 03058-2013-07-CAI, Neldy Virginia Andrade Martínez [III.1].
[2038] *DCP 0015/2013* (n 2005) III.1.
[2039] Even though Jach'a Karangas did not use the consultation process during the analysis period, this subrule should be taken into consideration because the PCC's decisions have binding effects on everyone.
[2040] Thus, case 0056/2016 declared the cosultation inadmissible because it tried to enforce an agreement, and case 0100/2017-S1 accepted the consultation.
[2041] *Declaración Constitucional Plurinacional 0008/2014* [2014] Tribunal Constitucional Plurinacional Expediente: 05156-2013-11-CAI, Efren Choque Capuma [III.4].
[2042] *DCP 0043/2014* (n 1270) para III.2.
[2043] *DCP 0016/2013* (n 1026) para III.2.
[2044] Ley Marco de Autonomías y Descentralización 'Andrés Ibáñez' [Framework Law of Autonomies and Decentralization 'Andrés Ibáñez'].

formalizing their autonomous government. One of the requirements to access governmental autonomy is to have a statute that the PCC had previously declared compatible with the Constitution. Consequently, the process for Prior Control of the Constitutionality of an Autonomous Statute aims to guarantee constitutional supremacy over such indigenous statutes under law 254.[2045]

### *The Action for Liberty*

The Constitution and law 254 describe the aim and process for this action.[2046] The Action for Liberty guarantees and protects the person who feels his or her rights to life, physical integrity, and personal liberty are illegally violated or restricted. The interested party, or anyone in his or her name, shall file a written or oral claim before any judge or Court with criminal matters' competence. The judicial authority shall immediately set a public hearing within 24 hours, order the claimant to be brought into its presence and decide the case at the hearing. The PCC must revise the decision afterward.

### *The Popular Action*

The Constitution and lay 254 define the objectives and procedures of the Popular Action.[2047] It aims to protect against the violation or threat of collective rights and interests recognized by the Constitution, such as the public patrimony, space, security, health, and environment. The action is available during the violation or threat exists. Finally, its procedure is similar to Constitutional Amparo.

## Plurinational Constitutional Court Case Law Analysis

Below are the tables that contain all the relevant cases to this investigation, ordered by date, from the oldest (2010) to the most current (2019), followed by their case numbers under PCC's designation. In addition, other identification data is included for each of these cases: a) the corresponding resolution type, b) the PCC's courtroom that issued the resolution, c) the rapporteur magistrate who prepared the draft resolution, d) the corresponding case type, e) the file number (or docket number), f) the department of Bolivia to which the indigenous people related to the case belongs, g) the matter on which the case deals, and h) the name of the indigenous people involved. In addition, if there are dissenting votes, i) the magistrates who issued them are included, as well as the j) dissenting vote's opinion. Finally, an k) abstract and l) analysis are established for each case.

The following abbreviations were used: Plurinational Constitutional Court (PCC), Plurinational Constitutional Judgment (PCJ), Plurinational Constitutional Declaration (PCD), Plurinational Constitutional Order (PCO), and Constitutional Amparo (CA).

[2045] Ley 254 Código Procesal Constitucional [Law 254 Constitutional Procedural Code], articles 116-120.
[2046] Constitución Política del Estado Plurinacional de Bolivia, articles 125-127; Ley 254 Código Procesal Constitucional [Law 254 Constitutional Procedural Code], articles 29-50.
[2047] Constitución Política del Estado Plurinacional de Bolivia 254, artcile 135-136; Ley 254 Código Procesal Constitucional [Law 254 Constitutional Procedural Code], articles 68-71.

# Relevant Cases of 2010

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 31/5/10 | 0243/2010-R | PCJ | without data | Marco Antonio Baldivieso Jinés | Liberty action |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 2007-17108-35-RHC | La Paz | Indigenous sanction. Expulsion for abuse of mining extraction. Kidnapping to force a deal |

**Indigenous people:**

Pucarani and Federación Sindical Única de Trabajadores Campesinos de la Provincia los Andes

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| The claimant, a foreign citizen and holder of a mining concession, was called by municipal and indigenous authorities to a conciliation hearing with the community members of Pucarani and the representatives of Federación Sindical Única de Trabajadores Campesinos de la Provincia Los Andes for alleged abuses in the extraction of aggregates in the area. The Departmental and national authorities were also present at the hearing. The community held the claimant against his will for six hours during the hearing, conditioning his release on signing an agreement that implied his mining company's expulsion from the community. Under these circumstances, the claimant presented an Action for Liberty which the PCC decided in his favor. | The PCC respected constitutional limits to restrict indigenous jurisdiction's illegalities. Then, the Court's decision did not affect the effectiveness of the indigenous jurisdiction. Although the parties could validly conciliate on the case's extremes, as anyone could, the conciliation process would not be part of the indigenous jurisdiction since the claimant was not part of the community. However, indigenous jurisdiction was more effective when it decided the expulsion of non-community members and their industry from their territory by acting outside its legal limits. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 15/10/2010 | 1586/2010-R | PCJ | without data | Ernesto Félix Mur | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 2008-17401-35-RAC | Oruro | Indigenous sanction. To a community for land dispute |

**Indigenous people:**

Jach'a Karangas (Collana Ayllu, Pacocahua community)

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| Through a resolution vote of the Collana Ayllu assembly, it was decided to sanction the members of the 'San José de Pacocahua Annex' for not respecting the territorial division. This decisive vote occurred after helding two indigenous conciliation hearings without an agreement. The PCC and the Guarantees Court (lower-ranking court) accepted the plaintiff's arguments that the hearings were not legally summoned and that there was not a sufficient quorum to adopt the decision, thereby affecting the due process.<br>The indigenous sanctions were decided against all the community members and their families indefinitely. The sanctions were: a) the Ayllu Collana does not recognize the annex, b) nullity of the creation of the annex, c) they cannot participate in folkloric acts of the province, d) they cannot be indigenous authorities, e) they cannot participate in investment projects of the community, and f) in case of non-compliance, they will apply final banishment from the community.<br>The Amparo claimants sued against the violation of their rights to due process, life, health, equality, work and individual and collective private property.<br>The PCC decided in favor of the claimants, limiting the sanctions according to human rights and constitutional provisions (they must not be disproportionate, without due process, or imply civil death). However, it also decided to apply the Penal Code regarding that criminal sanctions are personal and not, as in the case, to the next of kin (regarding the families involved). | The PCC disregarded the collective values of the indigenous people to protect the unity of its territory against unilateral and arbitrary actions and the social dimension of indigenous sanctions when it declared the indigenous decision disproportionate. Furthermore, the PCC did not respect legal limits when it decided to apply the limitations of the Penal Code's criminal responsibility, which are impertinent to indigenous justice. Consequently, the PCC made ineffective the indigenous jurisdiction.<br>The PCC and the lower-ranking judge (Guarantees Court) should have: a) Denied the Amparo under the subsidiarity principle until the highest indigenous authorities resolve the dispute. According to JK's competencies, the parties should submit the dispute to the Marka and Suyu authorities. b) Conduct cooperation and coordinaiton with the indigenous people to decide if the indigenous hearings were wrongfully cited to the community members and the parties or that there was not a sufficient quorum to adopt the decision.<br>On the other hand, the case demonstrates indigenous jurisdiction to be effective regarding the claimants (Amparo defendants) and the indigenous jurisdiction indicators (by accepting and deciding the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the defendants (Amparo claimants) because they rejected the indignous jurisdiction and illegally preferred the constitutional jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 09/11/2010 | 2036/2010-R | PCJ | without data | Marco Antonio Baldivieso Jinés | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 2008-18028-37-RAC | Oruro | Indigenous sanction. Expulsion for sexual assault on minors |

**Indigenous people:**

Jach'a Karangas (Sajama, Cosapa community)

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| The plaintiffs (sons of the expelled older person) denounced the violation of their rights to dignity, freedom, life, work, and private property because the Council of indigenous authorities decided a) to expel their father for sexual abuse of several minors, b) extinguish his land possession; and c) to give him six months to leave the community under the threat of taking severe measures against him. The Amparo claimants, who live in the city, believed that they were also subject of the expulsion and land loss sanction.<br>The PCC decided in favor of the indigenous authorites (Amparo defendants). | The PCC's decision is more effective because it held that the process and the sanction of the community member is the prerogative of the indigenous jurisdiction, even though criminal offenses against minors are outside the competence of the indigenous jurisdiction (material validity area). Interestingly, the lower-ranking formal court's decision was against the indigenous jurisdiction by arguing it does not have the competence to solve criminal offenses against minors. Therefore, the case is irrelevant for the indicator of the lower-ranking court because, although its decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be more effective regarding the indigenous jurisdiction indicators since it accepted and decided the case outside its competence, and the indigenous claimants (victims of the Amparo claimants) because they requested their indigenous authorities to resolve the case. Furthermore, the Amparo claimants (indigenous defendant's sons), who were third parties in the indigenous process, rendered the indigenous jurisdiction less effective by legally rejecting the indigenous decision and preferring the constitutional jurisdiction. |

# Relevant Cases of 2011

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 21/10/2011 | 1639/2011-R | PCJ | without data | Eve Carmen Mamani Roldán | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 2009-20946-42-AAC | Potosí | Indigenous sanction. Expulsion for illegal construction |

| Indigenous people: |
|---|
| Porco, Ayllus Jatun y Juchuy |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| The claimant wanted to build a service station for the sale of fuel in the community of Porco. For this, the indigenous authorities of Porco asked him to submit documentation. However, when the claimant complied with the request, the Porco authorities rejected the construction and issued a decisive vote expelling the plaintiff from the community, gave him a month to leave the site, and threatened to destroy the construction if he continued. The Porco community was sued in this amparo action for having adopted these decisions. It is relevant to state that the political and local authorities of Agua Castilla stated that the claimant belonged to this community and that, consequently, Porco could not administer indigenous justice against him. The PCC decided against Porco authorities and in favor of the claimant. | The PCC respected the limits of jurisdictional competence between formal and indigenous jurisdictions since, in this case, the condition of personal validity for the indigenous jurisdiction to be competent was not met. In other words, Porco should not decide on the construction of the gas station as the builder is not a member of the Porco community.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

# Relevant Cases of 2012

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 06/09/2012 | 1114/2012 | PCJ | Second chamber | Mirtha Camacho Quiroga | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 00975-2012-02-AAC | La Paz | Agrarian. Land dispute |

| Indigenous people: |
|---|
| Sullcata community |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Gualberto Cusi Mamani (Tata) | The judgment is not adequately substantiated and does not consider indigenous jurisdiction. In the case, since the three areas of validity of the indigenous jurisdiction were fulfilled, it was necessary to respect the decision of the community. |

| Abstract | Analysis |
|---|---|
| A church has a proprietary registry on a farm in the Sullkata community in Calluchani, Santiago Guaqui. The indigenous authorities requested to the church the exhibition of its property documents. Considering that the church's documents were not acceptable for them, that there was an unfulfilling social | The PCC's decision in favor of the church and against the community was motivated by the alleged de facto actions that the community took to recover its claimed lands. It is stressed that the basis of the judgment is insufficient to justify why the PCC identified the events that occurred as factual measures and not as indigenous jurisdiction actions. Additionally, the PCC did not follow the JDL by considering the areas of territorial, personal and material validity of the indigenous jurisdiction as, instead, did the dissenting vote of the indigenous magistrate of the PCC. Even if the PCC had also decided in favor of the |

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| function, and that the land belonged to the community, indigenous authorities gave 72 hours to the church to leave the land and took de facto measurements. PCC decided in favor of the claimant (church). | church following this second reasoning, the PCC would not have confused the exercise of indigenous jurisdiction with merely de facto measures.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional competencies. Nonetheless, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected (the claim and decision are outside the indigenous competence). |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 24/09/2012 | 1574/2012 | PCJ | Transitory liquidation chamber | Carmen Silvana Sandoval Landivar | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 2010-22873-46-AAC | Oruro | Indigenous sanction. Dismissal of authority for incorrect or unethical behavior |

| Indigenous people: |
|---|
| Jach'a Karangas (Unión Collana, Ayllu Turco, Marka, Sajama province) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
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| Abstract | Analysis |
|---|---|
| The Amparo claimants, as indigenous authorities, had fights with their peers, with some community members, and with higher-ranking indigenous authorities. Considering the claimants' actions, the Council of Authorities of the Marka (later, Amparo's defendants) decided to suspend them permanently from their positions as indigenous authorities. Faced with this decision, the defendants (later, Amparo claimants) requested the Apu Mallku and Mama Talla of Turco Marka summon a conciliation hearing to clarify the incident. However, these authorities denied the petition. Consequently, they filed an Amparo, requesting the annulment of their sanction and the restitution of their indigenous positions.<br>The Court of Guarantees (lower-ranking court) revoked the indigenous decision and ordered the Amparo claimants remain as indigenous authorities arguing due process violation because the higher indigenous authorities hindered and rejected summoning further conciliation hearings after the indigenous decision was taken. However, the PCC decided in favor of the indigenous jurisdiction because there was no violation of the claimant's right to due process since it had the participation of the parties, the community and the indigenous authorities. Furthermore, they weighted the magnitude of the offenses and sanctioned the defendants (Amparo claimants) under their law. Finally, the PCC observed that the indigenous jurisdiction's personal, material and territorial validity areas of competence concurred. | The PCC made the indigenous jurisdiction effective by recognizing its competence to decide the case and validating its decisions within the legal framework. The lower-ranking court's decision, on the contrary, rendered it ineffective.<br>If the Amparo claimants wanted to appeal the Council of Markas' decision, they should have presented their case to the indigenous authorities of the Suyu (Apu Mallku and Apu Talla) and not to the constitutional jurisdiction. As a result, the case demonstrates indigenous jurisdiction to be effective regarding the indigenous claimant (victims of the former authorities' offenses) and the indigenous jurisdiction indicators (by accepting and deciding the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the defendants (later, Amparo claimants) because they challenged the indigenous jurisdiction wrongfully by choosing the constitutional jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 24/09/2012 | 1422/2012 | PCJ | Third Chamber | Ligia Mónica Velásquez Castaños | Liberty action |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 00040-2012-01-AL | Chuquisaca | Indigenous sanction. Expulsion for theft |

| Indigenous people: |
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| Poroma neighborhood council |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
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| Abstract | Analysis |
|---|---|
| The Poroma neighborhood council expelled a couple and their children from the community because the eldest son had stolen money from a community member. Although the money was returned and parties reached a settlement, the indigenous decision remained. The claimant states that there was no due process and that the neighborhood council is not an indigenous people. | The case is not interesting because of the result of the decision but of its opinion. It was the first judgment that a) applied the anthropological expert opinion of the Decolonizing Unit of the PCC to qualify a community (in this case, the Poroma Neighborhood Council) as an indigenous people (IPs), and b) to establish how to interpret fundamental rights within intercultural contexts through the 'living-well paradigm.'<br>Regarding the first, even though the community did not argue its IPs quality to decide the family expulsion from the community, the PCC applied the anthropological expert opinion to define the Poroma's territory, pre-colonial existence, different culture and institutions, and its indigenous laws, customs and procedures. In other words, the PCC decided Poroma was an IPs. Such definition changed the constitutional judgment: instead of disregarding the community's decision as a de facto measure, it recognized IJ to decide the case.<br>Regarding the second, the PCC understood the unfairness of judging IJ's decisions through a strict test of fundamental rights. Instead, the PCC decided to apply the live-well paradigm test, consisting of five phases to contrast the indigenous judgment not with fundamental rights but with values and facts. Hence, the indigenous decision must be coherent with a) intercultural and intracultural constitutional values (equality, complementarity, reciprocity, harmony, inclusion, transparency among others, and ama qhilla, ama llulla, ama suwa (do not lie, do not be lazy, and do not steal), suma qamaña (live-well), |

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|---|---|
| The PCC decided to favor the family, considering that the sanction was not consistent with intercultural and intracultural values. The PCC also understood that it was disproportionate to apply the sanction to the whole family. | ñandereko (harmonious life), teko kavi (good live), ivi maraei (land without evil), qhapaj ñan (noble path or live), among others), b) indigenous people's cosmovision and c) internal indigenous norms and procedures. Furthermore, the indigenous punishment shall be d) proportional to the sanctioned behavior and e) strictly necessary for the community's interest protection.<br>In this sense, the PCC rendered IJ more effective not only by legally unveiling the IPs' exercise of IJ but for deciding beyond constitutional limits that restricted IJ's exercise to fundamental rights. Even if it is arguable that a) there was no disproportion given the social dimension of indigenous sanctions, or b) whether the final practical result would vary at the end if the PCC would not have construed the reality and the Constitution, it is self-evident that the opinion made IJ gain recognition, efficacy, and validity. On the other hand, the case demonstrates IJ to be effective regarding the claimant and the IJ indicators since both acted within IJ competencies, and ineffective concerning the defendants (claimants of the Action for Liberty) since they argued their community was not an indigenous people and had no jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 01/10/2012 | 1624/2012 | PCJ | Third Chamber | Ligia Mónica Velásquez Castaños | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 00488-2012-01-AAC | Cochabamba | Indigenous sanction. Expulsion for environmental damage, damage to neighboring crops, and fouls against union colleagues |

| Indigenous people: |
|---|
| Huañacota (Sindicato Agrario or Agrarian Union) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| The Huañacota Sub-central decided to evict (expel) one of the claimants for damage to the environment, damage to neighboring crops, and offenses committed against union colleagues. When carrying out this eviction, there was violent entry into the claimants' agrarian farm by the defendants, causing a violation of their rights.<br>The PCC decided in favor of the claimants. To reach the decision, the PCC was informed by the Decolonization Unit of the Plurinational Constitutional Court, through a cultural-anthropological expert opinion (Technical Report TCP/ST/UD/JIOC-JP/ Inf. 007/2012 of July 17, and Complementary Report TCP/ST/UD/0181/2012 of September 10). | The lower-ranking court rejected the claim considering that indigenous authorities should have consulted the PCC first due to the complexity of the case, favoring indigenous jurisdiction to some extent by maintaining its decision.<br>The PCC decided in favor of the claimants not because it considered that the peasant union could not exercise jurisdiction but because it understood that it committed procedural offenses against the Union's own ritualisms by exercising it. Furthermore, the PCC observed that the offender was not granted the three opportunities defined by Union's internal regulations, he was not sanctioned with community work, and the agreements between the parties were not respected. Consequently, the indigenous people's jurisdictional actions were not internally coherent. This information was obtained from the technical report of the Decolonization Unit of the PCC.<br>However, contrary to other cases resolved by the PCC, the Court directly decided against the indigenous decision without letting the indigenous jurisdiction to resolve once more the dispute (e.g., 2076/2013, 1127/2013-L, 0486/2014 or 1254/2016-S1). As a consequence, the PCC's decision rendered indigenous jurisdiction ineffective.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant and the indigenous jurisdiction indicators (by accepting and claiming the case) since they acted within indigenous jurisdictional competencies, but ineffective concerning the defendant. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 22/11/2012 | 2463/2012 | PCJ | Plenary chamber | Efren Choque Capuma | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 00721-2012-02-CCJ | Oruro | Civil. Void contract |

| Indigenous people: |
|---|
| Jach'a Karangas (Totora y Mejillones) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Mirtha Camacho Quiroga | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| In 2011 a contract void lawsuit was filed before the ordinary jurisdiction for being agreed in a state of drunkenness and duress. According to the lawsuit, the contract regards a minute that obliges the claimant to leave his current land and move to another designated one.<br>The ordinary jurisdiction considered itself incompetent to resolve the case and referred it to the agri-environment jurisdiction asserting that the parties' rural property depended on the annulment of the minute. However, the agri-environmental jurisdiction considered itself incompetent as well, contending that although it decides contract void lawsuits when a rural property is at stake, it is not the case in this process. Subsequently, the Superior Court of Justice (Oruro's circuit court), the Supreme Court of Justice, and the PCC declared themself incompetent to decide the conflict of competencies between the ordinary and agri-environmental jurisdictions. | None of the formal jurisdictions considered sending the case to the indigenous jurisdiction, which legally was the only one with the competence to resolve the dispute. According to JDL, the indigenous jurisdiction has the competence to decide the internal distribution of indigenous lands and the related disputes that may arise during this process, provided that personal, territorial and material validity areas concur. It is highlighted that JDL's provisions (2010) existed before the process under analysis. |

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| The PCC argued that the competency dispute began before January 2012, i.e., prior to the PCC's existence and its current competencies, implying that the former Constitutional Court had no competence to decide on 'Jurisdictional Competency Disputes.' Moreover, the PCC stated that 'it has no competence to resolve a jurisdictional competency dispute originated during the interinstitutional transition period.' It is noted that the antecedents do not explain the reasons of the Superior Court of Justice or the Supreme Court of Justice to reject deciding the case.<br>The case does not involve the indigenous jurisdiction accepting or claiming the competence. | Then, ordinary, agri-environmental and constitutional jurisdictions rendered the indigenous jurisdiction ineffective. Furthermore, the case demonstrates indigenous jurisdiction to be ineffective regarding the claimant and defendant indicators since none of them resorted to their indigenous jurisdiction. |

# Relevant Cases of 2013

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 04/01/2013 | 0026/2013 | PCJ | Plenary chamber | Neldy Virginia Andrade Martínez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 00507-2012-02-CCJ | La Paz | Criminal. Criminal action for land dispossession |

| Indigenous people: |
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| Chirapaca Agrarian Union |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The claimants initiated a criminal process for dispossession against the indigenous authorities of Chirapaca because they seized their property for not fulfilling a social function and not carrying out community work. The claimants are not part of the indigenous community, but their lands are located in the indigenous territory.<br>The defendants objected to the complaint in the criminal proceeding because the competence corresponded to the indigenous jurisdiction. Although the judge accepted the competence of indigenous jurisdiction to resolve the dispute, he referred the case to the PCC.<br>The PCC established that the indigenous jurisdiction is competent to resolve the dispute because territorial, personal and material validity areas concurred. Additionally, the PCC clarified that jurisdictional competency disputes aim only to decide which jurisdiction is competent and not to resolve the cases. Therefore, it is the competent jurisdiction that must decide them. | The decisions adopted by the PCC and the lower-ranking judge made the indigenous jurisdiction more effective by expanding the personal validity area to people who are not community members. The basis for the expansion lies in the buyers acquiring their lands within the community's territory, and, following the PCC reasoning, they implicitly accepted the indigenous jurisdiction to resolve their eventual disputes.<br>Furthermore, the case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. The case is irrelevant to the claimant (none indigenous member).<br>The PCC required the lower-ranking judge to send the case directly to indigenous jurisdiction next time if he construes it is competent to resolve the case. Despite this, the PCC resolved it for the sake of procedural celerity. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 04/01/2013 | 0037/2013 | PCJ | Plenary chamber | Soraida Rosario Chánez Chire | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 00160-2012-01-CCC | Potosí | Criminal. Apology for crime, coercion, public instigation to commit a crime, public disorder or disturbance, resistance to authority, and threats |

| Indigenous people: |
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| Cerrillos Jatun Ayllu San Pablo, Community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| In the Cerrillos Jatun Ayllu San Pablo Community, a general meeting of community members was held. During the meeting, a community member shouted a series of offenses against his indigenous authority, accusing him of having provided information to the mining concessionaires about a transfer of mineral. The community member forced his authority to return the seal of indigenous authority. The offended presented charges to the ordinary justice in criminal proceedings, and the offender demanded a higher ranking | The PCC clarified that the indigenous jurisdiction (IJ) is not limited by the general criteria of jurisdiction established for the ordinary jurisdiction when two ordinary judges with the same conditions have knowledge of the same matter and in which the first one who had the prevention is favored. Thus, a) although the IJ has the same hierarchy as the ordinary jurisdiction, they are two different jurisdictions, b) the prevention criterion does not apply, and c) only personal, territorial, and material validity areas apply.<br>Even though the judgment expands the material validity area (III.6), it does not use it to decide the case. However, the precedent is followed by other decisions (e.g., 388/2014). The argument is: a) The Constitution refers the material validity area to the JDL. b) Indigenous justice does not distinguish matters to define its competencies. c) With a systematic and teleological constitutional interpretation through the explicit recognition that it makes of indigenous peoples' self-determination, it is the indigenous peoples who determine which cases to resolve and sanction according to the cases they have always known and resolved, and which cases they prefer to refer to the ordinary jurisdiction. d) Therefore, together with the personal and territorial spheres, the IJ is competent to resolve the cases that it deems pertinent and has always resolved, regardless of whether State laws consider them minor or severe, criminal or |

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| indigenous authority to claim the competence to resolve the incident in the indigenous jurisdiction. The superior indigenous authority accepted its jurisdiction and later claimed it to the ordinary jurisdiction. The judge rejected the request because he already had knowledge of the process (he had prevention), so the process was referred to the PCC to resolve the conflict of jurisdiction. The PCC decided in favor of indigenous jurisdiction. | civil, among others. e) It is crucial to avoid an external reduction of the issues that the IJ can decide because it is entering into a breakdown of the constitutional postulates and those provided for in the constitutionality block. Neither C169 nor the UNDRIP establishes limits regarding the matters or the seriousness of the facts. f) Therefore, the interpretative guideline is: the delimitations by subject matter provided by the JDL (Art. 10.II) must be compatible with 1) the Constitution, 2) its fundamental principles of plurinationality, pluralism, interculturality, decolonization, and 3) the self-determination and autonomy of indigenous peoples.<br>All things considered, the PCC rendered IJ more effective. However, the lower-ranking court argument to deny the competence to indigenous jurisdiction disregarded the law rendenring IJ ineffective. Moreover, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the criminal claimant because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 20/03/2013 | 0358/2013 | PCJ | Second chamber | Macario Lahor Cortez Chávez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 01236-2012-03-AAC | La Paz | Indigenous sanction. Land dispossession for not fulfilling community duties |

| Indigenous people: |
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| Jalsuri, Puente Arriba Community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The claimant of Amparo denounced having been stripped of his lands by the Jilliri Mallku, his daughter, and community members of Jalsuri, Puente Arriba of the Viacha canton, and suffered physical attacks, supposedly for having failed to comply with the community's uses and customs. Then, his community forced him to sign a minute book, under threat of lynching (supposedly, by way of indigenous justice), renouncing his lands in favor of the community.<br>It is clarified that there is an agreement breach (an indigenous minute signed) between the claimant's wife and daughter by which the latter received the 50% of the lands that the claimant refuses to leave and continues to plow. In addition, the claimant failed to present his land titles within the process of collective titling before the INRA (National Institute of Agrarian Reform).<br>The PCC decided to favor the claimant, stating that there was no due process, and it is not legally possible to sanction the elderly with expulsion due to non-compliance with communal duties, positions, contributions, and communal work. | In this case, it is necessary to differentiate the exercise of indigenous jurisdiction (by which it decided the Amparo claimant to abandon the lands that do not correspond to him) from the community members' violent execution of this decision. Although the PCC should have protected the claimant from the violence he suffered, it was not appropriate that it overruled the indigenous decision, leaving the elder in possession of the lands that did not correspond to him.<br>The decision was adopted within the framework of indigenous law and the agreement between the indigenous authorities, the claimant's wife and daughter. Therefore, the PCC has prevented the indigenous jurisdiction from legally deciding on the internal distribution of collective lands under the pretext that he is an older adult and Art. 5.III of the JDL. However, this article only denies expulsion due to non-compliance with communal duties, positions, contributions, and communal work. In this sense, it is observed that the Court's decision disregarded the law and made the indigenous jurisdiction's exercise ineffective.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (by accepting and deciding the case) since they respected the indigenous jurisdiction. Finally, it is noted that the older adult claimed the violation of his individual rights but did not reject the exercise of the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 03/06/2013 | 0698/2013 | PCJ | Plenary chamber | Soraida Rosario Chánez Chire | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 01570-2012-04-CCJ | Santa Cruz | Criminal. Falsification of documents (material and ideological falsehood) and use of forged document |

| Indigenous people: |
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| Yuracaré-Mojeño people, Consejo Indígena del Pueblo Yuracaré-Mojeño (CIPYM) [Council of indigenous people's Yuracaré-Mojeño] |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The General Assembly of the Yuracaré-Mojeño indigenous people elected two Departmental Assembly Members to occupy the fifth seat in the Departmental Legislative Assembly of Santa Cruz.<br>This act concluded with the election of two indigenous members. However, an indigenous authority criminally | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework. It also ordered the ordinary jurisdiction to refrain from interfering, offering collaboration and cooperation to the indigenous jurisdiction, if required, for the case's decision and its enforcement.<br>It should be noted that the PCC misrepresented the material area of validity by equating it with indigenous matters, as cases that belong to the indigenous people's interests, and not by contrasting it with JDL as corresponded. In other words, the PCC's central argument to define the material area of validity to admit the indigenous jurisdiction's competence was the indigenous people's interests and not the matters defined by law. Such |

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| denounced those elected for material and ideological falsehood and use of a forged instrument before the ordinary jurisdiction. As a result, the indigenous people's authorities claimed jurisdiction before the ordinary jurisdiction to resolve the dispute. The PCC decided in favor of the indigenous jurisdiction. | misrepresentation has no consequences if the indigenous affairs coincide with the indigenous people's interests. However, it would expand the indigenous jurisdiction if the interests' matters are outside its competence. In this sense, the binding opinion of the PCC's decision rendered indigenous jurisdiction more effective, even though the material matters of the case belong to indigenous competence.<br>It is remarkable that, according to the JDL, the PCC resolved that the public interest (public order) crimes of ideological falsehood and use of a forged instrument are within the competence of indigenous jurisdiction.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the claimant because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 05/06/2013 | 0006/2013 | PCJ | First specialized chamber | Soraida Rosario Chánez Chire | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 01922-2012-04-CAI | La Paz | Indigenous sanction. Expulsion for environmental damage, mining exploitation abuse, and failure to fulfill a social function |

| Indigenous people: |
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| Cahua Grande, Cahua Chico, Agrarian-peasant Union of Zongo |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The Aymara community 'Cahua Grande' of Zongo decided to expel and evict a mining businessman from its territory for environmental reasons through the Central Agrarian Union of Zongo. After this determination, the community submitted a query to the PCC on applying its regulations to a specific case. As a result, the PCC decided that: a) The indigenous sanction of expulsion is legal. b) Indigenous jurisdiction can be applied to a third party (justifying this decision in the constitutional decision SCP 0037/2013). c) The consultation on the application of indigenous peoples' rules can be carried out before, during, or after the decision is made. | The PCC disregarded the Constitution in favor of indigenous peoples, making their jurisdiction more effective. The case is precedent of 0874/2014, 0073/2018 and others regarding the expulsion of a mining entrepreneur that was not a community member. Thus, the PCC decided to extend indigenous jurisdiction to non-community members if their actions occurred on the community's territory and affected its members' interests. Such extension disregards the constitutional criterion of personal validity as a jurisdictional limit.<br>The PCC also modified the preventive nature of the consultation of indigenous peoples' authorities, set in its judgment SCP 2143/2012, by deciding that it could occur even after applying their statutes.<br>Finally, but not least, the PCC decided that expulsion and eviction, as indigenous sanctions, are legal and compatible with the constitution as long as they are provided in its internal regulations or customs.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional competencies. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 20/06/2013 | 0925/2013 | PCJ | Plenary chamber | Efren Choque Capuma | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 01826-2012-04-CCJ | Oruro | Criminal. Resolutions contrary to the constitution and the laws, right to work, severe injuries, and wrongful conduct |

| Indigenous people: |
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| Jatun Quillacas Asanajaqi Suyu (Capaj Amaya del ex Ayllu Quillacas) |

| Magistrate/s | Dissenting vote's opinion |
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| Ligia Mónica Velásquez Castaños | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
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| In a criminal proceeding between members of the same community for land dispossession, the indigenous authorities claimed the competence to resolve it. The reported crimes are severe injuries, attack against the right to work, wrongful conduct, and resolutions contrary to the Constitution and laws. The litigation started because the claimant felt that his farmlands were illegally taken.<br>Indigenous authorities, stakeholders, and the community held a community conciliation meeting. At that meeting, it was agreed that the disputed lands are community grazing lands so that the claimant will receive new land through a redistribution lottery process.<br>The PCC decided in favor of indigenous jurisdiction. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case and validating its decisions within the legal framework. It also denied the criminalization of indigenous customs that govern the indigenous people in question.<br>Likewise, the abstention of interference from the formal jurisdiction was ordered, offering collaboration and cooperation to the indigenous jurisdiction, if required, for the case's decision and its enforcement.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (accepting and claiming the case) since both acted within indigenous jurisdictional competencies and |

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| | ineffective concerning the criminal claimant because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 27/06/2013 | 0012/2013 | PCJ | Plenary chamber | Mirtha Camacho Quiroga | Prior control of the constitutionality of an autonomous statute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 02097-2012-05-CEA | Chuquisaca | Prior control of the constitutionality of an autonomous statute |

| Indigenous people: |
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| Mojocoya, commiunity of |

| Magistrate/s | Dissenting vote's opinion |
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| Ligia Mónica Velásquez Castaños | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
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| The PCC accepted the constitutionality of Article 40 of the Autonomous Statute of Mojocoya regarding the personal area of validity of indigenous jurisdiction under the condition that its wording is construed according to the Constitution: only indigenous people of Mojocoya are under such jurisdiction. | The decision respects the limits of indigenous jurisdiction and is therefore effective. It should be stressed that the decision, although follows the constitution, contradicts the constitutional declaration 0006/2013-DC. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 27/07/2013 | 0009/2013 | PCJ | Plenary chamber | Neldy Virginia Andrade Martínez | Prior control of the constitutionality of an autonomous statute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 01529-2012-04-CEA | Oruro | Prior control of the constitutionality of an autonomous statute |

| Indigenous people: |
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| Jach'a Karangas (Totora Marka) |

| Magistrate/s | Dissenting vote's opinion |
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| Ligia Mónica Velásquez Castaños | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
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| Totora Marka of Suyu Jach'a Karangas requested prior control of the constitutionality of its autonomous statute.<br>The PCC accepted the constitutionality of Article 93 of the Autonomous Statute of Totora Marka regarding the irreversibility of the indigenous jurisdiction's decisions as long as they agree with the Constitution. | The PCC made the indigenous jurisdiction effective by recognizing its competence to resolve disputes that shall be not revised or modified by other jurisdictions within the legal framework. Finally, since this kind of process does not involve claiming or accepting to resolve a dispute, nor the participation of claimants, defendants, or lower-ranking judges, those indicators are not considered. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 01/08/2013 | 1225/2013 | PCJ | Plenary chamber | Mirtha Camacho Quiroga | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 03003-2013-07-CCJ | La Paz | Criminal. Attempted murder, severe and minor injuries |

| Indigenous people: |
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| Chiarpata Community |

| Magistrate/s | Dissenting vote's opinion |
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| Neldy Virginia Andrade Martínez | The decision in SCP 1225/2013 was hasty as there was not enough information to allow an objective analysis of the facts to determine the respective material scope to resolve the conflict of competencies. |

| Abstract | Analysis |
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| In the criminal proceeding for attempted homicide and injuries, the Chiarpata community claimed jurisdiction to resolve the dispute, arguing that it was a land dispute, that the syndications were false and that, in addition, the plaintiff signed the minutes that decided the case. These minutes stated that the problems would be solved with the participation of the community and its authorities, and that the ordinary jurisdiction will be admissible with the prior authorization of the community authorities. The Pucarani criminal investigation court rejected the request stating that the dispute belongs to criminal matters and that, in addition, the first preventing jurisdiction (the first to know the case) should be preferred.<br>The PCC decided in favor of indigenous jurisdiction. | Regarding the area of material validity, since the crimes of attempted homicide and attempted murder are not excluded from indigenous jurisdiction by the JDL, the Court has rendered indigenous jurisdiction effective by accepting its competence.<br>It should be noted that the PCC misrepresented the material area of validity by equating it with the factual events that occurred and gave rise to the criminal action, and not by contrasting them with the Jurisdictional Demarcation Law as would actually correspond. In other words, the PCC's central argument to define the material area of validity to admit indigenous jurisdiction were the facts of the criminal action and not its legal qualification, which, in the end, are the matters admitted or excluded to indigenous jurisdiction by law.<br>Such misrepresentation has no consequences if the indigenous jurisdiction's competence matters coincide with the legal qualification of the facts, as happens in the present case. However, it would expanded the indigenous |

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| | jurisdiction's competence if those qualifications were outside of its competence.<br>On the other hand, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the criminal claimant because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 30/08/2013 | 1127/2013-L | PCJ | Transitory liquidation chamber | Blanca Isabel Alarcón Yampasi | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 2011-24160-49-AAC | La Paz | Indigenous sanction. Expulsion for initiating criminal actions against indigenous authorities and not performing community contribution |

| Indigenous people: |
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| Yauriri-San Juan Community (Jesús de Machaca) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Edith Vilma Oroz Carrasco | Because it was issued by a competent authority, it would have maintained the expulsion from the community of one of the indigenous persons who presented the constitutional claim. |

| Abstract | Analysis |
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| In 2002, a minor was punished for theft with the purchase of a door for the school and the production of 1000 adobes. Upon discovering the real thief, the family initiated criminal proceedings and public complaints that were considered infamous by the indigenous authorities. For this reason, the indigenous authorities decided to expel them from the community and argued that they failed to fulfill their duties with the community for eight years. Subsequently, they carried out these decisions by force, without using the public force, and with signed documents obtained with duress and undue influence. Faced with this circumstances, the family claimed the Amparo to restore their rights. | Although the PCC annulled the decisions adopted by the indigenous people that were contrary to human and constitutional rights, it ordered that its indigenous authorities decide again on the dispute and, on this occasion, frame their resolution within legal limits and respecting rights. This PCC position is plausible since it makes a difference in the scope of the decisions that this Court can adopt. Thus, it prevents the indigenous jurisdiction's decisions from causing an infringement of human and constitutional rights by annulling them and restoring the rights to their holders. However, it does not appropriate the conflict pertaining to the indigenous jurisdiction's competence since it decides not to resolve the dispute. In this way, the PCC fulfills its duty of non-interference in matters that correspond to indigenous jurisdiction.<br>Consequently, The Court's decision allowed indigenous jurisdiction to decide the dispute, rendering it effective. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimants and the indigenous jurisdiction indicators (by accepting and deciding the case, even though the decision was unfair) since both acted within indigenous jurisdictional competencies and ineffective concerning the defendants (Amparo claimants) because they chose the ordinary jurisdiction against their authorities. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 22/10/2013 | 0414/2013-CA | PCJ | Admission commission | Admission commission | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 04882-2013-10-CCJ | La Paz | Indigenous sanction. Water supply interruption to force community member's expulsion |

| Indigenous people: |
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| Santa Ana Primera Sección Pucarani |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| In an administrative process before the Ministry of the Environment and Water, it was decided to reconnect the water service to an expelled community member despite the indigenous community's opposition. As a result, the administrative decision was executed. Under these circumstances, the indigenous authorities tried to meet the administrative authorities, demanding their withdrawal from hearing the case.<br>The PCC's Admission Commission decided not to admit the case. | The PCC justified its decision not to admit the case (not to respond to the claim's merits), arguing that the indigenous jurisdiction is not competent to resolve administrative cases. Furthermore, it stated that the law does not grant the PCC the competence to resolve jurisdictions' conflict between the indigenous jurisdiction and administrative entities of the State (Executive Organ).<br>When the community decided to enforce its decision to expel a community member, the means to that end should not have been cutting off the water service or preventing its reconnection by the administration since both aspects are illegal. In Bolivia, water service cuts are only allowed to water companies due to lack of payment for the service and are prohibited as a sanction. In addition, the sanction of water supply cuts contradicts the Constitution for violating the fundamental right to access to water which, in turn, is directly related to the right to life. The community could have requested cooperation from the public force to evict the expelled. For this reason, the executive body did not interfere with the indigenous jurisdiction.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. The claimant of the administrative process made the indigenous jurisdiction less effective. There was no defendant in the administrative process. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 04/11/2013 | 1956/2013 | PCJ | First specialized chamber | Neldy Virginia Andrade Martínez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 03992-2013-08-AAC | Pando | Indigenous sanction. Expulsion for not being a community member |

**Indigenous people:**

Chivé Community, agrarian union (Manuripi province)

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The claimant denounced that the Chivé community expelled him with de facto measures by preventing him from entering his plot without having undergone a prior process, depriving him of his property rights. The defendants argued that the claimant never was a community member and, as a result, he has no right to the community's collective land.<br>The PCC decided a) to favor the claimant, clarifying that he was admitted as a community member by the community (according to the community's internal documents), and b) asserting that the community did not carry out a due process against the claimant (by summoning him and hearing his defense). On the contrary, the community directly decided his expulsion and then communicated the decision. So then, there was no due process. c) Finally, the PCC decided not to protect the claimant's right to property since his alleged land property is part of the community's collective territory. | The PCC decided against the community because it did not carry out a process against the claimant to expel him. Although the PCC's decision protects the claimant in his constitutional right to due process, it has appropriated the indigenous dispute's resolution. The PCC should have ordered indigenous jurisdiction to carry out a new due process under legal limits, as it did in other cases allowing it the possibility to resolve indigenous disputes (e.g., 2076/2013, 1127/2013-L, 0486/2014 or 1254/2016-S1). As a result, the PCC's decision rendered indigenous jurisdiction ineffective. The same reasoning applies to the lower-ranking court of guarantees.<br>The indigenous people's claimants and jurisdiction were effective by claiming and deciding the case, even though there was no due process, and the ruling was unjust when the indigenous people deemed the claimant a non-community member. Amparo claimant (defendant of the indigenous process) also rendered the indigenous jurisdiction effective since he claimed the violation of his rights but accepted the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 18/11/2013 | 2076/2013 | PCJ | First specialized chamber | Neldy Virginia Andrade Martínez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 04151-2013-09-AAC | Potosí | Indigenous sanction. Expulsion for illegally dressing as an indigenous authority |

**Indigenous people:**

Nación Killacas (Tolapampa Aransaya Ayllu Council)

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| A television channel requested permission from the authorities of the Ayllus of Tolapampa to make a documentary on indigenous justice. The authorities gave permission and delegated the activity to the claimants. The claimants are a married couple who held some positions in Tolapampa, although the husband is a native of the community and the wife is a native of another indigenous people.<br>The indigenous authorities, defendants in the process, sanctioned the wife with expulsion and the husband with three years suspension because they allegedly wore indigenous authority clothing without being indigenous authorities and because the wife is not a native of Tolapampa.<br>The couple claimed the violation of the right to due process, among other rights. The PCC decided in favor of the claimants and ordered the indigenous authorities to issue a new dispute resolution. The PCC argued that despite compliance with the territorial, personal and material areas of the indigenous jurisdiction when carrying out the process and issuing the decision, the right to due process was violated because the claimants did not have the opportunity to exercise their right to defense. Regarding the personal area, the PCC stated that the wife followed her husband's community affiliation when she held an indigenous position in Tolapampa, then the personal condition was met.<br>The PCC ordered the indigenous authorities to resolve the dispute once again to comply with due process. That is, the indigenous jurisdiction must allow the right of defense, which encompasses a due decision's motivation | Arguably the PCC hindered IJ by being extremely attentive to details on its due process performance. Imposing a stringent test of compliance with due process (and constitutional rights, for that matter) can affect or even obstruct IJ: a) most, if not all, indigenous processes and decisions could be observed (e.g., requiring the presence of the defendant's lawyer for the technical defense, requiring an entirely impartial decision's body or authority, decision's predictability, written, oral, or mixed specific procedures, cases' archive, among others). b) It would imply specialized juridical knowledge from indigenous authorities, which they usually lack (they are seldom lawyers, and their customs and procedures govern IJ). On the contrary, it should be taken into account that orality and relationships in collective contexts could imply, to some extent, the informal fulfillment of constitutional rights. For instance, summoning the parties to a hearing could be done through informal talks or general community knowledge (the parties and the authorities usually are in constant contact, contrary to what happens in individualistic contexts). The same with the proportionality of the sanction, since it should be community-based (as long as there is no contradiction, indigenous values or interests should not necessarily coincide with the State or PCC's ones). IJ is intrinsically distinct from other State's jurisdictions, deserving a differentiated consideration. Then, although the Constitution limits IJ to respect the rights to life, defense, and others, it also admits the intercultural exercise of IJ following their own worldview, principles, cultural values, rules, and procedures (Const. Arts. 30.II.14, 178.I, and 190). Then, to avoid the obstruction of IJ by thoroughly requiring formal compliance with constitutional rights, the PCC should count on the intervention of expert opinions to discover whether IJ complied with constitutional rights beyond a purely formal plane, giving IJ a fairer chance to exercise due process. The PCC accepted this approach later (0486/2014 and 0843/2017-S3). |

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| (chronological and coherent description, justifies the imposition of such severe sanction in the events and the evidence to prevent it from being construed disproportionate for excessive), and that the right to challenge the decision is not limited. The PCC also clarified that an Amparo action could be retaken if the indigenous jurisdiction does not comply with this constitutional guarantee. | However, the PCC recognized the right to exercise indigenous jurisdiction (IJ) and differentiated it from the indigenous people's duty to exercise it in compliance with constitutional rights. Additionally, the PCC has not appropriated the conflict, but instead, it left IJ to resolve it. The PCC limited itself to annul the IJ's decision for due process violation and ordered to carry out a new process. In this sense, considering the indigenous jurisdiction still has the possibility to decide the case, the Court rendered indigenous jurisdiction effective. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators since they accepted the indigenous jurisdiction. It is noted that the sanctioned couple claimed the violation of their individual rights and did not reject the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 19/11/2013 | 1248/2013-L | PCJ | Transitory liquidation chamber | Carmen Silvana Sandoval Landivar | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 2011-24856-50-AAC | Cochabamba | Agrarian. Land dispute |

**Indigenous people:**

Eñe Alto Agrarian Union Tiraque province

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| Even though the claimant won a possessory process in the agri-environmental jurisdiction against the agrarian union (defendant), for reasons not explained in the decision, the union decided to extinguish the claimant's property, giving him a period to abandon his land under threats. The PCC decided in favor of the claimant, considering that the union (defendant) is not an indigenous people and the competence to resolve the dispute pertain to agri-environmental jurisdiction. | This case is interesting for the following principal reasons. a) To show that not all rural peasant unions are considered indigenous peoples. However, of all the cases reviewed, this is the only one rejected because the community is not an indigenous people. b) The PCC recognizes the right to indigenous jurisdiction only to indigenous peoples. However, the PCC does not always follow this criterion (e.g., in SCP 0038/2014-S1 the PCC considered that a community exercised its indigenous jurisdiction and not, as it was appropriated, a simple conciliation between individuals, disregarding the Technical Report TCP/ST/UJIOC/03/2014 issued by its Technical Secretariat [contrast sections II.11 and III.5]). c) The PCC enforced the competence division by rejecting the modification of the agri-environmental jurisdiction's decision.<br>It is debatable that the PCC does not recognize this community as an indigenous people, despite the fact that its jurisprudence constantly extends the quality of indigenous people to all peasant, indigenous or agrarian communities. For this reason, by not treating this community the same as the others, the PCC would have illegally disregarded its status as indigenous people, making its right to exercise indigenous jurisdiction ineffective. However, despite this situation, the competence to resolve the dispute corresponded to the agri-environmental jurisdiction since the dispute was outside the material validity area. The case demonstrates that the indigenous jurisdiction was more effective when it decided outside the indigenous competence and less effective concerning the claimant and the defendant. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 29/11/2013 | 0028/2013 | PCJ | First specialized chamber | Neldy Virginia Andrade Martínez | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 03058-2013-07-CAI | La Paz | Indigenous sanction. Expulsion |

**Indigenous people:**

Chiviraque, Agrarian Union

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Efren Choque Capuma | Although the consulting authority did not make a broad and detailed explanation regarding the identification and doubts about the constitutionality of the norm and its application... nevertheless, under the criterion of broad flexibility when dealing with indigenous peoples... it should be considered what was stated by the indigenous authority... and establish compatibility with the constitutional text (II.7.3) |

| Abstract | Analysis |
|---|---|
| The indigenous authorities consulted the applicability of the expulsion sanction of community members. The Court decided that the consultation was inadmissible because it considered that there was no genuine consultation but rather the protection of a decision adopted. On the other hand, the dissenting vote maintains that the consultation should have been accepted in a flexible application of the procedure towards indigenous peoples. | The case demonstrates how the specialized chamber's plural constitution, which is made up of two magistrates (only one of them is indigenous), might have influenced the outcome. As the chamber did not reach a consensus, the PCC's chair voted. Possibly because the president is not an indigenous magistrate, the indigenous magistrate's vote remained as a dissenting vote.<br>Given that the indigenous authorities consulted whether their decision was compatible with the Constitution, suggest the indigenous authorities may confuse 'applicable norm' with the 'indigenous decision that resolves a dispute.' Although a similar situation is observed in other consultation processes (0006/2013, 0100/2017-S1, 0045/2017), only some of them were rejected because the Court considered that the indigenous authorities |

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| The decision was adopted by the specialized chamber composed of an indigenous magistrate and two non-indigenous magistrates. The dissenting vote was of the indigenous magistrate. | sought the ratification of their decisions and not the applicability of an indigenous norm (e.g., this case 0028/2013, 0056/2017-S1), demonstrating inconsistency.<br>Be that as it may, the PCC made the indigenous jurisdiction effective by not modifying the indigenous decision. Instead, it limited itself to declaring the consultation inadmissible.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, defendant and the indigenous jurisdiction indicators since both acted within indigenous jurisdictional competencies. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 03/12/2013 | 0479/2013-CA | PCO | Admission commission | Admission commission | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 05332-2013-11-CCJ | La Paz | Criminal. Severe injuries, threats, and trespassing |

| Indigenous people: |
|---|
| Huchuy Ayllu Lunlaya |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The indigenous authorities claimed competence to resolve criminal complaints against authorities from their own community. The judge admitted the request and sent the antecedents to the indigenous jurisdiction. However, he also ordered that the PCC know the case. The PCC decided not to admit the case as it found no conflict of jurisdiction. | Although the PCC decided not to admit the case because the ordinary jurisdiction has already accepted the competence of the indigenous jurisdiction, it has indirectly accepted the jurisdictional limits and recognized the competence of the indigenous jurisdiction. The case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the criminal claimant because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 13/12/2013 | 1259/2013-L | PCJ | Transitory liquidation chamber | Zenón Hugo Bacarreza Morales | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 2011-24569-50-AAC | La Paz | Indigenous sanction. Expulsion for the commission of illegal acts as an indigenous authority |

| Indigenous people: |
|---|
| Huancollo, indigenous Ayllu |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The defendants violated the claimant's rights, having assumed the determination to expel him from the Huancollo community for having committed alleged faults in the exercise of his functions as Sullka Mallku of said Community, all this without prior process.<br>Before the Court rendered a decision, the parties in conflict reached an agreement in an assembly, signing a minute by which the claimant was re-admitted to the community, and his land's possession was returned to him.<br>The PCC accepted the agreement between the parties as a rightful decision of the indigenous jurisdiction that reestablished the community's balance and called for its fulfillment. However, since the law does not allow withdrawal of the action in constitutional processes, the PCC partially reversed the guarantee judge's decision. | The PCC accepted the indigenous jurisdiction's decision that resolved the dispute, although it was assumed during the constitutional process and before the PCC issued its decision. For this reason, it is considered that the PCC respected and made effective the indigenous jurisdiction. The the actions of the parties and authorities rendered indigenous jurisdiction effective. |

# Relevant Cases of 2014

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 3/1/2014 | 0041/2014 | PCJ | Third Chamber | Ligia Mónica Velásquez Castaños | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 04439-2013-09-AAC | La Paz | Indigenous sanction. Expulsion for trafficking of community lands and dispossession of lands to community members |

| Indigenous people: |
|---|
| Tacobamba commuinity, agrarian union (Sapahaqui) |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The claimants denounced the commission of de facto measures by the defendants (indigenous authorities). The latter would have issued two decisions on which the community would have supported its violent actions, resulting in the violation of the claimants' property. Indigenous authorities decided to | The Court's decision could have argued against Tacobamba's judgment by excluding indigenous jurisdiction's competence to decide on rural real state property. Furthermore, it could have differentiated the indigenous decision from its enforcement (that violated human and constitutional rights). If the Court had followed |

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| dispossess the claimants from their lands to build a sports field. During the execution of the decisions, the community destroyed the claimant's entire plantation of prickly pear [tunas]. Furthermore, indigenous authorities cut the water service of the claimants, and expelled them and their families from the community because they trafficked with community lands, usurped and dispossessed other indigenous members, and would not have demonstrated their land property right. The PCC decided in favor of the claimants. However, the PCC did not carry out a technical study to determine if the Tacobamba agrarian union is an indigenous people with the right to exercise indigenous jurisdiction. The PCC also did not make a legal analysis of compliance with the areas of validity of indigenous jurisdiction. | these criteria, it would possibly have reached the same conclusion as that reached in the decision under analysis without affecting the effectiveness of the indigenous jurisdiction because it would have respected the legal limits between jurisdictions. On the contrary, when the Court argued that unjustified de facto actions were taken in a 'supposed indigenous justice,' it inappropriately delegitimized this indigenous people to exercise its jurisdiction and restricting its possibility to resolve disputes. As a consequence, the PCC made indigenous jurisdiction ineffective. The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies, and ineffective regarding the defendants (Amparo claimants) because they did not accept the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 19/2/2014 | 0323/2014 | PCJ | Second chamber | Mirtha Camacho Quiroga | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 03359-2013-07-AAC | Oruro | Agrarian. Land division or distribution for hereditary succession |

| Indigenous people: |
|---|
| Hiluta Chahuara Ayllu, Municipality of Huari |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| Together with a notary public, the indigenous authorities held a hearing to decide the land division based on hereditary succession. In this hearing, without the community's presence, minutes were signed by the parties in dispute, the indigenous authorities, and a notary. In the minutes, 60% of the land was granted to the brother-in-law, even though he did not work the land for several years, and 40% to the claimant.<br>Although the community was not present at the signing of the minutes, it later rejected the claimant's presence at the meetings and threatened to expel her from the community, blaming her for generating hatred and resentment against her family and having gone to the ordinary jurisdiction claiming her rights instead of resolving the dispute through the indigenous jurisdiction.<br>The PCC maintained that due process was affected because a notary cannot intervene in indigenous minutes since they are indigenous judgments. Likewise, the PCC stated that due process was affected by not allowing the claimant to defend herself by forcing her to sign minutes. | Differentiating the events that occurred, there are two aspects that the PCC should decide: the validity of the decision to divide the land by inheritance and the sanction of refusal of the claimant to participate in community meetings.<br>The authorities adopted the decision to divide lands by hereditary succession. The community later endorsed this decision. Then, indigenous decision should be valid even if a notary public has participated. It should be borne in mind that these are collective lands in which possession is redistributed, not property. Likewise, article 37 of the Law of Plurinational Notaries authorizes that notaries can attend and attest to the acts commonly practiced by indigenous communities and peoples at the request of interested parties, provided that it is settled within a minute. Although this law was not in force at the time of the notarial participation, it was when the PCC decided the case. In any case, there is no previous rule that prohibits notarial participation in indigenous hearings. Consequently, the Court disregarded the legal limits when revoking the indigenous decision.<br>However, when the community considered that the claimant had not acted well with the hereditary succession and rejected the claimant's participation in community meetings, they sanctioned the claimant without due process. The PCC did not resolve this situation, although it appears in the background of the case. It is a dispute that has been decided without complying with constitutional rights despite being within indigenous jurisdiction's competency.<br>Then, the Court made indigenous jurisdiction ineffective when it decided to annul the indigenous decision on the grounds of the notary presence.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (accepting the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the claimant because she rejected the indigenous jurisdiction to resolve the dispute. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/2/2014 | 0486/2014 | PCJ | First specialized chamber | Neldy Virginia Andrade Martínez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 03800-2013-08-AAC | Oruro | Indigenous sanction. Expulsion for not performing community contribution |

| Indigenous people: |
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| Jatun Killaka Asanajaqi Jakisa, Nación Originaria |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The indigenous jurisdiction decided to suspend the Amparo claimants' agricultural activity, requiring that a descendant of each member of their family should begin to contribute to the community. The higher indigenous authorities ratified this | The case inaugurates a paradigm on the application of due process based on<br>a) The minimal intervention of the constitutional jurisdiction in front of the indigenous jurisdiction,<br>b) The intangibility of indigenous decisions,<br>c) That the constitutional jurisdiction can only intervene in indigenous jurisdiction in cases where constitutional rights have been seriously affected, and |

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| decision, and the sanction was aggravated for lack of compliance.<br>The claimants maintained that because they were elderly, they could not be expelled and claimed the violation of their constitutional rights based on due process. Among other rights, they claimed that their right to defense was violated and that the decisions were not justified.<br>The PCC decided against the claimants, justifying that they were not expelled and that they failed to defend themselves because they did not submit to indigenous jurisdiction. However, it recognized that the indigenous decisions were unfounded (violating due process), so it annulled them and ordered indigenous jurisdiction to issue a new decision duly motivated. | d) That indigenous due process has different components than the due process in formal jurisdiction because it obeys different constitutionally recognized legal traditions, although PCC does not explain what they are.<br>For these four reasons, the PCC establishes that due process must impact the indigenous jurisdiction only in the face of violation of the rights to defense, life, dignity, and physical integrity.<br>Despite this paradigm, which is undoubtedly relevant and favorable for the indigenous jurisdiction in general, the case itself does not comply with it (the PCC orders the indigenous jurisdiction to issue a new decision sufficiently motivated). However, although the motivation is not written in the indigenous decision, it is most likely known to the sanctioned party, the community, and its authorities due to the indigenous process's oral nature and the reviews it had. Therefore, the PCC had to analyze this situation through its Decolonization Unit, as it did to deny the violation of the defense's right.<br>However, the PCC's decision rendered effective the indigenous jurisdiction as it implicitly admitted that the decision of this dispute falls within the scope of its competence. Furthermore, it did not appropriate the substantive decision but ordered indigenous jurisdiction to issue a new decision that complies with due motivation.<br>Then, the PCC rendered the indigenous jurisdiction effective. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (by accepting and deciding the case) since they respected the indigenous jurisdiction. It is noted that the Amparo claimants (defendants) claimed the violation of their rights and did not reject the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/2/2014 | 388/2014 | PCJ | Plenary chamber | Gualberto Cusi Mamani (Tata) | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 02918-2013-06-CCJ | La Paz | Criminal. Falsification of documents |

**Indigenous people:**

El Ingenio (indigenous community and agrarian union)

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey and *Ligia Mónica Velásquez Castaños | It should have been declared that the ordinary jurisdiction is competent because: a) The right to a natural and impartial judge is violated by imposing that it be the same union that presented the criminal complaint before the ordinary jurisdiction that decides the case through intracultural dialogue, and b ) By conditioning the solution of the case raised to intracultural dialogue, the claim is not resolved, and prompt and timely justice is not granted.<br>It is considered that: a) the decision does not depend solely on the union, and b) the case of jurisdictional competency dispute is resolved by granting the competency to indigenous jurisdiction.<br>* The opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| The 'El Ingenio' community has two parallel organizational structures: an agrarian union and an indigenous people. The union denounced the commission of crimes of falsification of documents against the indigenous people's authorities before the ordinary jurisdiction due to a crescent conflict between the two structures. The union, founded in 1953, tried to ignore and undermine the indigenous people's existence which, through the initiative of union members, has been reconstituting itself since 2009 when they met in a Jach'a Tantachawi for this purpose.<br>The PCC recognized that the union and the indigenous people are the same community that meets the characteristics to be an indigenous people. Therefore, the PCC established that 'El Ingenio' has jurisdiction to decide on the criminal matters denounced and must act this way through intracultural dialogue between the union and indigenous people's structures.<br>The PCC ordered an intracultural dialogue between both parties to reach a joint decision within a month. Moreover, the PCC ordered the parties in dispute to report the results to the PCC's Coordination Unit. | Within the legal framework, the PCC has preferred that the decision of the criminal case on falsification of documents be resolved by the indigenous jurisdiction of the 'El Ingenio' community, which makes the indigenous jurisdiction effective.<br>When the PCC tested indigenous jurisdictional competence through the personal, territorial and material validity areas, it expanded the material scope, following 0037/2013 (parr. III.6). The PCC did not contrast the JDL's criteria with the denounced facts but limited itself to maintaining that 'the facts for which the criminal process was initiated and from which the present conflict of competences arises are, from a comprehensive understanding [0037/2013 (parr. III.6)]..., within the matters known and resolved by the indigenous jurisdiction.' Under this argument, the scope of the material validity area could be any case that the indigenous jurisdiction has ever dealt with and independently from the JDL. For these reasons, the PCC rendered the indigenous jurisdiction more effective.<br>On the other hand, and for the first time, the PCC adopts a position of control and monitoring of a line of action that the indigenous people must carry out to reach a decision. The PCC ordered the parties to adopt the specific form of intracultural dialogue to reach a joint decision (whatever it may be) and inform within a specified period in this regard. The PCC's guidance and accompaniment regard more effective cooperation since the law does not provide it (it is beyond State duties). It is not construed as a paternalistic interference against the indigenous people's self-determination since the PCC's recommendation is generic and broad, aiming at unity and dialogue. Consequently, there is more effective cooperation and coordination.<br>Furthermore, under the argument that both structures belong to the same indigenous people, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators since both acted within indigenous jurisdictional competencies and ineffective concerning the claimant because the union refused to accept the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 8/4/2014 | 0672/2014 | PCJ | Plenary chamber | Neldy Virginia Andrade Martínez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 05249-2013-11-CCJ | Potosí | Criminal. Slander and defamation |

**Indigenous people:**

Saracara, Jucumani Ayllu, Chuquita Municipality

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| 1. Soraida Rosario Chánez Chire<br>2. Tata Gualberto Cusi Mamani<br>*Ligia Mónica Velásquez Castaños | 1.The three areas of validity are fulfilled, especially the personal one because the criminal plaintiff performs her functions as a teacher in the community and has the obligation to respect the customs of the community.<br><br>2. The three areas of validity are fulfilled, especially the personal one because, although the criminal complainant (teacher) does not have a particular link with the community, the criminal defendants (authorities) do. Art. 191.II.1 of the Constitution imposes indigenous jurisdiction when one of the parties is indigenous.<br>* The opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| The council of Tocoria made known to the District Director of Education of the Municipality of Chuquihuta its determination to change the current school teachers immediately. However, one of the teachers, who constantly abandoned her work, tried to pay Bs200 (about $28,5 at the moment) to exempt her said absences. Since the determination, the community rejected the return of the teachers because they permanently impaired their children in their education. Subsequently, the teacher who wanted to pay the fine and whose return was prohibited initiated a criminal proceeding against the former indigenous authorities for the alleged commission of defamation and slander crimes before the ordinary jurisdiction.<br>The indigenous authority of the community claimed the competence to decide the case, but the ordinary judge rejected it. The ordinary judge rejected the request since personal and material validity areas did not concur. The PCC decided in favor of ordinary jurisdiction as well. | The PCC's judgment refers to SCP 0026/2013, which allows indigenous jurisdiction to be extended to people who are not members of the indigenous community if the latter voluntarily expressly or tacitly agree to submit to indigenous jurisdiction. The PCC argues that this is not the case as the teacher 'is not identified' with indigenous norms and procedures. Although the decision does not make it explicit, it is inferred that the teacher did not voluntarily accept indigenous jurisdiction. Thus, unlike the position adopted in the dissenting votes, it is understood that the complainant teacher in criminal matters is not part of the indigenous community and cannot be submitted to indigenous jurisdiction. As a result, the case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies because the teacher is not a community member.<br>However, both the PCC and the ordinary jurisdiction misrepresented the dispute's material validity area of competence by construing that educational issues shall remain under the ordinary jurisdiction (note that the teacher filed this criminal case for defamation and slander). Although such confusion does not suffice to modify the outcome's case due to the unfulfillment of the personal validity area, it is a harmful precedent to the exercise of indigenous jurisdiction since the JDL does not exclude its competence to resolve education disputes. Then, the PCC and the lower-ranking courts made indigenous jurisdiction ineffective. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 15/4/2014 | 0764/2014 | PCJ | Plenary chamber | Ligia Mónica Velásquez Castaños | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 02917-2013-06-CCJ | La Paz | Criminal. Extortion |

**Indigenous people:**

Achumani community

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Tata Guarberto Cusi | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| Some Achumani community members sent two letters to landowners demanding $ 20000 under the threat of their land dispossession. For this reason, the threatened persons filed a criminal complaint about extortion. Faced with the criminal lawsuit, the authorities claimed | The PCC established that indigenous jurisdiction should be applied in the most extensive, favorable, and progressive way. Consequently, a) personal validity area regards a personal bind on cultural, idiomatic, religious, cosmovision, self-identification, or other grounds. b) Material validity area concerns matters that 'historically and traditionally it knows under its norms.' In other words, those new topics, which are not part of their historical and traditional custom, would be excluded from the indigenous jurisdiction. However, the Constitution does not necessarily limit indigenous jurisdiction to historical and traditional issues, but 'to indigenous affairs... under the provisions of a Jurisdictional Demarcation Law.' It is highlighted that the PCC adopts such a position despite justifying its interpretation in Art. 29.a of the American Convention on Human Rights ('No provision of this Convention shall be interpreted as: a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein'). Furthermore, the PCC established that indigenous jurisdiction might voluntarily refer its cases to ordinary jurisdiction if it prefers (III.3.2). c) Territorial validity area regards the cases that occurred in the geographical space where the indigenous people have possession or legal titularity.<br>Despite the aforementioned legal doctrine, the PCC decided that personal and territorial validity areas of indigenous competence did not concur since there is no personal link between the parties and the events took place outside the indigenous people's territory (the landowners do not reside in the indigenous territory). These criteria were obtained from the field reports made by its Decolonization Unit. |

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| jurisdiction to decide the case. The PCC denied the petition for not complying with personal and territorial validity areas of competence. | In this sense, the PCC respected the legal limits without expanding them with an interpretation such as the one initially proposed.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 21/4/2014 | 0778/2014 | PCJ | First specialized chamber | Ligia Mónica Velásquez Castaños | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 02391-2012-05-AAC | Oruro | Indigenous sanction. To a community for land dispute |

| Indigenous people: |
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| Jach'a Karangas (Ayllu Todo Santos and Buena Vide community) |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The Ayllu Todo Santos (also a municipality) decided to sanction a Buena Vides' community member for having acquired real state property through a prescription process before the ordinary jurisdiction. The Ayllu understood that this community member would have usurped and taken over collective property without the population's consensus. The details behind the prescription process and link with the Buena Vides community do not appear in the analyzed judgment. However, the case 0031/2016 refers to the criminal process initiated by this indigenous member against his indigenous authorities and community members because they violently trespassed his lands, threatened his sons, and stole his money.<br>Be that as it may, the Ayllu decided to sanction the community member through his community, that is, directly sanctioning the community as such. Therefore, the sanction consists of suspending the Buena Vides community from the rotation of its indigenous, political, sports championships, and other cultural activities related to Todo Santos. As a result, Buena Vides presented an Amparo requesting protection of its rights. Faced with Amparo's claim, the Ayllu defendant argued a) that within Todo Santos there are six communities, one of which is Buena Vides, b) lack of understanding of Buena Vides decision, and c) non-compliance with procedural requirements.<br>The Court of Guarantees (lower-ranking court) decided against the indigenous jurisdiction with the central argument that it did not have the competence to resolve property disputes. The PCC understood that there is a negative impact on collective rights (of the Buena Vides community) and individual rights (of the community member). The PCC considered that Todo Santos affected due process because spaces for dialogue and consensus were not generated in the assembly and because the decision of Todo Santos adopts a sanction that, according to its norms, should be only for extreme cases, which is not the case.<br>The PCC decided the case as follows: a) nullified the Ayllu's decision and restored the rights of the Amparo claimants, b) orders intra- and intercultural dialogue 'to the authorities of the communities of Todo Santos and Buena Vides' so that they resolve their differences following the postulates of the paradigm of living well. | The indigenous process' defendants (Amparo claimants) have rendered the indigenous jurisdiction (IJ) ineffective by rejecting the indigenous decision and requesting the PCC to decide the case. Instead, Buena Vides community should have claimed a higher instance within the IJ (Marka and the Suyu) to solve the problem.<br>The Court of Guarantees (lower-ranking judge) made the IJ ineffective by stating that it does not have the competence to resolve a dispute over property that, in turn, has already been resolved by the ordinary jurisdiction. However, the IJ did not decide on the ownership of the land but instead sanctioned the community for covering up the wrongdoings of the community member and neglecting and not protecting the collective property. Furthermore, the three validity areas of IJ's competence concurred. For these reasons, the IJ was competent.<br>The PCC did not resolve the substantive dispute and left it to the indigenous people to resolve it through dialogue between their authorities. Consequently, the decision respected the IJ, making it effective. It is noted that although the PCC should have denied the Amparo under the subsidiarity principle until the highest indigenous authorities resolved the dispute, in the end, indigenous authorities will resolve the dispute due to PCC's judgment. It urged intra- and intercultural dialogue between communities and gave them 12 months to solve their dispute which the PCC's Decolonization Unit will report. The PCC's guidance and accompaniment regard more effective cooperation since the law does not provide it (it is beyond State duties). It is not construed as a paternalistic interference against the indigenous people's self-determination since the PCC's recommendation is generic and broad, aiming at unity and dialogue. However, it is notorious that the intercultural dialogue ordered by the PCC demonstrates its confusion regarding the structure and social and territorial components of these indigenous peoples: they are not two separate communities, but rather the sanctioned community is part of the Ayllu.<br>Furthermore, the case demonstrates IJ to be effective regarding the indigenous claimants since they requested their indigenous authorities sanction the community member to preserve the indigenous territory's integrity. The IJ also was effective since it accepted and decided the case within its competence. The defendants (later, Amparo claimants) made IJ ineffective by preferring the constitutional action instead of challenging the indigenous decision within the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 12/5/2014 | 0874/2014 | PCJ | Plenary chamber | Gualberto Cusi Mamani (Tata) | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 03667-2013-08-CCJ | La Paz | Criminal. Aggravated robbery, criminal association, trespassing, injuries, qualified damage, and threats |

| Indigenous people: |
|---|
| Cahua Grande, Cahua Chico, Agrarian-peasant Union of Zongo |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey and Ligia Mónica Velásquez Castaños | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| This case is related to the antecedents of 0006/2013 of consultation of Indigenous Authorities on applying their legal norms to a specific case carried out by the indigenous authorities of Zongo. A mining entrepreneur was expelled and evicted from the indigenous territory of Zongo for environmental reasons. The expulsion decision was subsequently upheld. Consequently, the expelled person initiated criminal proceedings in the ordinary jurisdiction against indigenous people and the indigenous authorities who adopted and ratified the expulsion decision. The indigenous authorities claimed jurisdiction before the ordinary jurisdiction, a request that was rejected on the grounds that the JDL is not regulated and cannot be applied.<br>The PCC reiterated the arguments of the constitutional declaration 0006/2013 and admitted the existence of the areas of material, territorial and personal validity. The PCC adds on the personal validity area that Zongo exceptionally administers justice concerning people who are not community members when they have land in the community, and the conflict occurs in their territory. Besides, it recognizes that the expelled businessman once joined the Zongo community union.<br>The PCC argues that the mining entrepreneur ignored the indigenous jurisdiction by filing criminal actions, causing a) that the ordinary jurisdiction invades the indigenous one, despite the hierarchical equality between the two, b) that the indigenous jurisdiction is criminalized, and c) that the ordinary jurisdiction review the indigenous jurisdiction's decisions.<br>For these reasons, the PCC declared the indigenous jurisdiction competent to resolve criminal matters and orders that the dialogue and final resolution of the conflict be resumed, giving three months to inform on the matter. | The PCC made indigenous jurisdiction more effective by granting jurisdiction to indigenous justice by expanding the scope of personal validity area even against people who are not members of the indigenous community for the sole fact of having land in the community and causing conflict there. The argumentation or legal reasons essentially corresponds to the preceding case 0006/2013. Additionally, it is observed that the PCC ordered the dialogue to be restarted so that the parties in conflict resolve the conflict. To this end, it requested a report on the results of this dialogue, which implies that the PCC will monitor the events after the decision. As in cases 388/2014 and 0778/2014, the PCC's decision granted more effective cooperation to indigenous jurisdiction since it decided to oversee the dialogue and conflict resolution process.<br>Finally, since indigenous jurisdiction decided and claimed a case involving a third party, it rendered indigenous jurisdiction more effective, and, although the case is irrelevant to the claimant (none indigenous member), the defendants made the indigenous jurisdiction more effective by rejecting the ordinary jurisdiction and requesting his authorities to claim the competence. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 23/5/2014 | 0961/2014 | PCJ | Third Chamber | Neldy Virginia Andrade Martínez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 04216-2013-09-AAC | Oruro | Indigenous sanction. Expulsion for violent conduct and disrespect for indigenous authorities |

| Indigenous people: |
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| Obrajes Community Agrarian Union |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The members of a family, belonging to the community of Obrajes and the Agrarian Union of the Community of Obrajes, claimed the Amparo for the violation of their right to work because the Union's indigenous authorities decided to suspend them indefinitely from the sources of work that are available in the area (Termas de Obrajes spa, Transportation, and mining). The family argues that this suspension occurred without considering that the problem for which the sanction emerged was for physical assaults that are being criminally prosecuted for severe injuries in the ordinary jurisdiction. The family previously complained to indigenous and administrative authorities but could not reverse the situation.<br>The community, for its part, explained the reasons for its decision: a) the decision is not only for the violent behavior of the family but because they disrespected indigenous authority, threw the poncho (as a cultural token of authority), resold tickets, among others. The reasons are known by the entire community and the sanctioned persons. b) The family is not complying with the decision since it is still working in these places, c) that the family was not expelled from the community nor was evicted from their lands, which is why they can cultivate them. d) The whole family was not punished.<br>The PCC ignored the right to work claimed and argued that the indigenous decision violated due process because it is not justified. Consequently, the PCC gave protection to the claimants for the violation of due process, ordered a new decision to be issued (in the opinion and not in the | The decision of the PCC created a disorder regarding its justifying reasons and effects. These are the relevant criteria: a) The PCC granted protection to the claimants for lack of due process, but, in reality, by ratifying the decision of the Court of Guarantees, it also admitted that the indigenous jurisdiction does not have the power to resolve the reported labor and criminal disputes. However, it is noted that the indigenous jurisdiction did not decide on a labor dispute but, on the contrary, it aimed to sanction the claimants for their violent and disrespectful behavior. Consequently, the PCC misrepresented the context preventing the indigenous jurisdiction from resolving the conflict because, notwithstanding ordering a new decision to be issued, it also confirmed the decision of the Court of Guarantees, i.e., the incompetence of the indigenous jurisdiction. b) Even though the Court expressly recognized the duty not to interfere in the indigenous jurisdiction, citing the case 2076/2013, it omitted following such opinion in its final decision by annulling the indigenous judgment since allegedly it was insufficiently founded in its written version. Thus, the PCC disregarded that indigenous jurisdiction's exercise is primarily oral and the family, the authorities and the rest of the community were aware of the sanction's reasons. Nevertheless, considering the indigenous jurisdiction still has the possibility to decide the case, the Court rendered the indigenous jurisdiction effective.<br>Furthermore, the case refers to two different processes: the first supposedly concerns a criminal dispute under the ordinary jurisdiction for severe injuries inflicted by some family members to other community members, and the second regards the indigenous jurisdiction sanctioning the Amparo claimants for such violent behavior, and disrespect for indigenous authorities, among others. However, since the PCC only described and analyzed the second one (the family mentioned |

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| 'therefore'), and ratified the decision of the Oruro Departmental Court, constituted as Court of Guarantees. The ratified decision by the PCC maintained that the indigenous jurisdiction does not have material competence to resolve labor and criminal matters and that it violated due process by not allowing those punished to present their defense evidence in the indigenous process. | the first as a background), this analysis only deals with the second. Then, it exhibits the indigenous jurisdiction's effectiveness regarding the claimant, the defendant and the indigenous jurisdiction indicators since they legally accepted and exercised the indigenous jurisdiction. It is noted that the sanctioned family by the indigenous process claimed the violation of their individual rights and that, although they did not comply with the indigenous decision, they did not reject the indigenous jurisdiction either. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 6/6/2014 | 1024/2014 | PCJ | Third Chamber | Neldy Virginia Andrade Martínez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 04795-2013-10-AAC | Potosí | Water supply interruption |

| Indigenous people: |
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| Miraflores Community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The Amparo claimant maintains that the defendants, an indigenous community, arbitrarily and violently diverted the course of thermal waters that have long supplied the pools of her spa. The defendants argue that they are competent to administer justice since the hot springs are water resources that belong to their community and ecosystem. As a result, they will not return the watercourse to the spa. However, the diversion of the water apparently was an act of retaliation because the claimant did not want to share the management of her spa with the community.<br>The PCC decided in favor of the claimant granting her protection provisionally because the community carried out a de facto forbidden measure. The protection is provisional because the PCC maintains that water is an inalienable and imprescriptible resource and that hot springs are part of the State's wealth that does not belong to private individuals or collectivities, even indigenous peoples.<br>The PCC also established that the spa owner has been making payments to the community for the use of water, which suggests the existence of a legal relationship between them. Although the indigenous authorities can, in certain cases, settle disputes over waters within the framework of their customs, they cannot resolve the present case because they do not recognize the owner of the spa as part of the indigenous community. For this reason, the conflict shall be resolved by the corresponding State authority. Finally, the PCC urges the Legislative Assembly to develop a law to govern hot springs by individuals and collectivities. | The JDL does not restrict indigenous jurisdiction to resolve disputes over water use. The PCC recognizes this right to exercise indigenous jurisdiction on water issues but restricts it in the case because the scope of personal validity is not met since the Amparo claimant is not part of the community. The PCC's Descolonization Unit rendered a fieldwork to inform the Court's decision.<br>It can be interpreted from the PCC's decision that, although water and hot springs do not belong to individuals or communities, they can use them. Likewise, it is construed that the PCC understands that water use disputes can be decided by indigenous peoples when the conditions provided by the Constitution and the law are met.<br>The Court of Guarantees (lower-ranking Court) rejected the claim since the spa owner began a criminal process that is underway, which excludes the action of Amparo due to the subsidiarity principle. Consequently, it indirectly maintained decided to favor ordinary jurisdiction to resolve the dispute.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 10/6/2014 | 1203/2014 | PCJ | Second chamber | Soraida Rosario Chánez Chire | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 04592-2013-10-AAC | Oruro | Indigenous sanction. Fine for land dispute |

| Indigenous people: |
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| Challapata Marka |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The Amparo claimant complains that his right to due process was violated since he was not allowed to defend himself in an indigenous proceeding. He claims that there was no process and that he was directly informed of the indigenous resolution that economically sanctioned him for allegedly harming vegetative life and using other people's land for planting. Furthermore, he maintains that a single authority signed this decision.<br>The defendant authorities reply that the Amparo claimant was notified and summoned several times but did not attend the process, which is why the decision was adopted without the claimant's presence. | In this case, there are contradictory opinions between the Amparo claimant and the defendant indigenous authorities regarding the performance of a due process. The PCC has decided in favor of the claimant under the documentary evidence presented and not of the statements made by the defendant indigenous authorities or of an investigation that the PCC's Decolonization Unit could have carried out. This reality portrays that the PCC prefers a written justice system and documentary evidence, imposing excessive formalism on the indigenous jurisdiction instead of informal and oral justice.<br>Furthermore, given the collective characteristics of indigenous justice, it is most likely that the community and the involved parties did know the background and reasons for the decision. Furthermore, many indigenous authorities reported that the indigenous member |

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| The PCC states that there is evidence of the indigenous resolution among the documents presented to the Amparo, but there is no evidence of the processes (first in the Ayllu and then in the Marka).<br>The PCC decided in favor of the claimant, annulling the indigenous resolution because the authorities did not carry out due process in which they allowed the claimant to defend himself and because the indigenous resolution is only signed by the highest indigenous authority, but not by the other authorities who should have intervened. Therefore, there is no decision on the merits of the controversy. | disrespected their authorities by refusing to attend the hearings. Finally, it is also noted that the PCC did not substitute the exercise of indigenous jurisdiction deciding the case despite it did not order the indigenous authorities to issue a new decision following due process. Consequently, the PCC rendered indigenous jurisdiction ineffective, disregarding the legitimate version of the indigenous authorities, the orality of their justice system, and the existence of a decision. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant and ineffective concerning the defendant indicators. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 1/8/2014 | 0043/2014 | PCD | First specialized chamber | Juan Oswaldo Valencia Alvarado | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
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| 07368-2014-14-CAI | La Paz | Cooperation and Colaboration |

**Indigenous people:**

Portada Corapata, Jach'a Kamchinak Cheqa Phoqhayirinaka (Consejo Amawtico de Justicia), agrarian union

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The agrarian union Portada Corapata, through its Jach'a Kamchinak Cheqa Phoqhayirinaka (Amawtico Justice Council or indigenous jurisdiction), consulted the Plurinational Court on how to protect their collective rights against the police and the ordinary jurisdiction. The indigenous authorities requested collaboration to enforce its decision to evict squatters. Instead of complying with the request of the indigenous authority, the police required them unnecessary formalities to act, changed the date to enforce the judgment, and violated criminal laws by attacking the community together with the sanctioned persons. Subsequently, some community members filed a lawsuit against the police that the indigenous jurisdiction had to refer to ordinary jurisdiction because the former lacked the competence to decide it. Although the ordinary jurisdiction accepted the case, the interested party did not follow the process, extinguishing it for abandonment. The Bolivian general practice demonstrates that, since the public ministry has an excessive procedural burden and lack of resources, the cases it shall prosecute become extinguished and archived if their interested parties do not constantly follow them. The indigenous authorities claimed breach of cooperation and coordination because, in their perspective, they were not acting as an interested party but as a jurisdiction referring a case to another jurisdiction, and the referred jurisdiction should have carried on the case and informed them of the outcome.<br>The PCC declared the consultation inadmissible because the indigenous people wrongfully chose the process' consultation of indigenous authorities on applying their legal norms to a specific case.' | Although the PCC declared the consultation inadmissible because the indigenous people wrongfully chose the process 'consultation of indigenous authorities on applying their legal norms to a specific case,' under the facts reported by the indigenous authorities, the police would have breached its cooperation duty with the indigenous people (Art. 16.I.a of JDL) and also its general duties. However, the ordinary jurisdiction and the public ministry did not breach their duties and they were not acting in a collaboration role.<br>First, according to article 10.III of JDL, each jurisdiction must decide the cases that correspond to their competencies. Then, considering that the referred case did not pertain to indigenous jurisdiction because of the personal validity area, the ordinary jurisdiction had the competence to resolve the dispute through State laws and procedures. Second, the indigenous jurisdiction has no authority to demand the ordinary jurisdiction, or the public ministry, to resolve a specific dispute under alleged cooperation. Moreover, while the public ministry investigates and follows criminal cases, it is not obliged to report to indigenous jurisdiction the outcome. It should be noted that the first draft of JDL, the one that was consulted to indigenous peoples, incorporated both obligations. However, the current JDL does not. As a result, although prosecutors did not fulfill their duties when the case was extinguished, it does not breach its duty to collaborate with indigenous jurisdiction.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators. Both exceeded indigenous jurisdictional competencies when claiming and deciding to evict non-indigenous members (out of the scope of the personal validity area). However, the case is irrelevant for the indicators of the PCC because, although its decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 5/9/2014 | 1754/2014 | PCJ | Plenary chamber | Zenón Hugo Bacarreza Morales | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 06734-2014-14-CCJ | La Paz | Criminal. Mining area trespassing |

**Indigenous people:**

Pucarani (Vilaque Huaripampa indigenous community)

| Magistrate/s | Dissenting vote's opinion |
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| Mirtha Camacho Quiroga and Juan Oswaldo Valencia Alvarado | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
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| Within a criminal process started by a foreign citizen against indigenous | The PCC's arguments regarding the personal and material validity areas to justify the lack of competence of the indigenous jurisdiction respected the legal framework. Not only the criminal |

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| authorities for mining area trespassing, the indigenous authorities claimed jurisdiction to decide the case.<br>The PCC judged the case belonged to ordinary jurisdiction because the material and personal validity areas did not concur. Regarding the former, the PCC argued that a) the criminal claimant was a foreign citizen and that b) indigenous authorities and indigenous defendants in the criminal process were the same. Consequently, there were no guarantees for a fair indigenous trial. Regarding the latter, the PCC argued that a) mining matters are out of indigenous scope and that b) the felony is typified under the title 'Crimes against the national economy, industry, and commerce,' which implies that the State is the protected subject. | plaintiff is a foreign citizen that is not a community member, but the JDL also excludes indigenous jurisdiction to resolve disputes over mining law. Nonetheless, the PCC identifying the State as the victim by the sole fact of the title in which the criminal prohibition has been legislated (crimes against the national economy, industry, and commerce) is debatable. The title includes crimes against the national economy, where the State could be indirectly a victim, and includes crimes against industry and commerce in general in which the State is not necessarily a victim. Indeed, the alleged victim is an individual in the criminal proceeding. It should be remembered that JDL excludes indigenous jurisdiction from cases in which the State is the victim. Despite the latter, following the personal and material validity areas of competence arguments, the case demonstrates indigenous jurisdiction to be more effective regarding the defendant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected.<br>On the other hand, when the PCC unnecessarily argued the possible partiality of the indigenous jurisdiction and the breach of due process (the claiming authorities are simultaneously the criminal defendants), it included an impertinent factor harmful, as a precedent, for subsequent decisions. Who will be the indigenous authorities that would decide the dispute is not a question in the process, and indigenous jurisdiction can easily overcome it through its customs and laws. Consequently, denying indigenous jurisdiction on such grounds amounts to denying the right to exercise indigenous jurisdiction by prejudging non-existent facts supported by biased premises and events that may not happen. Therefore, when the PCC's decision followed the impartiality principle's case law line, it made indigenous jurisdiction ineffective. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 19/9/2014 | 1810/2014 | PCJ | Plenary chamber | Neldy Virginia Andrade Martínez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 05614-2013-12-CCJ | Potosí | Criminal. Slander, defamation and damage for land dispute |

| Indigenous people: |
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| Kapac Macha Macha community |

| Magistrate/s | Dissenting vote's opinion |
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| Juan Oswaldo Valencia Alvarado | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
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| Due to verbal aggression originating on land trespassing between neighbors, the parties went to indigenous authority to settle the case. However, given a breach of the agreement, one of the parties began a criminal process in the ordinary jurisdiction for qualified damage, trespassing, and defamation. The indigenous authority of Kapac Macha Macha community claimed the competence to resolve the dispute, which was rejected because the criminal plaintiff proved that he belongs to Pocoata's community with documents issued by his Corregidor and an ordinary judge.<br>The PCC decided in favor of Kapac Macha Macha's jurisdiction, arguing that the claimant has a particular bond with this community since he owned land there for more than 60 years and admitted its indigenous jurisdiction when agreed with the settlement. Furthermore, the PCC stated that if there was a breach of agreement, it corresponded to claim it through an Amparo and not resort to the ordinary jurisdiction to resolve the same dispute previously decided in indigenous jurisdiction. | The PCC expanded the personal scope by following judgment 0026/2013, which includes third parties who 'voluntarily, expressly or tacitly, submit to the indigenous jurisdiction' of a certain indigenous people. Although the PCC clarified that this aspect must be exceptional so as not to compromise due process, it also included that it must be taken into account that 'the Constitution calls for a particular bond' between the person and the community. In other words, the PCC extended the scope of personal validity to cases in which there is a particular bond between the community and the third party in addition to voluntary acceptance of the indigenous jurisdiction.<br>Finally, since indigenous jurisdiction decided and claimed a case involving a third party, it rendered indigenous jurisdiction more effective, and, although the case is irrelevant to the claimant (none indigenous member), the defendant made the indigenous jurisdiction more effective by rejecting the ordinary jurisdiction and requesting his authorities to claim the competence. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 20/10/2014 | 0062/2014-S3 | PCJ | Third Chamber | Ruddy José Flores Monterrey | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 05128-2013-11-AAC | Pando | Indigenous sanction. Expulsion for constant disagreements with the community |

| Indigenous people: |
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| Humaytha community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| A woman, who is the claimant, and her family were subjected to expulsion from their home, which was ordered and decided by indigenous jurisdiction, | The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional competencies. However, the case is |

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| despite the fact that none of them is a member of the community and they live outside its territory.<br>The reason for the decision was repeated disagreements between the claimant and some members of the community.<br>The PCC decided in favor of the claimant. | irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected.<br>It is noted that PCC's argumentation suggests that, although the decision and its execution emanate from indigenous jurisdiction, both should be considered as de facto measures because the areas of personal and territorial validity provided by the Constitution were violated. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 5/11/2014 | 0199/2015 | PCD | First specialized chamber | Macario Lahor Cortez Chávez | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 12511-2015-26-CAI | La Paz | Criminal. Severe injuries |

| Indigenous people: |
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| Hampaturi Ayllu |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The community decided to punish one of its members for attacking another by breaking his nose, threatening the community members and its authorities, and not submitting to the indigenous authority and jurisdiction. Accordingly, the indigenous decision declares the community member guilty of criminal offenses for severe physical assaults, racism, discrimination, trespassing, attempted kidnapping, among others. To that end, the indigenous decision requested cooperation from the ordinary jurisdiction to apply precautionary measures, deprivation of liberty, and apprehension of the sanctioned person. Finally, they requested both the approval of its decision and the sanction of deprivation of liberty through cooperation and coordination to ordinary jurisdiction.<br>The PCC decided to declare the consultation inadmissible because it considered that the indigenous jurisdiction did not apply indigenous norms and procedures to a specific case but rather the State Penal Code and its Procedure. Therefore, the Court reflected that the consulting authorities are misrepresenting the consultation process, did not meet the requirement of stating their indigenous law and procedures, and that the ordinary jurisdiction is the only one responsible for complying with the criminal code and its procedure.<br>The Court included two different additional considerations in its judgment. First, according to the Court, due to cooperation between jurisdictions, the indigenous jurisdiction can send any dispute that it considers it will not properly resolve to another state jurisdiction. The second, included at the end of the judgment (and citing a technical report of the judgment 2015.0562.S1-AL-SC), states that, for the sake of 'constitutional pedagogy,' indigenous peoples' values are against depriving liberty. | The PCC declared the indigenous consultation inadmissible because the indigenous jurisdiction has justified its decision in criminal laws when the constitutional consultation process aims to resolve questions from indigenous authorities regarding the application of indigenous laws in a specific case. Then, the PCC respected the legal framework and did not affect the indigenous jurisdiction's effectiveness.<br>However, the PCC has included two irrelevant aspects that negatively affect the indigenous jurisdiction as precedents, rendering it ineffective. Article 10.III of the JDL expressly establishes that other state jurisdictions are excluded from deciding indigenous jurisdiction matters. Moreover, the JDL establishes cooperation and collaboration as inter-jurisdictional information exchanges, which do not include the chance to refer cases between jurisdictions, as the PCC decided. For this reason, the Court had disregarded the JDL and made the indigenous jurisdiction less effective when it considered that the voluntary exclusion of some cases is possible, diminishing its mandatory nature. It should be noted that the first draft of JDL, the one that was consulted to indigenous peoples, incorporated both obligations. However, the current JDL does not. As a result, although prosecutors did not fulfill their duties when the case was extinguished, it does not breach its duty to collaborate with indigenous jurisdiction.<br>On the other hand, the Court allegedly knows Hampaturi's sanctions better than Hampaturi since it informed this community of its sanction based on a technical report from its Decolonization Unit that generically claimed indigenous peoples do not have the custom to sanction with deprivation of liberty. It disregarded that indigenous peoples are different. It would seem more appropriate to carry out an anthropological study of each consulting indigenous people to inform the Court of their customs because each has its own legal system, which may change over time and include the sanction of deprivation of liberty. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since they acted within indigenous jurisdictional competencies. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 5/11/2014 | 200/2015 | PCD | First specialized chamber | Efren Choque Capuma | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 12510-2015-26-CAI | La Paz | Criminal. Severe injuries |

| Indigenous people: |
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| Hampaturi Ayllu |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| This case is closely related to 0199/2015 (2015.0199-CAI-DC) since it concerns the same consulting authorities, subject, | The PCC declared inadmissible the indigenous consultation because it was based on the application of criminal laws instead of |

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| defendant, and indigenous resolution. For this reason, it is not understood how there are two constitutional declarations on the same subject.<br>However, this constitutional declaration respects the jurisdictional limits by declaring the request for consultation inadmissible. The community has not identified any indigenous law on which the consultation may concern, so the Court cannot analyze the merits. Unlike the other case, the Court urges the Ayllu of Hampaturi to make every effort to restore balance and harmony as principles of indigenous justice. | indigenous ones. The constitutional consultation process aims to resolve questions from indigenous authorities regarding the application of indigenous laws to a specific case. In this sense, the case is irrelevant for the indicator of the PCC because, although its decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. However, the case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 10/11/2014 | 0113/2014-S2 | PCJ | Second chamber | Zenón Hugo Bacarreza Morales | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 06094-2014-13-AAC | Potosí | Indigenous sanction. Expulsion for land dispossession of indigenous members |

| Indigenous people: |
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| Karakuyo community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| Due to the land dispossession of community members committed by three older people, the community sanctioned them to suspend their agricultural work and be exiled from the community. The convicts demanded in Amparo the protection of their rights to dignity, housing and work, presumably violated by the indigenous decision. The PCC favored the older adults, arguing that the JDL prohibits their expulsion and that the indigenous provisions do not foresee such sanction for severe crimes. | The PCC has annulled the indigenous jurisdiction rendering it ineffective due to the following reasons:<br>The PCC has directly decided the dispute and restricted the exercise of the indigenous jurisdiction. It has overruled the indigenous decision, eliminated any possibility of sanction, and reincorporated the sanctioned older adults into the community with all their rights as if they had not committed the crimes prosecuted by the indigenous people.<br>The PCC has prevented community members' expulsion because they are elder, allegedly under Art. 5.III of the JDL. However, this article only denies expulsion due to non-compliance with communal duties, positions, contributions, and communal work. Consequently, Article 5.III does not apply to sanction the elderly and disabled with expulsion in other cases (for instance, when they dispossess others of their lands).<br>However, the PCC has rightfully argued that, according to this community's internal regulations, the expelling sanction is not foreseen for severe offenses, such as the land dispossession that occurred in the case, but only for very severe offenses so that the indigenous decision would be excessive. Nevertheless, the PCC should have ordered the indigenous jurisdiction to issue a new decision as it did in other cases (e.g., 2076/2013, 1127/2013-L, 0486/2014 or 1254/2016-S1).<br>Finally, the PCC maintains that the claimants' expulsion would have harmed their rights to dignity, housing, and work. However, the PCC does not consider that harm is legitimate when sanctions are imposed within the due process and jurisdictional frameworks. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant (Amparo claimants) and the indigenous jurisdiction indicators (by accepting and deciding the case) since they accepted the indigenous jurisdiction. It is noted that the sanctioned men by the indigenous process claimed the violation of their individual rights and did not reject the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 13/11/2014 | 1983/2014 | PCJ | Plenary chamber | Zenón Hugo Bacarreza Morales | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
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| 06126-2014-13-CCJ | La Paz | Criminal. Severe injuries |

| Indigenous people: |
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| Chinchaya Bajo community |

| Magistrate/s | Dissenting vote's opinion |
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| Efren Choque Capuma, and Juan Oswaldo Valencia Alvarado | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
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| Due to severe injuries, a criminal process in ordinary jurisdiction started by a non-indigenous party against an indigenous authority and an indigenous individual. Although indigenous authorities claimed jurisdiction, the PCC decided against it, considering that the personal area of validity was not met since the criminal plaintiff is non-indigenous. For the first time, the non-indigenous trait of the concerned party was defined, among other reasons (as the declaration of legal residence within the criminal process), through her identity document that | Although the Court may follow the case-law precedents of 0026/2013, among others, to decide the case in favor of indigenous jurisdiction, it rejected indigenous competence respecting the legal framework.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected.<br>However, it should be considered that indigenous people may live in the cities, or outside indigenous territories, according to the migration process existing in Bolivia. Then, deciding the indigenous quality based on identification documents is |

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| demonstrates she was born in La Paz city and lives there. | not necessarily a good approach. On the contrary, it seems fragile and may exclude indigenous jurisdiction unfairly. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 20/11/2014 | 0152/2014-S3 | PCJ | Third Chamber | Neldy Virginia Andrade Martínez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 06868-2014-14-AAC | Oruro | Indigenous sanction. Dismissal of authority for incorrect or unethical behavior |

| Indigenous people: |
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| Jach'a Karangas (San Pedro de Totora) |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The indigenous jurisdiction decided to punish one of the community members for repeating violent, threatening, and arrogant behavior. The punishment was the definitive suspension of the municipal office that this person exerted on behalf of the indigenous people. In compliance with this decision, the municipality issued a resolution suspending this person. However, later, the municipality itself reinstated this councilor in his position. Faced with this situation, the indigenous people physically blocked the councilor's entrance to the municipality, made a new council, and reiterated the decision to suspend the position, for which the municipality once again resolved the suspension. As a consequence, the former counselor filed an Amparo against these decisions and the de facto measures. The Court of Guarantees (lower-ranking corut) and the PCC decided in favor of the Amparo claimant.<br>The case is *related to A.2013.03.02 | Although the PCC did not declare the nullity of the indigenous jurisdiction's decisions, it rendered them without effect. The reason is that the PCC ordered the restitution of the indigenous claimant's position, overruling the sanction imposed by the indigenous people. It is worth mentioning that the municipal councilor's position is also an indigenous peoples' position in this context. That is, the Amparo claimant was an indigenous municipal councilor. In this way, the PCC's decision rendered ineffective the indigenous jurisdiction exercise. The same happened with the lower-ranking court when it decided the Amparo, expressly annulling the indigenous people's decisions. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the indigenous claimants (against the councilor) and the indigenous jurisdiction indicators (by accepting and deciding the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the defendant (Amparo claimant) because he rejected the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 1/12/2014 | 1990/2014 | PCJ | Plenary chamber | Mirtha Camacho Quiroga | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 06206-2014-13-CCJ | Potosí | Criminal. Criminal action for land dispossession |

| Indigenous people: |
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| Kharacha Ayllu |

| Magistrate/s | Dissenting vote's opinion |
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| 1. Tata Efren Choque Capuma<br>2. Juan Oswaldo Valencia Alvarado | Both dissenting votes are concerned that no indigenous authority started the competency disputes, concluding that the case should not be admited.<br>However, the majority of the magistrates admited the case based on an indigenous resolution issued by the community's Corregidor. |

| Abstract | Analysis |
|---|---|
| Due to a criminal process for dispossession, change of boundaries, and disturbance of possession, the defendants, acting as indigenous authorities, claim the competence to resolve the dispute.<br>The PCC decided in favor of the indigenous jurisdiction because the material, personal and territorial validity areas concurred. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework. On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

# Relevant Cases of 2015

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 16/1/2015 | 0033/2015-S3 | PCJ | Third Chamber | Ruddy José Flores Monterrey | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 05267-2013-11-AAC | Oruro | Indigenous sanction. Expulsion to non-indigenous members from collective lands for claiming in ordinary jurisdiction against the indigenous people |

| Indigenous people: |
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| Kapaj Amaya Community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| Amparo claimant spouses bought land in the Kapaj Amaya Community and, despite making contributions to the community and complying with its uses and customs, some 40 people from the community and their authorities harvested their quinoa crops and forced them to leave. The couple asked for help from the police, but when they saw the number of people, the police withdrew, with which they were physically attacked and detained against their will. Sometime later, once again, some community members harvested their alfalfa and quinoa crops, punctured the tires of their tractor, and attacked them. There is a community resolution dated after the first incident that determined the final expulsion of the couple from the community, their eviction, and loss of land.<br>The PCC decided in favor of the couple, for which it differentiated the judgment of the indigenous justice system from the de facto measures that occurred. Regarding the first, the PCC argued that: a) The decision was not sufficiently motivated because it was not justified that the expulsion sanction was in the community practices. b) That the expulsion decision was because the Amparo claimants claimed their rights before the ordinary justice and not for any illegal actions committed within the community, which does not correspond. After all, the Constitution guarantees the right to request protection. However, it is noted that in the background of the case, the couple only requested help from the police and did not start an ordinary process. c) That the community did not consider the couple as part of the community but expels them in a contradictory way. The PCC maintains that the indigenous decision failed to justify the three scopes of validity in its ruling (territorial, material, and personal). Finally, the PCC established without justification that, in addition to the lack of motivation, the due process was also violated since the rights to defense and to be heard were not respected.<br>Regarding the de facto measures, the PCC argued that the community illegally exercised them against the couple and cannot be concealed by indigenous justice since the latter must respect constitutional limits. | The PCC rendered the indigenous jurisdiction ineffective by disregarding the principle of minimal interference of the constitutional jurisdiction over indigenous decisions established in the case 0486/2014. To judge whether the decision lacked motivation, the PCC had to verify through expert opinion whether the community and interested parties are indeed unaware of the indigenous decision's reasons, regardless of whether they are written in the resolution or not. The PCC revoked the indigenous decision solely on the merit of its writing, forgetting that indigenous justice is oral and communal. It is noted that the Court carried out the expert opinion in this case through its Decolonization Unit (as it did in 0843/2017-S3). The Court also revoked the indigenous decision for alleged violation of the right to defense and to be heard without justifying how this violation was carried out.<br>Although the Court states that it will analyze the territorial, personal, and material validity areas, it tangentially discusses the personal area and forgets the others, confusing the decision.<br>Differentiating the violation of the rights of the Amparo claimants, when the indigenous decision was enforced, from the exercise of indigenous jurisdiction, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (by accepting and deciding the case) since they accepted the indigenous jurisdiction. It is noted that the sanctioned couple by the indigenous decision claimed the violation of their rights and did not reject the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 12/2/2015 | 0007/2015 | PCJ | Plenary chamber | Zenón Hugo Bacarreza Morales | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 04396-2013-09-CCJ | La Paz | Criminal. Attempted homicide, and housebreaking |

| Indigenous people: |
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| Pacajes Agrarian Union |

| Magistrate/s | Dissenting vote's opinion |
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| Efren Choque Capuma, Macario Lahor Cortez Chávez, and Juan Oswaldo Valencia Alvarado | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
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| In a criminal proceeding for attempted homicide and housebreaking, the indigenous authorities claimed jurisdiction over only one of the defendants.<br>The PCC decided that the ordinary jurisdiction has the competence to resolve the case since a) the scope of personal validity is not met because one of the defendants is not indigenous (two plaintiffs against three defendants). b) The material scope is also not met since homicide is excluded from indigenous jurisdiction by the JDL. The PCC analyzed that since the attempted homicide is comparable to homicide, it is excluded from the indigenous jurisdiction. Furthermore, the Court did not take into account the crime of housebreaking. c) The PCC adds, without further explanation or justification, that in applying the principle of unity of judgment, the | The competence to resolve the dispute belongs to the ordinary jurisdiction since one of the defendants is not a community member (personal validity area). The PCC established for the first time that if one or more co-perpetrators in a criminal offense are not indigenous members, the entire process must be processed by the ordinary jurisdiction to safeguard the right to equal treatment. It is a legal vacuum not foreseen in the JDL and complemented by this case (apparently, unintentionally). Consequently, the Court respected the legal limits. It is noted that, as in the case 1983/2014, the PCC decided that one of the co-authors is not indigenous by using the address established in his identity document as the main reference. However, the place of residence is not a valid criterion to identify an indigenous member since an indigenous person can reside outside his territory and still be indigenous.<br>Although the competence belongs to the ordinary jurisdiction, the PCC disregarded the law when it argued against indigenous competence concerning the material validity area. Contrary to PCC's opinion, the crimes of attempted homicide, attempted murder (and housebreaking) are not excluded from the indigenous competence by the JDL, as the PCC recognized in 1225/2013 or 0028/2018, among others.<br>For these reasons, although the Court's decision declaring ordinary jurisdiction competent did not affect indigenous jurisdiction's effectiveness under the personal validity area criterion, being irrelevant for the indicators of the PCC and the lower-ranking courts, its binding arguments on material validity area disregarded the law and made the indigenous jurisdiction ineffective.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be more effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it outside its competence, and the criminal defendants because they allegedly requested their indigenous authorities to claim the case (even though they did not formally challenge the |

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| ordinary jurisdiction has the competence to resolve the case. | claimants' election of jurisdiction). Furthermore, the criminal claimants rendered indigenous jurisdiction less effective by legally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 26/2/2015 | 246/2015-S1 | PCJ | First specialized chamber | Macario Lahor Cortez Chávez | Liberty action |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 08231-2014-17-AL | Potosí | Criminal. Criminal action for land dispossession, and severe injuries |

| Indigenous people: |
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| SEMISERA comprensión de SAKANA Indigenous Agrarian Union |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The claimants of the Action for Liberty asserted that their rights to freedom, locomotion, and life had been violated because: a) The defendants (Union authorities) informed them that the Union decided to take possession of their land because one of their relatives claimed its tenancy. b) Then, under the pretext of failing to fulfill some community duties, one of the defendants flogged one of the plaintiffs as an exemplary punishment. They argue that the punishment was barbaric and they did not consider that the whipped person is elderly. c) However, in a kind of psychosis unleashed by that initial act, several people began to apply unrestrained punishment against this person's integrity. In a few moments, it unleashed the fury of more than fifteen community members who were totally out of control and exceeding the limits of reasonableness in a kind of dispute over who punishes him more rigorously. They proceeded to flog him mercilessly until he fainted. d) The aggressors, shielded in the indigenous justice, were determined to prevent the claimants from entering their properties.<br>The PCC decided in favor of the claimants, arguing that violent and disproportionated actions are not indigenous jurisdiction and that JDL forbids expelling an older person from his lands for the unfulfillment of his communal duties. Furthermore, the Court ordered a) a criminal procedure, b) land restitution, and c) damages. The Court also stated that despite the Amparo action would fit better regarding the dispute on land dispossession, protecting the right to live outweighs property and opens the protection of the Action for Liberty. | On the scope of the liberty action, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. Furthermore, the PCC differentiated the land dispossession decision taken by the indigenous jurisdiction from the barbaric violence that occurred within the community. The Court construed that the indigenous decision regarded land dispossession and not the disproportionated rage actions committed against the humanity of one of the claimants. As a result, accepting the PCC's perspective and regarding the indigenous process, the indigenous claimants legally submitted their disputes to the indigenous jurisdictions, which, in turn, agreed to resolve them, both rendering indigenous jurisdiction effective. The defendants, on the contrary, only were informed of the indigenous decision and did not participate in the process, being their actions irrelevant. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 2/3/2015 | 0057/2015 | PCD | First specialized chamber | Juan Oswaldo Valencia Alvarado | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 09657-2014-20-CAI | La Paz | Indigenous sanction. Expulsion for robbery and destructions of sacred places |

| Indigenous people: |
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| Carmen Lipe Agrarian Union |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The community consulted the PCC if their decision to expel a whole family is under constitutional standards because one of its members stole the original image of the 'Virgen del Carmen' from the church, supplanting it with a replica, as well as the destruction of 'chullpares' located in sacred places (the case does not refer what happened to the chullpares). It happened that a community member offered to renovate the Community Chapel, changing the doors and modifying the structure. After the repairs, the community realized that the image of the Virgin was not the original one that was 'carved naturally by Divine work in stone.'<br>Subsequently, they called several meetings in which the defendant denied his authorship. Indigenous authorities informed the community that the problem would be approached according to their uses and customs. They consulted with the witch doctors of the community (amautas and yatiris), who, with the corroboration of witnesses, concluded that the accused party had the disappeared image in the city of La Paz. The authorities gave four months for the return of the image. | The PCC would have made the indigenous jurisdiction inffective by declaring the complete indigenous decision inapplicable in the specific case. It corresponded to keeping it fully applicable against the accused and excluding his family to avoid a 'disproportionate' sanction (affect third parties).<br>The PCC's test of the living well paradigm: a) Did not justify why the decision is not harmonious with constitutional plural values. b) The PCC does not have the legitimacy to establish whether the expulsion sanction contradicts the indigenous peoples' holistic vision of the Pachamama. To this end, it should carry out an anthropological expert opinion since expulsion is a sanction commonly used in extreme cases. Additionally, regarding the supposed uncertainty of who was the author of the crime, it is worth remembering that IJ applied its customs to define the case (the expertise of spiritists, amautas, and yatiris -which the PCC pejoratively generalizes as healers-, as well as witnesses). Since ordinary jurisdiction also issues penal sanctioning decisions between complete certainty and 'beyond a reasonable doubt' schemes, it is not feasible to require 'irrefutable certainty' to IJ. c) Although there is disproportion when extending the sanction concerning the family, as established in |

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| Then, the community decided to expel the accused and his family for the damages they caused and to preserve their assets. The PCC declared the inapplicability of the indigenous decision because it does not comply with the test of the paradigm of living well (provided for by 1422/2012), given that: a) The decision is not harmonious with the supreme plural values 'since the end of the measure does not find justification in a decision aimed at the preservation of a collective interest.' b) Expulsion has no place within the holistic vision of the community because it is radical and exaggerated. Besides, there is no 'irrefutable certainty' that the sanctioned person was the author of the crime. c) The decision is irrationally disproportionate as it includes the family of the sanctioned person and is arbitrary because the community acts do not justify any reasons. e) The decision was not necessary because another sanction could be established.<br>On the other hand, the PCC held that the sanction is contrary to community members' constitutional rights to their cultural identity, religious beliefs, spiritualities, practices, customs, and their worldview (Art. 30.II.2), since expulsion implies the bond rupture between the sanctioned and his identity, beliefs, customs, and practices. | article 5.3 of the ACHR '[p]unishment shall not be extended to any person other than the criminal,' the PCC did not considered the social dimension of the sanction. Furthermore, this position occurs because the PCC only reviewed community minutes, which are not necessarily detailed. The PCC should have carried out an expert opinion through its Decolonization Unit to comprehend that reality better. d) The PCC did not explain why the decision is not necessary to achieve the end, limiting itself to stating that it could have been resolved through another type of sanctions. Additionally, when the Court maintains that the expulsion is contrary to the Constitution in its Article 30.II.2, it disregarded indigenous peoples' right to cultural identity, religious beliefs, spiritualities, practices, customs, and worldview. At justifying the expulsion, the Court did not state that it is contrary to the Constitution. It only mentioned that it is an extreme sanction with terrible effects. However, the PCC declared it unconstitutional in its conclusive part without justification and against other PCC's decisions that accepted it (e.g., 0028/2013, 2018.0073, among others). Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (accepting and claiming the case). |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 4/3/2015 | 0017/2015 | PCJ | Plenary chamber | Juan Oswaldo Valencia Alvarado | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 07184-2014-15-CCJ | Cochabamba | Criminal. Coercion, qualified damage, and threats |

**Indigenous people:**

Lloquemayu Communal Agrarian Union

| Magistrate/s | Dissenting vote's opinion |
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| 1. Tata Efren Choque Capuma<br>2. Macario Lahor Cortez Chávez<br>*Zenón Hugo Bacarreza Morales | 1. a) The law does not mandate to claim jurisdiction from the first time the authority knows the case. b) Union's procedures do not allow a conflict of interests between parties and judges. c) The Union is an indigenous people since it self-identified as one according to C169.<br>2. The opportunity criteria defined by Constitutional decision under which formal and indigenous judicial authorities have to claim jurisdiction within the first moment that the case is known is wrong because a) The PCC acted as a positive legislator disregarding the constituent and legislator's intention. b) Indigenous justice does not have defined procedural steps and preclusion as the ordinary justice to apply the constitutional decision. c) Jurisdictional competence concerns public order and not the parties' implicit or explicit intentions or will. d) The parties should not be obliged, under a procedural loyalty principle, to ask authorities to claim jurisdiction because they do not know the law and, within indigenous jurisdiction, they do not have lawyers.<br>* The opinion does not appear in the files of the Court. |

| Abstract | Analysis |
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| The indigenous people claimed criminal competency against ordinary jurisdiction after two years in a case of threats, qualified damage, and coercion.<br>The PCC decided against indigenous jurisdiction because it understood the indigenous authorities implicitly accepted the ordinary jurisdiction when they decided not to claim their competence for two years despite knowing about the case since its beginning. The PCC argued that the indigenous right to exercise jurisdiction, although fundamental, has limits. Moreover, the PCC determined that it is necessary to define the opportunity to claim the competence between jurisdictions, even though the law did not establish it, for the sake of legal certainty and to avoid delays or economic damage to the State or the parties. Consequently, the PCC defined, for the first time, that the judges or indigenous authorities have a reasonable time to claim their jurisdiction from the moment they heard about the case, under the alternative that the PCC interprets that there is a tacit acceptance of the jurisdiction of the authority that assumed knowledge of the case. Due to the principle of procedural fairness, the PCC also imposed on the parties the burden of demanding from their authorities the claim of jurisdiction.<br>Furthermore, the PCC argues that the indigenous authorities have a bias in the dispute since they expressed their opinion when they finally claimed the competence. Under this second argument, the PCC decided that no fair trial would be held in indigenous jurisdiction. | By limiting the opportunity to claim jurisdiction within a reasonable period, the PCC disregarded the Constitution and the law against indigenous jurisdiction (it is the only jurisdiction claiming competence to the present). The arguments sustained in the dissenting votes suffice to explain that indigenous jurisdiction was rendered ineffective.<br>Regarding the PCC's second argument, it is stressed that who will be the indigenous authorities that would decide the dispute is not a question in the process, and indigenous jurisdiction can easily overcome it through its customs and laws. Consequently, denying indigenous jurisdiction on such grounds amounts to denying the right to indigenous jurisdiction by prejudging non-existent facts, supported by biased premises and events that may not happen. Then, this second argument renders ineffective the indigenous jurisdiction.<br>Finally, the PCC did not apply the constitutional and legal standards to define the competence dispute. On the contrary, it established a new requirement and discussed an eventual breach of a fair trial. None of them is a constitutional or legal argument to decide the case. Consequently, the decision made indigenous jurisdiction ineffective.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even |

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| Finally, even though the PCC referred to territorial, personal, and matter validity areas, it did not confront them with the case or make any analysis at all. | though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 7/5/2015 | 0448/2015-S3 | PCJ | Third Chamber | Neldy Virginia Andrade Martínez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 08794-2014-18-AAC | Potosí | Indigenous sanction. Land dispossession for not fulfilling community duties |

| Indigenous people: |
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| Rodeo Pallpa Ayllu |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The indigenous authorities violently seized the properties of the Amparo claimants, arguing that they did not fulfill their duties and obligations towards the community. Additionally, the indigenous authorities decided that claimant's quinoa plots will be harvested for the benefit of the Ayllu educational units. Two months later, the indigenous authorities issued a written indigenous resolution to sustain their actions.<br>The Court decided in favor of the Amparo claimants. It considered that the indigenous jurisdiction acted outside its competence because it did not demonstrate that the community collectively owns the territory and, therefore, they cannot decide on land possession according to the JDL. Furthermore, the Court stated that the written resolution does not explain its reasons, violating due process for lack of reasoning. | The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 7/5/2015 | 0484/2015-S2 | PCJ | Second chamber | Juan Oswaldo Valencia Alvarado | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 08802-2014-18-AAC | Santa Cruz | Indigenous sanction. Expulsion and land dispossession for trafficking of community lands to non indigenous members |

| Indigenous people: |
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| San Joaquín Community, Base Territorial Organization (OTB) |

| Magistrate/s | Dissenting vote's opinion |
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| Mirtha Camacho Quiroga and Juan Oswaldo Valencia Alvarado | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
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| The community decided to expel an elderly community member because he did not attend community meetings and offered parts of the collective land for sale to outsiders. The community decided to expel the older adult in his absence since he did not want to attend the indigenous process. Additionally, the community decided to expel the community members' sons-in-law because they intimidated the community and sold wood without authorization.<br>The elder did not appeal the indigenous decision. Instead, he initiated an agrarian process to maintain possession of his land and avoid his expulsion. This process ended because the agrarian judge declared himself incompetent.<br>The indigenous jurisdiction declared his expulsion decision enforceable and requested the ordinary jurisdiction to order the police to execute the eviction. However, shortly before executing the expulsion, the older adult left voluntarily. Nonetheless, subsequently, he claimed the annulment of his expulsion through an Amparo, arguing that the community's decision was adopted without a due and fair process.<br>The Court decided in favor of the elder, ordering that his expulsion be annulled and that his lands and assets be restored, arguing that it does not comply with the test of the paradigm of living well (provided for by 1422/2012), given that: a) The decision is not harmonious with the supreme plural values 'since the end of the measure does not find justification in a decision aimed at the preservation of a collective interest.' b) Although the community's norms recognize the sanction of expulsion, the Court asserted it severely affects the victim's well being, identity and mental health, quoting the case 0057/2015. c) The decision is irrationally disproportionate as it expels the community | The Court made the indigenous jurisdiction ineffective by annulling its decision to expel a community member based on inappropriate arguments. However, if the claimant would have argued article 5.III of the JDL, which prevents indigenous jurisdiction from expelling older men, and the Court would have applied it, the annulment of the indigenous decision would have respected legal limits rendering indigenous jurisdiction effective. In the related case 0073/2017, the indigenous authorities admitted their fault of expelling an older man violating article 5.III of the JDL.<br>The Court constantly rejects Amparos when their claimants have voluntarily accepted the decisions that affect them or when they have made them enforceable for not having appealed on time. Although this was one of the arguments of the indigenous authorities, the Court did not take it into account, treating the indigenous jurisdiction differently than the other jurisdictions.<br>The Court's test of the living well paradigm did not justify why the indigenous decision is not harmonious with the supreme plural values. Furthermore, it applied the reasoning of the case 0057/2015 to justify the harm made to the expelled community member. However, the Court did not consider that the sanctions cause harm to those punished and that, in this case, the expulsion decision emerged from the opinion of the organized community in a meeting called to do justice. The Court had to carry out an anthropological expert opinion to know in greater depth what happened since the expulsion is a sanction commonly used in extreme cases.<br>The Court also did not consider that the Amparo claimant only argued violation of due process. However, instead of analyzing such violation, the Court has only decided the case with the paradigm of living well. |

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| member for not assisting the indigenous meetings. e) The decision was not necessary because another sanction could be established. Furthermore, the Court stated that indigenous jurisdiction must respect international human rights laws and the Constitution without mentioning or specifying which norms shall be respected. | Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators since they accepted the indigenous jurisdiction. It is noted that the sanctioned man by the indigenous process claimed the violation of his individual rights and did not reject the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 7/5/2015 | 0470/2015-S2 | PCJ | Second chamber | Juan Oswaldo Valencia Alvarado | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 08637-2014-18-AAC | La Paz | Indigenous sanction. Water supply interruption to force community member's expulsion for supplanting a religious image |

| Indigenous people: |
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| Carmen Lipe Agrarian Union |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| Although the PCC does not refer to it, the case is related to the community's decision to expel some of its members for supplanting an image of the Virgin from their church (case 0057/2015 or 2015.0057-CAI-DC). In this case, the community members and indigenous authorities proceeded to interrupt the water supply to Amparo claimants.<br>Although the PCC accepted that the community has the competence to decide and sanction this crime, the PCC decided the case in favor of the Amparo claimants considering that the community did a de facto measure because it did not hold a due process to hear the defendant and decide a sanction. Furthermore, the Court argued that cutting off the water supply is not permissible due to a criminal sanction or the unfulfillment with community duties, especially since the access to water is a human right. | As can be seen in the case 0057/2015, the community carried out a process that concluded with the expulsion of the community members for having appropriated the image of the Virgin from their church. In that case, the Court annulled that decision because it found it contrary to the principles of the Constitution, of the community, unproportioned and unnecessary, for which the community had to issue a new decision. However, there is no precision of the chronology of the events, and it is unknown if the water cut occurred as a consequence of the indigenous decision to expel the community members since they have not been made explicit in the Court's judgment. More to the point, the Court qualified the water supply interruption as a de facto measure.<br>Nonetheless, the PCC accepted that the community has the competence to resolve and decide and sanction this crime, rendering indigenous jurisdiction effective.<br>In Bolivia, water service cuts are only allowed to water companies due to the unfulfillment of payment for the service and are prohibited as a sanction. In addition, the sanction of water supply cuts contradicts the Constitution for violating the fundamental right to access to water. Thus, the PCC's decision legally limited the type of sanction that the indigenous jurisdiction could adopt in the case by directly restituting the water service due to its intrinsic urgency. The same reasoning regards the Guarantees Court (lower-ranking Court).<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimants, the defendants and the indigenous jurisdiction indicators (accepting the case) since they acted within indigenous jurisdictional competencies. It is noted that the sanctioned family by the indigenous process claimed the violation of their rights and did not claim rejecting the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 17/6/2015 | 0607/2015-S3 | PCJ | Third Chamber | Neldy Virginia Andrade Martínez | CA |

| Docket No. | Bolivia's Dept. | Matter |
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| 09506-2014-20-AAC | Potosí | Agrarian. Land dispute |

| Indigenous people: |
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| Selocha community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The community decided to grant the Amparo claimant's property to two community members in compensation for the unpaid years of labor service rendered to the claimant. Despite requests from the community, the land owner did not appear to resolve the conflict.<br>The PCC decided in favor of the Amparo claimant and revoking the indigenous decision because: a) The sanctioning determination of the community assembly has no motivation, that is, it does not explain the reasons for the resolution, the justification of the fulfillment of the areas of material, territorial, and personal validity, or what | Following the order of the arguments referred to by the Court, the following is found:<br>a) The Court did not carry out an anthropological examination to determine whether or not the community and the parties involved were aware of the reasons for the decision. However, it is possible to construe that the parties knew these reasons from the background of the constitutional judgment.<br>Furthermore, the PCC should not require written rulings from the indigenous jurisdiction, much less that they include a narrative of compliance with the areas of validity or due process. In fact, in most cases, the PCC has not required it and, instead, has identified their compliance through the constitutional processes.<br>b) Contrary to PCC's interpretations, it is observed from the background that the community's assembly had to decide the case in default of the Amparo claimant since the indigenous jurisdiction summoned her to solve the problem, but she did not want to be present. Consequently, due process was carried out following community customs.<br>c) Indeed, the indigenous jurisdiction does not have the competence to decide on the rural property. However, the case was not about deciding who owned the land but compensating for the lack of labor services. Therefore, as it was a labor case for unpaid services, the PCC should justify its decision under the JDL, stating that labor law is not the competence of |

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| was the reprehensible conduct. b) There was no due process, which means that the transfer of property is a de facto measure. c) According to the JDL, indigenous jurisdiction reaches agrarian possession only when there is a collective title. | indigenous jurisdiction and not hindering the exercise of indigenous jurisdiction and ruling against it by requiring excessive and innecessary written formalities and contents (see case 2076/2013). Consequently, the PCC and the defendant (Amparo claimant) rendered indigenous jurisdiction ineffective. On the contrary, the case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 22/6/2015 | 0649/2015-S1 | PCJ | First specialized chamber | Macario Lahor Cortez Chávez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 09609-2014-20-AAC | La Paz | Indigenous sanction. Expulsion for documents falsification |

| Indigenous people: |
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| Pichari Community, Asunta |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
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| Abstract | Analysis |
|---|---|
| The community decided to expel Amparo claimants and give them 30 days to sell their land because they had falsified documentation and posed as community representatives to benefit from a chicken farm project.<br>The PCC decided in favor of the Amparo claimants. It argued that indigenous jurisdiction does not apply to this case because it involves criminal offenses of public order, which does not meet the material validity area provided by the JDL. Furthermore, it maintains that these are de facto measures for the same reason. The Court also established that the community had infringed the claimants' human rights to dignity, home, and work without explaining why. | The indigenous jurisdiction had the competence to decide the case since a) The JDL does not exclude the reported crimes from the competence of the indigenous jurisdiction, nor establish that public order crimes are outside os its competence, b) The Court had established in other cases that the crimes of falsification of documents belong to the indigenous jurisdiction (e.g., cases 388/2014 and 0698/2013). Although the PCC does not explain how the rights to dignity, home, or work have been illegally affected, it should be noted that any legal sanctioning decisions are supposed to affect the rights of the sanctioned persons legitimately. Consequently, the Court has rendered the indigenous jurisdiction ineffective by determining that the indigenous jurisdiction does not have the competence to resolve these crimes and confusing indigenous jurisdiction as de facto measures. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators since they accepted the indigenous jurisdiction. It is noted that the sanctioned persons (Amparo claimants) by the indigenous process claimed the violation of their individual rights and did not reject the exercise of the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 3/7/2015 | 0707/2015-S1 | PCJ | First specialized chamber | Macario Lahor Cortez Chávez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 07745-2014-16-AAC | Pando | Indigenous sanction. Expulsion for rape |

| Indigenous people: |
|---|
| El Lago peasant community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| A community member committed rape, a crime for which he is confined in jail and criminally prosecuted in ordinary jurisdiction. As a result, the community decided to expel him and give his property to the family of the rape victim. It is noted that the community has collective ownership of the land.<br>To hand over these lands to the victim's family, the community had to evict the wife of the alleged rapist, who belongs to another community. The wife of the alleged rapist claimed in the Amparo process that the community had violated her rights by evicting her and locking the property with a padlock. She also claimed that some of her assets were stolen during the eviction and that the community is not an indigenous people to exercise indigenous jurisdiction.<br>The community maintained that the claimant belongs to another community, that land cannot be double endowed, that since it is collective property, the community can redistribute possession of the land among the community members following their customs and the JDL, and that the loss of the claimant's assets has been reported to the ordinary jurisdiction.<br>The Court decided that the community committed de facto measures since the ordinary jurisdiction is already prosecuting the alleged rapist, that the husband's actions should not affect his wife, who is not responsible for the violation, and that the material validity area of the JDL does not allow the community to exercise indigenous jurisdiction. | The crimes of rape and their punishment belong to the ordinary jurisdiction and are excluded from the indigenous jurisdiction. For this reason, the material validity area is not met. The community decided out of its competence to expel the alleged rapist and the redistribution of land.<br>Furthermore, regarding the eviction of Amparo claimant, the personal validity area is not met since she is not a community member.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (accepting the case) since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 8/7/2015 | 0131/2015 | PCJ | First specialized chamber | Macario Lahor Cortez Chávez | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 10598-2015-22 CAI | La Paz | Agrarian. Land division or distribution for hereditary succession |

| Indigenous people: |
|---|
| Queascapa Indigenous Community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| Upon the death of a community member, his family reached an agreement to divide his lands equally. However, one of the relatives wanted to ignore the agreement, forcing two family members to stop cultivating their lands. Faced with the situation, the community authorities summoned the parties to a solution, but the person who intended to ignore the agreement did not appear. Under these circumstances, the indigenous authorities decided that the agreement of division in equal parts must be respected.<br>The PCC decided the applicability of the decision. | The case regards collective land's distribution among community members. Since indigenous justice does not have the competence to decide property but possession disputes on collective indigenous territory (Art. 10, JDL), the Court's term 'property' shall be construed as possession.<br>The Court's decision rendered indigenous jurisdiction effective when it accepted the indigenous decision. It is highlighted that the PCC established that the competence of the indigenous jurisdiction depends on its self-determination, a position not provided for in the JDL.<br>Furthermore, the case demonstrates indigenous jurisdiction to be ineffective regarding the defendant (who ignored the agreement and forced his relatives to stop cultivating their lands) since he did not accept the indigenous jurisdiction, but effective concerning the indigenous claimants and the indigenous jurisdiction indicators. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 18/8/2015 | 0315/2015-CA | PCO | Admission commission | Admission commission | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 11883-2015-24-CCJ | La Paz | Agrarian. Land dispute |

| Indigenous people: |
|---|
| Achocalla Agrarian Central Union |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Efren Choque Capuma | *There is no dissenting vote in Constitutional Orders. The Court's decision has stated that the magistrate does not shares the decision.<br>However, since the opinion to decide the case is the same as 0017/2015, the dissenting vote of the magistrate might be the same that he emitted then. |

| Abstract | Analysis |
|---|---|
| According to the antecedents revealed in the Court's decision, the indigenous authority of the community, as soon as it became aware of the agri-environmental process brought against one of the community members, presented a conflict of jurisdiction against the agri-environmental judge. The judge rejected the request because there was already an executed final decision, and the interested indigenous party did not argue the judge's incompetence. When this conflict of jurisdiction was referred to the Court, it decided that the principle of opportunity, foreseen in case 0017/2015, should be applied. As a consequence, the Court's Admission Commission rejected the conflict of jurisdictions. | Even if a judge is incompetent to decide a case, the principle of legal certainty requires that final decisions that have already been executed remain certain and that they are not subsequently modified. On the contrary, the principle of opportunity that the Court established in the case 0017/2015 has, as a central element, that the indigenous authorities present their conflicts of jurisdiction within a reasonable period since they become aware that other jurisdictions are processing disputes that belong to their competence.<br>Thus, even though it was fair to reject the conflict of jurisdictions due to the principle of legal certainty, it is not reasonable to apply the principle of opportunity, as it renders the indigenous jurisdiction ineffective (see analysis of case 0017/2015).<br>Therefore, when the PCC applied the observed principle of opportunity, it rendered the indigenous jurisdiction ineffective. Moreover, the parties rendered the indigenous jurisdiction ineffective since they preferred the formal jurisdiction to resolve their dispute despite the material, personal, and territorial validity areas concurred. The indigenous jurisdiction was also ineffective in claiming the competence to decide the case but effective in accepting to resolve it. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 19/8/2015 | 0318/2015-CA | PCO | Admission commission | Admission commission | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 11919-2015-24-CCJ | Potosí | Criminal. Slander and defamation |

| Indigenous people: |
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| Kharacha Ayllu, Bustillos province |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The indigenous authorities requested that the case be referred to their jurisdiction within a criminal proceeding for defamation and slander. Even though the judge accepted the petition, she also referred it to PCC. The Court decided that sending the case to PCC's review was unnecessary as the judge had accepted indigenous jurisdiction within legal boundaries. | The ordinary jurisdiction and the PCC rendered effective the indigenous jurisdiction because it acted respecting the jurisdictional limits and competencies. It also admitted defamations and slander as criminal offenses belong to indigenous jurisdiction. On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 3/9/2015 | 0075/2015 | PCJ | Plenary chamber | Ruddy José Flores Monterrey | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 07827-2014-16-CCJ | Tarija | Criminal. Criminal action for land dispossession |

| Indigenous people: |
|---|
| Unique Trade Union Federation of Peasant Workers of the Autonomous Region of Gran Chaco |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Juan Oswaldo Valencia Alvarado | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| In a criminal process for land dispossession, the indigenous authority claimed the competence to decide the case. The ordinary jurisdiction rejected the claim since some criminal defendants allegedly resided outside the indigenous territory and were not indigenous members. However, the PCC understood that the defendants in the criminal proceedings voluntarily accepted the indigenous jurisdiction by acquiring lands inside the community's territory. Consequently, the PCC granted the competence to the indigenous jurisdiction considering that material, personal and territorial validity areas concurred. | The decision adopted by the PCC made the indigenous jurisdiction more effective by expanding the personal validity area to people who are not community members. The basis for the expansion lies in the buyers acquiring their lands within the community's territory, and, following the PCC reasoning, they implicitly accepted the indigenous jurisdiction to resolve their eventual disputes. Furthermore, the case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicator of the lower-ranking court because, although its decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be more effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it outside its competence. Furthermore, the criminal claimant rendered indigenous jurisdiction less effective by legally preferring the ordinary jurisdiction over the indigenous one. The case is irrelevant regarding some of the criminal defendants, since they are not community members, but relevant to the others that allegedly requested their indigenous authorities to claim the case, makint the indigenous jurisdiction more effective. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 17/9/2015 | 0082/2015 | PCJ | Plenary chamber | Neldy Virginia Andrade Martínez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 08338-2014-17-CCJ | La Paz | Criminal. Aggravated robbery, criminal association and trespassing |

| Indigenous people: |
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| Taypichullo Indigneous community |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for aggravated robbery, criminal association, and trespassing, the PCC decided to give the competence to the formal jurisdiction because the land where the crimes were committed was not collective but individual property in an urban area, and because neither the plaintiff nor one of the two defendants were indigenous.<br>The PCC resolved that in the material validity area, the crimes of aggravated robbery, criminal association, and trespassing can be resolved by indigenous peoples. However, it established that the personal and territorial validity areas were not met. Regarding the first, the criminal plaintiff is not indigenous (it omitted to refer to the non-indigenous situation of one of the defendants, who allegedly is also not indigenous). Regarding the territorial scope, the Court held that the crime was not committed on collective lands but in privately-owned urban properties. For this reason, no crime was committed on indigenous territory but private property. | The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected.<br>It is remarkable that, according to th JDL, the PCC resolved that the public interest (public order) crimes of aggravated robbery, criminal association, and trespassing are within indigenous peoples' jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 29/9/2015 | 0917/2015-S1 | PCJ | First specialized chamber | Efren Choque Capuma | Liberty action |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 10675-2015-22-AL | La Paz | Criminal. Aggravated robbery |

**Indigenous people:**

San Juan de Huancollo, indigenous community (Desaguadero)

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| In a criminal proceeding in the ordinary jurisdiction for aggravated robbery, where the alleged perpetrator was in preventive detention, a compromise agreement was reached in the indigenous jurisdiction between the victim and the alleged offender's family. This transactional agreement was brought to the judge's notice, requesting the criminal action's termination and the preventive detainee's release.<br>The ordinary jurisdiction construed the agreement as a civil settlement that may extinguish civil actions but not the criminal complaint. In turn, the PCC rejected to decide the case's merits due to a procedural consideration. Although the PCC determined to deny protection because, under the PCC's case law, it is not feasible to claim an Action for Liberty when the decision to release the detainee is pending, it recognized that the indigenous jurisdiction had exercised 'legal pluralism' (interpreted as jurisdiction) as a means of cooperation and coordination for the ordinary jurisdiction. | Although the PCC admitted the indigenous agreement on the crime of aggravated robbery as cooperation and coordination to the ordinary jurisdiction (it is noted that the JDL does not foresee this alleged cooperation and coordination), it has rejected to decide the merits of the case. As a result, the practical consequence of this decision is that the ordinary jurisdiction and not the indigenous one shall decide it.<br>Since the indigenous jurisdiction has superseded the ordinary jurisdiction and has resolved the case in parallel, without formally claiming its competence as the law mandates, and, therefore, exceeding its jurisdiction, it acted more effectively. At the same time, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although their decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. Finally, since the agreement concerns the victim and the offender's family during the criminal process, the indigenous claimant rendered indigenous jurisdiction ineffective since he illegally preferred the ordinary jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 6/10/2015 | 0098/2015 | PCJ | Plenary chamber | Neldy Virginia Andrade Martínez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 06068-2014-13-CCJ | Cochabamba | Criminal. Aggravated usurpation, criminal action for land dispossession and simple damage (private action offenses) |

**Indigenous people:**

Lloquemayu Communal Agrarian Union

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Zenón Hugo Bacarreza Morales and Efren Choque Capuma | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| When deciding the case, the PCC used the primary argument that only the personal validity area was not met since the criminal plaintiffs are not indigenous. The Court accepted that the crimes were committed in the indigenous territory and that dispossession, disturbance of possession, aggravated usurpation, and simple damage are crimes that indigenous peoples may settle.<br>However, the PCC expressed secondary arguments: the indigenous authorities have a bias in the dispute since they expressed their opinion when they claimed competence. Moreover, the Court also stated that some of the criminally indicted defendants are the indigenous authorities who will resolve the case if the competence is granted to indigenous jurisdiction. Under these arguments, assuming the responsibility to look after the fulfillment of fundamental rights, and citing the 0017/2015 judgment, the PCC decided that no fair trial would be held in indigenous jurisdiction. Consequently, the PCC decided favoring the ordinary jurisdiction. | The case demonstrates indigenous jurisdiction to be more effective regarding the defendant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. Furthermore, since the criminal claimant is not an indigenous member, the case is irrelevant to him.<br>The case would be irrelevant for the indicators of the PCC if it would resolve the competence dispute based on the primary argument.<br>However, the PCC's secondary argument was unnecessary and impertinent to the process, making indigenous jurisdiction ineffective. It is stressed that who will be the indigenous authorities that would decide the dispute is not a question in the process, and indigenous jurisdiction can easily overcome it through its customs and laws. Consequently, denying indigenous jurisdiction on such grounds amounts to denying the right to indigenous jurisdiction by prejudging non-existent facts, supported by biased premises and events that may not happen. In sum, the PCC's secondary argument regards a precedent that rendered indigenous jurisdiction ineffective. The lower-ranking court rejected the indigenous competence following the first argument, which is why although its decision is contrary to the indigenous jurisdiction, it respected legal limits without affecting indigenous jurisdiction's effectiveness. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 6/10/2015 | 0092/2015 | PCJ | Plenary chamber | Macario Lahor Cortez Chávez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 08368-2014-17-CCJ | Oruro | Criminal. Severe and minor injuries |
| **Indigenous people:** | | |
| Jach'a Karangas (Totora Marka) | | |
| **Magistrate/s** | **Dissenting vote's opinion** | |
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| Abstract | Analysis |
|---|---|
| In a criminal proceeding for severe and minor injuries between two members of the same community, the indigenous authority Council Mallku of Totora Marka claimed competence to resolve the dispute. The incident occurred in the vicinity of the Municipality gate, in which both community members inflicted mutual verbal and physical aggression on each other, also causing material damage to third parties.<br>The lower-ranking judge rejected the claim because the indigenous authority was not part of the criminal process. The Court of appeal confirmed this decision.<br>It is noted that the indigenous jurisdiction had already decided the case. It sanctioned the indigenous members by a) suspending one of them definitively from his municipal position for his recidivism in violent actions, b) suspending the other from his municipal position only for one period. Finally, the indigenous jurisdiction fined Bs3000 (around $430 at the moment) a third community member for participating in the violent acts of the previous two. The Totora Auqui Marka's Jach'a Tantachawi decided the case in front of the whole community.<br>The Court declared the indigenous jurisdiction competent, considering that the three validity areas of competence concurred. | The PCC made the indigenous jurisdiction effective by recognizing it and validating its decisions within the legal framework. The lower-ranking courts, on the contrary, rendered it ineffective by disregarding the law when they rejected the indigenous competence. Furthermore, the criminal claimant made ineffective the indigenous jurisdiction by lodging his claim to the ordinary jurisdiction, contrary to the defendant and the indigenous authorities that made it effective. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 19/10/2015 | 0967/2015-S1 | PCJ | First specialized chamber | Macario Lahor Cortez Chávez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 10719-2015-22-AAC | Potosí | Indigenous sanction. Expulsion for misappropriation, falsification of invoices, physical assaults, killing and illicit commercialization of vicuñas, and theft of cattle |
| **Indigenous people:** | | |
| Alota Canton agrarian union | | |
| **Magistrate/s** | **Dissenting vote's opinion** | |
| -- | -- | |

| Abstract | Analysis |
|---|---|
| The Amparo claimants were summoned to the community assembly to answer the crimes of misappropriation, falsification of invoices, physical assaults, killing and illicit commercialization of vicuñas, theft of cattle, and other crimes. On this occasion, these people were offered the alternative to accept a process or leave the community immediately. Given that Amparo claimants withdrew from the meeting, they were prosecuted, and their expulsion from the community was decided. The decision was ratified on two different occasions, one of which the entire community was present. The community authorities executed the expulsion decision, which is why the claimants demanded the restitution of their rights to water, food, housing, property, due process, and defense. Finally, the indigenous authorities referred to the ordinary jurisdiction the crimes committed by these people.<br>The Court considered that no process had been carried out, that de facto measures have been taken, that if there are crimes, they must be reported to the ordinary jurisdiction to decide them, and that the indigenous jurisdiction is subject to the constitutionality control of the PCC. The Court urged the parties to find a solution to their problems within the framework of respect and under indigenous principles. | According to the community's customs, a process was carried out in absentia of the Amparo claimants because they voluntarily opted to leave the assembly. This decision was reviewed on two different occasions by the community itself, so there was due process, and the claimants had the opportunity to defend themselves. The orality of the indigenous jurisdiction means that their decisions and opinions are not necessarily written. However, it is noted that the parties recognize them based on the case's background.<br>The Court disregarded that the indigenous jurisdiction has the competence to resolve the crimes reported, so the ordinary jurisdiction is incompetent. For this same reason, it is not understandable that the Court would urge the parties to solve the problem. Under this analysis, the Court has rendered the indigenous jurisdiction ineffective by depriving it of all jurisdictional power and not recognizing its decision's authority.<br>The same occurs with the indigenous jurisdiction that referred the case to the ordinary jurisdiction after already deciding the case and sanctioning the wrongdoers. Apparently, the community was unaware that there could be no double jeopardy (double sanction and process for the same cause). Furthermore, the community could have requested the public force to carry out its indigenous decision to avoid committing abuses or the exercise of de facto measures. Be that as it may, the indigenous jurisdiction decided the case by the instance of the indigenous claimants, both making it effective, while the indigenous defendants rendered it ineffective since they tried to ignore the indigenous competence, process, and ruling. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 29/10/2015 | 1016/2015-S3 | PCJ | Third Chamber | Neldy Virginia Andrade Martínez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 10727-2015-22-AAC | Oruro | Agrarian. Land dispute |
| **Indigenous people:** | | |
| Jach'a Karangas (Corque Marka, Cataza Ayllu, Antacahua community) | | |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| In a land dispute, a community member lodged an Amparo against JK authorities because she perceived that her right to due process had been affected by their decision. Specifically, she considered that the decision in question was not justified and that she had not been allowed to defend herself. The decision ordered the removal of the dividing posts of her sayaña or the extinction of her land possession and their reversion in favor of the community in case of disobedience. As the community member did not accomplish the indigenous decision, the community members removed the dividing posts in an indigenous public hearing with the presence of the indigenous authorities, the claimant (neighbor of the defendant) and the agri-environmental judge (invited to participate in the hearing).<br>The Court of Guarantees (lower-ranking court) and the PCC decided in favor of JK's indigenous jurisdiction, by recognizing its competence to decide the case and validating its decisions within the legal framework.<br>The current case is related to A.2015.01.28 (in minutes and indigenous cases). | The lower-ranking judge and the PCC's decisions respected the limits of the indigenous jurisdiction and made it effective.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted and decided the case within its competence, and the indigenous claimant. However, the defendant (Amparo claimant) rendered indigenous jurisdiction ineffective by illegally rejecting the indigenous jurisdiction's decision. |

# Relevant Cases of 2016

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 07/01/2016 | 0001/2016 | PCD | First specialized chamber | Efren Choque Capuma | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 10514-2015-22-CAI | Cochabamba | Agrarian. Land dispute |

| Indigenous people: |
|---|
| T'ajra Pankuruma Community |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| The community was excluded from its territory by other communities through land endowment processes carried out by INRA. Likewise, it does not have the exploitation of natural resources in the area. For this reason, the community met and decided to a) Approve a sanctions procedure against land usurpers. b) Annul the agrarian rights of land usurpers. c) Order the public registry of their lands. d) Recognize indigenous justice to resolve socio-environmental disputes. e) Punish the exploitation of natural resources by third parties.<br>The community consulted the Court if this resolution is in accordance with the Constitution.<br>The Court decided against the consultation of the community, declaring it inadmissible because a) the approved norm does not deal with attributions of the indigenous jurisdiction, and b) the legal requirements of the consultation are not met because the community has not identified a specific case in which it wants to apply its indigenous norm. | The purpose of the consultation of the indigenous community was to try to validate its decision through the Court and not, as appropriate, the validity of its application in a specific case. Accordingly, the Court applied the requirements established by the Constitution and the law by declaring the consultation inadmissible.<br>The case demonstrates indigenous jurisdiction to be more effective since it exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicator of the PCC because, although its decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 14/01/2016 | 0005/2016 | PCJ | Plenary chamber | Efren Choque Capuma | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 10053-2015-21-CCJ | La Paz | Criminal. Attempted homicide |

| Indigenous people: |
|---|
| Gualberto Villarroel Agrarian Central Union |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez and Ruddy José Flores Monterrey | Since homicide is no the competence of indigenous jurisdiction according to JDL, then the attempted homicide is not either. |

| Abstract | Analysis |
|---|---|
| The physical aggression between two community members during the Aymara New Year in an indigenous territory was denounced in ordinary jurisdiction, and the prosecutor formally charged the aggressor with attempted murder. However, the community authorities claimed competence to resolve this dispute. | The argumentation, in this case, has revolved around the legal qualification of the events occurred inside an indigenous territory. While the ordinary jurisdiction established attempted murder, the indigenous jurisdiction established physical aggression for fighting.<br>According to the Court, the first to qualify the facts was the indigenous jurisdiction. This situation, however, should not have value when deciding which of the jurisdictions is competent, not only because decision 0037/2013 established that the principle of prevention does not apply between indigenous and ordinary |

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| The Court decided in favor of the indigenous jurisdiction, arguing that:<br>a) It is a case that the indigenous jurisdiction knows historically and traditionally under its rules and procedures. So much so that the indigenous authorities were already treating the case.<br>b) The prosecution's classification as attempted murder differs from the classification made by the indigenous jurisdiction as 'nuwasiña' between two 'jaques,' that is, a fight or physical aggression.<br>c) The case cannot be re-prosecuted in another jurisdiction, once again qualifying the fact with criminal criteria. d) The community had already contributed money to the victim's relatives for his healing expenses. e) The affected people themselves must restore the lack of harmony and balance through their authorities. f) The principles of the last ratio, the most favorable rule, and the first authority that has known the case (prevention) must be applied. | jurisdictions to define the competence but especially because more than one crime may arise from the same act, and consequently, more than one qualification.<br>When the Court granted the competence to the indigenous jurisdiction to resolve the dispute, it respected the scope of material validity, making it effective. Furthermore, the Court decided to interpret the scope of personal validity extensively, broadening it, even though it was unnecessary to resolve this case. It stated that the personal validity are reaches not only members of the same community but also outsiders who have legitimate interests in the community or voluntarily submit to indigenous justice explicitly or implicitly. To this end, the Court cited and followed partially the case 0026/2013. For this reason, this decision also made the indigenous jurisdiction more effective. Additionally, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the criminal claimant because he chose the formal jurisdiction.<br>Regarding the attempted murder, the following are precedents: a) The case 0007/2015 rejected the competence of the indigenous jurisdiction on attempted murder, under the logic that if the homicide is excluded from its competence, the crime of attempted murder must also be. The dissenting vote uses this argument. b) The case 1225/2013, without entering to argue about the material validity, admitted the indigenous jurisdiction competence to resolve the attempted murder. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 14/01/2016 | 0007/2016 | PDJ | Plenary chamber | Mirtha Camacho Quiroga | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 08844-2014-18-CCJ | Oruro | Criminal. Aggravated robbery |

**Indigenous people:**

Jach'a Karangas (Apu Mallku of Aransaya representing Lagunas Community)

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| In a criminal proceeding for aggravated robbery between members of the same community, the Apu Mallku, as the highest authority in Karangas, claimed the competence to resolve the dispute. However, given the refusal of the judge, the process was sent before the PCC. The theft involved wire fencing and poles that delimited two Sayañas, emerging from a collective land possession conflict.<br>The lower-ranking judge rejected this request because he considered that he had the competence under the criminal law and its procedure.<br>The Court decided in favor of indigenous jurisdiction, considering that the areas of territorial, material, and personal validity were met. Regarding the material area, which was the area discussed by the criminal judge, the Court has decided, without expressly stating it, that it was a land dispute and that the indigenous jurisdiction of Karangas resolves this type of conflict. | It is not possible to assert that, in this case, the Court has established that the crime of aggravated robbery is in the material sphere of competence of the indigenous jurisdiction. It seems that avoiding deciding on the scope of the material validity area, the Court would have adopted a pragmatic stance by identifying, through the findings of its Decolonization Unit, that the origin of the dispute concerns the internal distribution of community lands.<br>Be that as it may, the Court has preferred the indigenous jurisdiction over the criminal jurisdiction. In this way, the Court has respected the legal limits, making the indigenous jurisdiction effective. On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. Finally, the lower-ranking judge disregarded the limits defined by law making the indigenous jurisdiction ineffective, since the competence of the indigenous jurisdiction shall be defined through the Constitution and JDL's provisions and not only from criminal laws (as the PCC's case law recognized later with cases 0022/2018 and 0035/2019). |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 01/02/2016 | 0150/2016-S1 | PCJ | First specialized chamber | Macario Lahor Cortez Chávez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 12644-2015-26-AAC | Oruro | Indigenous sanction. Land dispossession for land misappropriation and unfulfilling community duties |

**Indigenous people:**

Jach'a Karangas (Marka Curahuara de Carangas, Jila Uta Manasaya community)

| Magistrate/s | Dissenting vote's opinion |
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| Efren Choque Capuma | The magistrate agrees with the Court's decision to grant protection to the Amparo claimant, but with different arguments: a) The rights to physical and psychological integrity were not violated since there are no prooves. b) The right to human dignity was violated because the family of the Amparo claimant was not taken into account to find out the reasons for not attending community meetings. As a result, the family or another member of the community can attend these meetings for him. c) Due process and motivation for the indigenous decision were complied with |

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| | because the community has known about the problem for more than ten years, the Amparo claimant has been summoned, and several meetings have been held with him. Furthermore, it is inappropriate to demand literal parameters from the indigenous authorities that exercise their jurisdiction orally. d) The claimant has other lands where he can work, cultivate and have livestock legitimately, so his right to work, food, and land has not been infringed. e) The claimant could visit the indigenous authorities to have their queries answered, so requiring a written response is only a pretext to justify non-compliance with the right to petition. |

| Abstract | Analysis |
|---|---|
| A community member, who is an older adult, claimed protection because his indigenous authorities decided to communicate an abstention order to him. They ordered him not to do agricultural work and raise livestock on one of his lands (Sayaña), affecting his rights to work, food, possession, and petition. The indigenous authorities justified the sanction because the community member had problems with the community for more than ten years, intended to appropriate the lands of others, and did not participate in community meetings. It is emphasized that the indigenous jurisdiction did not expel the community member and that he possesses other lands in the community.<br>The PCC decided to grant protection to the Amparo claimant, arguing that: a) He is an older adult. b) The indigenous decision is not substantiated correctly, which is why the reasons for the sanction and its proportionality are unknown. c) The indigenous jurisdiction must protect people's fundamental rights. As a result, the indigenous jurisdiction cannot justify its decision in the breach of community duties or land possessions controversy. d) On the other hand, the Court ratified the guarantee judge's decision, which established that the actual owners (possessors) of the Sayaña are other people and that, to resolve this dispute, they must go to the corresponding jurisdiction to claim their right. e) The indigenous order directly affected the right to work and food of the Amparo claimant. f) As the indigenous jurisdiction did not answer the Amparo claimant's written request to reconsider its abstention order, it violated his right to request. | On the one hand, the PCC has decided in favor of the defendant (Amparo claimant) on the merit of the documentary evidence presented and not of the statements made by the indigenous authorities or of an investigation that the PCC's Decolonization Unit could have carried out. Thus, as the dissenting vote also argued, the PCC prefers documentary evidence, which would impose excessive formalism on the indigenous jurisdiction, and a written justice system instead of an informal, oral and prompt justice. Furthermore, given the communitarian characteristics of indigenous justice, it is most likely that the community and the involved parties were aware of the indigenous decision and its reasons.<br>On the other hand, when the Court ratified the decision of the guarantee judge, it accepted the position that the indigenous jurisdiction does not have the competence to decide on possession disputes within collective lands when they pertain to an older adult. This position is contrary to the JDL (article 5.III), which only prohibits the expulsion or loss of land to older people and people with disabilities due to non-compliance with communal duties, such as contributions, positions, and community work. Moreover, the indigenous jurisdiction's abstention order did not expel o decide the land loss of the Amparo claimant. Hence, the Court has disregarded the Constitution and JDL preventing the exercise of the indigenous jurisdiction within its competencies and requiring it to comply with written formalities that do not correspond to its nature.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the indigenous claimants (who allegedly claimed against the older adult) and the indigenous jurisdiction indicators (by accepting the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the defendant (Amparo claimant) because he rejected the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 01/02/2016 | 0012/2016 | PCJ | Plenary chamber | Neldy Virginia Andrade Martínez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 09808-2015-20-CCJ | La Paz | Criminal. Criminal action for land dispossession |

| Indigenous people: |
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| Nueva Parcopata II indigenous community |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| 1. Tata Efren Choque Capuma<br>2. Macario Lahor Cortez Chávez | 1. a) The judge of the criminal process had to inform the indigenous authorities of the case under the principle of legal pluralism. Unfortunately, the Court's decision acts as if it was in colonization times undermining indigenous justice.<br>2. The opportunity criteria defined by Constitutional decision under which formal and indigenous judicial authorities have to claim jurisdiction within the first moment that the case is known is wrong because a) The PCC acted as a positive legislator disregarding the constituent and legislator's intention. b) Indigenous justice does not have defined procedural steps and preclusion as the ordinary justice to apply the constitutional decision. c) Jurisdictional competence concerns public order and not the parties' implicit or explicit intentions or will. d) The parties should not be obliged, under a procedural loyalty principle, to ask authorities to claim jurisdiction because they do not know the law and, within indigenous jurisdiction, they do not have lawyers. |

| Abstract | Analysis |
|---|---|
| The indigenous people claimed the competence to resolve a criminal dispute for dispossession and disturbance of possession after one year and three months it had begun.<br>The PCC decided against indigenous jurisdiction by arguing the opportunity principle. It understood that the indicted indigenous individuals allowed the criminal process to advance without requesting their indigenous authorities to claim the competence demonstrating their passive and approving behavior. Moreover, the defendants in the criminal process defended themselves, presented evidence, made appeals, and other actions without claiming indigenous competence. | By limiting the opportunity to claim the competence within a reasonable period, the PCC disregarded the Constitution and the law against the indigenous jurisdiction, rendering it ineffective.<br>The decision follows the jurisprudential line started by 0017/2015. Under the PCC's argument, on this occasion, it was not the delays of the indigenous authorities to claim the competence that produced the rejection but the lack of diligence of the criminal defendants to inform them.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence. Furthermore, the parties of the criminal process rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 17/02/2016 | 0009/2016 | PCD | First specialized chamber | Efren Choque Capuma | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 11835-2015-24-CAI | Potosí | Agrarian. Land dispute |

**Indigenous people:**

Yurcuma community, agrarian Union

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The territorial area of the Yurcuma community suffered a long process of destructuring over the years. First, at the end of the 19th century and the beginning of the 20th, the territory was converted into the property of a single person who did not allow the production and reproduction of the community according to its culture; on the contrary, the members of the community were turned into free laborers of the land in favor of that owner (semi-slavery). Later, through the agrarian reform of the mid-twentieth century, this territorial structure continued with the land sale in plots to people outside the community.<br>The case regards a conflict of overlapping territories between the municipality of Tupiza and the community of Yurcuma since 1992. This conflict was originated by Law 1381 of 1992, which expanded the urban reserve of Tupiza, encompassing the community's territory. Yurcuma demands that its territory be maintained as a rural area. In 2004 the municipality of Tupiza declared as protected municipal green and crops areas the Yurcuma zone for its preservation, prohibiting its urbanization.<br>In 2013, without affecting the lands covered by Law 1381 but within the municipality of Tupiza, the INRA (National Institute of Agrarian Reform) granted the community of Yurcuma the collective property called Junta Vecinal Yurcuma. However, this same year, the community of Yurcuma, as a result of illegal occupations, determined to enforce its territory as a rural area according to its customs and not as an urban area. In addition, Yurcuma expressed its opposition to the expansion of the urban area of Tupiza. It argued that it is intended to usurp its collective territory as if they were urban lands.<br>The Yurcuma's indigenous authorities consulted the PCC on applying its regulations to: a) The alleged territorial overlap caused by Law 1381. b) The distribution and redistribution of its collective lands. c) The protection and safeguarding of its territory.<br>The PCC decided that the Yurcuma regulations: a) Do not apply to Law 1381 because it is not part of the Consultation of Indigenous authorities. b) They are applicable for the distribution and endowment of lands within the collective territory. c) They are applicable for protecting and safeguarding the community's collective lands, but without prejudice to the rights legitimately acquired by third parties. | The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicator of the PCC because, although its decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected.<br>It is observed that the territory disputes that affect indigenous communities are not within the framework of its powers. This situation shows that a) State sovereignty is above the sovereignty of indigenous peoples and b) the State reserves for itself the solution of essential disputes over indigenous territory and its delimitation, despite the existence of an egalitarian plural justice in Bolivia. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 01/03/2016 | 0029/2016 | PCJ | Plenary chamber | Ruddy José Flores Monterrey | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 10344-2015-21-CCJ | La Paz | Criminal. Aggravated robbery, attacks against the freedom of work, criminal association, disobedience to authority, force entry, public instigation to commit a crime, sabotage |

**Indigenous people:**

Pucarani (Vilaque Huaripampa indigenous community)

| Magistrate/s | Dissenting vote's opinion |
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| Macario Lahor Cortez Chavez | a) As the analysis of the territorial scope has not been made, the sentence is incomplete. b) The criminal complainant, a mining entrepreneur, has to submit to indigenous regulations when carrying out his mining activity in the community's territory. c) The minimum intervention of criminal law must be considered, granting jurisdiction to the indigenous jurisdiction. d) The impartial trial does not constitute a matter to justify the incompetence of the indigenous jurisdiction, according to 0026/2013. |

| Abstract | Analysis |
|---|---|
| Within a criminal process started by a foreign citizen against indigenous authorities for trespassing, disobedience to authority, aggravated robbery, public instigation to commit a crime, sabotage, attacks against the freedom of work and criminal association, the indigenous authorities claimed the competence to decide the case. | Personal validity area: The first reason to justify the breach of the personal validity area is valid since the criminal plaintiff is a foreign citizen outside the community. However, rejecting the competence of indigenous jurisdiction (IJ) based on a possible future violation of due process in its impartiality's branch (due to the criminal defendants and indigenous authorities who would decide the case are the same persons) disregards legal limits, is impertinent, and a harmful precedent. Thus, who will be the indigenous authorities that would decide the dispute is not a question in the process, and IJ may easily overcome it through its laws. Consequently, denying IJ on such grounds amounts to denying the right to its exercise by prejudging non-existent facts, supported by biased premises and events that may not happen.<br>Material validity area: Justifying the exclusion from indigenous jurisdiction for mining crimes would have been sufficient and consistent with the JDL. However, the PCC disregarded the |

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| The PCC judged the case belonged to ordinary jurisdiction because the material and personal validity areas were not met. Regarding the former, the PCC argued that a) the criminal claimant was a foreign citizen and that b) indigenous authorities and indigenous defendants in the criminal process were the same. Consequently, there were no guarantees for a fair indigenous trial. Regarding the latter, the PCC argued that indigenous jurisdiction should be excluded when seeking to protect a legal asset of a national or international entity. | Constitution and the JDL because it decided to make an alleged systematic interpretation of the Constitution, without explaining how it did it, according to which indigenous jurisdiction should be excluded from the prosecution of cases intended to protect national or international interests. Nevertheless, the Constitution does not tackle the material validity area. On the contrary, it refers its determination to the JDL. When the PCC analyzes the fulfillment of material validity area on national and international interests, it includes a requisite not foreseen in the Constitution or the law. Indeed, the JDL excludes crimes in which the State is the victim, crimes that involve the internal and external security of the State, and the crimes under public and private international law. However, when the PCC refers to the 'legal asset of national and international entity,' it restricts more IJ through unnecessary generalization. Thus, for example, protecting families from domestic violence or the society and its goods through aggravated robbery are matters of national interest, but the law recognizes the competence of the IJ to resolve them.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the defendant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. However, the PCC's judgment rendered IJ effective since it partially disregards the legal and constitutional jurisdiction limits in the personal and material validity areas. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 01/03/2016 | 0031/2016 | PCJ | Plenary chamber | Ruddy José Flores Monterrey | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 04043-2013-09-CCJ | Oruro | Criminal. Aggravated robbery, exactions, force entry with the aggravating circumstance for being public officials, resolutions contrary to the Constitution and the laws, and threats |

| Indigenous people: |
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| Jach'a Karangas (Ayllu Todo Santos and Buena Vide community) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| 1. Tata Efren Choque Capuma<br>2. Macario Lahor Cortez Chávez | 1. Although the three areas of validity to grant jurisdiction to indigenous justice were recognized, the judgment denies this jurisdiction because there would be bias from the indigenous authorities. In this way, the decision subjects the indigenous people to the state institution. If there was concern about the impartiality of the indigenous authorities, jurisdiction should have been granted to their higher authorities.<br>2. The Constitution only requires to met the three areas of validity to grant the competence to the indigenous jurisdiction. Possible judge unfairness is not an element to be resolved in this process. If there is a violation of the rights of the natural and impartial judge, there is the constitutional Amparo process to provide protection. |

| Abstract | Analysis |
|---|---|
| Within a criminal process started by a community member against his indigenous authorities for exactions, resolutions contrary to the Constitution and the laws, threats, forced entry with the aggravating circumstance of being public officials, and aggravated robbery, the indigenous authorities claimed the competence to decide the case. The criminal claimant initiated the process against his indigenous authorities and community members because they violently trespassed on his lands, threatened his sons, and stole his money using dynamite because he acquired real state property through a prescription process before the ordinary jurisdiction. The prescribed lands are part of the indigenous territory and were communal land. Consequently, Ayllu Todo Santos decided to sanction the community member and his community Buena Vides (case 0778/2014).<br>The lower-ranking criminal judge referred the case to the PCC, arguing he has no competence to resolve disputes of competencies among jurisdictions. Thus, the PCC decided the case belonged to the ordinary jurisdiction because, even though the three areas of validity concurred, the indigenous authorities who would decide the dispute were partialized against the alleged victim (who filed the criminal process in the ordinary jurisdiction). Furthermore, although the Court explicitly admitted that indigenous jurisdiction has the competence to resolve all the denunciated crimes, it justified such a decision considering that national and international interests were not affected by the case. | The PCC's judgment rendered indigenous jurisdiction (IJ) ineffective since a) it disregarded the constitutional and legal jurisdiction validity areas and b) included national and international interests to define material validity.<br>Regarding the first, although the three areas of validity to grant the competence to the IJ concurred in the case, the Court preferred the ordinary jurisdiction because it considered that the indigenous authorities, who would decide the case if the Court granted them the competence, did not meet the criteria of impartiality required for the natural judge. Although the impartiality of judges is an essential element of due process, it is not a requirement established by the Constitution or by law to decide a process of conflict of competencies between jurisdictions. In addition, a) it is a future event that may not occur, b) IJ can provide a due process through its customs and laws, c) if there might exist a violation of impartiality, the Constitution provides due protection through the Amparo, and d) the PCC may exhort IJ to comply with due process when deciding the dispute, as it later does in other cases (e.g., 0071/2016, 0007/2017). Consequently, denying the exercise of IJ on such grounds amounts to denying the right to IJ by prejudging non-existent facts supported by biased premises and events that may not happen.<br>Regarding the second, when the Court admitted the material validity fulfillment by arguing that national and international interests were not at stake, it included a requisite not foreseen in the Constitution or the law. Indeed, the JDL excludes crimes in which the State is the victim, crimes that involve the internal and external security of the State, and crimes under public and private international law. However, making a general reference to 'legal asset of national and international entity' unnecessarily expands the restriction of IJ. Thus, for example, protecting against falsification is in the national interest of the public faith, but the law recognizes the competence of the IJ to resolve these cases.<br>On the other hand, the case demonstrates the IJ to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendants because they were also the indigenous authorities who claimed the case. Furthermore, the lower-ranking judge rendered the IJ ineffective since he had the legal competence to accept the indigenous request. Finally, the criminal claimant also made the IJ ineffective because he illegally preferred the ordinary jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 29/03/2016 | 0020/2016 | PCD | First specialized chamber | Macario Lahor Cortez Chávez | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 12512-2015-26-CAI | La Paz | Indigenous sanction<br>force communal labor for land disputes in urban areas |

**Indigenous people:**

Hampaturi Ayllu

| Magistrate/s | Dissenting vote's opinion |
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| Tata Guarberto Cusi | Faced with the administrative process of transformation to communal land before INRA, when some families decided to resolve their conflicts directly before the National Institute of Agrarian Reform (INRA) and not internally, the territorial integrity of the community has been put at risk. The individual interest must be subject to the collective interest, especially when it refers to the territory, as it is one of the elements most linked to the culture of human communities. For this reason, the community sanction had to be declared applicable. |

| Abstract | Analysis |
|---|---|
| The community's authorities consulted the PCC if: a) The sanction of 5,000 bricks imposed on each of the Hampaturi's families is compatible with the Constitution. This sanction occurred because the families made individual land claims during the administrative process of transforming the community's territory to collective land before INRA. The community thought that individual claims negatively affected the transformation process. b) If the customary norms of the Hampaturi communities that are now in the urban area are compatible with the Constitution.<br>The PCC decided that the sanction is incompatible with the Constitution because agrarian disputes are outside indigenous jurisdiction, according to JDL. Furthermore, the Court argued that claims are part of the access to justice and the right to petition provided by the Constitution. The Court did not respond to the second query because it did not refer to a specific application of indigenous rules. | The case demonstrates indigenous jurisdiction to be more effective regarding the claimants, defendants, and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicator of the PCC because, although its decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 05/04/2016 | 0025/2016 | PCD | First specialized chamber | Efren Choque Capuma | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 10371-2015-21-CAI | La Paz | Agrarian. Land dispute |

**Indigenous people:**

Corapata Sub Central Union

| Magistrate/s | Dissenting vote's opinion |
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| Macario Lahor Cortez Chavez | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| Five unions that make up the Corapata Sub Central have disputes over the collective use of the lands located in Villuyo. Specifically, Chiarhuyo Corapata, Marquirivi Corapata, Huancané Corapata, Centro Corapata, on the one hand, and La Portada Corapata on the other hand. The disputes raised in intensity because the commercial value of the land increased due to the transfer of the toll from a busy highway to Viluyo. The Amáutico Council of Justice, created by the Portada Corapata union, has decided to grant these lands to this union. The query lies in knowing if the decisions of the Amáutico Council are lawful and legitimate.<br>The Court decided that each community has the competence to distribute the lands in its jurisdiction and not distribute lands in the jurisdiction of the other unions or collective lands belonging to all of them. For this reason, the decisions of the Amáutico Council are not applicable to decide the distribution of the collective property in conflict, requiring the consensus of the five unions (or Sub Central). In other words, the Court declared applicable the consensus and inapplicable de unilateral decision. The Court urged the Sub Central to establish an inclusive dialogue process to resolve the dispute. If the objective is not achieved, they shall resort to the higher organic bodies of the unions (Provincial Federation, Departmental Federation, or National Confederation). | It should be noted that the case concerns the collective property of collectivities (the dispute is between communities and not between individuals). In this sense, the Court's decision rendered the indigenous jurisdiction effective because it recognized its competence to resolve the dispute through its internal organization. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since they acted within indigenous jurisdictional competencies. However, the resolution of the conflict shall involve indigenous authorities with jurisdiction over the five communities in dispute, not only a decision of the authorities of one of them. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 05/04/2016 | 0044/2016 | PCJ | Plenary chamber | Macario Lahor Cortez Chávez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 11093-2015-23-CCJ | La Paz | Agrarian. Land dispute |

| Indigenous people: | |
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| Tanapaca 'Chaqueña' de Marka Ulloma | |
| **Magistrate/s** | **Dissenting vote's opinion** |
| Efren Choque Capuma | The controversy is over land ownership arising from a land loan. It is a typical practice of the communities of the highlands and valleys of the country, whose regulation is subject to its own rules and procedures; therefore, it corresponds to the sphere of material competence. |

| Abstract | Analysis |
|---|---|
| In a repleving action before an agri-environmental judge to regain possession of a fraction of land loaned by one community member to another, the indigenous authorities claimed competence to resolve the dispute. In addition, it should be noted that the applicant for possession is the owner of the land.<br>The court decided in favor of the agri-environmental jurisdiction, arguing that the JDL does not recognize the competence of the indigenous jurisdiction in agrarian cases of private property. | The case demonstrates indigenous jurisdiction to be more effective regarding the defendant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. The indigenous claimant in the agrarian process made the indigenous jurisdiction less effective. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. Agrarian disputes pertain to agri-environmental jurisdiction except when they concern land redistribution on collective property. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 13/04/2016 | 0055/2016 | PCJ | Plenary chamber | Efren Choque Capuma | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 09279-2014-19-CCJ | La Paz | Criminal. Slander and defamation |

| Indigenous people: | |
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| Wila Collo community, Sub Central Union | |
| **Magistrate/s** | **Dissenting vote's opinion** |
| *Juan Oswaldo Valencia Alvarado, Neldy Virginia Andrade Martínez, and Ruddy José Flores Monterrey | a) There is no congruence since the decision uses occidental terms that do not belong to indigenous justice, such as 'querella' [file a criminal charge]. b) Solely having land within indigenous territory does not mean accepting indigenous jurisdiction. c) When referring to the territorial validity area, the judgment refers to municipality jurisdiction, which is not the same. d) Although the judgment argues the principles of extrema ratio and minimum intervention when comparing indigenous and ordinary criminal jurisdictions and preferring the former, it is forgotten that indigenous jurisdiction has punitive power, and its sanctions might be even greater than those of the ordinary jurisdiction.<br><br>* The opinion of Juan Oswaldo Valencia Alvarado does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for defamation and slander initiated by former indigenous authorities against community members, the current indigenous authorities of the community claimed jurisdiction to resolve the dispute. The Court decided to favor the indigenous jurisdiction because the three validity areas for its competence concurred.<br>It should be noted that the judgment was not precise when determining the existence of the three validity areas. Furthermore, it included impertinent elements to justify the decision, such as the principles of extrema ratio, subsidiarity, and minimum intervention to prefer indigenous jurisdiction over the ordinary. | The decision respects the limits of indigenous jurisdiction and is therefore effective.<br>Regarding the dissenting vote, it should be noted that Constitutional indigenous and non-indigenous magistrates have divided opinions regarding the competences of indigenous jurisdiction. At least, some of them are constantly rejecting the decisions of the others through dissenting votes. Even though those contradictory positions are noticeably growing stronger in their arguments, they are not necessarily assertive. For instance, in the present case, whereas it is not forbidden for indigenous justice to use occidental concepts to term their jurisdictional actions and there is no internal contradiction in the decision for referring to them, as the dissenting vote claimed, the judgment should be precise in its wording to avoid misunderstandings in the parties and stakeholders. It becomes particularly relevant when analyzing the existence of the indigenous jurisdiction validity areas. Moreover, the judgment inspired the dissenting vote when it expressed, without further reasons, that indigenous jurisdiction should be preferred over ordinary criminal jurisdiction on the grounds of the principles of extrema ratio, subsidiarity, and minimum intervention, implying that indigenous jurisdiction is necessarily benigner.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendants because they allegedly requested their indigenous authorities to claim the case (even though they did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimants rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 18/4/2016 | 0046/2016 | PCJ | Plenary chamber | Mirtha Camacho Quiroga | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 09087-2014-19-CCJ | La Paz | Criminal. Criminal association, dispossession and deprivation of liberty |

| Indigenous people: | |
|---|---|
| Junthuma community (Achocalla) | |
| **Magistrate/s** | **Dissenting vote's opinion** |
| Efren Choque Capuma and | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

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| Macario Lahor Cortez Chávez | |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding followed by a landowner against the indigenous authorities of the community for the crimes of dispossession, criminal association, and deprivation of liberty, the indigenous authorities claimed competence to resolve the dispute. However, in the antecedents, the community reverted the land ownership because its owner abandoned the land, unfulfilling its socio-economic function.<br>The Court decided against the indigenous jurisdiction because it considered that, although the material and territorial areas of validity were fulfilled, the personal area was not met because the criminal complainant stated in the process that he was not part of the community. | In this case, it is necessary to differentiate the areas of validity of the indigenous jurisdiction from the object of the dispute.<br>Regarding the scope of material validity: if the dispute corresponds to deciding who gets the ownership of the land, the agri-environmental jurisdiction is competent because it is individual property (Art. 10, JDL). On the other hand, if the dispute is the sanction of crimes, these crimes belong to the competence of the indigenous jurisdiction.<br>Regarding the scope of personal validity, it is not met in any alternatives because the landowner (and criminal complainant) is not from the community. However, the Court could expand the scope of personal validity, as it did in several precedents (0026/2013, 1810/2014, 0075/2015, 0005/2016, and 0029/2016, among others), subjecting the owner to indigenous jurisdiction for having accepted it implicitly after acquiring land within the community.<br>Finally, in both alternatives, the scope of territorial validity is fulfilled.<br>As the conflict of jurisdiction is between indigenous and ordinary jurisdictions in a criminal process, then the competence could have been granted to the indigenous jurisdiction by expanding the personal scope. However, the Court does not have a univocal criterion in this regard, which is why it is considered that the decision has made the indigenous jurisdiction ineffective in terms of the jurisprudential line.<br>However, regarding the law, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/4/2016 | 0444/2016-S1 | PCJ | First specialized chamber | Macario Lahor Cortez Chávez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 13629-2016-28-AAC | Potosí | Indigenous sanction. Expulsion for adultery |

| Indigenous people: |
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| Chiro Kasa Ayllu, indigenous community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The indigenous community decided a) to expel a couple (man and woman) and punish them with a monetary fine if they do not leave the community because the man leave his wife and began to cohabit with the woman, and b) that the man's assets remain for his children and not for his relatives, according to indigenous customs. It is clarified that the man (husband) carried out a divorce process in the ordinary jurisdiction that concluded with a judgment that rejected the divorce and simply declared the separation of bodies.<br>The Court decided to annul the indigenous resolution stating that: a) The ordinary jurisdiction has already issued a final judgment on the divorce. b) Although the due process was not claimed, the indigenous jurisdiction did not allow the couple to defend themselves, violating their right to due process. c) The expulsion sanction imposed by the indigenous jurisdiction does not comply with the paradigm of living well because it is disproportionate, unnecessary, and unfair. d) The indigenous decision affected the right to property of the expelled husband. | The Court's decision made the indigenous jurisdiction ineffective because: a) There is no overlapping between jurisdictions since the ordinary jurisdiction declared that there is no termination of the marriage by divorce, and the indigenous jurisdiction sanctioned the establishment of a new cohabitation relationship without the conclusion of the previous conjugal relationship. b) The Court only speculated on the alleged violations of the claimant's due process. c) Although the Court has not justified why the indigenous sanction is disproportionate, unfair, and unnecessary, the community has felt its values violated by the couple's behavior and, consequently, the community itself decided to sanction them. Therefore, the Court does not have the legitimacy to decide on the validity of the community's values. d) The alleged violation of the right to property by the indigenous jurisdiction's decision only affects the community's collective lands and its redistribution due to the husband's expulsion. Consequently, there is no actual violation of his property rights.<br>Furthermore, the case demonstrates indigenous jurisdiction to be ineffective regarding the claimant indicators since he did not accept the indigenous decision, but effective concerning the indigenous jurisdiction indicators by accepting the case within its competence. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 4/5/2016 | 0047/2016 | PCJ | Plenary chamber | Macario Lahor Cortez Chávez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 12787-2015-26-CCJ | Potosí | Criminal. Criminal action for land dispossession |

| Indigenous people: |
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| Jucumani Ayllu |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez<br>Ruddy José Flores Monterrey | The conflict of competences required greater justification when establishing each of the three scopes of validity of the indigenous jurisdiction. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for disturbances in possession and dispossession, the indigenous authorities of the community claimed jurisdiction to resolve the dispute. However, the complaining party of the criminal proceeding opposed the claim of the indigenous authorities because they stated that it is an urban land of private property that does not belong to the collective property of an indigenous people.<br>The Court decided in favor of the indigenous jurisdiction on the grounds of a certificate issued by indigenous authorities that maintains that the lands are in the indigenous territory and that both parties in dispute belong to the community. Furthermore, the Court held that the material scope was complied with because land possession problems are ancestrally resolved in indigenous jurisdiction. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework. On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 23/5/2016 | 0056/2016 | PCD | First specialized chamber | Efren Choque Capuma | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 14811-2016-30-CAI | La Paz | Civil. Contract compliance |

| Indigenous people: |
|---|
| Hampaturi Ayllu |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| Faced with the accident that caused the death of one of the community members while carrying out work in the city of La Paz for a public water company, the community reached an agreement with the manager of the company. The agreement established that the company would grant a job to the widow, pay several wages as damages, pay insurance policy, and collaborate in the criminal investigation for the death. The community considers that the company manager has not complied, so it wants to sanction him, consulting if that is feasible.<br>The PCC ruled that the consultation was inadmissible because it is not about applying a community rule to a specific case but about trying to enforce an agreement through the consultation constitutional process. | The final result of the decision is adequate, because the indigenous jurisdiction cannot apply its internal norms to solve the consulted problem.<br>However, the Court uses vague and impertinent arguments to answer the consultation. The Court did not analyze the areas of validity of the indigenous jurisdiction to maintain that they were not met and that, consequently, the indigenous jurisdiction could not sanction those who are not members of the community for an act that occurred outside the community and on issues that are partially excluded from indigenous jurisdiction, such as labor law. On the contrary, the decision refers to the character of indigenous justice and Andean principles.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicator of the PCC because, although its decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 24/6/2016 | 0058/2016 | PCJ | Plenary chamber | Mirtha Camacho Quiroga | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 08087-2014-17-CCJ | La Paz | Criminal. Abortion, attempted murder, discrimination, force entry, severe and minor injuries |

| Indigenous people: |
|---|
| Santa Ana Primera Sección Pucarani (Consejo Amawtico de Justicia, Jach´a Kamachinak Apnaqery Amawt'anaka) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| *Efren Choque Capuma and Macario Lahor Cortez Chávez | The attempted homicide, as it does not result in the consummation of the criminal type of homicide, is not excluded from indigenous jurisdiction.<br><br>*The opinion of Efren Choque Capuma does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| Emerging from a land conflict in the community, an indigenous decision was issued to partially evict a family from community land (part of the land in conflict was recognized in favor of the community member and his family). Later, compliance with this decision was carried out with Police assistance. The community member and his family, who were partially evicted from their land, filed criminal proceedings before the ordinary jurisdiction for the crimes of attempted murder, force entry, abortion, | Since the Court did not differentiate the crimes at the time of resolving the conflict of jurisdiction, it denied the competence of the indigenous jurisdiction to resolve the crimes within its competence. Consequently, the Court's decision has rendered the indigenous jurisdiction ineffective by excluding it from deciding all the crimes reported.<br>It should be remembered that the complaint of attempted homicide is only a facts qualification and that the indigenous jurisdiction |

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| severe and minor injuries, and discrimination against some authorities and members of the community. Faced with this criminal lawsuit, the indigenous authorities claimed competence to resolve the dispute.<br>The PCC decided in favor of ordinary jurisdiction. The Court argued that although the areas of personal and territorial validity were met, the area of material validity was breached because the attempted murder is excluded from the powers of the indigenous jurisdiction as it is the beginning of the execution of the crime of homicide, which is explicitly excluded from indigenous jurisdiction by JDL. The Court did not refer to the other criminal offenses.<br>The Court explicitly decided to exclude from the decision any qualification related to due process and the impartiality of the indigenous authorities who claimed jurisdiction and who, at the same time, were criminally sued. | should not be excluded for that reason, following the precedent provided in the case 0005/2016. Moreover, the JDL does not refer to attempted crimes to exclude indigenous jurisdiction.<br>It is commendable that the Court explicitly decided to exclude from the judgment any qualification related to due process and the impartiality of the indigenous authorities to define the dispute of competences.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendants because they were also the indigenous authorities who claimed the case. Furthermore, the criminal claimants rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 24/6/2016 | 0059/2016 | PCJ | Plenary chamber | Mirtha Camacho Quiroga | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 11923-2015-24-CCJ | La Paz | Criminal. Slander and defamation |

| Indigenous people: |
|---|
| Villa Jarka Sub Central Union (Zongo) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez and Ruddy José Flores Monterrey | Despite the three areas of validity were met, the authorities are not impartial. Consequently, the competence should have been granted to ordinary jurisdiction. |

| Abstract | Analysis |
|---|---|
| The indigenous authorities of the community requested the competence to decide a criminal case of defamation and slander to the ordinary jurisdiction. The PCC decided in favor of the indigenous jurisdiction since the three areas of validity were met. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework. On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally rejecting the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 24/6/2016 | 0060/2016 | PCJ | Plenary chamber | Macario Lahor Cortez Chávez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 10192-2015-21-CCJ | Chuquisaca | Criminal. Coercion, deprivation of liberty, public instigation to commit a crime, severe and minor injuries, and threats |

| Indigenous people: |
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| Villa Mojocoyo, Peasant Labor Sub Central Union |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez and Ruddy José Flores Monterrey | a) The arguments to establish a change of jurisdictional line are insufficient. The judgment lacks justification on the principle of legal certainty, which is affected by eliminating the principle of opportunity. b) The requirement of opportunity to raise the conflict of the competences cannot be subject to the authorities' discretion. |

| Abstract | Analysis |
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| The case emerges as a consequence of the dispute and request for the resignation of the Major of the Autonomous Municipal Government of Villa Mojocoya, which led to physical and psychological attacks, deprivation of liberty, and other de facto measures. These events led to the denunciation and filing of a criminal complaint by the Major for the crimes of deprivation of liberty, coercion, threats, severe and minor injuries, and public instigation to commit a crime. The lower-ranking criminal judge rejected the indigenous competence on the grounds of the opportunity principle.<br>The Court decided in favor of the indigenous jurisdiction since the three areas of validity were met. It also eliminated the jurisdictional line started by the case 0017/2015 that imposed the opportunity principle, i.e., the necessity to | The decision respects the limits of indigenous jurisdiction and is therefore effective.<br>Regarding the dissenting vote, it should be noted that Constitutional indigenous and non-indigenous magistrates have divided opinions regarding the competences of indigenous jurisdiction. At least, some of them are constantly rejecting the decisions of the others through dissenting votes. Even though those contradictory positions are noticeably growing stronger in their arguments, they are not necessarily assertive. For instance, in the present case, whereas it is not forbidden for indigenous justice to use occidental concepts to term their jurisdictional actions and there is no internal contradiction in the decision for referring to them, as the dissenting vote claimed, the judgment should be precise in its wording to avoid misunderstandings in the parties and stakeholders. It becomes particularly relevant when analyzing the existence of the indigenous jurisdiction validity areas. |

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| claim jurisdiction at the beginning of the process or immediately the process is known. The arguments are: a) Jurisdictional competence concerns public order and not the parties' implicit or explicit intentions or will. b) The opportunity principle limits justice access and natural judge. c) Indigenous justice does not have defined procedural steps and preclusions, as the ordinary justice does to apply the opportunity principle. Therefore, indigenous authorities can claim jurisdiction at any time during the process. It is highlighted that these arguments are the same as the magistrate rapporteur established in his dissenting vote on the case 0017/2015. | Moreover, the judgment inspired the dissenting vote when it expressed, without further reasons, that indigenous jurisdiction should be preferred over ordinary criminal jurisdiction on the grounds of the principles of extrema ratio, subsidiarity, and minimum intervention, implying that indigenous jurisdiction is necessarily benigner.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendants because they allegedly requested their indigenous authorities to claim the case (even though they did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimants rendered indigenous jurisdiction ineffective by illegally rejecting the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 19/7/2016 | 0076/2016 | PCD | Plenary chamber | Mirtha Camacho Quiroga | Prior control of the constitutionality of an autonomous statute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 07860-2014-16-CEA | Oruro | Prior control of the constitutionality of an autonomous statute |

| Indigenous people: |
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| El Choro, Autonomous Municipal Government |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The PCC's decision was rendered within the process that must be carried out before the Court to verify the compatibility of the Autonomous Statute draft of the Municipal Government of El Choro with the Constitution. Article 106 of the project established that indigenous peoples who access 'indigenous districts' will exercise their own justice within the framework of the Constitution and the JDL. The Court declared the incompatibility of this article. | The Court understood that Article 106 of the draft Autonomous Statute of the Municipal Government of El Choro was unconstitutionally conditioning indigenous justice and the exercise of indigenous jurisdiction by requiring that the indigenous people first comply with the form of constituting indigenous districts. Thus, by declaring the incompatibility of this article with the Constitution, the Court has recognized the direct existence of indigenous jurisdiction and, consequently, it has made it effective. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 18/8/2016 | 0062/2016 | PCJ | Plenary chamber | Mirtha Camacho Quiroga | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 10193-2015-21-CCJ | Chuquisaca | Criminal. Attacks against the freedom of work, and prevent or hinder the exercise of functions |

| Indigenous people: |
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| Mojocoya, Sun Central Indigenous Union |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez and Ruddy José Flores Monterrey | a) The opportunity principles was not met in the case. b) Lack of motivation regarind the fulfillment of the three areas of validity. |

| Abstract | Analysis |
|---|---|
| The former municipal mayor of Mojocoya sued for the crimes of preventing or hindering the exercise of functions and attacks against the freedom of work to some members of the community who demanded their resignation and protested against him for alleged acts of corruption. Noticed about this process, the community authorities claimed jurisdiction over the ordinary jurisdiction.<br>The court decided in favor of indigenous jurisdiction because the three scopes of validity provided by the Constitution were met. | The decision respects the limits of indigenous jurisdiction and is therefore effective. On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 18/10/2016 | 0924/2016-S1 | PCJ | First specialized chamber | Efren Choque Capuma | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 13163-2015-27-AAC | La Paz | Indigenous sanction. Expulsion for attempted murder, appropiation of assets and spousal abuse |

| Indigenous people: |
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| Anacurí community agrarian union |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| Given that a) Amparo claimant committed spousal abuse to her ex-husband, divorce, and the attempt to appropriate her ex-husband's assets, as well as b) the attempted murder that her brother, Amparo co-complainant, did to her ex-husband, the union authorities, defendants in the Amparo process, issued a sanctioning resolution. This decision established: a) repudiate the assassination attempt, b) the expulsion of the lady from the community, together with her minor children and her brother, c) walk barefoot and with hands tied behind by the nearby communities, d) that the assets of the marriage become the property of the ex-husband, and e) union intervention of the house acquired by the brothers, among others.<br>The Court decided the following: a) that the community has jurisdiction and the competence to resolve the case, b) although the Constitution does not prohibit expulsion, in this case, this decision is not possible because there are minors who deserve all protection, c ) although a community could prohibit and punish divorce according to its worldview, in the present case the community accepts divorce according to its customs so it cannot prohibit it, d) the right to due process was violated due to the physical sanction that was inflicted on the brothers, e) the property cannot be affected through indigenous jurisdiction, f) the right to housing was violated, g) the right to work was violated, h) the indigenous authorities can resolve the alleged attempt to murder under their rules, and i) a new union assembly must revoke the decision that violated all these rights. | Without differentiating and analyzing the areas of validity, the Court has decided that the indigenous jurisdiction has the competence to resolve the existing disputes in the case. Nonetheless, it is observed that material, personal and territorial validity areas concur since the disputed matters are not excluded from its competence, the parties involved are members of the same community, and the events that caused the dispute occurred in the community's territory.<br>The Court's decision partially affected the effectiveness of the indigenous jurisdiction when it disregarded the law interfering with its exercise. Thus, a) the Court illegally excluded the sister's expulsion, arguing she is the mother of two children who should not be expelled. However, it maintained the expulsion of the brother. b) Although the PCC admitted indigenous jurisdiction to resolve the dispute reissuing the revoked decision, it defined the content of the future indigenous decision. Consequently, the Court rendered indigenous jurisdiction less effective (excluding and affecting the indigenous jurisdiction in some cases and respecting it in others).<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (accepting and claiming the case) since they acted within indigenous jurisdictional competencies. It is noted that the sanctioned woman by the indigenous process claimed the violation of her rights and did not claim rejecting the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 3/11/2016 | 1197/2016-S3 | PCJ | Third Chamber | Neldy Virginia Andrade Martínez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 16041-2016-33-AAC | Santa Cruz | Agrarian. Land dispute |

| Indigenous people: |
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| Guaraní Community (Consejo de Justicia Indígena de la Comunidad Guaraní) |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| Amparo claimant won a constitutional proceeding against members of a community who illegally entered his lands. However, in the absence of spontaneous compliance with this decision, the Amparo claimant had to execute the constitutional decision by evicting these people through public force. As a consequence, the community initiated an indigenous process against the claimant. The claimant filed a dilatory incompetence plea because a) he is not a member of that community (personal scope of validity), b) the property is outside the indigenous jurisdiction (material scope), and c) there is already res judicata by the PCC. However, the community decided against the claimant and without ruling on his request for incompetence. Thus, the community imposed fines on him and declared that the property of the land belonged to the community.<br>The Court confirmed the decision of the guarantee judge deciding in favor of the claimant, arguing that the community violated his right to defense and due process. The guarantee judge, for his part, declared that the indigenous jurisdiction acted without jurisdiction for not complying with the areas of personal and material validity. | The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 7/11/2016 | 1160/2016-S2 | PCJ | Second chamber | Zenón Hugo Bacarreza Morales | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 16370-2016-33-AAC | Oruro<br>*The case declares Chuquisaca, but the facts happened in Oruro | Agrarian. Land dispute |

| Indigenous people: |
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| Jach'a Karangas (Ayllu Rosapata, Santiago de Andamarca) |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| A community member presented an action to maintain possession before an agri-environmental judge. He attached as evidence to his claim a settlement and a resolution minute on the land conflict by the indigenous authorities of the Ayllu de Rosapata of Santiago de Andamarca, which, in his opinion, were conciliatory attempts to settle the dispute that the | The pivot element in which the case turns concerns the Amparo claimant's (prior claimant in the indigenous and agri-environmental jurisdictions) misleading understanding of indigenous justice. He construed, possibly under an occidental perspective, that dialogues |

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| defendant rejected. Furthermore, he stated that the unsolved problem was referred to the Mallku de Marka, the superior indigenous authority who did not act in consequence.<br>The defendant used this documentation in the agri-environmental process to justify that the jurisdiction belonged to the indigenous authorities and that they were waiting for the agri-environmental jurisdiction to refer the case to them to decide it. Given that the agri-environmental judge decided in favor of the plaintiff, the ruling was challenged by a cassation appeal before the Agri-environmental Court, stating the judge's lack of competence to decide the case. However, the magistrates of the Agri-environmental Court held that it was a process that corresponded to the indigenous jurisdiction because it deals with the possession of land in collective properties of indigenous peoples, that the process was already under the prevention of the indigenous authorities, and that the judge misconstrued its competence.<br>Faced with this decision, the agrarian plaintiff claimed through Amparo arguing that: a) The conflicts of jurisdiction shall be initiated by the indigenous authorities and not as an exception by the defendant. b) The PCC is the only one that can decide on competence disputes and not to the Agri-environmental Court. c) That the Agri-environmental Court's decision was not adequately substantiated. d) The previous actions of the indigenous authorities were only an attempt to conciliate, rejected by the Amparo claimant.<br>The PCC decided to validate the Agri-environmental Court's decision, stating that it was adequately funded, rejecting Amparo's action. | and minutes made with indigenous authorities and the counterparty were only part of a settlement course. Moreover, he likely understood that since there was no final agreement between the parties, the dispute was ready to be decided by the agri-environmental jurisdiction. Additionally, the agri-environmental procedure was not a jurisdictional competency dispute initiated by the concerned indigenous authorities that the PCC had to decide, as the Amparo claimant argued, but the agrarian defendant's dilatory plea which ended recognizing the indigenous jurisdiction to solve the dispute. Consequently, the Agri-environmental Court's decision was well-funded, as the PCC declared, rendering indigenous jurisdiction effective.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted and decided the case within its competence, and the agrarian defendant because he formally challenged the claimant's election of jurisdiction. Furthermore, the agrarian claimant (prior claimant in the indigenous process) rendered indigenous jurisdiction ineffective by illegally rejecting the indigenous jurisdiction. Finally, the lower-ranking judge disregarded the limits defined by law making the indigenous jurisdiction ineffective since it rejected its competence despite the three validity areas of the indigenous jurisdiction competence concurred in the case. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 8/11/2016 | 0071/2016 | PCJ | Plenary chamber | Macario Lahor Cortez Chávez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 10964-2015-22-CCJ | La Paz | Criminal. Aggravated robbery, and force entry |

| Indigenous people: |
|---|
| Julio Ponce de León, Sub Central Peasant Labor Union |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Juan Oswaldo Valencia Alvarado, Neldy Virginia Andrade Martínez, and Ruddy José Flores Monterrey | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| A criminal proceeding emerged from a land dispute over boundaries for the alleged commission of an aggravated robbery and force entry crimes. Simultaneously, during the development of the conflict, the parties and the indigenous authorities held assemblies and community meetings to try to reach a solution. Thus, an agreement was signed to carry out a new land measurement between parties. In this context, the indigenous authorities claimed the competence to solve the dispute.<br>The Court decided in favor of the indigenous jurisdiction considering that the three areas of validity were fulfilled. However, it should be noted that the criminal complainant belongs to another community and that the Court has included him in the scope of personal validity because he would have signed the measurement minutes before the indigenous jurisdiction. Additionally, because one of the persons denounced in the criminal process is also an indigenous authority, the PCC has established that the constitutional protection processes are expedited if the indigenous jurisdiction violates due process and impartiality. | The Court broadened the scope of personal validity, including a member of a different community under the indigenous jurisdiction. Consequently, it rendered indigenous jurisdiction more effective.<br>It is commendable that the Court explicitly decided to exclude from the judgment any qualification related to due process and the impartiality of the indigenous authorities to define the dispute of competences.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one, although it was initially. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 30/11/2016 | 1251/2016-S2 | PCJ | Second chamber | Zenón Hugo Bacarreza Morales | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 15283-2016-31-AAC | Oruro | Agrarian. Land dispute |

| Indigenous people: |
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| Cóndor Apacheta Jach'a Marka Tapakari |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| In an indigenous process in which a land division agreement was reached with the indigenous authorities, one of the parties breached the agreement and also caused damage to the other party's fields. As a result, the indigenous authorities ordered him to respect the agreement under the alternative to enforcing the dispute resolution with public force. Faced with the threat of the indigenous authorities and feeling that his lands were being affected, he claimed violation of his property rights through a constitutional Amparo.<br>The PCC decided against the claimant, arguing that indigenous decisions are binding, that the land belongs to a collective or communitarian indigenous territory, and that the Amparo action was presented after the term established by law. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case and validating its decisions within the legal framework. Furthermore, the case demonstrates indigenous jurisdiction to be ineffective regarding the claimant indicators since he did not accept the indigenous decision, but effective concerning the defendant and the indigenous jurisdiction indicators. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 2/12/2016 | 1254/2016-S1 | PCJ | First specialized chamber | Macario Lahor Cortez Chávez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 16449-2016-33-AAC | Oruro | Indigenous sanction. Expulsion for theft |

| Indigenous people: |
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| Jatun Killaka Asanajaqi Jakisa, Nación Originaria (Salinas de Garci Mendoza, Huatari Ayllu) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Efren Choque Capuma | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| The authorities of the indigenous community decided to expel a woman for failing to deliver property, documents, minute books, a tractor key, and money obtained from rents in the community. They also decided to expel her father until her daughter from her returns these assets. Later, a criminal proceeding was initiated by some indigenous authorities against the woman. Faced with this process, the community decided to claim the competence to resolve the dispute. However, at the same time, due to the absence of interest of the plaintiffs, the case was dismissed. As a result, the community issued a new resolution ratifying the sanctions against the woman but excluding her father.<br>The woman requested photocopies and certifications that indigenous authorities did not respond to. Due to the lack of response and the sanctions against her, the woman claimed the Amparo's protection to revoke her expulsion, arguing lack of motivation of the indigenous decision, double jeopardy, the violation of her right to work, and the inexistent precedent in her community regarding the expulsion of community members.<br>The Court decided in favor of the Amparo claimant and ratified the decision of the guarantee judge, who annulled the indigenous decisions and ordered that they decide the case once more with due motivation. It argued that a) the resolutions are unfounded and are inconsistent because the JDL prohibits expelling the father, who is an older adult and the matter had nothing to do with him, b) the expulsion is not provided for in the community statutes and is disproportionated , c) there is no double trial, d) the right to work of the Amparo claimant has been violated at the time of her expulsion since she will not be able to work the land for her livelihood. | Interestingly, the indigenous jurisdiction decided the case before the ordinary jurisdiction, i.e., when the parties engaged in the criminal process, the case was already decided. As a consequence, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (by accepting and deciding the case), even though later on, some indigenous authorities initiated a criminal proceeding in the ordinary jurisdiction and the defendant used its dismissal to defend herself in the Amparo, rendering the indigenous jurisdiction ineffective.<br>Furthermore, although the PCC granted the community the possibility to issue a new resolution duly motivated, it rejected the woman's expulsion, interfering with the exercise of indigenous jurisdiction under debatable arguments (indigenous laws and customs are not all written, and the community has the prerogative to decide the sanction under its values). Nevertheless, considering the indigenous jurisdiction still has the possibility to decide the case, the Court rendered indigenous jurisdiction effective. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 2/12/2016 | 1386/2016-S3 | PCJ | Third Chamber | Neldy Virginia Andrade Martínez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 16665-2016-34-AAC | Oruro | Agrarian. Land dispute |

| Indigenous people: |
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| Ucumasi Marka, Collana Ayllu |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| At the time of his mother's death, the Amparo claimant maintains that some of his family members dispossessed him of the land he worked, arguing that he had no right to that land. Faced with the claim made by the dispossessed to the indigenous authorities, they told him that he was not a member of the community and | By the collective property of indigenous peoples, there is no property but possession among their indigenous members. Therefore, only indigenous individuals can possess collective lands, distributed and redistributed by indigenous peoples under their laws and customs. In this case, the indigenous jurisdiction understood that the claimant is not a community member since he has never participated in its activities, meetings, or positions. So then, the son has no right to community lands, and he does not have the right to inherit his mother's possession. As a result, the son is not a community member, and arguably there is no reason for |

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| that, in addition, the lands of his deceased mother were redistributed.<br>The Court decided that the indigenous authorities and the relatives of the Amparo claimant exercised de facto measures because due process was not carried out, and he was not summoned to participate in it. Accordingly, the Court ordered a) to annul the land redistribution, b) that the lands of which the claimant was stripped be provisionally restored to him, until c) the indigenous authorities carry out a new land redistribution process with the claimant's participation, and d) the decision to be adopted justifies the reasons for excluding or including him from the land redistribution. | him to be present when indigenous jurisdiction defines land possession. Otherwise, the indigenous jurisdiction would be acting out of its competence regarding the personal validity area.<br>The Court disregarded this indigenous stance by ordering a supposedly due process with the presence of a none community member. As a result, even though the PCC respected the indigenous jurisdiction's right to decide the case granting the community the possibility to issue a new resolution duly motivated, it has broadened its competence on the personal validity area, rendering the indigenous jurisdiction more effective.<br>On the other hand, the case demonstrates indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators (accepting and resolving the case) since it decided the case within its competence. Furthermore, even though the case is irrelevant for the claimant of the Amparo (he is not a community member), the defendants (indigenous authorities) rendered indigenous jurisdiction effective by arguing in favor of the indigenous jurisdiction's competence to exclude a third party. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 13/12/2016 | 0077/2016 | PCJ | Second chamber | Mirtha Camacho Quiroga | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 15189-2016-31-CCJ | Oruro | Agrarian. Land dispute |

| Indigenous people: |
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| Jatun Killaka Asanajaqi Jakisa, Nación Originaria |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Juan Oswaldo Valencia Alvarado, Neldy Virginia Andrade Martínez, and Ruddy José Flores Monterrey | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| In an agrarian process to recover possession, the indigenous authority claimed jurisdiction to resolve the case. The discussion concerned 5 hectares of land plus payment of damages because the defendants had entered the claimant's property with violence, causing damage to their crops.<br>The Court decided in favor of the indigenous jurisdiction when it found that the validity areas of the indigenous jurisdiction was met. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework. On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the agrarian defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the agrarian claimant rendered indigenous jurisdiction ineffective by illegally rejecting the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 16/12/2016 | 1336/2016-S2 | PCJ | Second chamber | Mirtha Camacho Quiroga | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 13017-2015-27-AAC | Beni | Indigenous sanction. Expulsion for not being a community member |

| Indigenous people: |
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| Sudamericano, peasant community union |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| In a conflict between indigenous organizations, a person decided to abandon her housing unit to favor a woman who did not belong to the community. It is clarified that: a) the community's authorities did not authorize the woman's land possession, and b) the housing unit is located on the community's collective land. Faced with this situation, the authorities decided to retake possession of the housing unit and expel the woman from the indigenous territory.<br>The Court decided that, even though the three areas of validity for the indigenous jurisdiction to resolve the dispute were met, the indigenous resolution violated due process, mainly because the decision was incongruent regarding the 'eviction' or 'expulsion' decision. Thus, while it decided to 'evict' the woman, the judgment's motivation referred to her 'expulsion' from the community. | The case complies with territorial and material validity areas. However, the area of personal validity was not met since the woman was not a community member. In this regard, the Court held that the woman implicitly accepted the community's indigenous jurisdiction by settling in its territory. Consequently, the Court's decision broadened the scope of personal validity in favor of indigenous jurisdiction, making it more effective.<br>The PCC's granted indigenous jurisdiction the possibility to correct the congruency of its decision by defining if it regards 'eviction' or 'expulsion,' and, as a result, maintain the same decision.<br>Finally, since claimants and the indigenous jurisdiction acted on a case involving a third party, they rendered indigenous jurisdiction more effective, although the case is irrelevant to the defendant (none indigenous member). |

# Relevant Cases of 2017

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 2/2/2017 | 0006/2017-S1 | PCJ | First specialized chamber | Macario Lahor Cortez Chávez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 14785-2016-30-AAC | La Paz | Indigenous sanction. Expulsion for not performing community contribution |

| Indigenous people: |
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| Circa Kata union community (Sapahaqui) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Efren Choque Capuma | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| The plaintiffs of Amparo denounced the violation of their rights to private property, defense, health, and rights of the elderly because the union leaders of the Circa Kata community determined to occupy an area of 100 m2 of the land they owned with the argument of non-compliance with communal obligations for more than twenty years. At the same time, they decided to expel the claimants' father, who possessed the land as a lifetime usufructuary and without considering that he is an older adult. The Amparo claimants demonstrated that they had private property on the land.<br>The Court decided in favor of the Amparo claimants, a) using the main argument that an older person's expulsion and dispossession of land are not possible since it violates his dignity and right to work. b) In addition, the Court clarified that the older adult has the right to usufruct and that his possession of the land represents the owners. c) The Court uses a secondary and tangential argument that disputes over property rights must be clarified in the corresponding instances; otherwise, the indigenous jurisdiction would be taking de facto measures. This argument does not explain that disputes related to private property are outside the material and territorial scope. | The Court could resolve the case by applying the indigenous jurisdiction validity areas. In this way, it could argue that the material scope was not met because the dispute concerns the individual private property of lands. However, as there is the expulsion of the older adult, the Court privileged his rights, arguing his decision regarding this fact.<br>When the Court decided to annul the indigenous decision of dispossession and expulsion without ordering the indigenous jurisdiction to resolve the dispute through a new resolution, it does not appropriate a conflict that the indigenous jurisdiction could resolve since the latter does not have the competence to decide on individual and private property. This consequence, which is relevant for respecting jurisdictional limits, has not been considered by the Court.<br>In any case, the case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 15/2/2017 | 0047/2017-S1 | PCJ | First specialized chamber | Efren Choque Capuma | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 17211-2016-35-AAC | Oruro | Indigenous sanction. Seizure of cattle (lamas) and force communal labor for non-compliance with decisions of indigenous authorities |

| Indigenous people: |
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| Jatun Killaka Asanajaqi Jakisa, Nación Originaria |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The community authorities seized 30 llamas from a family because a) they did not comply with decisions of the indigenous jurisdiction, b) they refused to sign the agreements to settle disputes over land limits, and c) they continued to cause damage by bringing their llamas to their neighbors' lands.<br>Faced with the confiscation of their llamas, the family filed a criminal complaint before the ordinary jurisdiction against some authorities and members of the community for cattle rustling. However, the ordinary jurisdiction referred the case to the indigenous jurisdiction after the latter claimed jurisdiction to resolve this dispute.<br>Subsequently, the indigenous authorities summoned the family to a Marka's Jach'a Cabildo to resolve the dispute. However, although the family attended this meeting with their lawyer, they left it insulting the authorities. For this reason, the Marka's Jach'a Cabildo decided to sanction the family in their absence with the construction of a 50-meter-long wall in 30 days, under the alternative of doubling the sanction and retaining their llamas using the public force. The sanction was also motivated because the family had sued indigenous authorities in the ordinary jurisdiction. | The Court's resolution was limited to reviewing the sanctions established in the minutes of the Marka's Jach'a Cabildo. Within the constitutional rights framework, the Court interpreted that these sanctions affected the right to due process of the family because they were issued in their absence, without being allowed to defend themselves and with a biased authority against them. Furthermore, it should be noted that the Court did not have appropriated the conflict by supplanting the indigenous jurisdiction and resolving it. On the contrary, it ordered that a new Marka's Jach'a Cabildo be summoned to resolve the dispute definitively. Consequently, the Court's decision made the indigenous jurisdiction effective.<br>However, when deciding the case, the Court did not consider: a) The indigenous jurisdiction had already adopted a position regarding the family's actions and decided to punish it. b) That the indigenous jurisdiction claimed jurisdiction from the criminal jurisdiction to extinguish the criminal process with which the family tried to criminalize the indigenous sanction. c) That the indigenous people subsequently convened a Marka's Jach'a Cabildo to reach an agreement with the family in conflict and restore the harmony of the community. In this framework, the Court disregarded the indigenous jurisdiction and the decisions it had previously adopted |

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| The Court decided that the indigenous jurisdiction violated the rights to due process, defense, and impartiality by a) not resolving the dispute over the theft of llamas for which the Marka's Jach'a Cabildo was summoned, b) sentencing the family during their absence and being unable to defend themselves, and c) acting bias because one of the authorities, formerly denounced, also signed the minutes that decided the sanction. Under these reasons, the Court protected the family in their rights to due process and ordered a) annulling the minutes that decided the sanction, and b) to convene a new Marka's Jach'a Cabildo to resolve the controversy definitively. | when sanctioning the family. Nevertheless, considering the indigenous jurisdiction still has the possibility to decide the case, the Court rendered indigenous jurisdiction effective.<br>Finally, the case demonstrates indigenous jurisdiction to be effective regarding the defendant, the lower-ranking judge and the indigenous jurisdiction indicators. The defendants, indigenous authorities and community members, rightfully claimed the competence to decide the case and the lower-ranking judge accepted the indigenous petition. On the contrary, the criminal claimants made the indigenous jurisdiction ineffective because they chose the formal jurisdiction and tried to criminalize the indigenous justice. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 13/3/2017 | 0206/2017-S2 | PCJ | Second chamber | Zenón Hugo Bacarreza Morales | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 17833-2017-36-AAC | Tarija | Indigenous sanction. Dismissal of authority for incorrect or unethical behavior |

| Indigenous people: |
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| San Andrés Agrarian Union |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| In an Amparo claimed by a peasant union authority for having been dismissed from office by a general assembly of the community without due process and as a consequence of allegedly not having adequately defended the peasant organization, the Court decided against the claimant because he did not comply with the subsidiarity principle that is one of Amparo's process requirement. It is clarified that a) the defendant authorities argued that the Amparo claimant did not comply with the principle of subsidiarity, b) they presented the statutes and internal regulations of the union as proof that the claimant did not exhaust the indigenous bodies to claim his right. c) The Court rejected the process without deciding on its merits. | The Court's decision recognized the legal limits making the indigenous jurisdiction effective since: a) It recognized that the indigenous jurisdiction has competence to resolve their internal disputes and that the constitutional jurisdiction is only subsidiary. b) It did not decide on the merits of the claim, allowing the indigenous jurisdiction to decide the dispute.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendants because they allegedly requested their indigenous authorities to claim the case and some of them were also indigenous authorities who claimed it. Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally rejecting the indigenous decision and preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 16/3/2017 | 0006/2017 | PCJ | Plenary chamber | Zenón Hugo Bacarreza Morales | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 09269-2014-19-CCJ | La Paz | Criminal. Kidnapping |

| Indigenous people: |
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| Janko Suni Cantonal Central |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez and Ruddy José Flores Monterrey | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| The community's indigenous authorities initiated administrative procedures before INRA to obtain collective property titles of its land. For this reason, the community became aware that some members of the community and some outsiders were carrying out procedures to obtain individual private property titles on community lands. As a result, the indigenous authorities convened the Great Assembly of the Community, in which the parties reached a final agreement. However, a person who was not a member of the community denounced before the ordinary jurisdiction that the community kidnapped him to solve the dispute. On that account, the indigenous authorities claimed jurisdiction to decide this case.<br>The Court decided in favor of the indigenous jurisdiction, considering that the areas of personal, territorial, and material validity were met to grant jurisdiction to the indigenous jurisdiction. | In the case concur the territorial and material validity areas of indigenous competence but not the personal one. In this regard, the Court held that non-community members accepted the community's indigenous jurisdiction by a) participating in the community's general meeting held to resolve the dispute, b) signing indigenous resolutions and minutes settling the conflict, and b) being the concubine of a community member. Although the Court added the latter as a secondary argument, it is the first time it supports the personal validity area in such terms.<br>Consequently, the Court's decision broadened the scope of personal validity in favor of indigenous jurisdiction, making it more effective. Finally, since indigenous jurisdiction decided and claimed a case involving a third party, it rendered indigenous jurisdiction more effective, and, although the case is irrelevant to the claimant (none indigenous member), the defendant made the indigenous jurisdiction more effective by rejecting the ordinary jurisdiction and requesting his authorities to claim the competence. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 23/3/2017 | 0007/2017 | PCJ | Plenary chamber | Zenón Hugo Bacarreza Morales | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 09811-2015-20-CCJ | La Paz | Criminal. Attempted murder, severe and minor injuries |

| Indigenous people: |
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| Nación Kallawaya (Huch'uy Ayllu Originario Lunlaya) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez and Ruddy José Flores Monterrey | a) Despite the prosecutor's indictment of severe injuries, the criminal claim was for attempted murder. Consequently, indigenous jurisdiction does not have the competence to decide the case. b) Although the judgment argues the principles of extrema ratio and minimum intervention when comparing indigenous and ordinary criminal jurisdictions and preferring the former, it is forgotten that those categories regard ordinary jurisdiction. |

| Abstract | Analysis |
|---|---|
| Due to the fight that community members had, one of them filed a criminal complaint about attempted murder and severe injuries. The public prosecutor charged the alleged perpetrator with severe and minor injuries. Aware of these facts, the indigenous authorities claimed the competence to resolve this dispute.<br>The Court decided in favor of indigenous jurisdiction because the three areas of validity of indigenous jurisdiction were met. Additionally, it stated that a) it no longer corresponds to apply the principle of opportunity following the case 0060/2016, and that b) impartiality is guaranteed in the indigenous jurisdiction because it has mechanisms to resolve conflicts of interest, e.g., by changing the indigenous authority in the process, according to the Fieldwork Technical Report. | The constitutional decision recognizes the legal limits of the indigenous jurisdiction making it effective.<br>Regarding the area of material validity, since the crime of attempted murder is not excluded from the indigenous competence by the JDL, the Court has made the indigenous jurisdiction effective by accepting its competence to decide the case. On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one.<br>This case is interesting for the following reasons: a) To define the scope of material validity in criminal offenses, the prosecutor's imputation must be followed and not the victim's criminal complaint. In this case, the prosecutor charged with severe injuries, a crime that is not excluded from the jurisdiction of indigenous jurisdiction by the JDL. b) The decision strengthens the jurisprudential line that excludes the application of the principle of opportunity (implicit acceptance of ordinary jurisdiction due to lack of immediate claim to jurisdiction) by reiterating case 0060/2016. As the principle of opportunity is not in the law and was created by constitutional jurisprudence, its exclusion makes the indigenous jurisdiction effective. c) For the first time, the constitutional jurisdiction adopts the position of the anthropological expertise to exclude concerns about the impartiality of the indigenous jurisdiction. Thus, the impertinent pretext of 'impartiality' to decide disputes of jurisdiction, used in other cases to exclude indigenous jurisdiction (2016.0031-CC-SC), was avoided. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 28/3/2017 | 0025/2017 | PCD | First specialized chamber | Macario Lahor Cortez Chávez | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 15911-2016-32-CAI | La Paz | Indigenous sanction. Expulsion for trafficking of community lands to non indigenous members |

| Indigenous people: |
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| Chuquiñuma Irpa Grande community |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Efren Choque Capuma | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| According to the background displayed by the Court's decision, the indigenous people decided that real states' transmissions to non-community members within its territory are forbidden. Under such prescription, the community resolved to expel the seller and the buyer, and retake the lands in favor of the collectivity. The community also argued that the buyer was an outsider trying to divide the community's organization. Finally, it should be noted that the buyer started a criminal proceeding against some community members and authorities to recover his property, which is why the community also resolved to declare null any ordinary action against it and its members.<br>The Court declared the case inadmissible, arguing: a) The land seller was no longer living in the community. b) Indigenous jurisdiction may not expel a non-indigenous member due to the limit set by the | Given that the indigenous authorities consulted whether their decision was compatible with the Constitution, suggest the indigenous authorities may confuse 'applicable norm' with the 'indigenous decision that resolves a dispute.' Although a similar situation is observed in other consultation processes (0006/2013, 0100/2017-S1, 0045/2017), only some of them were accepted (e.g., 0091/2017-S1) and others rejected because the Court considered that the indigenous authorities sought the ratification of their decisions and not the applicability of an indigenous norm (e.g., 0028/2013, 0056/2017-S1), demonstrating inconsistency.<br>Be that as it may, the PCC maintain the indigenous decision by simply limiting itself to declaring the consultation inadmissible (i.e., rejecting the consultation). It is highlighted that although the PCC recognized that the legal framework does not authorizes it declaring the inadmissibility of consultations, but only their applicability, the Court decided explicitly to declare inadmissible the consultation. As a result, and contrary to its opinion, the PCC's decision rendered the claimant and the indigenous jurisdiction indicators: a) effective regarding the community member's expulsion, b) more effective regarding the non-indigenous member's expulsion (it exceeded indigenous jurisdictional |

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| personal validity area provided by the Constitution and JDL. c) The actual aim of the indigenous consultation was validating its resolution to declare null the ordinary actions of the buyer and not consulting the application of their legal norms to a specific case, which is out of the scope of the process. | competencies under the personal validity area), c) more effective regarding the decision of recovering the lands since it involves a property dispute outside the indigenous competence (material validity area).<br>Finally, the case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (accepting and claiming the case) since both exceeded indigenous jurisdictional competencies. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 12/4/2017 | 0010/2017 | PCJ | Plenary chamber | Zenón Hugo Bacarreza Morales | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 08807-2014-18-CCJ | Oruro | Criminal. Severe injuries |

**Indigenous people:**

Jatun Killaka Asanajaqi Jakisa, Nación Originaria (Santuario de Quillacas, Community)

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Efren Choque Capuma, and Juan Oswaldo Valencia Alvarado | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| Within a criminal process started by a community member against the wife and daughter of an indigenous authority for severe injuries, the indigenous authorities claimed jurisdiction to decide the case.<br>The PCC judged the case belonged to ordinary jurisdiction because, despite the fact that the three areas of validity were met, the indigenous authority who would decide the dispute is partialized against the alleged victim (who filed the criminal process in the ordinary jurisdiction).<br>It should be noted that the Court explicitly admitted that indigenous jurisdiction might decide on the denunciated crime before ordinary jurisdiction. | The PCC's judgment rends indigenous justice ineffective since it disregards the constitutional and legal jurisdiction validity areas.<br>Although the three areas of validity to grant the competence to the indigenous jurisdiction concurred in the case, the Court preferred the ordinary jurisdiction because it considered that the indigenous authorities, who would decide the case if the Court granted them the competence, did not meet the criteria of impartiality required. However, although the impartiality of judges is an essential element of due process, it is not a requirement established by the Constitution or by law to decide a process of conflict of competencies between jurisdictions. In addition, it is a future event that may not occur. If there might exist a violation of the impartiality of the natural judge, the Constitution provides due protection through the Amparo.<br>Who will be the indigenous authorities that would decide the dispute is not a question in the process, and indigenous jurisdiction can easily overcome it through its customs and laws. Moreover, the Court may even exhort indigenous jurisdiction to comply with the impartiality element of due process, among others. Consequently, denying indigenous jurisdiction on such grounds amounts to denying the right to indigenous jurisdiction by prejudging non-existent facts, supported by biased premises and events that may not happen.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendants because they allegedly requested their indigenous authorities to claim the case (even though they did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 12/4/2017 | 0011/2017 | PCJ | Plenary chamber | Zenón Hugo Bacarreza Morales | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 14283-2016-29-CCJ | Cochabamba | Criminal. Falsification of documents |

**Indigenous people:**

Suyu Suras, Nación Originaria (Marka Sipe Sipe, parcialidad aransaya de cabecera de valle y valle de Cochabamba)

| Magistrate/s | Dissenting vote's opinion |
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| Neldy Virginia Andrade Martínez and Ruddy José Flores Monterrey | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| Within a criminal process started by a community member against indigenous authorities for documents falsification, the indigenous authorities claimed jurisdiction to decide the case.<br>Even though the indigenous authorities who would decide the dispute were partialized against the alleged victim (who filed the criminal process in the ordinary jurisdiction), the Court decided that the case belonged to the indigenous jurisdiction. The PCC argued that a) the three competence validity areas concurred, and b) the Technical Fieldwork Report stated that the community has a superior indigenous authority (CONAMAQ) that could resolve the dispute without affecting the guarantee of impartiality. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework.<br>Based on the Technical Fieldwork Report (anthropological expertise), the PCC excluded concerns about the impartiality of the indigenous jurisdiction admitting it to decide the case. However, the Court should have assumed in favor of the indigenous jurisdiction recognizing its dignity, equal hierarchy, and capability to cope with a possible conflict of interests through its customs, procedures, and authorities. On the contrary, instead of letting the community's autonomy resolve the question, the Court has interfered with the exercise of indigenous jurisdiction to some extent, ordering that the CONAMAQ, as a hierarchical superior indigenous authority of the community, decides the dispute.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the |

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| It should be noted that the Court explicitly admitted that indigenous jurisdiction might decide on the denunciated crimes of falsification of documents. | case and claimed it within its competence, and the criminal defendants because they were also the indigenous authorities who claimed the case. Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 21/4/2017 | 0012/2017 | PCJ | Plenary chamber | Mirtha Camacho Quiroga | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 15343-2016-31-CCJ | La Paz | Criminal. Criminal association, home search and severe injuries |

| Indigenous people: |
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| Quilima Community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The origin of the problem lies in the exhumation and transfer made of the mortal remains of a community member (RIP) buried in his private home. Through an extraordinary meeting, the community imposed its transfer to the cemetery to take care of public health and safety in accordance with their customs. Faced with the criminal lawsuit filed by the deceased's wife against community members, the indigenous authorities claimed jurisdiction to decide the case.<br>The Court decided in favor of indigenous jurisdiction, considering that the three areas of validity provided in the Constitution were met.<br>It should be noted that the Court explicitly admitted that indigenous jurisdiction might decide on the reported crimes of criminal association, severe injuries, and home search. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case and validating its decisions within the legal framework. The PCC avoided the criminalization of the indigenous jurisdiction.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendants because they allegedly requested their indigenous authorities to claim the case (even though they did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally rejecting the indigenous decision and preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 12/5/2017 | 0016/2017 | PCJ | Plenary chamber | Macario Lahor Cortez Chávez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 12491-2015-25-CCJ | La Paz | Criminal. Criminal action for land dispossession |

| Indigenous people: |
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| Hampaturi Ayllu |

| Magistrate/s | Dissenting vote's opinion |
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| Neldy Virginia Andrade Martínez and Ruddy José Flores Monterrey | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| Due to a criminal process for land dispossesion and disturbance of possession between community members, the indigenous authorities claimed the competence to decide the case.<br>The Court decided in favor of indigenous jurisdiction, considering that the three areas of validity provided in the Constitution concurred.<br>It should be noted that the Court explicitly admitted that indigenous jurisdiction might decide on the reported crimes of dispossesion and disturbance of possession. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework. Additionally, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the criminal claimant because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 12/5/2017 | 0015/2017 | PCJ | Plenary chamber | Macario Lahor Cortez Chávez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 09807-2015-20-CCJ | La Paz | Criminal. Intentional alienation of property without ownership [estelionato] |

| Indigenous people: |
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| Parcopata Community |

| Magistrate/s | Dissenting vote's opinion |
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| Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey and Zenón Hugo Bacarreza Morales | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
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| Due to a criminal process for land disposition granted by a party who had no title to it [estelionato] between community | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework. On |

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| members, the indigenous authorities claimed jurisdiction to decide the case.<br>The Court decided in favor of indigenous jurisdiction, considering that the three areas of validity provided in the Constitution concur.<br>It should be noted that the Court explicitly admitted that indigenous jurisdiction might decide on the reported crime [estelionato]. | the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 19/5/2017 | 0119/2017-CA | PCO | Admission commission | Admission commission | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 19189-2017-39-CCJ | Oruro | Criminal. Breach of contract with the State |

| Indigenous people: |
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| Cawalli Ayllu, Challapata Marka |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Mirtha Camacho Quiroga | *There is no dissenting vote in Constitutional Orders. The Court's decision has stated that the magistrate does not shares the decision. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding initiated by the prosecutor against the indigenous community representatives for breach of contract with the State, the indigenous authorities claimed competence to resolve the dispute.<br>The Admission Commission of the Court rejected the case (to be decided by the Court's Plenary Chamber), considering that the claim lacks a legal basis since it does not comply with the area of material validity of the indigenous jurisdiction provided by the JDL. The Admission Commission argued that the State is the victim of the breach of contract, and it is also a corruption crime. | The Admission Commission of the Court prevented the claim of the jurisdiction from being decided by the Court in its Plenary Chamber by rejecting its admission for an alleged breach of the procedural requirement of having sufficient 'legal basis.' However, the Admission Commission, far from deciding a procedural requirement of admissibility, entered to decide the merits of the claim by arguing that the area of material validity was not complied with in the case. Although this is a procedural offense that unjustifiably prevents the indigenous people's access to justice, the decision respects jurisdictional legal limits.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 31/5/2017 | 0045/2017 | PCD | First specialized chamber | Macario Lahor Cortez Chávez | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 17624-2016-36-CAI | Oruro | Agrarian. Land dispute |

| Indigenous people: |
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| Jatun Killaka Asanajaqi Jakisa, Nación Originaria (Marka Santuario de Quillacas, Ayllu 1ra. Collana, Ayllu Collana Wilajahuira, Eduardo Avaroa Province) |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| Within a Marka, communities decided land disputes through agreements. Faced with the breach of the agreements and seeing the Marka authorities that they did not have mechanisms to enforce them, they decided to approve a regulation that established the reversion of the lands of the non-compliant communities in favor of educational units. The indigenous authorities consulted whether they could apply this decision in the case of a specific non-compliant community.<br>The Court decided that the rule is inapplicable because it is disproportionate: failure to comply cannot imply land reversion. The Court argued that the Marka could | The Court's decision makes the indigenous jurisdiction ineffective because: a) The indigenous authorities, the indigenous councils, and the communities reached agreements on the internal distribution of lands that were not complied with. The case is about the sanction that the indigenous authorities will give to the non-compliant community. b) The sanction has already been decided, and it is about redistributing collective lands, only this time it is called reversion in favor of educational institutions. This decision is not a norm but an indigenous resolution that emerges from the land claim. The indigenous authorities may confuse 'applicable norm' with the 'indigenous decision that resolves a dispute.' Although a similar situation is observed in other consultation processes (0006/2013, 0100/2017-S1), only some of them were rejected because the Court considered that the indigenous authorities sought the ratification of their decisions and not the applicability of an indigenous norm (e.g., 0028/2013). c) According to the Constitution, the indigenous jurisdiction, like any other jurisdiction, has the power to order the public force to enforce its decisions. Consequently, the indigenous jurisdiction requests to the competent State bodies to enforce its decisions are not cooperation between jurisdictions, but rather the fulfillment of mandates emanating from jurisdictional authorities. d) The Court suggests that the indigenous jurisdiction coordinate with the other jurisdictions. However, the other jurisdictions do not have the competence to modify the indigenous decision, and neither do they have the competence to enforce it through public force.<br>Therefore, if the indigenous jurisdiction requests this collaboration or cooperation, it would act illegally and undermine its authority and competence. Furthermore, the JDL does not establish |

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| request cooperation from other jurisdictions to enforce its decisions, as provided by the JDL. | such extremes as cooperation between jurisdictions. Furthermore, the case demonstrates indigenous jurisdiction to be effective but irrelevant to claimant and defendant's indicators since there are no parties in the process. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 31/5/2017 | 0019/2017 | PCJ | Plenary chamber | Macario Lahor Cortez Chávez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 15157-2016-31-CCJ | Cochabamba | Agrarian. Land dispute |

| Indigenous people: |
|---|
| Curumba Centro Agrarian Union |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Efren Choque Capuma | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
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| Due to an agrarian process over land possession filed by a union member against its authorities and some of its members, the authorities claimed jurisdiction to decide the case.<br>It is underscored that a) the Union issued a resolution resolving the dispute, b) parties were discussing land ownership in the agrarian process, and c) the agri-environmental judge had stated that it was a community land owned by individuals and not a collective indigenous territory under the documents and land deeds presented in the case.<br>The Court decided to favor agri-environmental jurisdiction by only taking into consideration that the Union's authorities and members were partialized against the possession claimant, and there was no guarantee of a fair trial. To that end, the Court argued the complementarity principle between jurisdictions, implying that this principle would make ordinary or agri-environmental jurisdictions competent. | A process over jurisdictional competency dispute between indigenous and formal jurisdictions concerns recognizing the existence of an indigenous people entitled to exercise jurisdiction and analyzing if the dispute meets the personal, material, and territorial validity areas. Consequently, in the present case, the Court rendered indigenous jurisdiction ineffective since it has disregarded the constitutional and legal jurisdictional limits by simply assuming that there was no guarantee of a fair trial. As referred in other cases, not only the possibility of a due process is out of the scope of a process over jurisdictional competency dispute, but indigenous or Union organizations have the means to cope with it.<br>Following the antecedents of the case, the Court should have defined, through technical expertise: a) Whether the Union is an indigenous people entitled to indigenous jurisdiction or not, to decide if a process of jurisdictions conflict was appliable, under the precedent of the case 1248/2013-L. b) If the disputed lands were part of a collective indigenous territory or, on the contrary, if they were of individual ownership to apply the limits of the material validity area provided by the JDL. Whereas indigenous people has no competence to resolve disputes over private ownership, it is entitled to decide over collective lands redistribution. Finally, considering a) and b), the Court should have decided if the Union's resolution of the dispute is valid or, on the contrary, an agrarian process and its final decision are needed to resolve the case. Moreover, such analysis excludes itself the impartiality and fair trial discussion: if the indigenous jurisdiction had rightfully decided the case, evidently there is no need for another trial, and the alleged bias of the Union is, instead, the community's final decision. Otherwise, the Union's resolution would be void, and the agri-environmental jurisdiction should decide the case.<br>Finally, the principle of complementarity argued by the Court is impertinent because 'it implies the concurrence of efforts and initiatives of all constitutionally recognized jurisdictions' (JDL, Art. 4.f). However, it does not grant competence to a different jurisdiction than the one defined by law.<br>Since the material validity area does not concur (private rural land disputes pertain to the agri-environmental jurisdiction), the case demonstrates indigenous jurisdiction to be more effective regarding the defendant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies and less and effective concerning the agrarian claimant. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 31/5/2017 | 0018/2017 | PCJ | Plenary chamber | Macario Lahor Cortez Chávez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 15167-2016-31- CCJ | Santa Cruz | Agrarian. Land dispute |

| Indigenous people: |
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| Núcleo 30 'Sagrado Corazón' community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| Due to an agrarian process of land eviction between community members, the indigenous authorities claimed jurisdiction to decide the case.<br>The Court decided to favor the agri-environmental jurisdiction, considering that the material area of validity was not met since the JDL prevents indigenous jurisdiction from resolving cases related to agrarian law and individual property. | The case demonstrates indigenous jurisdiction to be more effective regarding the defendant (of the agrarian process, who allegedly requested his authorities to claim the competence to resolve the case) and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. The claimant of the agrarian process made the indigenous jurisdiction less effective by suing in the agri-environmental jurisdiction. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. Agrarian disputes pertain to agri-environmental jurisdiction except when they concern land redistribution on collective property. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 31/5/2017 | 0020/2017 | PCJ | Plenary chamber | Macario Lahor Cortez Chávez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 14554-2016-30-CCJ | Cochabamba | Criminal. Slander and defamation |

**Indigenous people:**

Mayu Molino Agrarian Union

| Magistrate/s | Dissenting vote's opinion |
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| Juan Oswaldo Valencia Alvarado,<br>Neldy Virginia Andrade Martínez, and Ruddy José Flores Monterrey | The personal validity area was not prooved by any document.<br>*The existing dissenting vote was signed only by Andrade and Flores. |

| Abstract | Analysis |
|---|---|
| Due to a criminal process for slander and defamation between community members, the indigenous authorities claimed the competence to decide the case.<br>The Court decided in favor of indigenous jurisdiction, considering that the three areas of validity provided in the Constitution concurred.<br>It should be noted that the Court explicitly admitted that indigenous jurisdiction might decide on the reported crimes of slander and defamation. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework. On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 09/06/2017 | 0516/2017-S3 | PCJ | Third Chamber | Ruddy José Flores Monterrey | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 18864-2017-38-AAC | Pando | Indigenous sanction. Expulsion for for unfulfilling community duties and marrying a married woman |

**Indigenous people:**

Villa Florida peasant community

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| In an Amparo, the claimant denounced that the defendants violated his right to work because they stripped him of his land area in the Villa Florida Peasant Community and expelled him under its internal regulations because a) He did not participate in more than 20 community meetings. b) He does not live in the community. c) He broke a family by falling in love with and marrying a community member who was already married to another member of the community. For these reasons, the Amparo claimant is prevented from carrying out the three-months-per-year chestnut harvest to generate resources for his family.<br>The Court protected the claimant by considering that there is no written evidence to show that the sanctions determined by the community respected due process and allowed the sanctioned person to defend himself. Although the Court stated that the indigenous jurisdiction has to respect the rights and limits established by the Constitution, it did not analyze the validity of the expulsion from the community. | The Court rendered the indigenous jurisdiction ineffective by presuming that it did not comply with due process and the defendant's right to defense only because the community did not present written evidence. The Court had to carry out fieldwork or anthropological expert opinion to determine if the indigenous jurisdiction complied with due process and the right to defense, considering that the processes are carried out orally and that the indigenous records are in most of the cases incomplete summaries. The argument of 2076/2013 applies to the present case.<br>On the other hand, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (by accepting and deciding the case) since they accepted the indigenous jurisdiction. It is noted that the sanctioned man by the indigenous process claimed the violation of his rights and did not reject the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 19/06/2017 | 0171/2017-CA | PCO | Admission commission | Admission commission | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 11106-2015-23-CCJ | La Paz | Criminal. Fraud and intentional alienation of property without ownership [estelionato] |

**Indigenous people:**

Parcopata Community

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez | *There is no dissenting vote in Constitutional Orders. The Court's decision has stated that the magistrate does not shares the decision. |

| Abstract | Analysis |
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| In a criminal proceeding for fraud and disposition of property granted by a party who has no title to it [estelionato], the indigenous authorities claimed the competence | Since the competence and jurisdiction are mandatory and established by law, the Court must decide conflict of jurisdiction's cases according to legal criteria. Additionally, considering that jurisdiction claims help identify potential cross-jurisdictional encroachments, it becomes symptomatic that, to the present, all the jurisdiction claims have been submitted only by the indigenous peoples. Since the Court accepted the withdrawal of the jurisdictional claim, it |

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| to resolve the dispute. However, after the Court had admitted the claim of jurisdiction, the indigenous authorities changed of minds and requested it to send the process to the ordinary jurisdiction. The PCC accepted the withdrawal of the claim, referring the process to the ordinary jurisdiction. | affirmed that the competence and the jurisdiction are governed by the will of the interested parties (voluntarist principle), disregarding legal limits (e.g., articles 190 and 191 of the Constitution and Article 10.III of the JDL). Consequently, accepting the voluntary waiver of jurisdictional claims renders the indigenous jurisdiction ineffective. Furthermore, when the indigenous authorities relinquished their claim of competence, they have made the indigenous jurisdiction ineffective. Another related antecedent is 0068/2017. However, that case concerned a plurinational constitutional judgment after the PPC accepted the case. Finally, the criminal defendant made the indigenous jurisdiction effective because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction) and the criminal claimant rendered it ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 27/06/2017 | 0641/2017-S1 | PCJ | First specialized chamber | Macario Lahor Cortez Chávez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 16950-2016-34-AAC | Cochabamba | Agrarian. Land division or distribution for hereditary succession |

**Indigenous people:**

Trade Union Federation of Peasant Workers of Cochabamba [Federación Sindical Única de Trabajadores Campesinos de Cochabamba] (FSUTCC)

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| In 2012 the community decided to divide the land equally between siblings due to their father's death in 1983, even though only one of the siblings worked and owned the land for the entire time and the other siblings did not live in the community. As a result, the community forced the signing of a division agreement between siblings by threatening the possessing brother with expulsion from the community despite being an older adult. The possessing brother complained in the different instances of the union, but the decision to divide the land into equal parts was not modified. Faced with this situation, the claimant brother appealed to the ordinary jurisdiction, but the community authorities managed to get the judge to decline the competence in favor of the indigenous jurisdiction. Finally, the brother claimed to the PCC, demanding the restoration of his possession and the annulment of the agreement.<br>The Court decided a) to confirm the decision of the indigenous jurisdiction, considering that it complied with the values of equality, complementarity, solidarity, reciprocity, harmony, inclusion, and equal conditions. b) The Court declared invalid the agreement between the brothers because the community had imposed it. c) Finally, it ordered the community to respect the rights of the elderly, who cannot be expelled from the community. | The PCC's decision made the indigenous jurisdiction effective by respecting its decisions. On the other hand, it recognized the legal limits related to the rights of the elderly and by annulling an imposed agreement. It should be clarified that although the JDL establishes that the indigenous jurisdiction cannot resolve property disputes, the present case is about distributing collective community lands, so the indigenous jurisdiction has the competence to decide the dispute.<br>The claimant's actions respected the competence of his indigenous jurisdictions at the beginning. However, when he found his pretensions frustrated, he made indigenous jurisdiction ineffective by claiming his rights in the ordinary jurisdiction. The defendants, on the contrary, rendered indigenous jurisdiction effective by rejecting other jurisdictions different from the indigenous one. Finally, the indigenous jurisdiction was effective since it accepted and decided the case, and later claimed its competence. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 27/06/2017 | 0573/2017-S1 | PCJ | First specialized chamber | Macario Lahor Cortez Chávez | Liberty action |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 19337-2017-39-AL | La Paz | Indigenous sanction. Expulsion for initiating criminal actions against indigenous authorities, destruction of dwellings, and abduction |

**Indigenous people:**

Chuñawi Ayllu and its Consejo Amawtico Mayor de Justicia Patamanta Apsutaparjama (afiliated to CONAMAQ or Consejo Nacional de Ayllus y Markas del Qullasuyu) and Chuñawi Community, Agrarian Peasant Union (afiliated to CSUTCB or Conferedación Sindical Única de trabajadores Capensinos de Bolivia)

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The case concerns two different indigenous structures that occupy approximately the same territory: a) Chuñawi Ayllu and its Consejo Amawtico Mayor de Justicia Patamanta Apsutaparjama (affiliated to CONAMAQ or Consejo Nacional de Ayllus and Markas del Qullasuyu) established in 2007, and b) Chuñawi Community, Agrarian Peasant Union (affiliated to CSUTCB or Conferedación Sindical Única de Trabajadores Campesinos de Bolivia), existent since the agrarian reform of 1952.<br>The union authorities, trying to ignore the Ayllu, initiated criminal proceedings for falsifying documents against the Ayllu authorities that, supposedly, were used to establish | In order to determine the legality of the exercise of indigenous jurisdiction, the Court must: a) Define if the community is an indigenous people since these collectivities are the only ones authorized to exercise jurisdiction. b) Determine which jurisdiction is competent to decide disputes through the areas of territorial, material, and personal validity. c) Contrast the content of indigenous decisions with constitutional and legal limits. While (a) and (b) have the purpose of defining who decides the dispute (which jurisdiction is competent), (c) is intended to analyze how the dispute has been decided, that is, if the jurisdiction has acted respecting the rights, obligations, and limits provided by the Constitution and the laws. In this case, the Court's decision made the indigenous jurisdiction less effective since it devoted its analysis to explaining how the indigenous jurisdiction |

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| it. In retaliation, and with the aim that the Union withdraws the criminal complaints, the Ayllu, through its Council of Justice, sentenced several members of the Union for defamation, slander, impersonation of authorities, violation of collective rights, breach of ancestral norms of coexistence and attack against the territorial integrity of the Ayllu. Furthermore, the Ayllu expelled these people, forbade them to return, destroyed their homes, seized their lands and cattle, exercised physical and psychological violence against them, even abducting some of them for hours. Under these circumstances, the Union authorities claimed before the Court to protect their life and personal liberty from undue prosecution and persecution.<br>The Court decided in favor of the victims of the Union, ordered that they be compensated for damages, and nullified the Ayllu's decisions, arguing that: a) The indigenous jurisdiction must respect the legal limits. b) The Ayllu violated the right to due process since its decisions were issued without a prior process. c) The facts judged by the Ayllu fall under ordinary jurisdiction. d) There was extreme violence and de facto and illegal measures. e) The indigenous authorities that issued the decisions are not recognized. | violated the individual rights of the claimants (c) with such vehemence that it ended up affirming, without evidence or due verification, the incompetence of the indigenous jurisdiction (b). As a result, the Court unfoundedly and without evidence disqualified the competence of the Ayllu's jurisdiction to decide disputes but legally recognized the violation of the rights of the union members.<br>The PCC could decide the case, as it creatively did in an Amparo case based on its Decolonizing Unit's fieldwork, ordering inter and intra-cultural dialogue (2014/0778) or in jurisdictional competency disputes through the creation of an ad hoc indigenous court between both structures (case 0093/2017). It also ruled in 2019 by instructing that the whole community decide the case since both structures belong to it (0059/2019).<br>Instead, on this occasion, the PCC excluded the indigenous jurisdiction's exercise, did not analyze the indigenous validity areas of competence, and did not differentiate Ayllu's processes and decisions' merits from their illegal enforcement. The PCC construed the indigenous jurisdiction's exercise simply as de facto measures, and the Ayllu and the Union as different communities, despite the fact they share the same territory and collective name. Consequently, the Court ruled against its precedents, and without sufficient evidence and foundation, making the indigenous jurisdiction ineffective.<br>The case also demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies regarding the personal validity area. In a literal sense, the Ayllu and the Union concern distinct communities. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 21/07/2017 | 0691/2017-S3 | PCJ | Third Chamber | Neldy Virginia Andrade Martínez | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 19597-2017-40-AAC | Potosí | Indigenous sanction. Water supply interruption for unfulfilling community duties and destroying community members' goods |

| Indigenous people: |
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| Suraga Marka, Grande and Suraga Ayllus |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The indigenous jurisdiction cut off the community's water to a community member because a) He destroyed a bridge that a neighbor built on his property, did not remove the stones found in the water channel, and did not comply with the water channel cleaning task three times. b) He does not fulfill social functions in the community. c) He does not respect the indigenous authorities.<br>The Court annulled the decision of the indigenous jurisdiction, ordering the community to restore water to the Amparo claimant. The Court held that the claimant's right to due process was violated by not allowing him to defend himself and not communicating the decision to cut off his water supply. | In Bolivia, water service cuts are only allowed to water companies due to the unfulfillment of payment for the service and are prohibited as a sanction. In addition, the sanction of water supply cuts contradicts the Constitution for violating the fundamental right to access to water. The PCC's decision respected jurisdictional limits and the individual right to water by directly restituting him the water service due to its intrinsic urgency. However, the PCC has appropriated the indigenous dispute's resolution by avoiding the indigenous jurisdiction to sanction the indigenous member. Instead, the PCC should have ordered indigenous jurisdiction to carry out a new due process under legal limits, as it did in other cases allowing it the possibility to resolve indigenous disputes (e.g., 2076/2013, 1127/2013-L, 0486/2014 or 1254/2016-S1). As a result, the PCC's decision rendered indigenous jurisdiction ineffective.<br>The Guarantees Court (lower-ranking court) rejected the claim since it did not comply with subsidiarity principle (the claimant should have claimed with administrative authorities first). The case is irrelevant for the indicators of the lower-ranking court because, although its decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (by accepting the case) since they acted within indigenous jurisdictional competencies. It is noted that the sanctioned man by the indigenous process claimed the violation of his rights and did not claim rejecting the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 28/07/2017 | 0056/2017-S1 | PCD | First specialized chamber | Macario Lahor Cortez Chávez | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 18022-2017-37-CAI | Potosí | Indigenous sanction. Expulsion for land misappropriation |

| Indigenous people: |
|---|
| Kharacha Ayllu, Uncía Municiplaity |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Efren Choque Capuma | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| The indigenous authorities consulted the Court on a dispute resolution by which they determined: a) Restore the ownership of land to two community members because they are ancestral owners and successors. b) Expel a community member for wanting to appropriate the land. c) Establish that the ordinary jurisdiction should not admit any procedure related to the case.<br>The Court declared the consultation inadmissible because the authorities did not explain the indigenous norm to be applied, the specific fact in which it would be applied, and what doubt they had. The Court also clarified that the purpose of this process is not to endorse acts and decisions of the indigenous authorities. | Given that the indigenous authorities consulted whether their decision was compatible with the Constitution, suggest the indigenous authorities may confuse 'applicable norm' with the 'indigenous decision that resolves a dispute.' Although a similar situation is observed in other consultation processes (0006/2013, 0100/2017-S1, 0045/2017), only some of them were rejected because the Court considered that the indigenous authorities sought the ratification of their decisions and not the applicability of an indigenous norm (e.g., 0028/2013, 0056/2017-S1), demonstrating inconsistency.<br>Be that as it may, the PCC made the indigenous jurisdiction effective by not modifying the indigenous decision. Instead, it limited itself to declaring the consultation inadmissible. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (by accepting and deciding the case) since they accepted the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 28/07/2017 | 0055/2017 | PCD | Plenary chamber | Mirtha Camacho Quiroga | Prior control of the constitutionality of an autonomous statute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 07860-2014-16-CEA | Oruro | Prior control of the constitutionality of an autonomous statute |

| Indigenous people: |
|---|
| El Choro, Autonomous Municipal Government |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey, and Efren Choque Capuma | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| The PCC's decision was rendered within the process that must be carried out before the Court to verify the compatibility of the Autonomous Statute draft of the Municipal Government of El Choro with the Constitution. Article 106 of the project established that 'indigenous jurisdiction is allowed.' The Court declared the incompatibility of this article. | The Court understood that Article 106 of the Autonomous Statute draft of El Choro Municipal Government was unconstitutionally conditioning indigenous justice and the exercise of indigenous jurisdiction to its recognition by the statute. Thus, by declaring the incompatibility of this article with the Constitution, the Court has recognized the direct existence of indigenous jurisdiction acknowledged by the Constitution and, consequently, it has made it effective. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 31/07/2017 | 0715/2017-S2 | PCJ | Second chamber | Zenón Hugo Bacarreza Morales | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 19714-2017-40-AAC | Oruro | Criminal. Aggravated robbery, robbery, and threats |

| Indigenous people: |
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| Jatun Killaka Asanajaqi Jakisa, Nación Originaria (Salinas de Garci Mendoza, Huaylluma community, Huatarde Ayllu, Ladislaro Cabrera province) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
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| Abstract | Analysis |
|---|---|
| In a criminal proceeding for aggravated robbery and threats, the indigenous authority claimed the competence to resolve the dispute, which is why the judge declined jurisdiction in favor of the indigenous jurisdiction. This decision was confirmed on appeal.<br>At the request of the criminal complaining party, the PCC annulled the decision of the ordinary jurisdiction because it was not duly motivated and did not respond to all the appeal arguments. | The PCC annulled the decision of the ordinary jurisdiction and ordered it to issue a new resolution complying with due process by duly motivating its decision. The Court did not impose any criteria on the ordinary jurisdiction to decide the case in favor or against indigenous jurisdiction. On the contrary, the PCC only ordered to motivate the decision, that is, to recognize the indigenous jurisdiction's competence. Consequently, the Court's decision respected the legal limits, making the indigenous jurisdiction effective.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators since both acted within indigenous jurisdictional competencies and ineffective concerning the claimant because he refused to accept the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 21/08/2017 | 939/2017-S2 | PCJ | Second chamber | Zenón Hugo Bacarreza Morales | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 14309-2016-29-AAC | Santa Cruz | Indigenous sanction. Expulsion and qualified damages for land dispute |

| Indigenous people: |
|---|
| Guaraní Nation, Ipitacito del Monto Indigenous Community |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
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| Abstract | Analysis |
|---|---|
| The indigenous people asked a community family to move their corral since it was located next to the plaza and affected public security and ornamentation. Consequently, the family moved the corral near to the cemetery and the community's water well. However, in due process, the authorities ordered the family to move the corral to the family's land. Given the non-compliance of the family, the forced transfer of the corral was ordered and executed. Under these circumstances, the family criminally sued the indigenous authorities for the crimes of trespassing and qualified damage caused by the forced transfer of the corral. As a result, the community decided to expel the family and keep all its remaining assets because a) the family does not respect the indigenous authorities and their decisions, and b) the family criminally denounced the authorities for the exercise of indigenous justice.<br>The Court decided: a) In favor of the indigenous jurisdiction regarding the removal of the corral, since it considered that there was due process and that the execution of the transfer by the community members themselves was not a matter of de facto measures. b) Against the decision of the indigenous jurisdiction to expel the family because i) There was no due process deciding the sanction in the family's absence and, according to the draft of the community norms, the sanction of expulsion should be applied in different cases. ii) The sanction is disproportionate and unjustified since the problem of the corral was already solved. iii) It is illegal to sanction the family just for claiming their rights before the ordinary jurisdiction. iv) It is also illegal to seize the family's assets since it threatens their dignity and life, condemning them to beg. | The Court's decision made the indigenous jurisdiction effective (removal of the corral) and possibly ineffective (expulsion sanction). The former respected legal limits. The latter, on the contrary, relied upon the argument that expulsion sanction is only admissible for other cases under the law of this indigenous people, which is debatable. Moreover, its norm was still only a draft and may not represent the totality of its unwritten norms and customs. Nonetheless, according to the technical report prepared by the PCC's Peasant Indigenous Justice Unit, the sanction of expulsion in these indigenous peoples only applies as a last resort (after all means have been exhausted and it has not been possible to resolve the dispute). This indigenous provision was not fulfilled in this case, so the family's expulsion was not appropriate. As a result, it is construed that the PCC made indigenous jurisdiction effective by respecting the legal limits.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the defendants. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 21/08/2017 | 0032/2017 | PCJ | Plenary chamber | Ruddy José Flores Monterrey | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 18157-2017-37-CCJ | Oruro | Criminal. Corruption |

| Indigenous people: |
|---|
| Jach'a Karangas (Capi Ayllu, Escara Municipality, Litoral Province) |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| In a criminal process initiated by the public prosecutor's office against some indigenous authorities for passive bribery during the execution of a project in the community, the Apu Mallku claimed the competence to decide the dispute. The ordinary jurisdiction rejected the petition arguing that the material validity area for the indigenous competence does not concur.<br>Later on, the Court decided in favor of the ordinary jurisdiction, understanding that although the areas of personal and territorial validity were complied with, the same did not happen with the area of material validity since the indigenous jurisdiction cannot resolve corruption crimes. Passive bribery is a kind of corruption crime, according to Law 004 on the Fight against Corruption, Illicit Enrichment and Investigation of Fortunes 'Marcelo Quiroga Santa Cruz.' Furthermore, the Court held that the State is a victim of this type of crime. | The case demonstrates the indigenous jurisdiction to be more effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it outside its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). It is noted that there is no indigenous criminal claimant in the process. Finally, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 21/08/2017 | 0031/2017 | PCJ | Plenary chamber | Efren Choque Capuma | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 15580-2016-32-CCJ | Oruro | Agrarian. Land dispute |

| Indigenous people: |
|---|
| Jach'a Karangas (Ayllu Comujo, Pisiga, Sabaya) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Juan Oswaldo Valencia Alvarado, Neldy Virginia Andrade Martínez, and Ruddy José Flores Monterrey | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| Due to a civil procedure to recover land possession, the indigenous authority of the community (named 'corregidor') claimed the competence to decide the case, and the ordinary jurisdiction sent the case to the PCC, arguing uncertainty of the territorial validity area. Previously, the agri-environmental jurisdiction, for unknown reasons, declared itself incompetent to decide the dispute, and, consequently, the claimant presented the case to the ordinary jurisdiction.<br>Interestingly, although the first part of the PCC's resolution manifests that the civil judge was the one who presented the conflict of jurisdictions, from the rest of its content, it is construed that the indigenous authority was the one who claimed the competence through a dilatory incompetence plea. Indeed, after the indigenous request, the lower-ranking judge refused to decide on his competence and preferred referring the case to the PCC.<br>The Court decided in favor of indigenous jurisdiction, even though there was uncertainty regarding whether the land was individually or collectively owned or even if it was rural or urban. Whereas INRA reported the land as urban, the Municipality informed it as rural. Moreover, the PCC did not clearly explain or justify the fulfillment of material, territorial or personal areas of validity. | The PCC has preferred the indigenous jurisdiction over the ordinary jurisdiction despite the uncertainty over the territorial validity area. However, it should be noted that the communities' lands, ayllus and markas concerning JK's territory are collective. In this way, the Court has respected the legal limits, making indigenous jurisdiction effective.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authority to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the agri-environmental and the ordinary jurisdictions over the indigenous one. Finally, under the uncertainty of the territorial validity area, the lower-ranking judge refused to decide on his competence and preferred to send the case to the PCC. Consequently, it is not feasible to assess whether he made effective or not the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/08/2017 | 0049/2017 | PCJ | Plenary chamber | Juan Oswaldo Valencia Alvarado | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 08705-2014-18-CCJ | La Paz | Criminal. Criminal action for land dispossession |

| Indigenous people: |
|---|
| Machacamarca community |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey and Zenón Hugo Bacarreza Morales | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| Due to a criminal process for dispossession and disturbance of possession, the defendant claims jurisdiction in favor of indigenous justice. The ordinary judge accepted the petition and sent the case to indigenous jurisdiction. However, the Authority Council of the community rejected the case by arguing that criminal cases are out of the scope of indigenous jurisdiction. Moreover, the indigenous authorities requested the ordinary jurisdiction investigate and process the criminals. Faced with this indigenous decision, the judge sent the case to the Constitucional Court.<br>The Court declared the case inadmissible because one of the process requirements was not met: no indigenous authority claimed jurisdiction. On the contrary, indigenous authorities refused to hear the case. Furthermore, the PCC declared the ordinary judge competent. | The Court had to reject the case through its Admission Commission for not complying with the procedural requirement of having been claimed by an indigenous authority, as it did in other similar cases. However, on the contrary, the Court admitted the case to resolve it on its merits. Notwithstanding, when deciding the case on its merits, the Court declared it inadmissible. Although 'inadmissibility' implies not ruling on the merits, the Court simultaneously declared that the ordinary judge is competent to decide the case.<br>Under this context, it is interesting to underscore that indigenous jurisdiction declared itself incompetent to hear and resolve the case. The indigenous authorities' central argument was that criminal cases are out of the scope of indigenous jurisdiction. The ordinary judge and the Court were indifferent to this erroneous legal assessment of the indigenous jurisdiction, even though the State has the duty to strengthen the indigenous jurisdiction. In particular, the Court failed to clarify to the indigenous jurisdiction that it is competent to resolve this dispute and the criminal cases that the JDL does not exclude. This State's breach of duty through its Judicial Organ also affects the duty of cooperation and coordination established by the Constitution. Consequently, the PCC's decision rendered indigenous jurisdiction ineffective. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the defendant indicator since he acted within indigenous jurisdictional competencies and ineffective concerning the indigenous jurisdiction and the claimant because both chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 01/09/2017 | 0843/2017-S3 | PCJ | Third Chamber | Ruddy José Flores Monterrey | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 18894-2017-38-AAC | Oruro | Agrarian. Land dispute |

| Indigenous people: |
|---|
| Huarikasa Community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| After an internal indigenous process for the redistribution of collective lands among the community's families, some community members felt excluded and claimed the restoration of their lands and the annulment of the distribution. In addition, the Amparo claimants argued de facto measures adopted by the indigenous authorities and the violation of their right to due process because they did not inform them of the process and its decision.<br>The PCC decided against the Amparo claimants because: a) The indigenous jurisdiction has the competence to decide on the redistribution of lands within their collective lands and establish fines in the event of non-compliance. b) Although the Amparo claimants were not notified in writing of the process and decision, due process was respected since, according to the Technical Field Report, prepared by the Technical Secretary of the Tribunal, everyone in the community knows each other, and they are aware of everything that happens in it. For this reason, it is not possible that the claimants did not know about the process and should not demand written and personal notifications from each one. c) Disputes of division must be resolved by the indigenous jurisdiction applying the Amparo's principle of subsidiarity. | The PCC's decision recognized the legal limits of the indigenous jurisdiction, making it effective since: a) It declared that the indigenous jurisdiction has the competence to decide the distribution and redistribution of land within collective properties and resolve related disputes. b) Thanks to the expert opinion carried out, the Court acknowledged that due process had been complied with because, although there were no written and personal notifications, the parties knew of it because they are part of the community with a close relationship. c) The Court recognized the principle of subsidiarity, leaving it to the indigenous jurisdiction to resolve the disputes of its members and rejecting to invade indigenous jurisdiction. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators but ineffective regarding the claimant. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 08/09/2017 | 0909/2017-S3 | PCJ | Third Chamber | Ruddy José Flores Monterrey | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 20256-2017-41-AAC | Oruro | Agrarian. Land dispute |

| Indigenous people: |
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| Jatun Killaka Asanajaqi Jakisa, Nación Originaria (Salinas de Garci Mendoza Marka, Cora Cora Ayllu) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
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| Abstract | Analysis |
|---|---|
| The community member went to the indigenous jurisdiction to resolve a land possession issue after both of his agrarian processes had been declared terminated due to his abandonment. The indigenous jurisdiction decided against the community member, stating that if he had already chosen the agri-environmental jurisdiction and he should continue in it and not in the indigenous jurisdiction. The community member complained of Amparo because the indigenous authorities would allegedly violate his right to due process.<br>The Court ruled against the community member because: a) according to indigenous law, he did not contest the indigenous decision on time. b) Constitutional jurisdiction cannot be used as a next judicial stage but only to protect constitutional rights. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case and validating its decisions within the legal framework. However, the claimant rendered indigenous jurisdiction ineffective since he preferred at the beginning the agri-environmental jurisdiction over the indigenous one and resorting to the latter only when he could not go further in his agrarian processes. On the other hand, the indigenous jurisdiction was ineffective by rejecting to admit the dispute, even though it has the competence to resolve it. Finally, it is noted that the indigenous jurisdiction rejected the case as a sanction against the claimant's initial preference. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 19/9/2017 | 0034/2017 | PCJ | Plenary chamber | Zenón Hugo Bacarreza Morales | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 18234-2017-37-CCJ | Oruro | Criminal. Attempted homicide, severe injuries, and minor injuries |

| Indigenous people: |
|---|
| Jatun Killaka Asanajaqi Jakisa, Nación Originaria |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez and Ruddy José Flores Monterrey | The decision should have justified and explained the reasons to exclude the indigenous jurisdiction from resolving disputes related to attempted homicide.<br>They reiterated their dissenting vote to 0005/2016. Since homicide is no the competence of indigenous jurisdiction according to JDL, then the attempted homicide is not either. |

| Abstract | Analysis |
|---|---|
| Given that the breaking carried out by a tractor would have damaged the irrigation canal, there were physical attacks among the neighbors, causing severe and minor injuries to one of them. Faced with the criminal complaint, the prosecutor classified the incident as an attempted homicide and severe and minor injuries. The indigenous authorities claimed the competence to resolve the dispute, but the Court decided in favor of ordinary jurisdiction. The Court justified the decision for the crime of attempted homicide | Regarding the area of material validity, since the crime of attempted homicide is not excluded from the indigenous competence by the JDL (as the PCC recognized in 1225/2013 or 0028/2018, among others), the Court has made the indigenous jurisdiction ineffective by rejecting its competence to decide the case. Moreover, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and |

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|---|---|
| because homicide is excluded from indigenous jurisdiction by the JDL and not for the crimes of severe and minor injuries. | ineffective concerning the criminal claimant because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/9/2017 | 1048/2017-S2 | PCJ | Second chamber | Zenón Hugo Bacarreza Morales | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 19089-2017-39-AAC | La Paz | Indigenous sanction. Expulsion, fine and lashes for supplanting indigenous authority in the exercise of indigenous jurisdiction by dispossessing land as a supposed sanction against community members |

| Indigenous people: |
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| Quentavi Community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The defendant indigenous authorities sanctioned a community member with expulsion, a $50,000 fine, and ten blows (or lashes) for supplanting indigenous authority in the exercise of indigenous jurisdiction by dispossessing land as a supposed sanction against community members. The community member claimed the violation of his right to due process because he was not summoned and could not defend himself. After an expert opinion by the Decolonization Unit, the Court decided in favor of the community member, annulling the indigenous resolution. | The PCC decided against the community because it did not carry out a process against the claimant to sanction him. Although the PCC's decision protected the claimant in his constitutional right to due process, it has appropriated the indigenous dispute's resolution and prevented the indigenous jurisdiction to resolve the case. The PCC should have ordered indigenous jurisdiction to carry out a new due process under legal limits, as it did in other cases allowing it the possibility to resolve indigenous disputes (e.g., 2076/2013, 1127/2013-L, 0486/2014 or 1254/2016-S1). As a result, the PCC's decision rendered indigenous jurisdiction ineffective. The same reasoning applies to the lower-ranking court of guarantees.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (by accepting the case) since they acted within indigenous jurisdictional competencies. It is noted that the sanctioned man by the indigenous process claimed the violation of his rights and did not claim rejecting the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/9/2017 | 0043/2017 | PCJ | Plenary chamber | Ruddy José Flores Monterrey | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 18331-2017-37-CCJ | La Paz | Criminal. Very severe and severe injuries |

| Indigenous people: |
|---|
| Tacachira Community, Centro Tacachira, and Nuevo Milenio Communities Union Federation (FESCONM) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Efren Choque Capuma | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| Due to a criminal process for severe injuries between community members and non-community members (two criminal claimants are non-indigenous, two are indigenous; and, it is undetermined how many of the criminal defendants are indigenous or not), the indigenous authorities claimed jurisdiction to decide the case.<br>The Court decided in favor of ordinary jurisdiction, considering that only the material area of validity provided in the Constitution was met. | The case demonstrates indigenous jurisdiction to be more effective regarding the indigenous defendant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. The indigenous criminal claimants made the indigenous jurisdiction less effective by suing in the ordinary jurisdiction. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/9/2017 | 0042/2017 | PCJ | Plenary chamber | Neldy Virginia Andrade Martínez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 18685-2017-38-CCJ | Cochabamba | Criminal. Criminal action for land dispossession |

| Indigenous people: |
|---|
| Suyu Suras, Nación Originaria (Marka Sipe Sipe, Ayllu parcialidad Urinsaya) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Zenón Hugo Bacarreza Morales and Efren Choque Capuma | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| The indigenous authorities claimed criminal competence against the ordinary jurisdiction after two years and eight months in a case of land dispossession and when the ordinary jurisdiction had already sentenced an indigenous authority to three years in prison. The sentence was on appeal. Apparently the claimants are non-community members. | The PCC has disregarded the Constitution and the law: a) by limiting the opportunity to claim jurisdiction within a reasonable period at the beginning of the criminal process when the law does not impose this limit; b) by justifying that the parties tacitly or expressly consent to another jurisdiction resolving the dispute when the law only allows |

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| The Court decided against indigenous jurisdiction without considering the territorial, personal, and material validity areas. On the contrary, the Court understood that the indigenous people and its authorities implicitly accepted the ordinary jurisdiction when they decided not to claim their competence at the beginning of the criminal process. Accordingly, the Court reinstated the opportunity principle inaugurated by the case 0017/2015, which was dismissed by the case 0060/2016, arguing that claiming jurisdiction after the fulfillment of each procedural phase is against the principle of legal certainty. Furthermore, if it is permitted to claim jurisdiction at any time, it would unnecessarily cause the deployment of the administration of justice and the expenditure of resources.<br>Consequently, the Court defined that indigenous authorities had a reasonable time to claim their jurisdiction at the beginning of the case. The Court also imposed on the parties the burden of demanding from their authorities the claim of jurisdiction. Otherwise, the Court will interpret a tacit acceptance of the jurisdiction under Article 13 of the Law of Judicial Organization that permits changing territorial jurisdiction by express or tacit consent. | this consent to change territorial jurisdiction; and, c) by not taking into account the areas of territorial, personal and material validity provided by law to decide on conflicts of competence. As a consequence, and regardless the competence legally belongs to the ordinary jurisdiction in the present case because the personal validity area was not fulfilled, the Court rendered indigenous jurisdiction ineffective.<br>It should be noted that some of the magistrates have divided opinions on the matter. Some created and forced the existence of the principle of opportunity, some are against it, and some are indifferent to the issue. Consequently, depending on who the rapporteur magistrate is, the decision changes.<br>Furthermore, although the case is irrelevant to the claimant (none indigenous member), the defendant made the indigenous jurisdiction ineffective by accepting the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/9/2017 | 0052/2017 | PCJ | Plenary chamber | Juan Oswaldo Valencia Alvarado | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 04839-2013-10-CCJ | La Paz | Criminal. Criminal action for land dispossession |

| Indigenous people: |
|---|
| Pucarani, Corapata Community (Jach'a Kamachinak Cheqa Phoqhayirinaka Justice Council - Portada) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey and Zenón Hugo Bacarreza Morales | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for dispossession, disturbance in possession, and simple property damage that occurred between community members, the indigenous authorities claimed jurisdiction stating that they had already resolved the land dispute declaring that the lands are community property due to the owner's abandonment for more than ten years.<br>The Court declared the indigenous jurisdiction competent to decide the criminal offenses, considering that the three territorial, personal, and material validity areas were met. Furthermore, the PCC clarified that the indigenous jurisdiction always resolved property disputes. | The case is interesting because the judgment broadens the material scope of the indigenous jurisdiction to ownership disputes, arguing that it has always resolved them. It is highlighted that, although this argument was not necessary to elucidate the conflict of jurisdiction over criminal offenses (they do not decide on the property), it was relevant to the antecedent that gave rise to the criminal process, which is the core of the conflict. Indeed, the cause of the criminal proceedings was the indigenous jurisdiction's decision declaring the community is the owner of the disputed lands because the former owners abandoned them. Thus, granting the competence to indigenous jurisdiction amounts to accepting and validating its jurisdictional decision on property matters.<br>Since the JDL excludes indigenous competence to resolve property disputes, the PCC's decision broadens the scope of material validity, making the indigenous jurisdiction more effective.<br>Finally, the Court established the personal validity area based on the identity cards of the parties, which does not necessarily produce certainty in all cases since the address declared in an identity card does not imply that a person is part of a community or indigenous people.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be more effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it outside its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction less effective by legally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/9/2017 | 0045/2017 | PCJ | Plenary chamber | Juan Oswaldo Valencia Alvarado | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 11472-2015-23-CCJ | La Paz | Criminal. Qualified damage |

| Indigenous people: |
|---|
| Orkojipiña Community |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| In a criminal process for qualified damage due to the use of heavy machinery to extract sand, thereby contaminating the river water and affecting the animals caused by members of the community, the | Since environmental law and related crimes concern the agri-environmental jurisdiction's competence under the JDL provisions, the PCC rendered the indigenous jurisdiction more effective by granting it the competence to decide the dispute. |

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| indigenous authorities claimed jurisdiction to decide the case.<br>The Court decided in favor of indigenous jurisdiction, considering that the three areas of validity provided in the Constitution concurred. It should be noted that the PCC explicitly admitted that indigenous jurisdiction might decide on the reported crime of qualified damage. | The case also demonstrates indigenous jurisdiction as more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. The case is irrelevant for the indicators of the lower-ranking courts because, although the decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. Furthermore, the criminal claimant rendered indigenous jurisdiction less effective by legally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/9/2017 | 0047/2017 | PCJ | Plenary chamber | Ruddy José Flores Monterrey | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 16149-2016-33-CCJ | La Paz | Criminal. Domestic violence, false and reckless accusation, severe and minor injuries, and slander |

| Indigenous people: |
|---|
| Hampaturi Ayllu |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| The community's indigenous jurisdiction decided the land disputes that a family had. However, the brothers continued their disputes. The brother filed a new complaint against his sister with the indigenous authorities for slander and false and reckless accusation. On the other hand, the sister denounced her brother for domestic violence and severe and minor injuries before the ordinary jurisdiction.<br>The indigenous authorities claimed the competence to decide the case. However, the ordinary judge did not answer this claim on time. Later, the indigenous authorities informed the judge that they would have a hearing to resolve the case, but he did not respond it either. In this way, the indigenous jurisdiction, through the Mallkus Council of the community, declared the brother innocent and the sister guilty, punishing her with two bags of cement, two days of community work, the obligation to give guarantees to her brother, and ordered that in case of recidivism she be submitted to the General Assembly of the Ayllu.<br>Subsequently, the conflict of competencies was processed. The Court decided in favor of the indigenous jurisdiction by analyzing that the territorial, material and personal validity areas were met and that the indigenous jurisdiction had already resolved the case. | Even though the ordinary jurisdiction had prevention on the dispute filed by the sister, the indigenous jurisdiction resolved the case before the conflict of jurisdictions was decided and even before the Court would have admitted the jurisdictional competency dispute. Thus, the Court implicitly accepted and validated such anomaly because the ordinary judge did not respond to the indigenous jurisdiction claim on time. Furthermore, ordinary and indigenous jurisdictions did not have a restriction to decide the case since the Court had not admitted the competency dispute case yet.<br>Be that as it may, according to the legal framework, the indigenous jurisdiction is certainly not competent to resolve processes of family violence against women. As a result, when the PCC admitted the competence of the indigenous jurisdiction to resolve the case, it expanded the indigenous material validity area. Therefore, the PCC rendered the exercise of the indigenous jurisdiction more effective (approximately the same happened in cases 0067/2017 and 0610/2019-S1). However, the case is irrelevant for the indicator of the lower-ranking court because, although it did not respond to the indigenous request implicitly denying its competence, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be more effective regarding the indigenous jurisdiction indicators since it claimed the case outside its competence, and the criminal defendant because he requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction less effective by legally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/9/2017 | 0037/2017 | PCJ | Plenary chamber | Neldy Virginia Andrade Martínez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 18091-2017-37-CCJ | Cochabamba | Criminal. Slander and defamation |

| Indigenous people: |
|---|
| Tachachi Sub Central Agrarian Union |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Efren Choque Capuma | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| Due to a criminal process for slander and defamation between community members, the indigenous authorities claimed the competence to decide the case.<br>Even though the three areas of validity provided in the Constitution concurred, the | A process over jurisdictional competency dispute between indigenous and formal jurisdictions concerns a) recognizing the existence of an indigenous people, b) entitled to exercise jurisdiction and c) analyzing if the dispute meets the personal, material, and territorial validity areas. Consequently, the PCC rendered indigenous jurisdiction ineffective in the present case since it has disregarded the constitutional and legal jurisdictional limits by simply assuming that there was no guarantee of a fair trial because the criminal defendant is also a Union's authority (impartiality principle). However, as referred in other cases, not only the possibility of a due process is out of the scope of a process over jurisdictional competency dispute, but indigenous or Union organizations have the means to cope with it. |

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|---|---|
| PCC decided in favor of ordinary jurisdiction, considering that the criminal defendant is a Union's authority and there was no guarantee of a fair trial. | On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/9/2017 | 0054/2017 | PCJ | Plenary chamber | Zenón Hugo Bacarreza Morales | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 18102-2017-37-CCJ | La Paz | Criminal. Severe and minor injuries |

| Indigenous people: |
|---|
| Unión Catavi Agrarian Subcentral, Yaurichambi community |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez and Ruddy José Flores Monterrey | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for severe and minor injuries between members of the same community, the indigenous authorities claimed competence to resolve the dispute.<br>The Court declared the indigenous jurisdiction competent, considering that the three areas of personal, territorial, and material validity were fulfilled. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework.<br>It should be noted that the Court established the personal validity area based on the identity cards of the parties, which does not necessarily produce certainty in all cases since the address declared in an identity card does not imply that a person is a community member. On the other hand, even though the indigenous norms of the community did not foresee the crimes in dispute, the Court recognized the material area in favor of indigenous jurisdiction under JDL. Although the Court's decision did not justify the reasons, it has to be taken into account that indigenous norms are not necessarily written, and indigenous peoples have the power to resolve disputes affecting their members.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/9/2017 | 0054/2017 | PCJ | Plenary chamber | Juan Oswaldo Valencia Alvarado | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 17863-2017-36-CCJ | La Paz | Criminal. Aggravated robbery, robbery, force entry, qualified damages, and threats |

| Indigenous people: |
|---|
| Pueblo Leco de Apolo, Indigenous Central (CIPLA) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez and Ruddy José Flores Monterrey | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding between community members for trespassing, robbery, aggravated robbery, threats, and qualified damage, the indigenous authorities claimed the competence to decide the case.<br>The Court declared the indigenous jurisdiction competent, considering that the three areas of material, personal and territorial validity were met. | The PCC decided the dispute within limits provided by the Constitution and the laws, making the indigenous jurisdiction effective. On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one.<br>It should be noted that some of the magistrates have divided opinions on the matter. Some created and forced the existence of the principle of opportunity, some are against it, and some are indifferent to the issue. Consequently, depending on who the rapporteur magistrate is, the decision changes.<br>This case is relevant because it favored indigenous jurisdiction by disregarding the opportunity principle. Accordingly, the Court recalled the opportunity principle raised by 0017/2015 and its dismissal by 0060/2016. Interestingly, this case was issued the same day as the case 0042/2017, which reconstituted the opportunity principle. The latter is a consequence that although both cases were resolved simultaneously in the same Plenary Chamber on the same date, both cases had different rapporteur magistrates. Whereas for the case 0042/2017 the rapporteur magistrate was Neldy Virginia Andrade Martínez, and the dissenting votes were from Zenón Hugo Bacarreza Morales and Efren Choque Capuma; the case 2017.0051-CC-SC had Juan Oswaldo Valencia Alvarado as the rapporteur magistrate, and Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey, and Macario Lahor Cortez Chavez as dissenting votes. The Magistrates Mitha Camacho Quiroga and Juan Oswaldo Valencia Alvarado voted in favor of both cases. Finally, it is presumed that the rapporteur Juan Oswaldo Valencia Alvarado is in favor of the opportunity principle, but since he had already written the judgment project, he preferred to keep it that way until the next case. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/9/2017 | 0057/2017 | PCJ | Plenary chamber | Zenón Hugo Bacarreza Morales | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 14762-2016-30-CCJ | Oruro | Criminal. Qualified damage |

**Indigenous people:**

Suyu Suras, Nación Originaria (Challacollo Marka Indigenous Authorities Council [CAOChMA])

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez and Ruddy José Flores Monterrey | The decision violates the opportunity principle established by 0017/2015 and restituted by 0042/2017 |

**Abstract**

In a criminal proceeding between members of the same community for qualified damage for crops destruction due to the entry of cattle, the indigenous authorities claimed the competence to resolve it. The process already sentenced three years and two months of imprisonment and is in the appeal stage.

The Court decided in favor of the indigenous jurisdiction when it determined that the three areas of material, territorial and personal validity were fulfilled. However, it also argued that the principle of opportunity is inapplicable even if the parties and the indigenous jurisdiction knew of the case in advance and had not claimed jurisdiction promptly, following the precedent of 0060/2016 that changed the case law line initiated by 0017/2015.

The Court expressly recognized qualified damage as a dispute that the indigenous jurisdiction can hear.

**Analysis**

The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework. Furthermore, although the principle of opportunity has divided the opinions of the Court's magistrates, the decision is faithful to the powers, limitations, and prohibitions provided in the current regulations. It should be noted that this decision did not refer to case 0042/2017 because, although its number is prior to the case under review, both decisions were adopted in the Plenary Chamber of September 2017. It is also clarified that the rapporteur magistrates are different in both cases (more detail in case 0051/2017).

On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one.

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/9/2017 | 0039/2017 | PCJ | Plenary chamber | Efren Choque Capuma | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 17862-2017-36-CCJ | La Paz | Criminal. Aggravated robbery, and force entry |

**Indigenous people:**

Pueblo Leco de Apolo, Indigenous Central (CIPLA)

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey and Zenón Hugo Bacarreza Morales | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

**Abstract**

The indigenous people decided to expel three community members due to their adultery, immorality, and general wrong behavior. Face with the expulsion, the expelled members denunciated aggravated robbery and forced entry against some authority and community members in the ordinary jurisdiction. Under such context, the indigenous authorities claimed the competence to resolve the dispute. Even though the ordinary judge accepted the indigenous jurisdiction competence, the Court of Appeal decided that the judge was incompetent to resolve the competency dispute since, according to them, only the PCC may resolve it.

Nonetheless, the PCC decided to favor the indigenous jurisdiction considering that the personal, material and territorial validity areas were met. Furthermore, the Court explained that ordinary and agri-environmental judges have the authority to accept jurisdiction claims and that the Court of Appeal unnecessarily forced the competency dispute.

It should be noted that the Court explicitly admitted that indigenous jurisdiction might decide on the reported crimes of aggravated robbery, and forced entry.

**Analysis**

Apparently, the claim of competence made by the indigenous jurisdiction was not to decide the crimes but to close the criminal investigations. Thus, the community had already decided to expel the three members of the community, thereby fulfilling its jurisdictional function. This reasoning acquires greater force if it is considered that the three expelled persons were no longer members of the community at the time of the criminal proceeding, with which the scope of personal validity was not fulfilled.

For these reasons, despite the purpose pursued by the indigenous people and that the Court granted the competence to indigenous jurisdiction to decide a case already decided, the PCC made the indigenous jurisdiction effective by recognizing it and indirectly validating its decisions within the framework of the law. On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendants because they allegedly requested their indigenous authorities to claim the case and some of them were also indigenous authorities who claimed the case. Furthermore, the criminal claimants rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one.

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/9/2017 | 0051/2017 | PCJ | Plenary chamber | Juan Oswaldo Valencia Alvarado | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 06158-2014-13-CCJ | La Paz | Criminal. Criminal action for land dispossession |

| Indigenous people: | |
|---|---|
| Tupaj Katari Union Federation of Peasant, Manco Kapac Province | |
| **Magistrate/s** | **Dissenting vote's opinion** |
| Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey, and Macario Lahor Cortez Chavez | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for dispossession and disturbance of possession between siblings, the sister claimed that her brother broke the dividing wall of her house, entered and destroyed her kitchen, and closed her home. At first, the indigenous authorities believed that the competence belonged to the agri-environmental jurisdiction, so they requested the ordinary judge to refer the process to that jurisdiction (therefore, it was not a conflict of jurisdiction, the PCC declared). However, since the ordinary judge rejected this request, the indigenous authorities claimed competence a few months later, declaring that they had already resolved the dispute. The Court ruled in favor of the indigenous jurisdiction, considering that the three areas of validity of the indigenous jurisdiction were met. In addition, the Court preferred not to apply the principle of opportunity, even though the jurisdiction claim was more than two years after the process began. | The Court's decision recognized the limits provided by the Constitution and the JDL, rendering the indigenous jurisdiction effective. On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one.<br>It should be noted that some of the magistrates have divided opinions on the matter. Some created and forced the existence of the principle of opportunity, some are against it, and some are indifferent to the issue. Consequently, depending on who the rapporteur magistrate is, the decision changes.<br>This case is relevant because it favored indigenous jurisdiction by disregarding the opportunity principle. Accordingly, the Court recalled the opportunity principle raised by 0017/2015 and its dismissal by 0060/2016. Interestingly, this case was issued the same day as the case 0042/2017, which reconstituted the opportunity principle. The latter is a consequence that although both cases were resolved simultaneously in the same Plenary Chamber on the same date, both cases had different rapporteur magistrates. Whereas for the case 0042/2017 the rapporteur magistrate was Neldy Virginia Andrade Martínez, and the dissenting votes were from Zenón Hugo Bacarreza Morales and Efren Choque Capuma; the case 2017.0051-CC-SC had Juan Oswaldo Valencia Alvarado as the rapporteur magistrate, and Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey, and Macario Lahor Cortez Chavez as dissenting votes. The Magistrates Mirtha Camacho Quiroga and Juan Oswaldo Valencia Alvarado voted in favor of both cases. Finally, it is presumed that the rapporteur Juan Oswaldo Valencia Alvarado is in favor of the opportunity principle, but since he had already written the judgment project, he preferred to keep it that way until the next case.<br>Nonetheless, the Court rendered indigenous jurisdiction effective since it preferred to denied the opportunity principle. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/9/2017 | 0041/2017 | PCJ | Plenary chamber | Mirtha Camacho Quiroga | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 19016-2017-39-CCJ | Chuquisaca | Agrarian. Land dispute |

| Indigenous people: | |
|---|---|
| Chuncusla Community, Territorial Base Organization | |
| **Magistrate/s** | **Dissenting vote's opinion** |
| -- | -- |

| Abstract | Analysis |
|---|---|
| The community ordered a community member to remove the fences that he placed in a fraction of their collective lands under the alternative of initiating a process in the agri-environmental jurisdiction to recover them. The community member justified that the fence was to prevent his four cows from escaping or causing damage to the property of the other community members.<br>Consequently, the community requested conciliation from the agri-environmental judge to resolve the dispute.<br>Faced with this situation, the community member went to the Central Sindical Única de Trabajadores Campesinos de Monteagudo, to which the community is affiliated, to ask them to claim the competence to resolve the dispute through indigenous jurisdiction. For this reason, the secretary union submitted a claim of jurisdiction to the agri-environmental judge.<br>The Court decided the conflict in favor of indigenous jurisdiction, considering that the three areas of validity required by the Constitution and the JDL were met. | Although the community ignored the indigenous jurisdiction, the request of the community member to a highger indigenous authority was decisive in ensuring that the indigenous jurisdiction is respected.<br>When the Court decided the case, it made the exercise of indigenous jurisdiction effective. Moreover, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the agrarian claimants because they chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/9/2017 | 0072/2017 | PCD | Plenary chamber | Zenón Hugo Bacarreza Morales | Prior control of the constitutionality of an autonomous statute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 18984-2017-38-CEA | Oruro | Prior control of the constitutionality of an autonomous statute |

| Indigenous people: |
|---|
| Jach'a Karangas (Corque Marka) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey, and Mirtha Camacho Quiroga | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| Corque Marka of Suyu Jach'a Karangas requested prior control of the constitutionality of its autonomous statute. Within the procedure, the Court observed two articles related to the exercise of indigenous jurisdiction.<br>The first referred to rejecting the indigenous competence to punish corruption crimes since the Court held that a) the JDL exclude them from the indigenous jurisdiction and b) they always have State as a victim.<br>The second concerned the indigenous statute. It established that the ordinary and agri-environmental jurisdictions would not review the decisions of the indigenous jurisdiction. The Court interpreted that this article would only be effective when the indigenous jurisdiction resolves disputes within the limits of its powers, in accordance with the Constitution and JDL. | The case is irrelevant regarding the first article for the indicators of the PCC because, although the decision is contrary to the indigenous jurisdiction, it respected the legal limits without affecting the indigenous jurisdiction's effectiveness. On the contrary, regarding the second article, the PCC made the indigenous jurisdiction effective by recognizing its competence to resolve disputes that shall be not revised by the formal jurisdictions within the legal framework. Furthermore, the indigenous jurisdiction was more effective since it tried to expand its competence to resolve corruption crimes. Finally, since this kind of process does not involve claiming the competence, nor the participation of claimants, defendants, or lower-ranking judges, those indicators are not considered. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 25/9/2017 | 0077/2017 | PCD | Plenary chamber | Mirtha Camacho Quiroga | Prior control of the constitutionality of an autonomous statute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 16205-2016-33-CEA | Santa Cruz | Prior control of the constitutionality of an autonomous statute |

| Indigenous people: |
|---|
| Organización Indígena Chiquitana (OICH)(Monkoxi Indigenous People of Lomerío Territory) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey and Zenón Hugo Bacarreza Morales | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| The Court declared incompatible some provisions of the autonomous draft statute related to indigenous jurisdiction, arguing that the Constitution and the law are the only ones that define the competence of the jurisdictions (principle of legal reserve):<br>a) The indigenous jurisdiction will not be able to decide on cases of discrimination against minors because of article 10.II of the JDL excludes crimes committed against the bodily integrity of minors from its material validity area.<br>b) Not all the inhabitants living in the Autonomous Indigenous Territory are subject to indigenous jurisdiction because it only includes the members of the community and those who voluntarily submit to it.<br>c) Whenever a case legally corresponds to the indigenous jurisdiction, it cannot refer 'serious matters' to the formal state jurisdictions, as if they were a higher instance. The indigenous jurisdiction must resolve the cases that correspond to it within hierarchical equality between jurisdictions.<br>d) Indigenous jurisdiction cannot sanction the failure to comply with reforestation, forest fires, and uncontrolled burning. These cases belong to forest law which, according to the JDL, are not within the competence of the indigenous jurisdiction. | The PCC made indigenous jurisdiction less effective because one of the four incompatibilities did not recognize the legal limits adequately (i.e., a), in one it duly imposed on the indigenous jurisdiction the duty to resolve the cases that are under its competence (i.e., c), and in two of them it respected legal limits (i.e., b and d).<br>Regarding the first, the Court illegally reduced the competence of the indigenous jurisdiction regarding the decision and sanction of discrimination crimes against minors. However, the JDL only limits indigenous competence in crimes that affect children and adolescents' bodily integrity. Thus, since discrimination crimes do not affect the bodily integrity of minors, they belong to the indigenous jurisdiction competence. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 4/10/2017 | 0061/2017 | PCJ | Plenary chamber | Ruddy José Flores Monterrey | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 16694-2016-34-CCJ | Potosí | Criminal. Attacks against the freedom of work, and force entry |

| Indigenous people: |
|---|
| San Cristóbal Indigenous Community |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Efren Choque Capuma, and Juan Oswaldo Valencia Alvarado | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for threats, force entry, and attacks against the freedom of work reported by a mining company against a community member, the indigenous authorities claimed competence to resolve the dispute. | The PCC acted within the legal framework, which implies that indigenous jurisdiction's legal limits and effectiveness were respected. The jurisprudence analyzed does not justify whether private corporations, as collective persons, could be part of the indigenous jurisdiction if they were part of the community. |

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|---|---|
| The Court decided in favor of the ordinary jurisdiction, considering that the scope of personal validity was not fulfilled because, 'apart from being a collective person', the mining company is not part of the community. However, the Court declared that the crimes reported do belong to indigenous competence. | The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 19/10/2017 | 0067/2017 | PCJ | Plenary chamber | Efren Choque Capuma | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 18856-2017-38-CCJ | Oruro | Criminal. Domestic violence and threats |

**Indigenous people:**

Jatun Killaka Asanajaqi Jakisa, Nación Originaria

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey, and Juan Oswaldo Valencia Alvarado | The assassination attempt is excluded from the scope of material validity of the indigenous jurisdiction. However, and contrary to the dissenting vote, it should be noted that although the victim claimed attempted murder, the prosecution's accusation was solely for domestic violence and threats.<br><br>*The dissenting vote of Juan Owaldo Valencia Alvarado does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| The indigenous authorities claimed the competence to resolve the dispute in a criminal proceeding for family or domestic violence and threats between community members. However, it should bear in mind that the indigenous authorities, before the ordinary procedure, tried but could not resolve the dispute, so the female victim went to the ordinary jurisdiction. On the other hand, although the complaint also included the attempted murder, the prosecutor formally charged only with family violence and threats.<br>The Court decided to favor the indigenous jurisdiction considering that the three areas of personal, territorial, and material validity were met. In addition, the Court specified that a) The lack of action of the indigenous authorities does not mean that they waive their right to exercise jurisdiction, b) The parties can activate constitutional jurisdiction in case of their authorities' inactivity. Moreover, the PCC made clear the duty that indigenous peoples have to administer justice among their members, and in turn, indigenous members have the right to claim jurisdictional activity from their authorities through constitutional processes. Finally, c) ordinary judges must exercise all the mechanisms at their disposal to ensure that the disputes presented to them do not belong to indigenous jurisdiction. The Court's recommendation to the ordinary judges underlines their duty vis-à-vis the indigenous jurisdiction, especially considering that to the present, the latter claimed all the dispute of competence processes for the invasion of ordinary and agri-environmental jurisdictions. | According the the legal framework, the indigenous jurisdiction is certainly not competent to resolve processes of family violence against women. As a result, when the PCC admitted the competence of the indigenous jurisdiction to resolve the case, it expanded the indigenous material validity area. Therefore, the PCC rendered the exercise of the indigenous jurisdiction more effective (approximately the same happened in cases 0047/2017 and 0610/2019-S1). However, the case is irrelevant for the indicator of the lower-ranking court because, although its decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be more effective regarding the indigenous jurisdiction indicators since it claimed the case outside its competence, and the criminal defendant because he requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction less effective by legally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 19/10/2017 | 0068/2017 | PCJ | Plenary chamber | Zenón Hugo Bacarreza Morales | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 17169-2016-35-CCJ | Oruro | Criminal. Severe and minor injuries |

**Indigenous people:**

Jatun Killaka Asanajaqi Jakisa, Nación Originaria

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey, and Efren Choque Capuma | The Court supports its decision to accept the withdrawal of the claim on jurisprudential precedents referring to Amparo actions since the right's exercise depends on the parties' will in those cases. However, the 'Jurisdictional competency dispute' is different from the Amparo process since the definition of jurisdiction is of public order. Then, the Court should have declared the claim inadmissible.<br><br>*The dissenting vote of Efren Choque Capuma does not appear in the files of the Court. |

| Abstract | Analysis |
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| In a criminal proceeding for minor and severe injuries, the indigenous authorities claimed competence to resolve the dispute. | Given that a) the jurisdiction and the competence emerge from the law (Articles 122 of the Constitution, and 11 and 12 of the Law of the Judicial Organ), b) indigenous disputes can only be resolved by indigenous authorities (JDL), and c) the indigenous jurisdiction's three validity areas of competence concurred, the PCC should have declared the |

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| Before the Court's decision, the indigenous authorities voluntarily withdrew their claim of competence (there is no explanation about the causes in the antecedents). Although the indigenous jurisdiction's three validity areas of competence concurred, the Court accepted the withdrawal. The PCC stated that the current withdrawal fulfilled the requirements defined in the jurisprudential precedents for Amparo processes' withdrawals since it was: a) voluntary, b) prior to the Court's decision, and c) does not affect public order. Consequently, the Court accepted the withdrawal and ordered that the process continues in the ordinary jurisdiction. | indigenous jurisdiction competent and rejected the indigenous voluntary withdrew of their claim.<br>The jurisprudential antecedents on withdrawal cited by the Court were in Amparo processes, in which there is no obligation to resolve disputes according to the criteria of competence provided by the Constitution and the laws. Accepting the withdrawal, although it was voluntary and prior to the Court's decision, has disregarded the Constitution and the JDL, making the indigenous jurisdiction ineffective.<br>This position coincides with the particular opinion that the argument of analogically applying the jurisprudence on the withdrawal in Amparos does not proceed. However, this position differs from the effects and analysis of the dissenting vote.<br>Furthermore, when the indigenous authorities relinquished their claim of competence, they have made the indigenous jurisdiction ineffective. Another related antecedent is 0171/2017-CA. However, that case concerned a plurinational constitutional order of the Admission Commission. Finally, the criminal defendant made the indigenous jurisdiction effective because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction) and the criminal claimant rendered it ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 24/10/2017 | 1189/2017-S1 | PCJ | First specialized chamber | Efren Choque Capuma | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 17269-2016-35-AAC | Oruro | Indigenous sanction. Land dispossession for unfulfilling community duties |

**Indigenous people:**

Q'asaya Marka, Collana Pampa Ayllu, Saucari province

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| Given that the claimant community members of Amparo failed to comply with the decisions of the indigenous authorities, did not fulfill their social function, and carried out abusive acts, the indigenous jurisdiction of the Ayllu, through an extraordinary council, decided to revert their lands in favor of the community. The Saucari body of authorities ratified this decision. However, the complaining community members of Amparo stated that they were not allowed to defend themselves and that the decision was made without them being present.<br>The PCC decided in favor of the Amparo claimants, ordering the indigenous jurisdiction to issue a new decision in compliance with due process. | The Court's decision rendered indigenous jurisdiction effective since it respected the legal limits between jurisdictions. The Court ordered the indigenous jurisdiction to issue a new decision that complies with due process without deciding the merits of the problem. It should be clarified that, despite the field reports from the Decolonization Unit, it was not possible to identify compliance with due process in the exercise of indigenous jurisdiction.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (accepting and claiming the case) since they acted within indigenous jurisdictional competencies. It is noted that the sanctioned indigenous members by the indigenous process claimed the violation of their rights and did not claim rejecting the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 24/10/2017 | 0090/2017 | PCD | First specialized chamber | Efren Choque Capuma | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 20970-2017-42-CAI | La Paz | Indigenous sanction. Demolition of constructions to protect indigenous sacred places |

**Indigenous people:**

Lupaka Qullasuyu Nation (Isla del Sol, Challapampa Community)

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The indigenous authorities consulted the Court if its decision to demolish some ecological huts built by the municipality of Copacabana in its sacred places is applicable according to the Constitution. The Court interpreted that the rule applicable to the specific case is that the desecration of sacred places upsets the balance, so these actions must be corrected.<br>With this background, the Court established that the decision of indigenous jurisdiction of the affected community is not applicable because: a) The solution should be agreed with the other interested parties and not decided unilaterally. b) A unilateral decision does not solve the problem. c) A unilateral decision is incompatible | The Court could reach a similar result of inapplicability of the indigenous decision by using the personal validity area provided by the Constitution and the JDL since the execution of the works was carried out by the Municipality of Copacabana, which is a non-indigenous entity.<br>It should be clarified that: a) If the municipal constructions were demolished in compliance with the indigenous decision, such actions could be considered de facto measures. b) The agreement ordered by the Court implies an effort by the interested parties to reach an agreement. In case of not reaching an agreement, the parties must go to the ordinary or agri-environmental jurisdictions to resolve the dispute.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the claimants and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional |

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| with the values and principles of the indigenous jurisdiction. Consequently, the Court gave 60 days to reach a consensus between the interested parties. | competencies. However, the case is irrelevant for the indicator of the PCC because, although its decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 24/10/2017 | 0071/2017 | PCJ | Plenary chamber | Ruddy José Flores Monterrey | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 19190-2017-39-CCJ | Oruro | Criminal. Discrimination |

**Indigenous people:**

Jatun Killaka Asanajaqi Jakisa, Nación Originaria

| Magistrate/s | Dissenting vote's opinion |
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| Efren Choque Capuma | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for discrimination, the indigenous authorities claimed competence to settle the dispute.<br>The PCC decided to grant the competence to the ordinary jurisdiction, considering that the area of personal validity was not fulfilled since, even though the parties of the criminal proceedings had their domiciles in the same community, the defendant of the criminal proceding had previously been expelled from the community. However, it is clarified that although the defendant (expelled) in the process voluntarily accepted the indigenous jurisdiction, the plaintiffs (community members) rejected the indigenous jurisdiction (because they appealed the judge's decision to accept the indigenous jurisdiction). Moreover, the Court stated that 'the procedural parties did not express the will to submit to indigenous justice.'<br>The Court expressly accepted that the material validity area was fulfilled for the sole reason that the crime is not excluded from the indigenous jurisdiction by Article 10.II of the JDL, and ignoring the criminal judge's argument that Article 10.I establishes that the indigenous jurisdiction only can decide disputes that they have traditionally solved (since the discrimination offense exists only since 2010). | Since case 0026/2013, jurisprudence has frequently reiterated that the personal scope is fulfilled if the none community member expressly or tacitly agrees to submit to indigenous jurisdiction (expanding the personal validity area). Nevertheless, even though the PCC's decision also cites this case and expressly reiterates this understanding, it decided against it, i.e., that the indigenous jurisdiction is incompetent since it does not comply with the personal validity area (the expelled person is no longer a community member). Thus, the personal validity area should be admitted from the jurisprudential perspective since the criminal defendant (expelled) agreed to be tried by the indigenous jurisdiction. To this end, it was not appropriate to take into account the will of the plaintiffs since they are community members.<br>Nonetheless, under the legal understanding provided by the Constitution and the JDL, the case is irrelevant for the indicator of the PCC because, although its decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. However, by admitting that indigenous jurisdiction can resolve disputes that it has not traditionally resolved, it overcame the limitation provided by Article 10.I of the JDL, making it more effective.<br>On the other hand, the case demonstrates indigenous jurisdiction to be more effective regarding the indigenous jurisdiction indicators (accepting and claiming the case) since it decided the case outside its competence. Furthermore, even though the case is irrelevant for the defendant (he is not a community member), the indigenous claimants rendered indigenous jurisdiction less effective by legally preferring the ordinary jurisdiction over the indigenous one. Finally, the case is irrelevant for the indicators of the lower-ranking court because, although its decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 24/10/2017 | 0072/2017 | PCJ | Plenary chamber | Ruddy José Flores Monterrey | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 17642-2016-36-CCJ | Santa Cruz | Criminal. Aggravated robbery, breach of trust [abuso de confianza], and force entry |

**Indigenous people:**

Organización Indígena Chiquitana (OICH), CIBAPA Bajo Paragua Indigenous Central

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Efren Choque Capuma | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for aggravated robbery, breach of trust, and force entry, the indigenous authorities claimed jurisdiction to resolve the dispute.<br>The Court granted the competence to the ordinary jurisdiction with the sole argument that the indigenous authorities are also the criminal defendants. To that end, the Court argued the complementarity principle between jurisdictions, implying that this | A process over jurisdictional competency dispute between indigenous and formal jurisdictions concerns recognizing the existence of an indigenous people entitle to exercise jurisdiction and analyzing if the dispute meets the personal, material, and territorial validity areas. Consequently, in the present case, the Court rendered indigenous jurisdiction ineffective since it has disregarded the constitutional and legal jurisdictional limits by simply assuming that there was no guarantee of a fair trial. Besides, the Court never entered to consider compliance with the areas of territorial, personal and material validity, which are the only reasons provided by law to resolve conflicts of competence between jurisdictions. As referred in other cases, not only the possibility of a due process is out of the scope of a process over jurisdictional competency dispute, but indigenous or Union organizations have the means to cope with it. |

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| principle would make ordinary or agri-environmental jurisdictions competent. Consequently, the Court argued that due process and impartiality would be affected if jurisdiction were granted to the indigenous jurisdiction. Moreover, the PCC did not analyze the compliance with territorial, personal and material validity-areas to decide the case. | Finally, the principle of complementarity argued by the PCC is impertinent because 'it implies the concurrence of efforts and initiatives of all constitutionally recognized jurisdictions' (JDL, Art. 4.f). However, it does not grant competence to a different jurisdiction than the one defined by law.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 24/10/2017 | 0073/2017 | PCJ | Plenary chamber | Zenón Hugo Bacarreza Morales | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 15569-2016-32-CCJ | Santa Cruz | Civil. Damages |

**Indigenous people:**

San Joaquín Community, Base Territorial Organization (OTB)

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Efren Choque Capuma | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| In a civil proceeding for damages between community members, the indigenous authorities claimed competence to resolve the dispute. The damages occurred when the community expelled and took the lands from a community member, applying indigenous jurisdiction, and the Court annulled the indigenous decision in 0484/2015-S2.<br>It should be noted that the victim filed the civil action even though the indigenous jurisdiction restored him his lands and goods.<br>The Court decided to give the competence to the ordinary jurisdiction despite the fact that the three areas of territorial, personal and material validity were fulfilled, arguing that the authorities responsible for the damage would be the same that would resolve the dispute if the Court granted the competence to the indigenous jurisdiction. For this reason, the Court decided the conflict of competence based on due process in its component of the impartial judge. To that end, the Court argued the complementarity principle between jurisdictions, implying that this principle would make ordinary or agri-environmental jurisdictions competent. | A process over jurisdictional competency dispute between indigenous and formal jurisdictions concerns recognizing the existence of an indigenous people entitle to exercise jurisdiction and analyzing if the dispute meets the personal, material, and territorial validity areas. Consequently, in the present case, the Court rendered indigenous jurisdiction ineffective since it has disregarded the constitutional and legal jurisdictional limits by simply assuming that there was no guarantee of a fair trial. As referred in other cases, not only the possibility of a due process is out of the scope of a process over jurisdictional competency dispute, but indigenous or Union organizations have the means to cope with it.<br>Finally, the principle of complementarity argued by the Court is impertinent because 'it implies the concurrence of efforts and initiatives of all constitutionally recognized jurisdictions' (JDL, Art. 4.f). However, it does not grant competence to a different jurisdiction than the one defined by law.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the civil defendants because they allegedly requested their indigenous authorities to claim the case (even though they did not formally challenge the claimant's election of jurisdiction). Furthermore, the civil claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 24/10/2017 | 0069/2017 | PCJ | Plenary chamber | Juan Oswaldo Valencia Alvarado | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 17781-2017-36-CCJ | Potosí | Agrarian. Conciliation |

**Indigenous people:**

Nación Killacas (Tolapampa Aransaya and Urinsaya Ayllus Council)

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez and Ruddy José Flores Monterrey | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| In an agri-environmental process, in which two community members are summoned to conciliation on land limits, the indigenous authorities claimed competence to resolve the dispute.<br>The court granted the competence to the indigenous jurisdiction because the three | The court decided within the framework of the Constitution and the laws, making the indigenous jurisdiction effective. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators (by accepting and claiming the case) since it acted within its competence and ineffective concerning the agrarian claimant because he chose the formal jurisdiction. In the case there is no defendant.<br>The PCC's decision demonstrates that agri-environmental processes, in which the parties are summoned to conciliate, invade the indigenous jurisdiction that, interestingly, applies the exact mechanism to resolve disputes and provided that the three areas of personal, material, and territorial validity concur. It could be argued that they are not jurisdictional acts that may interfere with indigenous jurisdiction. However, these acts prevent the indigenous jurisdiction from |

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| areas of material, territorial and personal validity were fulfilled. | assuming jurisdiction in the way they usually exercised it, that is, through conciliation. A similar decision is reached in 0005/2018. It is interesting to revise the admision of the case through 0020/2017-CA. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 24/10/2017 | 0075/2017 | PCJ | Plenary chamber | Juan Oswaldo Valencia Alvarado | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 17266-2016-35-CCJ | La Paz | Criminal. Aggravated robbery, robbery, incendiarism, and qualified damages |

| Indigenous people: |
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| San Juan de Satatora indigenous people |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey, and Macario Lahor Cortez Chavez | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for robbery, aggravated robbery, qualified damage, and incendiarism, the indigenous authorities claimed competence to resolve the dispute. The Court decided in favor of the indigenous jurisdiction, considering that the three areas of validity of the indigenous jurisdiction were met and even though the indigenous authorities could be biased when resolving the dispute. However, the Court recommended that the indigenous jurisdiction respects the procedural guarantees of due process and impartiality. | The Court decided the case within legal limits making the indigenous jurisdiction effective. On the other hand, this case contradicted the previous decisions that preferred the ordinary jurisdiction with the sole argument of impartiality and due process. Since the law does not grant competence on an impartiality basis, this decision made the indigenous jurisdiction effective.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 13/11/2017 | 0077/2017 | PCJ | Plenary chamber | Neldy Virginia Andrade Martínez | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 18088-2017-37-CCJ | La Paz | Criminal. Aggravated robbery |

| Indigenous people: |
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| Tupaj Katari Union Federation of Peasant, Manco Kapac Province |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| In a criminal proceeding for aggravated robbery, the indigenous authorities claimed competence to resolve the dispute.<br>The PCC decided in favor of the indigenous jurisdiction, considering that the three areas of validity of the indigenous jurisdiction were met. | The PCC decided the case within legal limits, making the indigenous jurisdiction effective. Moreover, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 14/11/2017 | 0078/2017 | PCJ | Plenary chamber | Efren Choque Capuma | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 16796-2016-34-CCJ | Oruro | Agrarian. Land dispute |

| Indigenous people: |
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| Jach'a Karangas (Opoqueri Community, Kala Ayllu of Corque Marka) |

| Magistrate/s | Dissenting vote's opinion |
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| Neldy Virginia Andrade Martínez, Ruddy José Flores Monterrey, and Mirtha Camacho Quiroga | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |

| Abstract | Analysis |
|---|---|
| In an agrarian process of retaining land possession between neighbors within a community with collective property titles, the indigenous authority (Tata Awatiri of Ayllu Kala) claimed the competence to resolve the | The current distribution of powers between the indigenous, agri-environmental, and ordinary jurisdictions has occurred since the 2009 Constitution and the 2010 JDL. For this reason, even though the previous agrarian laws of 1996 and 2006 do not refer to the indigenous jurisdiction, |

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| dispute arguing that the internal distribution of lands recognized by the JDL also encompasses deciding on possession conflicts. However, the judge refused the indigenous request, even though she informed the indigenous authorities of the process at its beginning. The PCC decided to maintain the process in the agri-environmental jurisdiction by arguing that a) the agrarian laws (of 1996 and 2006) establish the competence in favor of the agrarian jurisdiction to resolve disputes over land possession and that b) the dispute is not about internal redistribution of community land, but a dispute concerning possessory actions. | the current distribution of competencies between jurisdictions implicitly modified these laws, as the PCC later recognized in the cases 0022/2018 and 0035/2019. Additionally, the constitutional jurisprudence has constantly granted the competence to the indigenous jurisdiction in these kinds of matters under the JDL provisions since resolving collective land distribution and redistribution implies the competence to decide disputes over limits and land possession among community neighbors (this argument was determined in cases 0022/2018 and 0035/2019 as well).<br>Consequently, in this case, the PCC rendered the indigenous jurisdiction ineffective. Furthermore, the case demonstrates indigenous jurisdiction to be effective by accepting and claiming the case within indigenous jurisdictional competencies and ineffective concerning the agrarian claimant and defendant because they chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 15/11/2017 | 1161/2017-S2 | PCJ | Second chamber | Zenón Hugo Bacarreza Morales | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 19217-2017-39-AAC | La Paz | Freedom of worship |

| Indigenous people: |
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| Pueblo Leco de Apolo, Indigenous Central (CIPLA) |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| A group of community members denounced the violation of their rights to freedom of worship because their indigenous community decided to ignore them since: a) They changed their convictions, worldview, and faith by becoming evangelical and ceasing to be Catholic. b) They abstained from all ancestral rites dedicated to the earth, water, sun, stars, from participating in communal festivities and the coca chewing [pijchar]. c) They did not respect the sacred places, cultural identity, beliefs, worldview, indigenous authorities, and community meetings by wanting to change them, ignore them and disrupt community activities with megaphones and music. In addition, this group of community members denounced that the community prevented them from professing their faith with de facto measures and threats in a public place.<br>The PCC decided against the claimants because they did not comply with the subsidiarity principle that is one of Amparo's process requirements. It is clarified that a) the defendant authorities argued that the Amparo claimants did not comply with the principle of subsidiarity. b) Indigenous authorities presented the statutes and internal regulations of the union as proof that the claimants did not exhaust the indigenous bodies to claim their rights. c) The Court rejected the process without deciding on its merits. | The PCC's decision recognized the legal limits making the indigenous jurisdiction effective since: a) It recognized that the indigenous jurisdiction has the competence to resolve their internal disputes and that the constitutional jurisdiction is only subsidiary. b) It did not decide on the merits of the claim, allowing the indigenous jurisdiction to decide the dispute. On the other hand, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, defendant and the indigenous jurisdiction indicators since they accepted the indigenous jurisdiction. It is noted that the defendants (claimants of the Action for Liberty) claimed the violation of their rights and did not rejected the indigenous jurisdiction's exercise of their community. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 15/11/2017 | 0091/2017-S1 | PCD | First specialized chamber | Juan Oswaldo Valencia Alvarado | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 21159-2017-43-CAI | Potosí | Indigenous sanction. Expulsion for stripping indigenous people of their lands, deceiving them and physically assaulting them |

| Indigenous people: |
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| Jatun Ayllu Qhayana, Chiru Ayllu, Chiru K'uchu community union |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The indigenous authorities decided to expel four people from their community and nullify their property titles and possession over collective lands because they had deceived and physically assaulted the older women to obtain them.<br>The Court decided to declare the indigenous resolution inapplicable because it was adopted without the defendants' presence affecting their right to defense and due process. The Court ordered the indigenous authorities to resolve the dispute again, complying with constitutional guarantees. Finally, the Court reflected that the expulsion sanction should be adopted only when | Given that the indigenous authorities consulted whether their decision was compatible with the Constitution, suggest the indigenous authorities may confuse 'applicable norm' with the 'indigenous decision that resolves a dispute.' Although a similar situation is observed in other consultation processes (0006/2013, 0100/2017-S1, 0045/2017), only some of them were accepted (e.g., 0091/2017-S1) and others rejected because the Court considered that the indigenous authorities sought the ratification of their decisions and not the applicability of an indigenous norm (e.g., 0028/2013, 0056/2017-S1), demonstrating inconsistency. The case demonstrates indigenous jurisdiction to be effective regarding the claimants, defendants and the indigenous jurisdiction indicators since they respected indigenous jurisdictional competencies.<br>The Court's decision rendered indigenous jurisdiction effective since it respected the legal limits between jurisdictions. The Court ordered to the indigenous |

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| proportional to very serious and necessary conduct and after exhausted other possible means. | jurisdiction to issue a new decision that complies with due process without deciding the merits of the problem. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 15/11/2017 | 0080/2017 | PCJ | Plenary chamber | Mirtha Camacho Quiroga | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 19440-2017-39-CCJ | Potosí | Criminal. False accusation |

**Indigenous people:**

Nación Killacas (Tolapampa Aransaya Ayllu Council)

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| In a criminal proceeding for the crime of false criminal complaint of cattle rustling and slaughter of llamas, the indigenous authorities claimed the competence to resolve the dispute.<br>The PCC decided in favor of the indigenous jurisdiction, considering that the three areas of validity of the indigenous jurisdiction concurred. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework. On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 27/11/2017 | 0081/2017 | PCJ | Plenary chamber | Mirtha Camacho Quiroga | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 18125-2017-37-CCJ | Oruro | Criminal. Aggravated robbery, dispossession and disturbance of possession |

**Indigenous people:**

Jach'a Karangas (Opoqueri Community, Kala Ayllu of Samancha partiality, Corque Marka)

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| In a criminal proceeding for aggravated robbery, dispossession, and disturbance of possession, the indigenous authorities claimed jurisdiction to resolve the dispute. The Tata Awatiri of Ayllu Kala argued that a) the conflict emerges from a land distribution between Ayllu Kala and Ayllu Sullcavi, b) it shall be decided through conciliation between the parties. Otherwise, the case will be referred to the Council of Mallkus of Corque Marka as a neutral instance to decide it, and c) the three validity areas of the indigenous jurisdiction's competence concur in the case.<br>The lower-ranking judge did not answer the indigenous request. Consequently, the PCC decided on the conflict of competencies in favor of the indigenous jurisdiction, considering that the three areas of validity of the indigenous jurisdiction were met. | Concerning one of the criminal defendants, the Court expanded the scope of personal validity by applying case 0026/2013 since he was not part of the community but implicitly accepted the indigenous jurisdiction by settling in the indigenous territory with his spouse (on the contrary, in the case 0007/2015, in which the parties of the criminal process were community members and none community members, the Court decided the competence in favor of the ordinary jurisdiction). Therefore, the PCC made the indigenous jurisdiction more effective.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be more effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it outside its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction less effective by legally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 29/11/2017 | 0100/2017-S1 | PCD | First specialized chamber | Juan Oswaldo Valencia Alvarado | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 19912-2017-40-CAI | Oruro | Agrarian. Land dispute |

**Indigenous people:**

Suyu Suras, Nación Originaria (Ullami Pampa Ayllu)

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The indigenous authorities consulted whether the decision they adopted in a conflict between ayllus of their indigenous people was contrary to the Constitution. Since one of the ayllus added to its denomination the name of another Ayllu with the objective of its territorial | Given that a) the indigenous authorities consulted whether their decision was compatible with the Constitution and that b) the Court had to interpret which was the rule to apply in the specific case to absolve the indigenous authorities' consultation, suggest the indigenous authorities may confuse 'applicable norm' with the 'indigenous decision that resolves a dispute.' Although a similar situation is observed in other consultation |

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| expansion, the indigenous authorities resolved to restore the names and land boundaries between them.<br>However, it should be noted that the indigenous authorities did not identify the indigenous norm that they were applying and that the Technical Secretariat and Decolonization of the PCC had to determine it. Under these circumstances: a) The Court decided the applicability of the norm to the specific case and recognized that the indigenous resolution is mandatory. b) The Court recognized, without analyzing the compliance with the areas of territorial, personal and material validity, that the indigenous jurisdiction has the competence to decide on the distribution of their collective lands and their territorial organization. | processes (0006/2013, 0100/2017-S1, 0045/2017), only some of them were rejected because the Court considered that the indigenous authorities sought the ratification of their decisions and not the applicability of an indigenous norm (e.g., 0028/2013), demonstrating inconsistency. However, on this occasion, the Court implicitly corrected the breach of this procedural requirement through the interpretation made by its Technical and Decolonization Secretariat. Consequently, although the Court corrected the breach of the procedural requirement by the indigenous authorities, the decision did not modify the competence of the indigenous jurisdiction or its decision.<br>Therefore it respected the legal limits and made it effective. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (by accepting and deciding the case). |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 29/11/2017 | 0093/2017 | PCJ | Plenary chamber | Zenón Hugo Bacarreza Morales | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 15966-2016-32-CCJ | La Paz | Criminal. Criminal action for land dispossession, qualified damage, and threats |

**Indigenous people:**

Ayllu Cagua (Titiamaya Community, afiliated to CONAMAQ or Consejo Nacional de Ayllus y Markas del Qullasuyu) and Sopocari Community, Peasant Union (afiliated to CSUTCB or Conferedación Sindical Única de trabajadores Capensinos de Bolivia)

| Magistrate/s | Dissenting vote's opinion |
|---|---|
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| Abstract | Analysis |
|---|---|
| In a criminal proceeding for dispossession, qualified damage, and threats followed by authorities of a peasant union (Sopocari Community) against authorities of an indigenous people (Titiamaya community), the criminally denounced authorities claimed competence to resolve the dispute. Although the conflict of jurisdictional competencies was initially raised against the prosecutor and later against the judge, the Court admitted it, arguing that conflicts of jurisdictional competencies occur between jurisdictions and not with the auxiliary of the jurisdiction, as is the case with the prosecutor. The criminal process between communities originates from a land dispute that the agri-environmental jurisdiction has already decided. The community that lost failed to comply with the agri-environmental decision by committing the crimes reported.<br>Through the Technical Field Report TCP/STyD/UD/004/2017, issued by the Technical Secretariat and Decolonization, the Court established that the three areas of indigenous jurisdiction were met, for which it decided to grant the competence to indigenous jurisdiction.<br>Regarding the personal sphere, the Court held that both communities, and other communities of the province, share cultural identity, language, historical tradition, institutions, territoriality, and worldview. Regarding the territorial scope, the Court argued that the lands in conflict are in the same province of both communities.<br>However, as these are two opposing social organizations, the Court established that it could not grant jurisdiction to either of them to protect the natural, impartial, and competent judge principles, but to an independent instance that both communities have subsequently created to resolve their disputes in the province. Accordingly, it is the 'Indigenous Peasant Indigenous Court of the Inquisivi Province' created by the 'Mixed Trade Union Federation of Agri-Mining Workers, Coca growers, and Original Authorities of the Inquisivi Province 'Tupac Katari-Bartolina Sisa' (FSMTAMCO-PI) [Federación Sindical Mixta de Trabajadores Agro Mineros, Cocaleros y Autoridades Originarias de la Provincia Inquisivi 'Tupac Katari-Bartolina Sisa']. | The Court has not sufficiently explained and justified the legal implications of its decision: a) The Court grants the competence to a special indigenous court formed after the conflict to resolve the problems between communities. However, the Court did not justify why it is an indigenous jurisdiction of an indigenous people. b) It is not about the exercise of jurisdiction in an indigenous people, within the framework of its law and juridical system, but about resolving disputes between two different communities. c) The agri-environmental jurisdiction has already decided the land problem. However, from the background, it can be interpreted that the new indigenous court will also resolve the land dispute between communities. Furthermore, there is no certainty of the territorial limits of the claiming community to decide its competence claim (territorial validity area). d) It did not grant jurisdiction to the claimant indigenous jurisdiction but to a different court.<br>The situation is more similar to arbitration, in which the communities in conflict voluntarily established an ad hoc tribunal, than to the exercise of indigenous jurisdiction. In this framework, the Court should not have granted the competence to indigenous jurisdiction.<br>Consequently, the Court made the indigenous jurisdiction more effective: a) It expanded the area of personal validity by establishing that it encompasses two different social organizations. b) It disregarded the territorial validity area of the claiming jurisdiction to decide the case. c) It privileged the will of the indigenous communities in conflict, recognizing as indigenous jurisdiction a court established ad hoc by them. d) It implicitly allowed the ad hoc indigenous tribunal to resolve, in addition to the criminal dispute claimed, conflicts over land between communities.<br>Finally, the case demonstrates indigenous jurisdiction to be more effective regarding the defendant and the indigenous jurisdiction indicators (accepting and claiming the case) since both exceeded indigenous jurisdictional competencies, but less effective regarding the criminal claimants. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 29/11/2017 | 0088/2017 | PCJ | Plenary chamber | Zenón Hugo Bacarreza Morales | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 16930-2016-34-CCJ | Potosí | Criminal. Criminal action for land dispossession |

| Indigenous people: | |
|---|---|
| Yurcuma community, agrarian Union | |
| **Magistrate/s** | **Dissenting vote's opinion** |
| Neldy Virginia Andrade Martínez and Ruddy José Flores Monterrey | *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |
| **Abstract** | **Analysis** |
| In a criminal proceeding for changing boundaries and disturbance of possession, the indigenous authorities claimed competence to resolve the dispute.<br>The Court decided to declare the indigenous jurisdiction competent, considering that the three territorial, personal, and material validity areas were fulfilled. Additionally, the Court referred to the fact that the principle of opportunity is no longer followed (0017/2015) according to case 0060/2016 (it does not refer to case 0042/2017 that tried to reinstate the principle of opportunity). | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework. On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because they allegedly requested their indigenous authorities to claim the case (even though they did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 6/12/2017 | 0105/2017 | PCD | First specialized chamber | Efren Choque Capuma | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 17837-2017-36-CAI | La Paz | Indigenous sanction<br>Expulsion for unfulfilling community duties |

| Indigenous people: | |
|---|---|
| Quentavi Community | |
| **Magistrate/s** | **Dissenting vote's opinion** |
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| **Abstract** | **Analysis** |
| The indigenous authorities consulted whether their decision to sanction a community member for unfulfilling community duties is compatible with the Constitution. The Court decided that the consultation was inadmissible because previously, by means of Plurinational Constitutional judgment 1048/2017-S2, it annulled the sanctioning indigenous decision. Consequently, the Court stated, the query was rendered useless.<br>It is noted that the indigenous jurisdiction did not carry out a new process and that the antecedents demonstrate that indigenous authorities sanctioned a community member with expulsion, a $50,000 fine, and ten blows (or lashes) for supplanting indigenous authority in the exercise of indigenous jurisdiction by dispossessing land as a supposed sanction against community members. In that opportunity, the community member claimed the violation of his right to due process because he was not summoned and could not defend himself. | In the case 1048/2017-S2, the PCC decided against the community because it did not carry out a due process against the claimant to sanction him. Although the PCC's decision protected the claimant in his constitutional right to due process, it appropriated the indigenous dispute's resolution and prevented indigenous jurisdiction from resolving the case. The PCC should have ordered indigenous jurisdiction to carry out a new due process under legal limits, as it did in other cases, allowing it the possibility to resolve indigenous disputes (e.g., 2076/2013, 1127/2013-L, 0486/2014 or 1254/2016-S1). As a result, the PCC's decision rendered indigenous jurisdiction ineffective.<br>In the current case, although the indigenous jurisdiction did not carry out a new process to sanction the allegedly wrongful actions of the community member, the PCC once more prevents the indigenous jurisdiction from deciding the dispute by excluding its exercise on the matter. It is noted that the PCC has exhorted the Departamental Federation of Peasant Workers to resolve its union legal representation to avoid further supplanting issues. However, such exhortation does not recognize the possibility of exercising indigenous jurisdiction to judge the community member, which is the object of the consultation.<br>Furthermore, the case demonstrates the indigenous jurisdiction to be effective when it accepted to resolve the case. |

# Relevant Cases of 2018

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 14/3/2018 | 0008/2018 | PCJ | Plenary chamber | Gonzalo Miguel Hurtado Zamorano | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 19843-2017-40-CCJ | Santa Cruz | Criminal. Criminal action for land dispossession |

| Indigenous people: | |
|---|---|
| Organización Indígena Chiquitana (OICH) | |
| **Magistrate/s** | **Dissenting vote's opinion** |
| 1. Julia Elizabeth Cornejo Gallardo<br>2. Petronilo Flores Condori | 1. Applying the highest jurisprudential standards, the competence should be granted to the indigenous jurisdiction. Furthermore, in case of doubt a fieldwork should be done through the Court's Technical Secretariat with its two Units, Decolonization and Indigenous Jurisdiction. |

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| | 2. Although OICH and the peasant organization are two different communities, both are indigenous peoples. Therefore, both should decide the case. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for land dispossession followed by a peasant community (El Sirari) against a member of the indigenous people 'Organización Indígena Chiquitana' (OICH), the indigenous authority of the OICH claimed jurisdiction to decide the dispute. The Court decided in favor of the ordinary jurisdiction considering that the criminal complaining party neither belongs to the OICH nor shares its territory. Therefore, the indigenous jurisdiction's personal and territorial areas of validity are not fulfilled in the case. | The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 14/3/2018 | 0005/2018 | PCJ | Plenary chamber | Brígida Celia Vargas Barañado | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 20710-2017-42-CCJ | Oruro | Agrarian. Land dispute and competence dispute |

| Indigenous people: |
|---|
| Jach'a Karangas (Pachacama Ayllu, Aransaya partiality, Totora Marka) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| 1. Karem Lorena Gallardo Sejas<br>2. Carlos Alberto Calderón Medrano | 1. The agri-environmental judge answered the indigenous authorities' request in due time without declaring himself competent and sending them copies of the proceedings, so there was no conflict of jurisdiction.<br>2. Grammatically, the internal distribution of lands authorized to the indigenous jurisdiction (Art. 10.II.c JDL) is not equivalent to resolving land disputes that arise from such distribution. |

| Abstract | Analysis |
|---|---|
| In a voluntary agri-environmental process of a geo-referenced topographic survey of sayaña requested by a community member and admitted as conciliation by the agri-environmental judge, the indigenous authorities claimed the competence to decide the case at the request of neighboring community members. Furthermore, they argued that the topographic survey made by the agri-environmental court, through its technical support, affected the physical integrity and possession of several cultivation areas (or 'qallpas').<br>The lower-ranking judge refuses the indigenous jurisdiction's competence arguing that it was not a process to resolve a dispute but only a voluntary and conciliatory procedure.<br>The Court decided in favor of indigenous jurisdiction because the three areas of material, territorial and personal validity concurred. | The Court made the indigenous jurisdiction effective by legally recognizing the indigenous jurisdiction's competence through its territorial, material, and personal validity areas.<br>It is clarified that although the indigenous jurisdiction may request technical cooperation from the agri-environmental jurisdiction to carry out geo-referenced topographic surveys with GPS, in the present case: a) The indigenous jurisdiction did not request such cooperation. b) There was no coordination between jurisdictions. c) A community member requested the agri-environmental jurisdiction to measure his allegedly Sayaña. d) Since the disputed lands are between two communities of the same Ayllu, the presence of the indigenous authorities of both was required. e) The neighbors opposed the agri-environmental jurisdiction's involvement in the matter and requested their indigenous authorities to claim the competence to conduct the conciliatory hearings. f) Finally, conciliation is how the indigenous jurisdiction largely resolves internal disputes.<br>The PCC's decision demonstrates that agri-environmental processes, in which the parties are summoned to conciliate, invade the indigenous jurisdiction's exercise that applies the exact mechanism to resolve disputes and provided that the three areas of personal, material and territorial validity concur. It could be argued that they are not jurisdictional acts that may interfere with the exercise of indigenous jurisdiction. However, these acts prevent the indigenous jurisdiction from assuming jurisdiction in the way they usually exercised it, that is, through conciliation. A similar decision was reached in 0069/2017.<br>Additionally, it should be noted that the Court recommended that the indigenous jurisdiction complies with due process and impartiality when deciding the dispute. In this way, it overcame the illegal practice of rejecting indigenous jurisdiction under the sole argument that the indigenous jurisdiction may violate the impartiality's guarantee (when the indigenous authority is, at the same time, an interested party in the process). Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators by accepting and claiming the case since it acted within its competence and ineffective concerning the agrarian claimant because he chose the formal jurisdiction. Finally, the neighboring community members acted as defendants in the case, rendering the indigenous jurisdiction effective by requesting their authorities to claim the competence to resolve the dispute. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 23/3/2018 | 0076/2018-S1 | PCJ | First chamber | Karem Lorena Gallardo Sejas | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 21492-2017-43-AAC | La Paz | Indigenous sanction. Expulsion for violent conduct and disrespect for indigenous authorities |

| Indigenous people: |
|---|
| Yabalo community, Agrarian Union - Irupana Sud Yungas |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Georgina Amusquivar Moller | Due process and the community's own law were not complied with when the family's expulsion measure was decided. The Court acted illogically by excluding the minor and her mother from the penalty of expulsion and, on the contrary, accepted the legality of the expulsion of the rest of her family nucleus. |

| Abstract | Analysis |
|---|---|
| The community decided to expel a family after it did not change its pattern of extremely violent behavior and lack of respect for the | The PCC recognized and validated that the sanction of indigenous expulsion of a family from an indigenous community |

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|---|---|
| authorities and the community since 1987. The indigenous decision gave the family 120 days to dispose of their assets under the alternative that they stay for the community. The family presented the Amparo claim because their rights to property, freedom of residence and permanence, and due process (defense, impartiality, and competent judge) were allegedly violated. 'After all, the community authorities do not have jurisdiction as the community is not an indigenous people,' in the claimants' words.<br>The Court decided against the family claiming protection and approved their expulsion, except for a minor and his mother for deserving greater protection and not being responsible for the illegal acts of the rest of the family. The Court's arguments were as follows: a) That the community is a union recognized by the State in recent times does not mean that it is not, at the same time, an indigenous people and that its authorities can exercise jurisdiction. Indigenous peoples can exercise their collective rights even if the State has not formally recognized them. b) The family and the community signed many minutes and agreements of conflict resolution, which denotes the recognition and submission of the family to indigenous jurisdiction. c) The minutes and commitment agreements were breached by the family, which shows its insufficiency to resolve the conflict and the need for the family's expulsion as the last alternative to reestablish the harmonious and balanced coexistence of the community. d) The community did not deprive the family of its assets. On the contrary, it gave the family a period to dispose of them freely. e) Although expulsion implies non-permanence in the community, the family can reside in any other part of the country. F) The Court cannot establish what is the due process for the indigenous people since its own rules govern it. It was a long time that the family failed to comply with their duties of harmonious coexistence with the community and that they knew about the processes and decisions of the authorities, so there is no violation of due process. | is legal, making the decision of the indigenous jurisdiction effective. However, contrary to the JDL, the PCC has excluded the mother and her son from expulsion, arguing that they deserve greater protection than the other family members. The JDL does not prohibit the expulsion of women if they, in the opinion of the indigenous jurisdiction, deserve this sanction. In addition, it should be noted that, unless it is proven that the parents are violating their rights and their best interests require their protection, minors under the custody and care of their parents must follow their parents despite not deserving the sanction of expulsion. Consequently, the PCC's decision is questionable since it not only separates a family but also unjustifiably excludes the mother from the sanction of expulsion, rendering the indigenous jurisdiction ineffective. Adding both extremes, the PCC made indigenous jurisdiction less effective.<br>The Court of Guarantees (lower-ranking court) that resolved the Amparo initially also excluded the minor from the indigenous sanction and, in addition, the women of the family, considering that they did not commit any crime. Although this may be true, in this case the Court of Guarantees does not have jurisdiction to decide who committed a crime, but only the indigenous jurisdiction. Consequently, although with a different foundation, the lower-ranking court's judgment is also partially contrary to the indigenous decision, rendering indigenous jurisdiction less effective.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant and the indigenous jurisdiction indicators (by accepting and deciding the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the defendants (Amparo claimants) because they rejected the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 23/3/2018 | 0014/2018 | PCJ | Plenary chamber | Gonzalo Miguel Hurtado Zamorano | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 21366-2017-43-CCJ | Potosí | Criminal. Illegitimate contributions and benefits |

| Indigenous people: |
|---|
| Aymaya Ayllu of Uncía |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Petronilo Flores Condori | Uncía Municipality is not part of the process, and it is not a victim of the crime since it does not own the rented property. Consequently, the material validity area of indigenous jurisdiction is fulfilled. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding of corruption for illegitimate contributions and benefits denounced between community members, the indigenous authorities claimed competence to resolve the dispute. It is clarified that neither the State nor the involved Municipality is a party to the process.<br>The Court decided in favor of the ordinary jurisdiction considering: a) The personal validity area is not fulfilled since the State should constitute itself as a claimant although it is not a party to the criminal process. b) The material validity area is not fulfilled since it is a corruption crime. | Although the State is not a party to the criminal process and, consequently, it is debatable that the Court maintains that the scope of personal validity is not fulfilled, the criminal offense denounced is outside the sphere of indigenous jurisdiction because, under the JDL, it is a corruption crime. Consequently, the case demonstrates indigenous jurisdiction to be more effective regarding the defendant (who allegedly requested his authorities to claim the competence to resolve the case) and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. The claimant made the indigenous jurisdiction less effective by suing in the ordinary jurisdiction. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 23/3/2018 | 0013/2018 | PCJ | Plenary chamber | Carlos Alberto Calderón Medrano | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 21295-2017-43-CCJ | Cochabamba | Criminal. Falsification of documents |

| Indigenous people: |
|---|
| Suyu Suras, Nación Originaria (Marka Sipe Sipe, Ayllu parcialidad Urinsaya) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Julia Elizabeth Cornejo Gallardo | By applying the best jurisprudential standards of the Constitutional Court, it should have been decided: a) to make the procedure requirements more flexible, b) to identify that there was indeed a jurisdictional competency dispute, c) to decide on the merits of the process, although the reasons for the claim did not state them, d) understand that the criminal process began before the indigenous peoples were reconstituted, and e) indigenous peoples can claim jurisdiction at any time. |

| Abstract | Analysis |
|---|---|
| The same indigenous authority that in 2010 criminally denounced a community member for falsifying a private document before the ordinary jurisdiction in 2017 requested the competence to resolve this dispute because the ordinary jurisdiction has not yet decided the case, violating the principle of prompt proceedings.<br>The Court decided in favor of the ordinary jurisdiction without entering to review the case's merits because the violation of the right to a prompt decision must be claimed by an Amparo and not in a jurisdictional competency dispute process. | The PCC rendered indigenous jurisdiction ineffective since deciding on the falsification of documents pertains to indigenous jurisdiction. Even though one of the indigenous authority's aims was denouncing the lack of a prompt decision, it should be noted that he claimed the competence as an indigenous authority in order that indigenous jurisdiction decides the case. Furthermore, the competence of the indigenous jurisdiction does not depend on the initial jurisdiction's election made by the claimant, as the Court argued, since the competence is defined by law. Therefore, the PCC should have ruled in favor of the indigenous jurisdiction, ordering a fair and due process to prevent the person who is both plaintiff and claimant from deciding the case.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence. Furthermore, the criminal claimant and defendant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one, even though the claimant is the indigenous authority that later requested the competence. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 10/4/2018 | 0105/2018-S1 | PCJ | First chamber | Karem Lorena Gallardo Sejas | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 21509-2017-44-AAC | Oruro | Agrarian. Land dispute |

| Indigenous people: |
|---|
| Suyu Suras, Nación Originaria (Ullami Pampa Ayllu - Cuerpo de Autoridades Originarias de Saucarí (C.A.O.S), Marka |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Georgina Amusquivar Moller | The Court should not have redirected the claim as if it were a violation of the rights of access to justice and effective judicial protection but should have based its decision on the violation of the right to the petition. |

| Abstract | Analysis |
|---|---|
| Although the indigenous jurisdiction decided a land possession dispute, the losing party repeatedly requested it to modify its the decision. Even though the indigenous jurisdiction responded negatively to these requests, the Court found that the last one of them was not duly answered because it did not motivate: a) why the indigenous resolution excluded three older adults who were allegedly also possessors of the terrain, and; b) on the competence of the indigenous authorities that supposedly would be usurping functions (other indigenous authorities should decide the case).<br>The Court decided that the indigenous jurisdiction should resolve the requests made by the Amparo claimants with due explanation, following its own rules and procedures. | The Court's decision did not affect the effectiveness of the indigenous jurisdiction since it respected the legal limits between jurisdictions: a) it did not annul the indigenous decision, and b) it ordered the indigenous jurisdiction to answer the requests made by the Amparo claimants.<br>Consequently, the PCC made the indigenous jurisdiction effective by recognizing it and validating its decisions within the framework of the law.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (by accepting the case) since they acted within indigenous jurisdictional competencies. It is noted that the losing party in the indigenous process only requested a second decision and did not claim rejecting the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 11/4/2018 | 0015/2018 | PCJ | Plenary chamber | René Yván Espada Navía | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 20100-2017-41-CCJ | Potosí | Criminal. Criminal action for land dispossession |

| Indigenous people: |
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| Nación Killacas (Civaruyos-Haracapis) Aransaya, Urinsaya - Consejo de Naciones Originarias de Potosí (CAOP) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Carlos Alberto Calderón Medrano | a) The purpose of the indigenous claim was not to claim jurisdiction to resolve the criminal dispute but to respect and not modify their previous indigenous decision, so it was necessary to declare its inadmissibility. b) The material scope is not fulfilled. |

| Abstract | Analysis |
|---|---|
| The indigenous jurisdiction resolved a land conflict between community members within its territory. The party that lost the process initiated a criminal action for dispossession against the indigenous authorities and the party that won the indigenous process. For this reason, the indigenous authorities claimed the competence, arguing that the indigenous jurisdiction had already | The Court's decision made the indigenous jurisdiction effective by respecting the legal limits. Although the purpose of the indigenous jurisdiction was not to decide on the criminal dispossession dispute but to extinguish that process, it should be noted that: a) The indigenous jurisdiction has the competence to resolve the criminal dispute. b) The criminal claim of the losing |

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| resolved the dispute and that the ordinary jurisdiction cannot review it.<br>The Court decided in favor of the indigenous jurisdiction after recognizing that the three areas of validity of its jurisdiction concurred. Furthermore, the Court clarified that the decision of the indigenous jurisdiction that resolved the land dispute is a precedent and that the jurisdiction is granted to the indigenous jurisdiction to resolve the criminal dispute. The dissenting vote, as stated, specified that the purpose of the indigenous claim was not to claim the competence to resolve the criminal dispute but to respect and not modify their previous indigenous decision, for which it was necessary to declare its inadmissibility. | party in the indigenous process had the illegal purpose of criminalizing the exercise of indigenous jurisdiction and, indirectly, of modifying the indigenous resolution. It shows that the ordinary jurisdiction acted in violation of the cooperation and coordination to which it is obliged by accepting the criminal complaint and rejecting the indigenous jurisdiction's competence request.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the criminal claimant because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 27/4/2018 | 0153/2018-S4 | PCJ | Fourth specialized chamber | René Yván Espada Navía | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 20877-2017-42-AAC | La Paz | Criminal. Severe and minor injuries |

| Indigenous people: |
|---|
| Comunidad de Tacachira |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
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| Abstract | Analysis |
|---|---|
| In a criminal proceeding before ordinary jurisdiction for severe and minor injuries, the defendant filed an objection of incompetence for the indigenous jurisdiction of the community to resolve the dispute. The judge accepted this request, and the appeal court confirmed it. However, the Amparo claimant argued that these decisions violated the rights of the natural judge and due process, given that the community does not have recognized legal personality and does not have indigenous authorities.<br>The PCC decided against the Amparo claimant because a) it did not sufficiently justify the violation of the rights claimed and b) the decision of the appeal court respected constitutional rights. | In a criminal proceeding before ordinary jurisdiction for severe and minor injuries, the defendant filed an objection of incompetence for the indigenous jurisdiction of the community to resolve the dispute. The judge accepted this request, and the appeal court confirmed it. However, the Amparo claimant argued that these decisions violated the rights of the natural judge and due process, given that the community does not have recognized legal personality and does not have indigenous authorities.<br>The PCC decided against the Amparo claimant because a) it did not sufficiently justify the violation of the rights claimed and b) the decision of the appeal court respected constitutional rights. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 30/4/2018 | 0153/2018-S2 | PCJ | Second chamber | Carlos Alberto Calderón Medrano | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 21279-2017-43-AAC | Potosí | Agrarian. Land division or distribution for hereditary succession |

| Indigenous people: |
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| Cala Cala Ayllu |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The heirs of a community member were notified with the decision that their land became the property of the community, on the grounds that supposedly the true owner would be a person who died without heirs. For this reason, the heirs claimed the violation of their rights to due process and defense.<br>The Court decided in favor of the amparo claimants and ordered a) that the resolution of the indigenous jurisdiction be annulled, and b) the indigenous jurisdiction carry out due process and issue a new resolution. | The Court rendered indigenous jurisdiccion effective since it respected the legal limits and ordered that the indigenous jurisdiction itself be the one that, complying with due process, resolves the dispute. As a consequence, the PCC has not appropriated the conflict and has allowed the indigenous jurisdiction to resolve it.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (accepting and claiming the case) since they acted within indigenous jurisdictional competencies. It is noted that the heris claimed the violation of their rights and did not claim rejecting the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 21/5/2018 | 0206/2018-S1 | PCJ | First chamber | Karem Lorena Gallardo Sejas | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 21953-2017-44-AAC | Cochabamba | Water supply interruption |

| Indigenous people: |
|---|
| Churu de Mizque community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| Through a community meeting, the indigenous jurisdiction decided to cut the water service to a family of community members because they did | In Bolivia, water service cuts are only allowed to water companies due to the unfulfillment of payment for the service and are prohibited as a sanction. Even though the PCC allegedly recognized the exercise of the indigenous jurisdiction |

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| not provide community work to carry out the water infrastructure and because they did not pay for the water service. The Amparo claimants denounced that de facto measures were taken by cutting off their water and violating their right to due process. The Court decided that the community did not carry out de facto measures because it adopted and executed the decision in the exercise of its indigenous jurisdiction. However, the Court ordered the immediate restitution of the water service to the family as it is a fundamental right linked to life. | and refused to understand its actions as de facto measures, it decided on the contrary. Since the indigenous community could be considered as a water company in the case (they manage the water provision, service and distribution through collective efforts), the Court's decision rendered the indigenous jurisdiction ineffective because it annulled its decision (to not share the community's water with the non-compliant community member) and excluded its competence to resolve the case.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the defendants (sanctioned family) because they rejected the indigenous jurisdiction's decision. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 21/5/2018 | 0211/2018-S4 | PCJ | Fourth specialized chamber | Gonzalo Miguel Hurtado Zamorano | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 22025-2017-45-AAC | Potosí | Criminal. Severe and minor injuries |

| Indigenous people: |
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| Coroma Nación Originaria Campesino |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| In a criminal proceeding for severe and minor injuries, the indigenous authorities claimed competence to resolve the dispute. The judge of the ordinary jurisdiction processed this claim as an ordinary incident, not as a constitutional procedure, and rejected the claim of jurisdiction after the deadline. However, before the appeal of this decision, the court of appeal decided that the jurisdiction corresponds to the indigenous jurisdiction. The criminal complaining party claimed Amparo against this last decision asking that it be invalidated and that the process be kept in the ordinary jurisdiction, arguing that the right to the natural judge (which allegedly is the ordinary jurisdiction) was violated.<br>The PCC declared that it granted protection to the complaining party of Amparo. The Court decided that the right of the natural judge was violated because, given the rejection of the claim of jurisdiction by the ordinary judge, the only one that can decide the conflict of jurisdiction between ordinary and indigenous jurisdictions is the PCC in a constitutional process. Consequently, the PCC annulled the appeals court's decision and ordered that the procedure be complied with, that is, the case be referred to the PCC to decide which jurisdiction corresponds to the jurisdiction to resolve the criminal dispute on severe and minor injuries. The Court also stated that the right of indigenous peoples to claim their jurisdiction was violated through disregarding due process. | Paradoxically, the PCC granted protection to the complaining party of Amparo contrary to its interests. While the complaining party considered the ordinary jurisdiction a natural judge to decide the criminal dispute, the Court understood that it is the natural judge to decide the conflict of jurisdictions. In reality, the Court did not agree with the complaining party of Amparo, as manifested in its decision. Instead, it corrected the procedural mistake to decide the case through a future constitutional judgment. Although the Court revoked the appeal decision that gave the competence to the indigenous jurisdiction, its decision rendered indigenous jurisdiction effective since a) it protected the competence of indigenous jurisdiction and its right to claim it, b) a legal process will be applied to decide the competence claim, and b) it will be the Court that decides the case. However, the PCC could directly resolve the jurisdiction dispute, as it did in other cases.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the criminal claimant because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 22/5/2018 | 0018/2018 | PCJ | Plenary chamber | Gonzalo Miguel Hurtado Zamorano | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 20766-2017-42-CCJ | Pando | Agrarian. Land dispute |

| Indigenous people: |
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| Bella Flor Union Subcentral |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| 1. Karem Lorena Gallardo Sejas<br>2. Carlos Alberto Calderón Medrano<br>3. René Yván Espada Navía | Although there is res judicata in the agri-environmental process, previously, the indigenous jurisdiction had already resolved the controversy, and this indigenous decision was not taken into account. Consequently, within the framework of egalitarian legal pluralism (equality of jurisdictions) and that it is illegal to revise indigenous judgments, it was necessary to enter the merits of the case and analyze the indigenous decision before declaring the indigenous claim of competence inadmissible (the claim of jurisdiction was declared inadmissible because it was filed after the agri-environmental jurisdiction achieved a final judgment). |

| Abstract | Analysis |
|---|---|
| The indigenous jurisdiction resolved a land conflict among its community members. Later, an indigenous authority filed a lawsuit in an agri-environmental process requesting to regain possession of the land due to its misuse by the community members. This agri-environmental | Although the dissenting votes maintain that there was already a resolution of the conflict by the indigenous jurisdiction and that the decision of the Court would be modifying it, the truth is, as the Court declared it, that the agri-environmental process decided a different problem than the one resolved by the indigenous jurisdiction. |

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| process concluded with a res judicata resolution. The losing party of the agri-environmental process asked his indigenous authorities to claim the competence to resolve the dispute.<br>The Court decided against the indigenous jurisdiction by declaring the claim inadmissible without entering to resolve its merits. It argued that due to the principles of progressivity and the best standard of jurisprudence, the opportunity principle is inapplicable, and the indigenous jurisdiction can claim the competence at any time. However, when there is res judicata, it is no longer possible for the indigenous jurisdiction to claim it since the process has already concluded and cannot be modified. | On the other hand, the PCC decided to follow the jurisprudential line that annulled the opportunity principle. Thus, although the rejection of the indigenous jurisdiction's claim could be understood as applying the opportunity principle, it seems plausible to understand that this is not the case, given that a) the process had already concluded with a final judgment (res judicata), there is no longer a dispute that a jurisdiction could claim to resolve. b) Furthermore, it is not legally feasible to modify judgments passed as res judicata (with some exceptions). Thus, the Court legally declared the indigenous jurisdiction's claim inadmissible.<br>All things considered, even though the PCC favored the agri-environmental jurisdiction by respecting legal limits, the decision made effective the indigenous jurisdiction by establishing the precedent of the inapplicability of the illegal opportunity principle that justified disregarding the law and rendering the indigenous jurisdiction ineffective in many cases before. Moreover, the parties rendered the indigenous jurisdiction ineffective since they preferred the formal jurisdiction to resolve their dispute despite the material, personal, and territorial validity areas concurred. The indigenous jurisdiction was also ineffective in claiming the competence to decide the case but effective in accepting to resolve it. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 19/6/2018 | 0022/2018 | PCJ | Plenary chamber | Gonzalo Miguel Hurtado Zamorano | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 20770-2017-42-CCJ | Oruro | Agrarian. Land dispute |

**Indigenous people:**

Jach'a Karangas (Apu Mallku of Aransaya representing Ayllu Aymarani of Totora Marka)

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| In an agri-environmental proceeding on land possession, JK's Apu Mallku claimed jurisdiction to resolve the dispute at the verbal request of the defendant (community member termed wawaq'allo). He argued that the three validity areas concur as the parties are community members and the matter regards a collective land distribution within the community.<br>The lower-ranking judge rejected this request because a) he considered that he has the competence under the law, b) everyone has the right to claim before any jurisdiction, and c) the parties to the process would have tacitly accepted agri-environmental jurisdiction.<br>Interestingly, at the beginning of the agri-environmental process (see LRFJ.AE.Curahuara de Carangas 2017.2019.012), the judge requested INRA (National Institute of Agrarian Reform) to certify the property's quality (collective or individual) to accept or reject it. Surprisingly, the judge accepted the case, although INRA certified the land was part of the collective indigenous property. Furthermore, although the PCC notified this judge about the conflict of competencies promoted by Apu Mallku (August 3, 2017), a) the judge continued the process, b) decided the dispute in favor of the plaintiffs (August 21, 2017), c) which in turn was appealed and confirmed by the Agri-environmental Court (2018).<br>The PCC decided in favor of the indigenous jurisdiction arguing that the three validity areas concur since the parties are members of the community (personal validity area), it is a dispute over the distribution and possession of collective lands within the indigenous people (material validity area) and the lands are in JK (territorial validity area). Additionally, it held that the action of the Jurisdictional Competency Dispute suspended the process and that all actions subsequently taken in the agri-environmental jurisdiction are null and void. | The PCC made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework.<br>The case is interesting because the PCC expressly modified the case-law established by case 0078/2017 (that decided to maintain the possession dispute process in the agri-environmental jurisdiction by arguing that a) the agrarian laws (of 1996 and 2006) establish the competence in favor of the agrarian jurisdiction to resolve disputes over land possession, and that b) it is not about internal redistribution of lands in a community, but possessory actions). The PCC defined that the laws prior to the 2009 Constitution and the JDL that define the competence of the jurisdictions must be interpreted in accordance with the latter. As a result, it established that the civil and agri-environmental possession actions 'should be equated to the internal distribution of land' provided for by the JDL as exclusive competence of the indigenous jurisdiction, in a broad and comprehensive sense. Thus, the indigenous peoples have full authority to redistribute and divide collective lands according to their need and usefulness and protect and decide on possession disputes. Case 0035/2019 followed this position.<br>The case demonstrates indigenous jurisdiction to be effective regarding the defendants and the indigenous jurisdiction indicators since both respected indigenous jurisdictional competencies. On the contrary, the claimants, the lower-ranking judge and the Agri-environmental Court disregarded the limits defined by law making indigenous jurisdiction ineffective. In the antecedents of the agri-environmental case (LRFJ.AE.Curahuara de Carangas 2017.2019.012), the defendants' actions were deemed ineffective due to their acceptance of the agri-environmental jurisdiction. However, their actions were effective within the Jurisdictional competency dispute context since the defendants requested their indigenous authority to claim the competence. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 26/6/2018 | 0023/2018 | PCJ | Plenary chamber | Karem Lorena Gallardo Sejas | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 21760-2017-44-CCJ | Chuquisaca | Criminal. Disobedience to authority and home search |

| Indigenous people: | |
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| Qhara Qhara indigenous people (Payacullo San Lucas Marka, Cantu Yucasa Ayllu, Pututaca community) | |
| **Magistrate/s** | **Dissenting vote's opinion** |
| 1. Carlos Alberto Calderón Medrano<br>2. Georgina Amusquivar Moller | 1. In this case, the scope of material validity of the indigenous jurisdiction is not fulfilled because a) Law 477 of 30 December 2013 on Land Dispossession [Avasallamiento] and Traffic provides that the criminal and agri-environmental jurisdictions have the competence to resolve dispossession [avasallamiento] disputes. b) The JDL in its art. 10.II.b establishes that the indigenous jurisdiction will not have jurisdiction in cases where the Constitution and the law exclude its jurisdiction<br><br>2. *The Court's decision has stated that there is a dissenting vote of some magistrates. However, the opinion does not appear in the files of the Court. |
| **Abstract** | **Analysis** |
| In a criminal proceeding for disobedience to authority and home search, the indigenous authorities claimed the competence to resolve the dispute. The Court decided in favor of indigenous jurisdiction because its three areas of territorial, personal and material validity were fulfilled. | The Court's decision made the indigenous jurisdiction effective because it respected the legal boundaries between jurisdictions. Additionally, it should be noted that the Court recommended: a) That the indigenous jurisdiction complies with due process and the impartiality principle when deciding the dispute. In this way, it overcomes the illegal practice of rejecting indigenous jurisdiction under the sole argument that the indigenous jurisdiction may violate the impartiality principle. b) That the ordinary jurisdiction should not interfere with the indigenous jurisdiction. Consequently, the Court respected the exercise of indigenous jurisdiction in both cases.<br>Regarding the dissenting vote's argument that indigenous jurisdiction lacks the competence to resolve disputes on dispossession crimes, it should be noted that: a) The indigenous jurisdiction can decide on lands distribution and possession conflicts within indigenous collective lands. b) Then, the competence of ordinary and agri-environmental jurisdictions defined by Law 477 on Land Dispossession and Land Traffic only applies when a non-indigenous people's member commits the act. In this case, the dispute cannot be resolved by the indigenous jurisdiction because the scope of personal validity does not concur.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 17/7/2018 | 0303/2018-S3 | PCJ | Third Chamber | Brígida Celia Vargas Barañado | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 22592-2018-46-AAC | Santa Cruz | Agrarian. Land dispute |

| Indigenous people: | |
|---|---|
| Guaraní “20 de junio Las Taperas II” community | |
| **Magistrate/s** | **Dissenting vote's opinion** |
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| Abstract | Analysis |
|---|---|
| Through criminal, agri-environmental, and administrative proceedings before the INRA, the Amparo claimant asked to be identified and recognized as the landowner that the indigenous community claims to be theirs. He also requested to regain his land possession, which occurred in executing an agri-environmental sentence and the public force support. For its part, the community, through its indigenous jurisdiction, ordered that a) the ordinary jurisdiction release the detained indigenous people, b) that INRA annuls its resolution to delimit the lands owned by the plaintiff of Amparo, and c) sanctioned the claimant of Amparo with a fine in money, without justifying the reasons. The Amparo claimant argued that the indigenous jurisdiction does not have the competence to decide his rights because none of the areas of validity are met. Therefore his right to due process and the natural judge were violated.<br>The Court decided in favor of the Amparo claimant because: a) The indigenous jurisdiction does not have the competence, as none of the JDL's areas of validity are fulfilled: i) the Amparo claimant is not indigenous and did not voluntarily submit to the indigenous jurisdiction (personal validity area); ii) the claimant's lands are not in the indigenous territory (territorial validity area), and iii) it is an agri-environmental process that does not deal with the internal distribution of collective lands (material validity area). b) The indigenous jurisdiction cannot invade the competences of the ordinary and agri-environmental jurisdictions, nor the administrative decisions of INRA. | The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction’s effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 1/8/2018 | 0028/2018 | PCJ | Plenary chamber | Carlos Alberto Calderón Medrano | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 22726-2018-46-CCJ | Potosí | Criminal. Attempted homicide, severe and minor injuries, and threats |

| Indigenous people: | |
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| Cullpa Ayllu | |
| **Magistrate/s** | **Dissenting vote's opinion** |
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| Abstract | Analysis |
|---|---|
| In a criminal proceeding for severe and minor injuries, threats, and attempted homicide, arising from the dispute over natural resources, the indigenous authorities claimed competence to resolve the dispute.<br>The Court decided in favor of the indigenous jurisdiction after verifying that the three areas of personal, territorial, and material validity were fulfilled. | The Court made the indigenous jurisdiction effective by respecting the legal limits in its decision. When deciding on the scope of material validity, the Court did not analyze the crime of attempted homicide, limiting itself to stating that it is not legally excluded from indigenous jurisdiction. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the criminal claimant because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 3/8/2018 | 0065/2018 | PCD | Plenary chamber | Gonzalo Miguel Hurtado Zamorano | Prior control of the constitutionality of an autonomous statute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 07860-2014-16-CEA | Oruro | Prior control of the constitutionality of an autonomous statute |

| Indigenous people: |
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| El Choro, Autonomous Municipal Government |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The PCC's decision was rendered within the process that must be carried out before the Court to verify the compatibility of the Autonomous Statute draft of the Municipal Government of El Choro with the Constitution. Article 106 of the project established that the Autonomous Government will promote indigenous justice within the framework of the Constitution and JDL and respect for life. The Court declared the compatibility of this article. | The Court has recognized the existence of indigenous jurisdiction within constitutional and legal limits, consequently, has made it effective. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 9/8/2018 | 0073/2018 | PCD | Fourth specialized chamber | Gonzalo Miguel Hurtado Zamorano | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 22502-2018-46-CAI | Potosí | Indigenous sanction. Expulsion for environmental damage and indigenous authorities discrimination |

| Indigenous people: |
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| Santa Isabel Jatun Ayllu - Sud Lípez |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The indigenous authorities of the community consulted the Court if the sanction of expulsion without compensation that they gave to a mining entrepreneur is in accordance with the Bolivian Constitution and laws for contempt and discrimination against the authorities and indigenous self-government and for causing damage to fauna and the environment. The Court decided in favor of the indigenous jurisdiction because: a) The three validity areas of the indigenous jurisdiction were complied with. Furthermore, although the expelled is not a community member, he maintained a close relationship with it and signed a commitment in 1981 with it, '[c]onstituting a tacit manifestation of the personal bond with this indigenous group.' Moreover, the events occurred in indigenous territory, and the community expressly recognizes the expulsion and its prosecution, even though it is an extreme measure. b) The community protects the collective against the individual and foreign (technical field report). c) The community exhausted all the instances to resolve the dispute and had to decide the expulsion as the last measure to regain its balance and harmony, so the sanction is proportional. d) The indigenous jurisdiction decided the sanction of expulsion respecting indigenous procedures, worldview, and values. | The Court made the indigenous jurisdiction more effective by deciding that the indigenous jurisdiction can expel a person who does not belong to the community because there is an implicit and voluntary personal bond emerging from an agreement. This argument is based on case 0026/2013. However, it is stressed that the power of the communities to apply their expulsion sanction is expressly recognized by the PCC as long as the following conditions are met: it is provided for in the community's indigenous law, indigenous jurisdiction follows due process, indigenous values, and the decision is proportional and necessary. Finally, since claimants and the indigenous jurisdiction acted on a case involving a third party, they rendered indigenous jurisdiction more effective, although the case is irrelevant to the defendant (none indigenous member). |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 17/8/2018 | 0433/2018-S1 | PCJ | First chamber | Karem Lorena Gallardo Sejas | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 23069-2018-47-AAC | La Paz | Indigenous sanction. Expulsion for physical and verbal attacks, disrespect for indigenous authorities and their decisions, and immoral acts |

| Indigenous people: |
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| Humaruta Baja community |

| Magistrate/s | Dissenting vote's opinion |
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|---|---|
| Georgina Amusquivar Moller | The indigenous community carried out de facto measures since the police were not summoned to carry out the indigenous decision. Consequently, the Court should have protected the claimants. |

| Abstract | Analysis |
|---|---|
| The indigenous jurisdiction decided to expel a community member and his family from the community for the constant physical and verbal aggressions committed over the years, the failure to comply with the authorities' decisions, the lack of respect for authorities, elderly and children, and immoral acts. The expelled community member claimed in the Amparo the violation of his rights and those of his family.<br>The Court decided that, although the disputes must be resolved within the community by the indigenous jurisdiction, the expulsion decision was adopted without the expelled person or his family being present in the assembly, despite the fact that they were called to participate in it. Thus, the right to defense of the community member and his family was violated. Accordingly, the Court ordered the indigenous jurisdiction to resolve the case respecting due process and annulled the expulsion decision. | Although the Amparo claimant and his family were not present at the assembly to defend themselves, their failure to attend the assembly was voluntary because they were summoned and knew of the process to decide their expulsion. Moreover, according to antecedents, the indigenous jurisdiction had already decided a few years before to expel these people without carrying out this decision for unknown reasons.<br>To annul the expulsion sanction, the Court argued that the indigenous jurisdiction did not explain (in writing) why it decided the expulsion in the absence of those sanctioned. However, the Court could request its Decolonization unit an expert opinion and fieldwork to learn the reasons and context of the indigenous decision in greater detail, which was adopted by the community in a mainly oral process. Both the community and the sanctioned would know the reasons for the sanction, so it would be excessive to require the formality of explaining it in writing. However, the Court recognized that the indigenous jurisdiction must decide the dispute despite this situation.<br>Consequently, although the Court annulled the indigenous jurisdiction's expulsion sanction under debatable reasons, it ordered the community to decide on the matter again. Then, considering the indigenous jurisdiction still has the possibility to decide the case, the Court rendered indigenous jurisdiction effective. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the defendant because he rejected the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 29/8/2018 | 0031/2018 | PCJ | Plenary chamber | Gonzalo Miguel Hurtado Zamorano | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 21557-2017-44-CCJ | La Paz | Criminal. Criminal action for land dispossession |

| Indigenous people: |
|---|
| Chinchaya community |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| 1. Julia Elizabeth Cornejo Gallardo<br>2. Petronilo Flores Condori | 1. a) Applying the highest jurisprudential standards, the scope of personal validity was complied with since the criminal claimants accepted the indigenous jurisdiction by identifying themselves as landowners in the community.<br>b) The Court should have carried out fieldwork to grasp reality with greater precision and decide whether indigenous jurisdiction's validity areas were met.<br>2. The three areas of validity of the indigenous jurisdiction were fulfilled. Regarding the personal sphere, criminal claimants accepted the indigenous jurisdiction by identifying themselves as landowners in the community. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for land dispossession against the indigenous land authority, the latter claimed jurisdiction for the indigenous jurisdiction to resolve the dispute.<br>The Court decided in favor of the ordinary jurisdiction since the scope of personal validity was not fulfilled (both the co-defendant and the criminal complainants' domiciles are not in the community). The Court decided that it was unnecessary to enter to analyze whether the material and territorial areas were met. | The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 11/9/2018 | 0508/2018-S4 | PCJ | Fourth specialized chamber | Gonzalo Miguel Hurtado Zamorano | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 21367-2017-43-AAC | Oruro | Indigenous sanction. Land dispossession and force communal labor |

| Indigenous people: |
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| Jatun Killaka Asanajaqi Jakisa, Nación Originaria (Pampa Aullagas Marka, Sacatiri Ayllyu) |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| After the ordinary criminal jurisdiction declined competence in favor of the indigenous jurisdiction, from a process for minor and severe injuries arising from a land dispute, the latter decided the dispute by rejecting the complaint and sanctioning the claimants with forced communal labor. Additionally, the claimants also denounced the dispossession of their lands and de facto measures, since in a Jach'a Cabildo the community authorities authorized the community members to sow on the lands of the Amparo denouncers. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case and validating its decisions within the legal framework.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and |

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| The PCC decided that: a) The indigenous decision must be respected since i) it complied with due process and ii) it became res judicata after the complainants did not request its modification within the term established by the indigenous authorities. b) There was no dispossession because: i) according to the Technical Field Report, it is a collective property of the indigenous people on which the authorities and the community can freely decide their redistribution and uses. ii) Claimants do not have private property and must submit to community decisions. iii) There were no de facto measures because it is an indigenous decision of the indigenous jurisdiction. | the indigenous jurisdiction indicators since they accepted the indigenous jurisdiction. It is noted that the sanctioned personas by the indigenous process claimed the violation of their individual rights and did not reject the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 24/9/2018 | 0036/2018 | PCJ | Plenary chamber | Brígida Celia Vargas Barañado | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 16295-2016-33-CCJ | La Paz | Criminal. Attack against the freedom of work, criminal association, defamation, extortion, public instigation to commit a crime, sabotage, and threats |

**Indigenous people:**

Cahua Chico, Agrarian-peasant Union of Zongo

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| 1. Karem Lorena Gallardo Sejas<br>2. Georgina Amusquivar Moller | 1. a) The expelled mining entrepreneur is no longer part of the community, so the area of personal validity is not fulfilled. b) The entire community of Zongo is biased against the mining entrepreneur, so there will be no impartial due process. c) The jurisprudential line that uniformly recognized the competence of the ordinary jurisdiction in cases of possible impartiality of the indigenous jurisdiction is discontinued.<br>2. The Court should have analyzed the personal, material, and territorial validity areas instead of applying the case 0874/2014 by analogy. |

| Abstract | Analysis |
|---|---|
| Under the precedents of 0006/2013 and 0874/2014, the indigenous authorities claimed competence to resolve a new criminal process (third process, for the crimes of sabotage, extortion, attack against the freedom of work, public instigation to commit a crime, criminal association, threats, and defamation) that the mining businessman (who was sanctioned with expulsion from the community) denounced against the indigenous authorities.<br>The Court decided in favor of indigenous jurisdiction and to apply the binding precedent provided by 0874/2014, using the same arguments. Additionally, the Court stated that, even though those criminally denounced are indigenous authorities, the principle of impartiality does not prevent the recognition of the competence in favor of indigenous jurisdiction.<br>Consequently, the Court ordered that indigenous authorities, other than those denounced, resolve the dispute to preserve due process and impartiality. | The Court made the indigenous jurisdiction more effective following the same reasoning referred to in 0874/2014. Additionally, it is emphasized that the Court established: a) That the possible violation of the principle of impartiality does not imply denying the competence of the indigenous jurisdiction. b) That indigenous law and jurisdiction are not provided solely in its written indigenous regulations. In both cases, the Court recognizes the effectiveness of the indigenous jurisdiction. The case is irrelevant for the indicator of the lower-ranking court because, although its decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected.<br>Finally, since indigenous jurisdiction decided and claimed a case involving a third party, it rendered indigenous jurisdiction more effective, and, although the case is irrelevant to the claimant (none indigenous member), the defendants made the indigenous jurisdiction more effective by rejecting the ordinary jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 15/10/2018 | 0647/2018-S2 | PCJ | Second chamber | Carlos Alberto Calderón Medrano | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 23867-2018-48-AAC | La Paz | Indigenous sanction. Expulsion for adultery |

**Indigenous people:**

San Antonio Alto Italaque community, La Asunta, Sud Yungas

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| The community decided to expel one of its members since he had committed 'destruction of home' on two occasions for infidelity. The expelled person alleged violation of due process because he was not allowed to defend himself and challenged the indigenous decision.<br>The Court decided to favor the Amparo claimant by applying the inter and intracultural interpretation of the paradigm of living well developed by SCP 1422/2012. Consequently, it argued that the indigenous decision was not harmonious: a) with constitutional values, because it supposedly does not preserve the collective interest (the Court does not explain why), b) with the community's worldview, for the same reason, c ) with their own indigenous | Although there was a violation of due process because the indigenous jurisdiction did not allow the expelled to defend himself, the Court annulled the expulsion decision for reasons not duly supported. On the other hand, the inter and intracultural interpretation of the paradigm of living well developed by SCP 1422/2012 is a broad and imprecise instrument, not provided by law that allows the Court to decide in favor or against, according to its subjective opinions and not following the legal framework of the indigenous jurisdiction's exercise. The PCC limits itself to declaring the lack of proportionality or the harmony among principles or values, but it does not explain the reasons supporting its decision. Moreover, in this case, the PCC overrode the indigenous internal values on fidelity and family protection when it defined that the indigenous decision violated the indigenous worldview and lacked proportion since the community expressed precisely the opposite.<br>Consequently, the Court made indigenous jurisdiction ineffective. |

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|---|---|
| procedures (lack of due process), and finally d) the decision was not proportional and necessary since other sanctions could be imposed (the Court does not justify which and why). | Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since they accepted the indigenous jurisdiction. It is noted that the sanctioned man by the indigenous process claimed the violation of his individual rights and did not reject the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 22/10/2018 | 0041/2018 | PCJ | Plenary chamber | Georgina Amusquivar Moller | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 19758-2017-40-CCJ | Oruro | Criminal. Severe and minor injuries |

**Indigenous people:**

Jatun Killaka Asanajaqi Jakisa, Nación Originaria (Callapa Tercero Ayllu and Callapa Arriba Ayllu)

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| 1. Carlos Alberto Calderón Medrano<br>2. Brígida Celia Vargas Barañado | 1. a) Opportunity principle should have been applied and b) impartiality principle: the authorities advanced their criteria for deciding the dispute when claiming jurisdiction, so they are biased.<br>2. Opportunity principle should have been applied. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for severe and minor injuries committed against a woman from the community, the indigenous authority claimed the competence to resolve the dispute.<br>The Court, a) applying the principle of progressiveness in favor of indigenous peoples, declared the principle of opportunity inapplicable, and b) recognizing the concurrence of the three validity areas of the indigenous jurisdiction, decided in its favor. | The Court did not consider that the physical attacks were against a woman and that the JDL excludes the indigenous jurisdiction from deciding crimes that threaten the integrity of women and children. Consequently, being a criminal proceeding for severe and minor injuries committed against a woman, the Court had to declare the ordinary jurisdiction competent. Consequently, the Court's decision made the indigenous jurisdiction more effective. However, on the other hand, the Court made the indigenous jurisdiction effective by declaring the principle of opportunity inapplicable and following the jurisprudential line most favorable to the indigenous jurisdiction.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be more effective regarding the indigenous jurisdiction indicators since it claimed the case outside its competence, and the criminal defendant because he requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction less effective by legally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 22/10/2018 | 0040/2018 | PCJ | Plenary chamber | Orlando Ceballos Acuña | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 23468-2018-47-CCJ | Potosí | Criminal. Severe and minor injuries |

**Indigenous people:**

Coroma Nación Originaria Campesino

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| 1. Karem Lorena Gallardo Sejas<br>2. Carlos Alberto Calderón Medrano<br>3. Brígida Celia Vargas Barañado | 1. The Court should have analyzed if the indigenous jurisdiction had already known and decided the case.<br>2 and 3. The opportunity principle should be applied after the conclusion of the first criminal procedural stage. Furthermore, claiming jurisdiction to resolve a dispute should not be left to the discretion of the claimant. |

| Abstract | Analysis |
|---|---|
| The indigenous authority claimed the competence to resolve the dispute in a criminal proceeding for severe and minor injuries between community members arising from a land dispute.<br>The Court decided in favor of the indigenous jurisdiction, considering that a) the three areas of territorial, material, and personal validity of the indigenous jurisdiction were fulfilled and b) that the principle of opportunity does not apply. However, two magistrates issued the clarifying vote stating that the principle of opportunity should not be applied when deciding a competence dispute except when there is already a final judgment (res judicata). In that case, there is no dispute to be resolved. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework and affirming the inapplicability of the opportunity principle. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the criminal claimant because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 30/10/2018 | 0721/2018-S4 | PCJ | Fourth specialized chamber | Gonzalo Miguel Hurtado Zamorano | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 23870-2018-48-AAC | Oruro | Agrarian. Land dispute.Right to request |

**Indigenous people:**

Jach'a Karangas (Ayllu Sullka Salle, Turco Marka)

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| The Amparo claimants demonstrated that their various written requests for photocopies and information addressed to the indigenous Ayllu authorities were not answered, violating their right to request. In the same way, they demanded the PCC decide a land dispute not addressed by the indigenous jurisdiction since 1986 that they have with another neighboring family, which also involved damages for their community expulsion. The indigenous authorities and the neighboring family, as Amparo defendants, argued that the the indigenous jurisdiction shall decide the dispute and not the PCC.<br>The Court confirmed the Court of Guaratees' decision, ordering a) that the claimants' requests be responded to within a reasonable time, either positively or negatively to their interests, and b) that the indigenous jurisdiction must carry out the land conflict's settlement or decide the case in accordance with their laws. | The Court and the lower-ranking court (Court of Guarantees) respected the competencies of the indigenous jurisdiction within the legal framework, thus making it effective. The Amparo defendants also made the indigenous jurisdiction effective by arguing the PCC's incompetence in deciding a dispute that belongs to the indigenous jurisdiction. On the contrary, the indigenous jurisdiction was rendered ineffective a) by the Amparo claimants (also prior claimants in the indigenous process), when they illegally requested the PCC to decide their conflict instead of resorting to their higher-ranking indigenous authorities, and b) by the indigenous jurisdiction, when it omitted to respond and resolve the case. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 30/10/2018 | 0722/2018-S4 | PCJ | Fourth specialized chamber | René Yván Espada Navía | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 23807-2018-48-AAC | Pando | Indigenous sanction. Dismissal of authority for incorrect or unethical behavior |

| Indigenous people: |
|---|
| Palestina peasant community, Puerto Rico municipality, Manuripi province |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| The indigenous jurisdiction decided to dismiss an indigenous union leader. In turn, he claimed Amparo since he felt his rights to due process (natural judge and defense) were violated. The Court decided that the indigenous jurisdiction has other higher instances that can resolve the claim and that supplying them through the constitutional jurisdiction would violate the right to exercise indigenous jurisdiction. To this end, the Court modulated the understanding of the 'living well paradigm test,' including that prior to its application, it must be analyzed whether the indigenous jurisdiction, within the framework of its organization and institutions, has other superior instances to decide the conflict and that, if so, the constitutional jurisdiction cannot decide. | The Court recognized the principle of subsidiarity provided by the Constitution when it modulated the paradigm of living well. Independently of the terms, the modulation respects the right to exercise indigenous jurisdiction, rendering it effective within legal limits.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant and the indigenous jurisdiction indicators (by accepting and deciding the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the defendant (Amparo claimant) because he rejected the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 30/10/2018 | 0677/2018-S1 | PCJ | First chamber | Karem Lorena Gallardo Sejas | Popular Action |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 23977-2018-48-AP | La Paz | Indigenous sanction. Expulsion for affecting cultural values and identity (freedom of worship) |

| Indigenous people: |
|---|
| Pueblo Leco de Apolo, Indigenous Central (CIPLA) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Georgina Amusquivar Moller | The case belongs to protecting individual rights through Amparo rather than collective rights through the Popular Action. Those are individual and homogeneous rights and interests of a circumstantial group of persons. |

| Abstract | Analysis |
|---|---|
| After the antecedents of 1161/2017-S2, the community decided to expel a group of people who changed their religion, arguing betrayal of the community for joining another, disrespecting the CIPLA organization, and non-compliance with the social function. However, the background of the expulsion was a) the change of religion of this group of people, b) that affected the culture, customs, and cohesion of the community, and that c) the group of expelled decided to affiliate with another community, wanting to affect the lands 'they owned' (although they were the collective property of the community). The community members, outraged by the antecedents, did not wait for the indigenous jurisdiction's term for the expelled to vacate their land. Thus, they destroyed the houses and plantations of these people, | The origin of this indigenous dispute was not on the claimants' freedom of worship but the intolerance and lack of respect for the indigenous people' ways when they were professing their newly adopted religion (1161/2017-S2). In fact, they hindered, challenged, demonized, and tried to change indigenous customs and traditions.<br>The Court did not consider the collective cultural rights of this indigenous people, which it tried to protect with the expulsion decision adopted by its jurisdiction. On the contrary, the Court limited itself to stating that no one can be discriminated against based on religion and that the indigenous jurisdiction acted outside the constitutional and legal limits. It is highlighted that even though the Court did not formally annul the indigenous decision, it was, nonetheless, overruled.<br>On the other hand, to enforce the popular action, without justification and in a forced manner, the PCC considered that the expelled persons are a group in itself and that, as such, it has collective rights. Contrarily, it |

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| attacking and threatening them physically and verbally. Those expelled went to a nearby city and were sheltered in an overcrowded church room with serious financial problems. They demanded the collective right to freely choose and profess religion and their rights to life and heritage, demanding the annulment of the indigenous decision and their complete restoration in the community.<br>The Court decided to favor the expelled, ordering their immediate return to the community. To this end, the Court argued that a) freedom of worship cannot be a valid reason to discriminate against people, b) that it is a collective right that the popular action can directly protect, and c) that the indigenous decision was executed excessively. However, the Court did not enter to elucidate individual rights and did not declare the nullity of the indigenous expulsion decision because the popular action does not have that purpose. | corresponded to understanding the right to freedom of worship as an individual right of this group of people, since they do not constitute a group that is the holder of collective rights. Consequently, the rights of those expelled had to be claimed through an Amparo. Despite this analysis, and considering that the indigenous jurisdiction cannot violate the right to freedom of worship, the case was not on discrimination against such right but the protection of indigenous people's culture. Within the framework of pluralism and tolerance, it corresponded that the indigenous people internally decide the best way of peaceful coexistence through their authorities and community members. In this sense, the Court might misrepresented the case and made the indigenous jurisdiction ineffective by overruling its decision and disregarding the protection of the indigenous people's culture and values within constitutional and legal limits.<br>On the other hand, the case demonstrates indigenous jurisdiction to be effective regarding the claimant and the indigenous jurisdiction indicators since both acted within indigenous competencies, and ineffective concerning the defendants (claimants of the Action for Liberty) since they disregarded the indigenous jurisdiction's exercise of their community by joining another. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 5/11/2018 | 0346/2018-CA | PCO | Admission commission | Admission commission | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 26058-2018-53-CCJ | Potosí | Criminal. Criminal action for land dispossession |

| Indigenous people: |
|---|
| Carangas nation |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
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| Abstract | Analysis |
|---|---|
| The criminal complaining party appealed the decision by which the ordinary jurisdiction accepted to decline powers in favor of the indigenous jurisdiction since it had already decided the dispute. The court of appeal referred the process to the PCC without deciding which is the competent jurisdiction. The PCC established that the judge declined the competence in favor of indigenous jurisdiction and that, consequently, the claim is rejected because there is no conflict of competencies. | The Court and lower-ranking judge made the indigenous jurisdiction effective by recognizing it and validating its decisions within the legal framework. Moreover, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the criminal claimant because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 26/11/2018 | 0046/2018 | PCJ | Plenary chamber | Karem Lorena Gallardo Sejas | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 21423-2017-43-CCJ | La Paz | Criminal. Attempted murder, aggravated robbery, severe and minor injuries, and threats |

| Indigenous people: |
|---|
| Calachaca Agrarian Union (Consejo Amawtico de Justicia) Los Andes Province |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| 1. Carlos Alberto Calderón Medrano<br>2. Petronilo Flores Condori<br>3. Gonzalo Miguel Hurtado Zamorano | 1. The violation of rights emerged from the execution of the indigenous decision and not from the decision of the dispute. Besides, as it affects older adults and minors, the jurisdiction corresponds to the ordinary jurisdiction.<br>2. There are two parallel organizations: the union (recognized by the community members) and the Ayllu Amawtico Council (not recognized by all). Unfortunately, the court's decision does not establish who will be competent, which creates insecurity.<br>3. The decision did not analyze the territorial, personal and material validity areas of the indigenous jurisdiction. As a result, it has not adequately defined to which jurisdiction corresponds the competence. |

| Abstract | Analysis |
|---|---|
| The indigenous authorities claimed competence to resolve the dispute in a criminal proceeding for attempted homicide, trespassing on the home or its premises, severe and minor injuries, robbery, and aggravated robbery. The events occurred because the indigenous jurisdiction decided to recover the traffic through an old road owned and used collectively to collect livestock products, which was blocked and appropriated by a family who bought a land superimposed on this road. When the authorities and indigenous community members carried out the decision, there were clashes and apparently, they committed excesses that were criminally denounced. | The Court made the indigenous jurisdiction effective by legally recognizing its competence to resolve the dispute. The decision clarified that the possible impact on the claimants' constitutional rights should be resolved in an Amparo. The latter, however, does not affect the competence of the indigenous jurisdiction to resolve the dispute. Additionally, although jurisdiction was granted to the same authorities of the indigenous jurisdiction that decided and executed the decision, without considering the principle of impartiality (as explained by the clarifying vote stating that jurisdiction should be given to the superior indigenous authorities), it corresponds to the indigenous jurisdiction decide, within the framework of its self-determination, how to resolve the dispute. |

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|---|---|
| The Court decided in favor of the indigenous jurisdiction: a) without entering to establish the concurrence of its validity areas of competence, b) declaring that the decision of the indigenous jurisdiction cannot be modified or criminalized, c) arguing that in this kind of process it is not feasible to hear and decide about the violation of rights in the execution of the indigenous decision, even if they are of older adults or minors; and d) recommending that the indigenous jurisdiction not violate rights in the execution of its decisions. | Therefore, in case of violation of due process, a claim for Amparo is always possible.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the criminal claimant because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 3/12/2018 | 0093/2018 | PCD | Fourth specialized chamber | Gonzalo Miguel Hurtado Zamorano | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 23911-2018-48-CAI | Tarija | Agrarian. Land dispute |

**Indigenous people:**

Guaraní Indigenous people, Yaku-Igua

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| The indigenous people obtained land titles and decided to take possession of them, removing illegal occupants who are not community members. The indigenous authorities consulted the Court whether this decision is compatible with the Constitution.<br>The Court decided that the consultation was inadmissible because: a) The indigenous authorities did not consult on applying an indigenous rule to a specific case, and b) The administrative and agri-environmental authorities are the only ones competent to comply with land titling. | The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 12/12/2018 | 0048/2018 | PCJ | Plenary chamber | Karem Lorena Gallardo Sejas | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 21761-2017-44-CCJ | La Paz | Criminal. Attempted homicide, aggravated robbery, robbery, severe and minor injuries, and trespassing on the home or its premises |

**Indigenous people:**

Lupaka Qullasuyu Nation (Isla del Sol, Ch'alla Ayllu, Aransaya, Marka Quta, Qhawaña)

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Julia Elizabeth Cornejo Gallardo | The Court should a) decide on the case's merits in favor of the indigenous jurisdiction and b) not declare the claim inadmissible. Although the criminal complaint was rejected in the ordinary jurisdiction, the criminal process can be reopened within a year. As a consequence, it is necessary to give legal certainty to the jurisdictions. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for severe and minor injuries, aggravated robbery, attempted murder, and threats, the indigenous authorities claimed the competence to resolve the dispute. However, before the indigenous authorities presented their claim of jurisdiction, the ordinary jurisdiction rejected the criminal complaint because of the lack of crime evidence. It is stressed that the rejecting decision was not final (res judicata) since the case could be reopened within one year.<br>The Court ruled against the indigenous jurisdiction, manifesting that the claim was inadmissible because it is not possible to resolve a jurisdictional competency dispute if there is no dispute to resolve; i.e., allegedly the case was already closed by the ordinary jurisdiction. | The Court rendered the indigenous jurisdiction ineffective, as its decision disregarded the legal limits. Under the dissenting vote's position, the Court should have analyzed the merits of the case and decided in favor of the indigenous jurisdiction, given that: a) The ordinary process had not concluded with a final decision. b) The indigenous jurisdiction can claim jurisdiction at any time during the process.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 12/12/2018 | 0098/2018 | PCD | Plenary chamber | Karem Lorena Gallardo Sejas | Prior control of the constitutionality of an autonomous statute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 17387-2016-35-CEA | La Paz | Prior control of the constitutionality of an autonomous statute |

**Indigenous people:**

Aucapata

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| In a process of prior control of constitutionality of projects of autonomous statutes or organic charters of autonomous territorial entities, the Court decided that: 'it is not up to the charter to define what types of conflicts will be submitted to indigenous jurisdiction, as the exercise of this jurisdiction must be framed in the areas of personal, material and territorial validity established in art. 191 of the CPE [Constitution], and not only those conflicts that have arisen in rural areas' (III.8.15. Examination of article 22, p.137). | The Court made the indigenous jurisdiction effective, preventing the charter from limiting or determining its jurisdiction. It is also emphasized that the Court clarified that indigenous jurisdiction is not limited to the rural area and that its exercise depends on compliance with the personal, material, and territorial areas of validity established by the Constitution. |

# Relevant Cases of 2019

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 6/2/2019 | 0006/2019 | PCJ | Plenary chamber | Carlos Alberto Calderón Medrano | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 21762-2017-44-CCJ | La Paz | Criminal<br>Severe and minor injuries |

| Indigenous people: |
|---|
| Lupaka Qullasuyu Nation (Isla del Sol, Ch'alla Ayllu, Aransaya, Marka Qutaqawaña Qhawaña) |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for severe and minor injuries, the indigenous authorities claimed the competence from the ordinary jurisdiction to resolve the dispute, in which some indigenous authorities were also denounced. The judge requested a lawyer's signature to resolve the request of the indigenous jurisdiction.<br>The PCC decided in favor of the indigenous jurisdiction, indicating that a) the actions of the indigenous jurisdiction do not require a lawyer because they have the same hierarchy as the ordinary jurisdiction and because they are vulnerable communities, b) the indigenous jurisdiction is competent (the areas of territorial, personal and material validity concur), and c) the conflict of interests to decide the dispute must be resolved by the indigenous jurisdiction, safeguarding the procedural guarantee of impartiality. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework. It is highlighted that a) The procedural guarantee of impartiality was not an obstacle to deciding in favor of the indigenous jurisdiction. The Court recognized the indigenous power to decide on the matter according to its own law and recommended safeguarding the impartiality ordered by the Constitution. b) When admitting the indigenous jurisdiction's request without the lawyers-signature-formality, the PCC recognized an equal hierarchy between jurisdictions. However, the lower-ranking court disregarded the law and rendered the indigenous jurisdiction ineffective.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 14/3/2019 | 0015/2019-S1 | PCJ | First chamber | Georgina Amusquivar Moller | Liberty action |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 24520-2018-50-AL | La Paz | Indigenous sanction. Expulsion for corruption |

| Indigenous people: |
|---|
| Cairoma Sub-Central Union |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| An indigenous union decided to keep the assets of a former indigenous authority and expel him from the lists of its members for corruption when he held a municipality position. These acts of corruption affected the community's prestige so much that the municipality offices were transferred to another community. Furthermore, the expelled demanded the protection of his right to locomotion and life through the action of liberty because the community threatened him with death if he returned to the indigenous territory.<br>The PCC decided in favor of the indigenous jurisdiction because a) the indigenous jurisdiction exercised jurisdiction within its legal framework, b) the community did not expel the claimant from the territory but only removed him from the lists of the union members, and c) there is no evidence that the union threatened the claimant or that his right of movement was prohibited. | Given that under the JDL the indigenous jurisdiction does not have the competence to decide corruption cases, the Court's decision made it more effective. Furthermore, the case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional competencies. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 22/3/2019 | 0016/2019 | PCJ | Plenary chamber | Julia Elizabeth Cornejo Gallardo | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 22506-2018-46-CCJ | La Paz | Criminal. Slander and defamation |

| Indigenous people: |
|---|
| Chillucirca community, Santiago de Huata |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| -- | -- |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for defamation and insults, the indigenous authorities claimed competence to resolve the dispute. The Court decided in favor of the indigenous jurisdiction by verifying the concurrence of its validity areas. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework. On the other hand, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the criminal claimant because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 8/5/2019 | 0023/2019 | PCJ | Plenary chamber | Karem Lorena Gallardo Sejas | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 24473-2018-49-CCJ | Santa Cruz | Criminal. Aggravated robbery, dispossession, fraud, intentional alienation of property without ownership [estelionato], land trafficking, and trespassing on the home or its premises |

| Indigenous people: |
|---|
| Guaraní indigenous people - CIDOB, Guaraní community, El Jorori, afiliated to Guaraní Assembly of the Guaraní indigenous people - CIDOB |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Petronilo Flores Condori | The competency should be given to higher indigenous authorities to avoid partiality in the indigenous decision |

| Abstract | Analysis |
|---|---|
| The indigenous authorities claimed competence to resolve the dispute in a criminal proceeding for dispossession, land trafficking, fraud, trespassing on the home or its premises, selling goods without property, and aggravated robbery. However, it should be clarified that a) the criminal claimants are not members of the community, b) they acquired the lands that are the origin of the dispute in 1992, and c) the lands are within the indigenous territory.<br>The Court decided in favor of the indigenous jurisdiction, arguing that the three validity areas of the indigenous jurisdiction were met. To preserve the guarantee of impartiality, the Court ordered that the indigenous authority criminally denounced should not intervene in the decision. | The Court made the indigenous jurisdiction more effective by granting it the competence to resolve the dispute, despite the fact that personal and material validity areas are not met. In this case, the criminal complaining party does not belong to the community, and the criminal offense of land trafficking does not belong to the indigenous jurisdiction. The Court considered that the purchase of land in the indigenous territory since 1992 is sufficient argument to interpret the tacit consent of the non-community members to submit to indigenous jurisdiction. On the other hand, the Court only declared that the JDL does not exclude these crimes from indigenous jurisdiction regarding the material validity area. The Court recognized the indigenous power to decide on the matter according to its own law and recommended safeguarding the impartiality ordered by the Constitution.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the defendant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies and less and effective concerning the criminal claimant. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 28/5/2019 | 0306/2019-S1 | PCJ | First chamber | Georgina Amusquivar Moller | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 26502-2018-54-AAC | Chuquisaca | Indigenous sanction. Expulsion for land dispute and sorcery |

| Indigenous people: |
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| Mosoj Llajta peasant community |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| Amparo claimant was expelled from the community for practicing witchcraft against the indigenous authorities. It should be noted that this expulsion was not applied and that the indigenous authorities accepted that they made a mistake since the complaining woman belongs to another community, and they cannot expel someone who is not part of their community. On the other hand, a land dispute between the parties is being discussed in the ordinary jurisdiction through an acquisitive prescription process followed by the community against the Amparo | When directed to do evil in a community, sorcery is considered an extreme action against the community and usually is severely punished. It is stressed that the Court did not take witchcraft into account when deciding the case. If the due process had been carried out and the sanctioned party was part of the community, the expulsion sanction would not be violating the limitations of the JDL and would be valid.<br>Although the indigenous authorities did not execute the expulsion and took into account that the expelled is not a community member (so they cannot expel her), the Court should have ordered the indigenous jurisdiction to issue a new resolution clarifying the error. Instead, the Court |

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| claimant and her criminal proceedings against indigenous authorities. It is a) a private property that she inherited from her husband, b) that her husband allegedly transmitted verbally to the community, and c) that she, once the owner of it, was unaware of the transfer of it. The community has had current possession of the land for more than 20 years.<br>a) The Court annulled the indigenous resolution that expelled the woman because the decision violated due process by not having summoned the sanctioned woman to defend herself and because the JDL prohibits the expulsion of the elderly. b) Land issues cannot be resolved by the Court. c) The claimant did not demonstrate the other violations of her rights. | a) ruled without considering the factual data of the case, b) has appropriated the conflict and decided it directly, c) wrongly interpreted the expulsion limits established by the JDL, diminishing the competence of indigenous peoples (although expulsion did not correspond in the case), d) but, has adequately assessed the violation of due process.<br>For these reasons, although the Court's decision to annul the expulsion of the Amparo claimant was within legal limits, its binding arguments disregarded the law and limited the competence of indigenous jurisdiction making it ineffective. The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional competencies. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 18/6/2019 | 0364/2019-S4 | PCJ | Fourth specialized chamber | René Yván Espada Navía | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 24297-2018-49-AAC | La Paz | Agrarian. Land dispute |

**Indigenous people:**

Organización Indígena Chiquitana (OICH), (Monkox nation)

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| As a precedent, in 2017, the indigenous people claimed in an Amparo against the INRA, requesting the annulment of an administrative resolution that authorized the settlement of third parties in public land and that the INRA adjudicate that territory to the community of Cañada Zapoco. However, the ruling of the Court on that occasion was contrary to the indigenous people because it declared that they did not comply with Amparo's subsidiarity and immediacy (they did not present a hierarchical appeal within the term of the law).<br>Under the PCC's decision, the indigenous jurisdiction of the community prosecuted the director of INRA. As a result, the indigenous jurisdiction ordered the director of INRA to annul its administrative resolution authorizing third parties' settlement and adjudicate those lands to the Cañada Zapoco community. Against this background, the director of INRA filed a claim against the indigenous authorities, asking for the annulment of the indigenous decision. The Court decided to annul the indigenous decision since it was issued without competence. Furthermore, when deciding this dispute, the Court argued the indigenous authorities did not comply with the limits of personal, territorial, and material validity areas since neither the director of INRA nor the lands pertain to the community and, in addition, the agrarian matter is excluded from the indigenous jurisdiction. Finally, the Court ordered to initiate a criminal proceeding against indigenous authorities because their actions were premeditated to breach the Court's previous decision. | Although it is possible that the indigenous community is seeking to reconstitute its territory and that it has the right to those disputed lands, it seems that the indigenous authorities did not comply with the process's deadlines, which caused them to lose those lands. Furthermore, according to the Constitution and the laws, the indigenous jurisdiction cannot decide cases regarding non-community members, on agrarian lands ownership and outside their territory. For these reasons, the Court did not affect the effectiveness of the indigenous jurisdiction by deciding against them.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 18/6/2019 | 0371/2019-S4 | PCJ | Fourth specialized chamber | René Yván Espada Navía | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 27030-2019-55-AAC | Santa Cruz | Agrarian. Land dispute |

**Indigenous people:**

Organización Indígena Chiquitana (OICH), (Monkox nation)

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| As a precedent, a) in parallel (but not together), the Chiquitano Indigenous People and the Associated Intercultural Community "Nueva Florida" required land endowment to INRA. Even though INRA gave the land to both, the Chiquitanos felt affected because they received less land than they asked for. b) The Chiquitano indigenous people claimed in 2017 in Amparo against INRA the annulment of the administrative resolution that authorized the settlement of the Intercultural Community and their eviction. c) The Court's ruling on that occasion was contrary to the indigenous people since it declared that the INRA resolution met the legal requirements.<br>Under the PCC's decision, the indigenous jurisdiction prosecuted the director of INRA. As a result, the indigenous jurisdiction decided to order the director of | Although it is possible that the indigenous community is seeking to reconstitute its territory and that it has the right to those disputed lands, it seems that the indigenous authorities did not comply with the process's deadlines, which caused them to lose those lands. Furthermore, according to the Constitution and the laws, the indigenous jurisdiction cannot decide cases regarding non-community members, on agrarian lands ownership and outside their territory. For these reasons, the |

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| INRA to annul her administrative resolution authorizing the settlement of third parties. Against this background, the director of INRA filed a claim against the indigenous authorities, requesting the annulment of the indigenous decision. The Court decided to annul the indigenous decision since it was issued without jurisdiction. When deciding this dispute, the Court argued that the indigenous authorities did not comply with personal, territorial, and material validity limits since neither the director of INRA nor the lands are part of the community. In addition, the agrarian matter is excluded from the indigenous jurisdiction. Finally, the Court ordered to initiate a criminal proceeding against indigenous authorities because their actions were premeditated to breach the Court's previous decision. | Court did not affect the effectiveness of the indigenous jurisdiction by deciding against them. The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 9/7/2019 | 0481/2019-S2 | PCJ | Second chamber | Julia Elizabeth Cornejo Gallardo | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 21716-2017-44-AAC | Potosí | Indigenous sanction. Expulsion for stripping indigenous people of their lands, deceiving them and physically assaulting them |

**Indigenous people:**

Jatun Ayllu Qhayana, Chiru Ayllu, Chiru K'uchu community union

| Magistrate/s | Dissenting vote's opinion |
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| Carlos Alberto Calderón Medrano | The Court should not enter to elucidate the merits of the case because there are controversial property rights that must be resolved in a process other than Amparo. |

| Abstract | Analysis |
|---|---|
| As a precedent, the indigenous jurisdiction of the community decided a) the expulsion of two brothers, b) they must return the lands acquired from two older women because they would have physically attacked and deceived them, and that c) they do not abide by the decisions of the community. Then, indigenous authorities consulted the PCC on the applicability of this expulsion sanction. The Court responded through 0091/2017-S1 that a) it was not applicable because the decision violated due process (the authorities prejudged without summoning those sanctioned, and b) ordered the indigenous jurisdiction to decide the dispute again fulfilling due process.<br>The expelled persons claimed through Amparo the annulment of the indigenous decision that ordered their expulsion and their obligation to return the lands to the older women.<br>The Court stated that there was already a ruling through statement 0091/2017-S1, so it would refer only to the issues that have not yet been decided: a) It ordered that the plaintiffs not approach the older women to protect their physical integrity, b) urged the indigenous authorities to decide the dispute, and c) ordered Amparo claimants to respect the decisions of the indigenous authorities and submit to the community law. Finally, it is highlighted that the Court advanced a criterion stating that it does not agree that the plaintiffs of Amparo have a residence in the community and circulate freely through it as long as they do not submit to the community law, do not respect its authorities and do not contribute to the community accordingly. To decide the case, the Court used the fieldwork of its Decolonization Unit. | Although the Court advanced a criterion stating that the Amparo claimants expulsion would be justified, the decision respected the indigenous jurisdiction, ordering that it shall decide the dispute. Furthermore, adopting the precautionary measure to protect the elderly did not interfere with the indigenous jurisdiction. Consequently, the Court made the indigenous jurisdiction effective.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the defendants (Amparo claimants) because they rejected the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 12/7/2019 | 0156/2019-CA | PCO | Admission commission | Admission commission | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 27370-2019-55-CCJ | Oruro | Criminal. Land dispossession, cattle rustling and usurpation of water |

**Indigenous people:**

Jach'a Karangas (Turco Marka, Sajama Provice)

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The Mallku de Marka claimed the competence to resolve the dispute in a criminal proceeding for land dispossession, usurpation of water, and cattle rustling. However, the Court did not accept the process because the claimant did not prove to be an indigenous authority on 3 January 2019 (when he filed the claim). On the contrary, he presented a certificate (trying to correct the illegible photocopy | Article 101.I of the Constitutional Procedural Code establishes that an indigenous authority must present the claim. In this case, the indigenous authority failed to demonstrate that his mandate extended to the first days of January 2019 when he presented the claim. Consequently, the Court respected the limits established by law rejecting his claim. In any case, the current indigenous authorities may present the claim of competencies once again.<br>The case is irrelevant for the indicators of the PCC because, although the decision is contrary to the indigenous jurisdiction, it respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. However, the case demonstrates that the lower-ranking judge and the indigenous member that denounced the crime to the ordinary jurisdiction rendered the indigenous jurisdiction ineffective since crimes reported belong to the indigenous competence. Moreover, the indigenous jurisdiction acted effectively despite the |

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| of his credential presented the first time) that proved he was an indigenous authority in 2018. | lack of documental proof. Finally, the criminal defendant rendered effective the indigenous jurisdiction because he allegedly requested his indigenous authority to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 12/7/2019 | 0518/2019-S4 | PCJ | Fourth specialized chamber | René Yván Espada Navía | Liberty action |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 27934-2019-56-AL | La Paz | Criminal. Domestic violence and threats |

| Indigenous people: |
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| Hampaturi Ayllu |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| The two claimants of the Action for Liberty stated that they were detained and attacked by members of the Hampaturi community when they were driving on the main road that runs through the community in their vehicle. It is clarified that a) the claimants periodically visit the Hampaturi community because their parents live there and that b) the indigenous authorities summoned the community to deal with this incident three days before the Action for Liberty was filed.<br>The Court decided to reject the action because indigenous jurisdiction is a direct and immediate mechanism to resolve the claimants' freedom deprivation. Consequently, the PCC applied what it terms 'the exceptional subsidiarity of the Action for Liberty' (recognized only through PCC's case law and not by the legal framework). It is noted that this judgment was the first to apply the exceptional subsidiarity of the Liberty action concerning indigenous jurisdiction, modulating the previous constitutional jurisprudence that only established it for the ordinary jurisdiction.<br>Additionally, the Court stated that if the claimants had demonstrated that their lives were in danger, as they denounced, the exceptional subsidiarity would not apply. | The Court recognized that a) the indigenous jurisdiction is part of the Bolivian judicial body and that, consequently, the PCC's exceptional regime of subsidiarity of the Liberty Action for the indigenous jurisdiction must also apply. b) That the indigenous jurisdiction has the competence to resolve disputes related to threats of freedom. Therefore, the Court made the indigenous jurisdiction more effective by recognizing its competence to decide the exceptional regime of subsidiarity since the legal framework does not recognize such a regime and it is out of its competence.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the defendants and the indigenous jurisdiction indicators (accepting the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the claimants because they rejected the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 24/7/2019 | 0610/2019-S1 | PCJ | First chamber | Georgina Amusquivar Moller | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 27682-2019-56-AAC | Potosí | Criminal. Family and domestic violence |

| Indigenous people: |
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| Kharacha Ayllu, Bustillos province |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| In a criminal proceeding for family and domestic violence, the indigenous authority claimed competence to resolve the dispute. The criminal judge accepted the request and referred the case to the indigenous jurisdiction. However, the crime victim, who was a woman, objected to this decision and appealed. The appeal was rejected, so she presented her Amparo denouncing the alleged violation of her right to appeal instead of the indigenous incompetence to resolve the dispute due to the lack of the material validity area.<br>The PCC rejected the claim, arguing that a) the judge legally remitted the process to indigenous jurisdiction and b) there is no appeal to the judge's decision in this procedure because it is an autonomous direct resolution process. | Although the indigenous jurisdiction is certainly not competent to resolve processes of family violence against women, when the Court specifically admitted the lower-ranking judge's decision to refer the case to the indigenous jurisdiction, the indigenous material validity area was de facto expanded to decide these types of cases. Therefore, the PCC rendered the exercise of the indigenous jurisdiction more effective (approximately the same happened in cases 0047/2017 and 0067/2017).<br>On the other hand, the case demonstrates the indigenous jurisdiction to be more effective regarding the indigenous jurisdiction indicators since it claimed the case outside its competence, and the criminal defendant because he requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction less effective by legally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 31/7/2019 | 0055/2019 | PCD | Fourth specialized chamber | Gonzalo Miguel Hurtado Zamorano | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 23079-2018-47-CAI | La Paz | Indigenous sanction. Expulsion for disobeying community mandates, interruption of water supply, opposition to the exploitation of natural resources, blocking of roads, and destruction of community landmarks |

| Indigenous people: |
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| Iquilluyo community, Yaco third municipality section, Loayza province |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| The indigenous authorities consulted whether the decision to expel two brothers (former authorities) from the community was in accordance with the Constitution. It is clarified that the expulsion happened: a) because the brothers disobeyed the community's mandates, closed the water source, opposed the construction of a bridge and the exploitation of limestone by a company, blocked roads, attacked INRA, and destroyed the landmarks that delimit the community; and b) after the recidivism of the brothers and that the community exhausted the dialogue and tried all the mechanisms that its norms establish to regain balance and harmony. The Court decided in favor of the indigenous jurisdiction declaring the expulsion constitutional since: a) The indigenous jurisdiction complied with due process. b) It did not affect women, children, or the elderly (who allegedly cannot be expelled according to the Court). c) The decision was proportional because it met the suitability, necessity, and proportionality sub-principles of the living well test (the expulsion restores the balance and harmony of the community, and the indigenous jurisdiction no longer had another mechanism to achieve it). d) It interprets the expulsion as temporary so that those sanctioned reflect and then rejoin the community in the future. | The Court's decision made the indigenous jurisdiction effective by respecting its jurisdiction within the legal limits. Although the Court illegally and generically argued that women and the elderly cannot be expelled, this position did not affect the substance of the decision. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (by accepting the case) since they respected the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 31/7/2019 | 0034/2019 | PCJ | Plenary chamber | Gonzalo Miguel Hurtado Zamorano | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 22657-2018-46-CCJ | La Paz | Criminal. Slander and defamation |

| Indigenous people: |
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| Caluyo Chiquipa Agrarian Sindicate |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
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| In a criminal proceeding for defamation and insults, the indigenous authority claimed competence to resolve the dispute. The Court decided in favor of indigenous jurisdiction because the three areas of territorial, personal and material validity were fulfilled. Regarding the personal sphere, the Court verified compliance with the identity cards of the parties in dispute. | The Court made the indigenous jurisdiction effective by recognizing its competence to decide the case within the legal framework. Moreover, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the criminal claimant because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
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| 7/8/2019 | 0035/2019 | PCJ | Plenary chamber | Julia Elizabeth Cornejo Gallardo | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 20157-2017-41-CCJ | La Paz | Agrarian. Land dispute |

| Indigenous people: |
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| Mosetén Indigenous People's Organization (OPIM) y Nariz Canoa, intercultural community |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| 1. Carlos Alberto Calderón Medrano<br>2. Brígida Celia Vargas Barañado<br>3. Georgina Amusquivar Moller | 1. The scope of material validity was not fulfilled. The competence to resolve actions to regain possession corresponds to the agri-environmental jurisdiction according to the Law of the National Agrarian Reform Service, modified by Law 3545 (2006).<br>2. Intercultural communities are not indigenous peoples and they do not have collective rights. Furthermore, they comprise many nations (indigenous peoples) and do not have the same worldview, so they do not have the same rights of their own.<br>3. a) The scope of personal validity is not met, b) the jurisdiction of one people should not be submitted to another indigenous people (the equality of jurisdictions is extensive between indigenous jurisdictions), c) there is no certainty of territoriality of both peoples, d ) the Mosetén people are a person of private law (according to their statute) and not of public law, which is why they cannot be given jurisdiction. |

| Abstract | Analysis |
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| A member of the Nariz Canoa (NC) community was dispossessed of his lands by the Mosetén Indigenous People's Organization (OPIM) for having breached the 2002 agreement between NC and OPIM (not paying contributions for the land, and not attending the conciliation to which he was summoned). It is clarified that NC is an intercultural community settled in OPIM indigenous territory. Faced with this dispossession, the member of the NC community claimed the recovery of possession of his lands before the agri-environmental jurisdiction against the indigenous authorities of OPIM. The OPIM authorities claimed jurisdiction to decide the dispute. | The Court made the indigenous jurisdiction more effective by expanding the scope of personal validity. Within the framework of judgment 0026/2013, the Court allowed the indigenous jurisdiction to resolve a dispute between the community and a person who is not a community member since the Court assumed that the person and his community agreed to submit to the OPIM indigenous jurisdiction.<br>On the other hand, it is highlighted that the Court did not use the argument of the guarantee of impartiality to exclude the indigenous jurisdiction, simply ordering that the indigenous |

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| The Court decided in favor of OPIM's indigenous jurisdiction, arguing that: a) The scope of personal validity is met because, even though NC and OPIM are different communities and have their own justice systems, NC is settled in OPIM territory and accepted submit to the indigenous jurisdiction of OPIM. Thus, despite not being a member of OPIM, the NC member is subject to the jurisdiction of OPIM. b) The scope of the territorial validity area is fulfilled since the events have occurred in OPIM territory. c) The scope of material validity is fulfilled since the JDL allows indigenous peoples to decide on the distribution of their lands within their territories. On the other hand, the Court established that the competencies provided for in the laws prior to the 2009 Constitution (preconstitutional) must be interpreted according to the areas of indigenous validity. Consequently, the preconstitutional competencies of the agri-environmental jurisdiction must be interpreted with the current norms. d) The Court ordered that other OPIM's indigenous authorities decide the dispute to respect impartiality. | authorities involved in the dispute shall not participate in its resolution.<br>This case is relevant because the Court equated intercultural communities with indigenous peoples as holders of collective rights (including the exercise of indigenous jurisdiction) despite the fact that the latter does not meet the constitutional requirements of being pre-colonial and having maintained structures and identity to be recognized as such. Consequently, the application of the C169-self-identification, which the Court argued, does not seem sufficient to recognize the collective rights of indigenous peoples. Moreover, it is also considered that the resolution of the case did not merit such recognition. Finally, the case demonstrates indigenous jurisdiction to be more effective regarding the defendant and the indigenous jurisdiction indicators (accepting and claiming the case) since both exceeded indigenous jurisdictional competencies. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 7/8/2019 | 0037/2019 | PCJ | Plenary chamber | Carlos Alberto Calderón Medrano | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 23192-2018-47-CCJ | Chuquisaca | Criminal. Attempted murder |

**Indigenous people:**

Qhara Qhara indigenous people, Payacullo San Lucas Marka, Llajta Yucasa Ayllu, Ocurí community

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| 1. Julia Elizabeth Cornejo Gallardo<br>2. Petronilo Flores Condori<br>3. Georgina Amusquivar Moller | 1 y 2. The JDL excludes from the competence of indigenous jurisdiction the crime of murder and not the crime of attempted murder. b) In addition, the problem arises from a land dispute that falls within the jurisdiction of the indigenous jurisdiction. c) It must apply the highest standard favorable to the exercise of the right to indigenous justice, interpreting its powers most broadly and restricting exclusions.<br>3. In addition to the foregoing, she maintains that a) the constitutionality block does not establish limits to indigenous jurisdiction, so the court should declare the exception provided by the JDL inapplicable. b) The indigenous jurisdiction is dynamic, so it not only resolves cases that it has known ancestrally. c) Solving crimes against life is in the interest of the indigenous jurisdiction. |

| Abstract | Analysis |
|---|---|
| In a criminal process of attempted murder resulting in land fights, the indigenous authorities claimed competence to resolve the dispute. The Court decided in favor of the ordinary jurisdiction stating that, although the personal and territorial areas of validity were fulfilled, the material validity area was not. To this end, it argued that a) public interest protects life, and it belongs to the State and its authorities by the rule of international obligations. b) Indigenous jurisdiction must be exercised within limits established by law. | The Court limited itself to establishing the legal protection of life to argue that the State and its authorities have the exclusive competence to elucidate the processes related to crimes that attempt against it. However, the Court did not justify why it decided to exclude the assassination attempt from the competencies of the indigenous jurisdiction, in which people's death is inexistent. Moreover, from a literal interpretation, it is highlighted that the JDL only excludes the indigenous jurisdiction's competence in the crimes of murder and homicide but not the attempted murder or homicide. For these reasons, the Court rendered the indigenous jurisdiction ineffective.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 28/8/2019 | 0737/2019-S2 | PCJ | Second chamber | Carlos Alberto Calderón Medrano | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 28308-2019-57-AAC | La Paz | Agrarian. Land dispute |

**Indigenous people:**

Uypaca community, Achocalla municipality

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Julia Elizabeth Cornejo Gallardo | The matters excluded from indigenous jurisdiction by article 10 of the JDL must be interpreted restrictively and exceptionally, according to SC 0764/2014. 'Uypaca authorities of 2017 and 2018, within the framework of their jurisdictional powers, decided to hear the conflict over the ownership of the land, acts that were consented to by the parties, submitting tacitly to indigenous jurisdiction. Otherwise, the claimant for Amparo would have had to go to authorities in other jurisdictions to promote the conflict of jurisdictional competence, which did not happen.' (II.4) However, the dissenting vote forgets that it would no longer be a question of indigenous jurisdiction, in the sense of collective law, but of arbitration. |

| Abstract | Analysis |
|---|---|
| The community members turned to their indigenous authorities to resolve a dispute over the property rights of | Even though the dissenting vote shows that there is an agreement of the parties for the indigenous jurisdiction to resolve a case of property rights |

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| real estate. However, after two hearings in two different years, the property was decided in favor of one of them against the literal test that showed that the seller had died long before the contract existence. Consequently, the party that lost claimed in the Amparo that due process was violated and that the indigenous authority lacks jurisdiction since it is a dispute over property rights that is excluded from the material scope of indigenous jurisdiction.<br>The Court decided in favor of the Amparo claimant for violation of due process concerning the natural judge and because the indigenous jurisdiction lacks the competence to decide on property rights. | and that it justifies that the restrictions on indigenous jurisdiction must be interpreted restrictively, the truth is that the indigenous jurisdiction does not have jurisdiction to decide on property rights. If it is an agreement to submit a dispute to a third party, it is appropriate to apply the rules on arbitration. However, the parties have not requested to apply arbitration nor have demonstrated the existence of an arbitration agreement that, in any case, must be explicit and written. For this reason, the dissenting vote disregarded the law.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 3/9/2019 | 0046/2019 | PCJ | Plenary chamber | Carlos Alberto Calderón Medrano | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 26103-2018-53-CCJ | La Paz | Criminal. Political harassment and violence against women |

**Indigenous people:**

Copancara Cantón, Huarina (Consejo Amawtico Mayor de Justicia Jach'a Kamachinak Apnaqeri Amawt'anaka)

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| Julia Elizabeth Cornejo Gallardo | a) The agreement is valid, according to case 2114/2013 of November 21. b) The competence corresponds to the indigenous jurisdiction but the affected woman can decide which jurisdiction will judge the violence she suffered according to Recommendation 33 of the Committee for the Elimination of Discrimination against Women. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for harassment and political violence against women, the indigenous authorities claimed the competence to resolve the dispute. The two indigenous candidates for municipal councilors agreed to each hold municipal office for half the term, the incumbent having to resign so that the other could take her place. After the woman resigned her position (incumbent or current holder), following the agreement, she criminally denounced the alternate candidate for political harassment.<br>The Court decided that although the personal and territorial areas of validity were fulfilled, the same did not happen with the material one, since it is the ordinary jurisdiction that has the competence to decide the conflict in accordance to article 10.II.d of the JDL (women violence is excluded from indigenous jurisdiction by the Law to Guarantee Women a Life Free of Violence). | Without considering the legality of the agreement between the candidates, within the framework of communitarian democracy (Art. 11 of the Constitution), the case demonstrates indigenous jurisdiction to be more effective regarding the defendant (who allegedly requested his authorities to claim the competence to resolve the case) and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. The criminal claimant made the indigenous jurisdiction less effective by suing in the ordinary jurisdiction. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 4/9/2019 | 0047/2019 | PCJ | Plenary chamber | Georgina Amusquivar Moller | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 22753-2018-46-CCJ | La Paz | Criminal. Criminal association, deprivation of liberty, kidnapping and threats |

**Indigenous people:**

Chuñawi Ayllu and its Consejo Amawtico Mayor de Justicia Patamanta Apsutaparjama (afiliated to CONAMAQ or Consejo Nacional de Ayllus y Markas del Qullasuyu) and Chuñawi Community, Agrarian Peasant Union (afiliated to CSUTCB or Conferedación Sindical Única de trabajadores Capensinos de Bolivia)

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| 1. Julia Elizabeth Cornejo Gallardo<br>2. Petronilo Flores Condori | 1. The crimes reported do not refer to the bodily integrity of minors, so the JDL does not exclude the jurisdiction of indigenous jurisdiction.<br>2. The Liberty Action 2017.0573.S1-AL-SC annulled the decision of the indigenous jurisdiction whose execution led to the criminal complaint. Consequently, there is no conflict of jurisdiction. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for criminal association, deprivation of liberty, threats, and kidnapping followed by a community member and his two minor children against indigenous authorities of the Ayllu, the indigenous jurisdiction claimed jurisdiction to resolve the dispute. It is clarified that: a) The dispute arises from the improper execution of the indigenous decision to sanction a community member to make 2,000 bricks under the alternative of his expulsion, in which he was physically attacked along with his two minor children. b) There is a conflict between organizations within the same community, which was initially the Chuñavi Peasant and | Although there was aggression against minors and an adult, the competence to resolve the dispute belonged to the indigenous jurisdiction because: a) There was no violation of the bodily integrity of the minors. b) The criminal offenses reported do not refer to the bodily integrity of minors (according to the dissent of Julia Elizabeth Cornejo Gallardo). Consequently, the exclusion of article 10.II.a is inapplicable. c) The Code of children and adolescents does not establish that the ordinary jurisdiction has exclusive |

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| Agrarian Union Community and later became the Chuñavi Indigenous Ayllu. However, some community members intend to keep the union. c) The Ayllu authorities sanctioned a union member who, in turn, criminally denounced them in the ordinary jurisdiction.<br>The Court decided in favor of ordinary jurisdiction because it understood that although the personal and territorial spheres were complied with because it is the same indigenous nation, the material spheres were not fulfilled. The Court argued that since minors were attacked, those crimes are excluded from indigenous jurisdiction (articles 147 of the Code of children and adolescents, and 10.II.a of the JDL). | competence to solve crimes of child violence. Then, this Code should be interpreted through the JDL. For these reasons, the Court rendered the indigenous jurisdiction ineffective.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the criminal claimants because they chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 9/9/2019 | 0563/2019-S3 | PCJ | Third Chamber | Brígida Celia Vargas Barañado | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 28499-2019-57-AAC | La Paz | Indigenous sanction. Expulsion for hindering collective land titling |

| Indigenous people: |
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| Cusijata agrarian community, Copacabana |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
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| Abstract | Analysis |
|---|---|
| In a collective land titling proceeding before INRA, the Amparo claimant requested its temporary suspension until her brother's invasion of her land was resolved. The indigenous authorities felt that this request for suspension affected the community's interests, so they decided to expel the claimant, arguing that she did not work her land and did not fulfill a social function. It should be clarified that: a) this decision was taken without summoning the sanctioned party and, consequently, affecting her right to defense and due process. b) The indigenous authorities gave a deadline to present the documents to INRA to carry out the process of land titling under the alternative of expulsion from the community. c) The Amparo claimant is an older adult woman.<br>The Court decided to nullify the indigenous decision because: a) Article five of the JDL prohibits the expulsion of the elderly. b) Women and the elderly deserve strengthened constitutional protection. c) It applied the paradigm test of living well, concluding without any analysis or justification that: i) the expulsion is not in harmony with the constitutional values and the community's worldview, ii) there was no due process, iii) the expulsion was disproportionate and unnecessary, and iv) the expelled woman is an older adult woman. | To decide the Amparo it was enough for the Court to argue due process violation and the prohibition to expel the elderly because of the unfulfillment of social function. It is noted that the Court also used the 'living well paradigm test' to illegally justify that the expulsion of older women a) is not allowed in all cases, b) does not belong to the indigenous worldview, and c) is contrary to the Constitution. However, the Court did not justify its analysis and only unfoundedly expressed its conclusions disregarding the law and constitutional precedents on the matter: a) Indigenous peoples can legitimately punish their members with expulsion from their community. b) The JDL prohibits the expulsion of the elderly only for lack of compliance with communal duties, positions, contributions, and collective works. Then, older adults may be punished with expulsion for reasons other than non-compliance with their community duties. c) The law does not prohibit indigenous peoples from expelling women.<br>For these reasons, although the Court's decision to annul the expulsion of the Amparo claimant was within legal limits, its binding arguments disregarded the law and limited the competence of indigenous jurisdiction. Additionally, the PCC should have ordered indigenous jurisdiction to carry out a new due process under legal limits, as it did in other cases allowing it the possibility to resolve indigenous disputes (e.g., 2076/2013, 1127/2013-L, 0486/2014 or 1254/2016-S1). As a result, the PCC's decision rendered indigenous jurisdiction ineffective.<br>Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant and the indigenous jurisdiction indicators since both acted within indigenous jurisdictional competencies. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 12/9/2019 | 0064/2019-S4 | PCD | Fourth specialized chamber | René Yván Espada Navía | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 27316-2019-55-CAI | Oruro | Indigenous sanction. Progressive sanctions: seizure of cattle, decisive oath and criminal sanction in the ordinary jurisdiction for continuing land disputes despite equitable land division agreement |

| Indigenous people: |
|---|
| Jatun Killaka Asanajaqi Jakisa, Nación Originaria (Santurario de Quillacas Marka) |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| Due to the land dispute between two families within the community, the indigenous authorities and the families reached an equitable land division agreement, according to their power for the internal distribution of collective lands. The indigenous authorities (IA) established in the agreement three progressive sanctions in case of successive non-compliance by any of the parties: a) delivery of cattle in favor of the community, b) decisive oath, which is a deities and supernatural forces' | Regarding the third sanction, which corresponds to the criminal process in the ordinary jurisdiction, the preliminary draft of the JDL taken to prior consultation included this type of collaboration, ordering the ordinary jurisdiction to submit a report to the indigenous jurisdiction on the result of the process. This type of collaboration does not exist in the current law because it is understood that each |

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| sanction for lying (ama llulla). The oath is carried out in front of the statue of Jesus Christ ['tata' king], in which the person swears to tell the truth while she or he walks naked or half-naked on a black cloak and salt. Nudity prevents the person from hiding an amulet that will neutralize the sanction. c) Finally, request criminal sanction in the ordinary jurisdiction (OJ) for non-compliance with the indigenous decision. The indigenous jurisdiction (IJ) interprets that it is an act of cooperation between jurisdictions to comply with indigenous decisions and that the JDL has a legal vacuum in this regard. The Court held that the IJ could criminally demand non-compliance with its jurisdictional decisions since the criminal offense of 'breach of sanction,' provided for in article 183 of the Penal Code, also punishes non-compliance with indigenous decisions (the Constitution recognizes IJ as part of its judicial branch). However, as the crime predates the Constitution, its scope must be interpreted according to the current multinational, intercultural and constitutional context. The object of the consultation of the IA is the compatibility of these three sanctions with the Constitution.<br>The Court decided that the 3 sanctions are compatible with the Constitution under the following conditions: a) The number of cattle that must be delivered as a fine must not be of such magnitude that it affects the survival of those sanctioned, having special consideration for the rights of older adults, women, and children. b) The decisive oath must be performed voluntarily. Otherwise, measures must be taken so that the execution of the 'decisive oath' does not affect the dignity of the people who will perform it, especially if they are women or the elderly. c) The IA may request the OJ to process a criminal proceeding to punish non-compliance with the IJ's decision. The OJ must interpret the criminal offense from an intercultural and pluralistic perspective since it predates the Constitution, and its content essentially refers to non-compliance with the decisions of the OJ in criminal proceedings. | jurisdiction has sufficient power and authority to enforce its own decisions. It is noted that the indigenous jurisdiction can also sanction non-compliance with its decisions. Not only does the PCC's response implies recognizing the lack of both authority and the possibility of the indigenous jurisdiction to enforce its decisions, but the PCC is also superimposing the ordinary jurisdiction since the indigenous jurisdiction has the competence to sanction non-compliance with its decisions.<br>Furthermore, when the Court cites article 192.II of the Constitution ('For compliance with the decisions of the native peasant indigenous jurisdiction, its authorities may request the support of the competent organs of the State'), misrepresents its purpose as it is not a means to replace the indigenous jurisdictional activity. Despite what has been said, it may be comforting to think that the meaning of the indigenous consultation is not that another jurisdiction supplants its function, but rather that submission to criminal proceedings and preventive detention are, in themselves, punishments.<br>For these reasons, the constitutional Court makes indigenous jurisdiction effective by recognizing the first two punishments are consistent with the Constitution. However, the Court renders the indigenous jurisdiction ineffective concerning the third punishment referred to the ordinary jurisdiction. In short, the Court makes indigenous jurisdiction less effective. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the claimant, the defendant and the indigenous jurisdiction indicators (by accepting and deciding the case) since they respected the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 12/9/2019 | 0050/2019 | PCJ | Plenary chamber | Julia Elizabeth Cornejo Gallardo | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 19626-2017-40-CCJ | La Paz | Criminal. Aggravated robbery, qualified damages, severe and minor injuries |

| Indigenous people: |
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| Portada Corapata, Jach'a Kamchinak Cheqa Phoqhayirinaka (Consejo Amawtico de Justicia), agrarian union |

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| 1. Karem Lorena Gallardo Sejas<br>2. Carlos Alberto Calderón Medrano<br>3. Brígida Celia Vargas Barañado<br>4. Petronilo Flores Condori | 1. The sentence establishes unnecessary grounds to decide the case<br>2 and 3. Opportunity principle<br>4. Impartiality must be guaranteed. Universities should not be forced to modify their curricula including pluralism, since it denatures the purpose of the process. |
| **Abstract** | **Analysis** |
| The indigenous authorities claimed competence to resolve the dispute in a criminal proceeding for severe and minor injuries, aggravated robbery, and qualified damage. However, it should be clarified that a) this claim was made when the criminal process was already advanced and in the stage of debates prior to sentencing, and that b) the authorities had a conflict of interest to resolve the dispute. The Court decided in favor of indigenous jurisdiction because material, personal and territorial validity areas were met. | The Court made the indigenous jurisdiction effective by resolving the case within the legal limits. The case also demonstrates the indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it within its competence, and the criminal defendant because he allegedly requested his indigenous authorities to claim the case (even though he did not formally challenge the claimant's election of jurisdiction and did it at a late stage of the criminal process). Furthermore, the criminal claimant rendered indigenous jurisdiction ineffective by illegally preferring the ordinary jurisdiction over the indigenous one. It should be noted that the decision did not follow the principle of opportunity or the guarantee of impartiality to reject the jurisdiction of the indigenous jurisdiction. The PCC stated that 'it is feasible to guarantee the indigenous authorities impartiality under the indigenous legal framework when deciding a case.'<br>The decision is excessive and curious because it orders a) the universities to include legal pluralism in their law curricula, b) train judges in legal pluralism according to the intercultural action protocol issued by the Supreme Court of Justice, c) that the Supreme Court of justice order the compliance with its intercultural action protocol and d) that the agri-environmental court draws up an intercultural action protocol. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 4/10/2019 | 0985/2019-S1 | PCJ | First chamber | Karem Lorena Gallardo Sejas | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 29211-2019-59-AAC | La Paz | Agrarian. Land dispute |

| Indigenous people: | |
|---|---|
| Collpacota community | |
| **Magistrate/s** | **Dissenting vote's opinion** |
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| Abstract | Analysis |
|---|---|
| The authorities and the community of Collpacota decided to plant potatoes on the land of the Amparo claimant. It should be clarified that the Amparo claimant considers that his lands are private and located in the neighboring community of Collpapampa. In this context, the Amparo claimant states that 30 people set fire to their pastures and plowed their land with de facto measures without him being able to stop this abuse. Faced with this claim, the Collpapampa authority explained that the collective use of these lands for potato planting was resolved at a community meeting. Therefore, the Amparo claimant considered his rights to defense and private property violated.<br>The Court decided against the community, considering that they exercised de facto measures, that is, outside of all institutional frameworks. The Court argued that the principle of subsidiarity of Amparo should not be applied as they are de facto measures and that the claimant has demonstrated his land ownership and de facto measures that have occurred. | It is necessary to bear in mind that: a) The Court based its decision by citing jurisprudential precedents that establish that in disputes over de facto measures: i) there must be no controversial facts or rights, ii) the claimant must only prove to have land ownership and that the de facto measures have occurred, and iii) the claimed events, to be considered de facto measures, must occur outside of any institutional framework. b) The Court stated that the claim to due process does not correspond since it contradicts the coexistence of de facto measures. Consequently, the Court acknowledged the claimant thought it was a process. c) The Court did not conduct a field study to find out the context. d) The Court based its decision on de facto measures, even though that: i) the community and the Amparo claimant have controversial ownership of the same lands, ii) the community, through its authorities and members, decided to use their land for cultivation purposes. e) The Court appropriated the dispute and resolved it directly, without allowing the indigenous jurisdiction to resolve it.<br>The contradictions between the facts reported by the PCC and its adopted decisions led the indigenous decisions to be considered de facto measures. Since the Amparo claimant declared his right to defense violated in due process, the Court should have ordered that a new indigenous process be carried out in compliance with constitutional rights and guarantees, as it did in other cases allowing it the possibility to resolve indigenous disputes (e.g., 2076/2013, 1127/2013-L, 0486/2014 or 1254/2016-S1). In addition, the Court should have considered that the indigenous jurisdiction has the competence to decide the internal redistribution of their lands.<br>Consequently, the Court rendered the indigenous jurisdiction ineffective. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the indigenous jurisdiction indicators (by accepting the case) since it acted within indigenous jurisdictional competencies and ineffective concerning the claimant because he rejected the community's decision by claiming it outside the competence of the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 20/11/2019 | 0059/2019 | PCJ | Plenary chamber | Brígida Celia Vargas Barañado | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 23982-2018-48-CCJ | La Paz | Criminal. Aggravated robbery, and qualified damages |

| Indigenous people: | |
|---|---|
| Añilaya indigenous community, Larecaja province | |
| **Magistrate/s** | **Dissenting vote's opinion** |
| 1. Carlos Alberto Calderón Medrano<br>2. René Yván Espada Navía<br>3. Gonzalo Miguel Hurtado Zamorano | 1. Ordinary jurisdiction is competent because the unfulfillment of personal validity area<br>2 and 3. The competent jurisdiction is the ordinary one since the scope of material validity is not fulfilled. The theft is a property donated by international cooperation and used for the community's irrigation (water trigger dynamo and hydroelectric control panel) and, therefore, is in the interest of the State. |

| Abstract | Analysis |
|---|---|
| In a criminal proceeding for aggravated robbery and qualified damage denounced by the authorities of an agrarian union against community members, the authorities of the Ayllu Añilaya council claimed the competence to resolve the dispute. However, it should be clarified that: a) The fieldwork carried out by the Technical and Decolonization Secretariat stated that even though it regards the same community, it has two parallel organizational structures, a union and an Ayllu. b) The union considers that the claim of competencies has the purpose of favoring criminals. c) The Court decided that the spheres of personal and territorial validity are fulfilled because both the members of the union and the Ayllu acknowledged being members of the same community, which shares identity and territory.<br>The Court held that the law does not condition the exercise of indigenous jurisdiction on a community having a single social organization, which is why it decided in favor of the indigenous jurisdiction, ordering that it resolves the case jointly between the two existing organizations (union and Ayllu). Moreover, it ordered that the Ombudsman's Office, ensuring the validity, promotion and fulfillment of human rights, should accompany the organizations in this regard. | Similar to case 0064/2019, the content of the decision suggests that the Court considered that it is the community that has the collective rights and not its internal organizations. However, unlike that case, the Court decided that these two community organizations should decide the case jointly. Although it turns out to be practical, this decision interferes in the indigenous jurisdiction since it orders the creation of an ad hoc indigenous court that does not have the prior legitimacy and recognition by the community. Therefore, the Court should have declared the community competent and ordered it to organize itself internally to decide the dispute according to its rules and customs.<br>In some cases, the Court decided to accompany the indigenous justice process, requesting that the results be reported to its Decolonization Unit. However, in this case, the Court required that it be the Ombudsman's Office. In the understanding that it is an 'accompaniment' it is expected that it is not an interference in the indigenous jurisdiction.<br>Beyond this problem, when the Court decided in favor of indigenous jurisdiction, it legally recognized its competence, making it effective. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators since both acted within indigenous jurisdictional competencies and ineffective concerning the claimants because he chose the formal jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 18/12/2019 | 0064/2019 | PCJ | Plenary chamber | Karem Lorena Gallardo Sejas | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 22752-2018-46-CCJ | La Paz | Criminal. Criminal association, falsification of documents, use of forged document |

**Indigenous people:**

Chuñawi Ayllu and its Consejo Amawtico Mayor de Justicia Patamanta Apsutaparjama (afiliated to CONAMAQ or Consejo Nacional de Ayllus y Markas del Qullasuyu) and Chuñawi Community, Agrarian Peasant Union (afiliated to CSUTCB or Conferedación Sindical Única de trabajadores Capensinos de Bolivia)

| Magistrate/s | Dissenting vote's opinion |
|---|---|
| 1. Petronilo Flores Condori<br>2. Georgina Amusquivar Moller | 1. The entity that would exercise jurisdiction should have been clearly identified, including an entity from another neighboring Ayllu, to avoid subjective interpretations.<br>2. Since the personal validity area is not present, one indigenous organization cannot judge the other. Therefore, the ordinary jurisdiction should have been declared competent. |

| Abstract | Analysis |
|---|---|
| The indigenous authorities claimed competence to resolve the dispute in a criminal proceeding for falsifying documents, using a counterfeit instrument, and criminal association. However, it is noted that a) In the same community, there are two organizations: a union (minority) whose members sued in the criminal case), and an Ayllu (majority) whose members were sued in the criminal case. b) The Court maintains that this double organization's existence does not affect its decision (on the conflict of competencies) since it is one community that has personal ties.<br>The Court decided to favor the indigenous jurisdiction, considering that the three areas of personal, territorial, and material validity are fulfilled. The Court ordered that a) The community should decide the dispute. b) To guarantee impartiality, the authorities that will decide the dispute should have no relationship with the criminal complaint or with the criminal acts. | Similar to case 0059/2019, the content of the decision suggests that the Court considered that it is the community that has the collective rights and not the internal organizations that this community has. However, unlike that case, the Court decided that the community should resolve the dispute and that the authorities involved shall not participate in deciding the case to protect impartiality. Furthermore, it is noted that the Court did not order the creation of an ad hoc court, nor did it decide that the Ayllu or the union should be in charge of resolving the dispute. Moreover, it did not require the Ombudsman Office to intervene. In this sense, the Court had no interference in the community and its exercise of indigenous jurisdiction. Instead, the Court let the community, according to its self-determination and self-government, solve the dispute.<br>Beyond this problem, when the Court decided in favor of indigenous jurisdiction, it legally recognized its competence, making it effective. Moreover, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (by accepting and claiming the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the criminal claimant because he chose the formal jurisdiction. |

# Relevant Cases of 2020

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 17/3/2020 | 0026/2020-S2 | PCJ | Second chamber | Brígida Celia Vargas Barañado | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 26914-2018-54-AAC | Oruro | Agrarian. Land division or distribution for hereditary succession |

**Indigenous people:**

Antakawa community, Ilave Grande Ayllu, Challapata Marka

| Magistrate/s | Dissenting vote's opinion |
|---|---|
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| Abstract | Analysis |
|---|---|
| In a land division dispute between a sister and her seven brothers, a mother decided to divide the lands she had in possession in the community's territory between her eight children. One of the sisters discussed this division concerning the remaining brothers before the authorities of her community and later with the Ayllu. However, despite not agreeing with the resolution of the dispute, she did not turn to the higher authorities of the Marka and, later, of the Suyu. Instead, the sister complained directly to Amparo, arguing the violation of her right to due process.<br>The Court rejected the Amparo without entering to decide on the merits since the claimant did not comply with the principle of subsidiarity. In other words, the Amparo claimant did not go to the higher indigenous authorities to decide the dispute within the framework of her jurisdiction. | The Court's decision legally recognized that the indigenous jurisdiction has the competence to resolve the dispute applying the subsidiarity principle, thus making the indigenous jurisdiction effective. Furthermore, the case demonstrates indigenous jurisdiction to be effective regarding the defendant and the indigenous jurisdiction indicators (accepting the case) since both acted within indigenous jurisdictional competencies and ineffective concerning the claimant because she rejected the indigenous jurisdiction. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 14/8/2020 | 0433/2020-S3 | PCJ | Third Chamber | Karem Lorena Gallardo Sejas | CA |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 31653-2019-64-AAC | La Paz | Agrarian. Land dispute |

**Indigenous people:**

Organización Indígena Chiquitana (OICH), (Monkox nation)

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| After the agri-environmental jurisdiction had ratified INRA's decision to endow a person with public land, the indigenous jurisdiction decided to nullify this endowment and ordered the payment of damages for $3 million to INRA.<br>The Court decided against the indigenous jurisdiction as it held that it acted outside its limits of jurisdiction and violated hierarchical equality between jurisdictions. Consequently, the Court annulled the indigenous decision. | The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators (by accepting the case) since both exceeded indigenous jurisdictional competencies. However, the case is irrelevant for the indicators of the PCC and the lower-ranking courts because, although the decisions are contrary to the indigenous jurisdiction, they respected legal limits, and the indigenous jurisdiction's effectiveness was not affected. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 16/10/2020 | 0016/2020 | PCD | Fourth specialized chamber | René Yván Espada Navía | Consultation of Indigenous Authorities on the application of their legal norms to a specific case |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 32625-2020-66-CAI | Santa Cruz | Indigenous sanction. Expulsion for environmental damage (deforestation) |

| Indigenous people: |
|---|
| Organización Indígena Chiquitana (OICH), (Lomerío Indigenous Communities Central (CICOL). Through CIDOB and OICH) |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| Background: An immigrant from the highlands bought land allegedly adjacent to the community's collective lands or TCO (the indigenous community believes that the buyer was deceived because they sold collective lands that cannot be transferred as private property). Later, together with other people hired for this purpose, he began to arbitrarily exploit the forest on this supposed property and enter the collective land, cutting the wires of the protection perimeter placed by the community.<br>The community presented a complaint to the highest authorities of the OICH and CIDOB. CIDOB called the parties in dispute, listened to their arguments, and issued a final decision establishing: a) $ 260,000 for damages and penalties (100,000 for environmental damage and the rest as an estimate of the illicit profit obtained from logging). b) Definitive prohibition of entering the community or expulsion. c) Retention of all the property of the expelled person remaining in the TCO (called 'embargo' by the indigenous jurisdiction -IJ-). Finally, the indigenous authorities consulted on the applicability of their decision concerning the Constitution, considering that the latter recognizes the right to protect their sacred places.<br>The PCC decided that: a) According to the JDL, the IJ does not have the competence to decide on sanctions for illegal logging, damage to forests, and the environment, since it is forestry law (administrative authorities and agri-environmental jurisdiction). However, the PCC clarified that IJ could order the material replacement of the damages caused. Despite this, the PCC has not differentiated the amounts determined by IJ and has not allowed any to be applied. b) The areas territorial and material validity were met concerning the expulsion of the non-community member. In the area of personal validity, the PCC clarified that the IJ could expel the immigrant despite not being a community member since he voluntarily settled in indigenous territory, exploited its natural resources, and participated in the indigenous hearing arguing his rights, submitting to IJ. PCC justified this decision with SCP 0764/2014 (self-identification or any other declaration generates a belonging link with indigenous peoples) and in the constitutional validity of the expulsion sanction (DCP 0006/2013). c) There is no constitutional incompatibility with retaining the property of those expelled, except edible property (essential for their subsistence). This retention ensures compliance with the expulsion because the expelled could collect their property at the time of leaving. | The PCC maintained the indigenous decision to expel a non-community member disregarding JDL's personal validity area in favor of the competence of the indigenous jurisdiction. Consequently, it made the indigenous jurisdiction more effective.<br>If the PCC accepted the expulsion of a non-community member despite the limits defined by law, its decision to revoke the indigenous decision on damages could be debatable. Despite such inconsistency, the PCC's decision did not affect the indigenous jurisdiction's effectiveness since the latter acted outside its competence.<br>The case demonstrates indigenous jurisdiction to be more effective regarding the claimant and the indigenous jurisdiction indicators since both exceeded indigenous jurisdictional competencies. |

| Date | Case number | Resolution type | Courtroom | Rapporteur magistrate | Case type |
|---|---|---|---|---|---|
| 8/12/2020 | 0037/2020 | PCJ | Plenary chamber | Karem Lorena Gallardo Sejas | Jurisdictional competency dispute |

| Docket No. | Bolivia's Dept. | Matter |
|---|---|---|
| 27179-2019-55-CCJ | Cochabamba | Agrarian. Land dispute |

| Indigenous people: |
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| Sarco Cucho, agrarian union, Capinota province |

| Magistrate/s | Dissenting vote's opinion |
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| Abstract | Analysis |
|---|---|
| In a criminal proceeding for dispossession and disturbance of possession, the indigenous authorities claimed competence to resolve the dispute.<br>The Court decided to favor the indigenous jurisdiction after identifying that the three areas of personal, | The Court made the indigenous jurisdiction more effective since it extended the scope of personal validity to people outside the community. It is highlighted that it granted jurisdiction to the indigenous jurisdiction, recommending impartiality due to the existence of a conflict of interest, |

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| territorial, and material validity were met. It should be clarified that the personal scope was not fulfilled concerning one of the criminally denounced as he is from another community. However, the Court forced reality and linked this person for being Quechua. Something similar happened with two other criminal defendants because despite identifying themselves from another community, the Court held, based on fieldwork, that they had relations with the community and that they even held some authority positions in the community. | since some persons criminally denounced are, at the same time, indigenous authorities.<br>On the other hand, the case demonstrates the indigenous jurisdiction to be more effective regarding the indigenous jurisdiction indicators since it accepted the case and claimed it outside its competence, and the criminal defendants because they allegedly requested their indigenous authorities to claim the case and apparently some of them were also indigenous authorities who claimed it. Furthermore, the criminal claimant rendered indigenous jurisdiction less effective by legally preferring the ordinary jurisdiction over the indigenous one. |

# Effectiveness Evaluation

*Table 32: Effectiveness evaluation of the Plurinational Constitutional Court case law*

| *Case* | *PCC* | | | | *LRC* | | | | *Coord. & Coop.* | | | | *Claimants* | | | | *Defendants* | | | | *JK acceptance* | | | | *JK claims* | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| *number* | *+E* | *E* | *-E* | *xE* | *+E* | *E* | *-E* | *xE* | *+E* | *E* | *-E* | *xE* | *+E* | *E* | *-E* | *xE* | *+E* | *E* | *-E* | *xE* | *+E* | *E* | *-E* | *xE* | *+E* | *E* | *-E* | *xE* |
| *0243/2010-R* | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| *1586/2010-R* | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| *2036/2010-R* | 1 | – | – | – | – | 1 | – | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – | – |
| *1639/2011-R* | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| *1114/2012* | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| *1574/2012* | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| *1422/2012* | 1 | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| *1624/2012* | – | – | – | 1 | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| *2463/2012* | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | – |
| *0026/2013* | 1 | – | – | – | 1 | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| *0037/2013* | 1 | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| *0358/2013* | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| *0698/2013* | 1 | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| *0006/2013* | 1 | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| *0925/2013* | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| *0012/2013* | – | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – |
| *0009/2013* | – | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – |
| *1225/2013* | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| *1127/2013-L* | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| *0414/2013-CA* | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – |
| *1956/2013* | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| *2076/2013* | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| *1248/2013-L* | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | 1 | – | – | – | 1 | – | 1 | – | – | – | – | – | – | – |
| *0028/2013* | – | 1 | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| *0479/2013-CA* | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| *1259/2013-L* | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| *0041/2014* | – | – | – | 1 | – | 1 | – | – | – | – | – | – | 1 | – | – | – | – | – | – | 1 | 1 | – | – | – | – | – | – | – |
| *0323/2014* | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| *0486/2014* | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| *388/2014* | 1 | – | – | – | – | – | – | 1 | 1 | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| *0672/2014* | – | – | – | 1 | – | – | – | 1 | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – |
| *0764/2014* | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| *0778/2014* | – | 1 | – | – | – | – | – | 1 | 1 | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| *0874/2014* | 1 | – | – | – | – | – | – | 1 | 1 | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| *0961/2014* | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| *1024/2014* | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| *1203/2014* | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| *0043/2014* | – | – | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| *1754/2014* | – | – | – | 1 | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| *1810/2014* | 1 | – | – | – | – | 1 | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| *0062/2014-S3* | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| *0199/2015* | – | – | – | 1 | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| *200/2015* | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| *0113/2014-S2* | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| *1983/2014* | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| *0152/2014-S3* | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| *1990/2014* | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| *0033/2015-S3* | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| *0007/2015* | – | – | – | 1 | – | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| *246/2015-S1* | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – |
| *0057/2015* | – | – | – | 1 | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| *0017/2015* | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| *0448/2015-S3* | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – | – |
| *0484/2015-S2* | – | – | – | 1 | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| *0470/2015-S2* | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |

| Case | PCC | | | | LRC | | | | Coord. & Coop. | | | | Claimants | | | | Defendants | | | | JK acceptance | | | | JK claims | | | |
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| number | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE |
| 0607/2015-S3 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | 1 | – | – | – | – | – | – | 1 | 1 | – | – | – | – | – | – | – |
| 0649/2015-S1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 0707/2015-S1 | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 0131/2015 | – | 1 | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| 0315/2015-CA | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | 1 | – | – | – | – | – | 1 |
| 0318/2015-CA | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0075/2015 | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0082/2015 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0917/2015-S1 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 0098/2015 | – | – | – | 1 | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0092/2015 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0967/2015-S1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| 1016/2015-S3 | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| 0001/2016 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 0005/2016 | 1 | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0007/2016 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0150/2016-S1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| 0012/2016 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – |
| 0009/2016 | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
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| 0031/2016 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0020/2016 | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – |
| 0025/2016 | – | 1 | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – |
| 0044/2016 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0055/2016 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0046/2016 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0444/2016-S1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – |
| 0047/2016 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0056/2016 | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 0058/2016 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0059/2016 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
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| 0076/2016 | – | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – |
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| 0924/2016-S1 | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 1197/2016-S3 | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 1160/2016-S2 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 0071/2016 | 1 | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 1251/2016-S2 | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 1254/2016-S1 | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 1386/2016-S3 | 1 | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 0077/2016 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 1336/2016-S2 | 1 | – | – | – | – | – | – | 1 | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 0020/2017-CA | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0006/2017-S1 | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – |
| 0047/2017-S1 | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – |
| 0206/2017-S2 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – |
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| 0025/2017 | 1 | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 0010/2017 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0011/2017 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0012/2017 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0016/2017 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0015/2017 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0119/2017-CA | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
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| 0019/2017 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0018/2017 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0020/2017 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0516/2017-S3 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 0171/2017-CA | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 |
| 0641/2017-S1 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0573/2017-S1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 0691/2017-S3 | – | – | – | 1 | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
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| 0055/2017 | – | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – |
| 0715/2017-S2 | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 939/2017-S2 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| 0032/2017 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
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| 0049/2017 | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 |
| 0843/2017-S3 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 0909/2017-S3 | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – |
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| 1048/2017-S2 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 0043/2017 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
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| Case number | PCC | | | | LRC | | | | Coord. & Coop. | | | | Claimants | | | | Defendants | | | | JK acceptance | | | | JK claims | | | |
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| | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE |
| 0045/2017 | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0047/2017 | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0037/2017 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
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| 0057/2017 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0039/2017 | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0051/2017 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0041/2017 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0072/2017 | – | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – |
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| 0061/2017 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0067/2017 | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0068/2017 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 |
| 1189/2017-S1 | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 0090/2017 | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 0071/2017 | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0072/2017 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0073/2017 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0069/2017 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 | – | – |
| 0075/2017 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0077/2017 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0078/2017 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – |
| 1161/2017-S2 | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 0091/2017-S1 | – | 1 | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 0080/2017 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0081/2017 | 1 | – | – | – | – | – | – | 1 | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0100/2017-S1 | – | 1 | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 0093/2017 | 1 | – | – | – | – | – | – | 1 | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0088/2017 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0105/2017 | – | – | – | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – |
| 0008/2018 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0005/2018 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0076/2018-S1 | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| 0014/2018 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0013/2018 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – |
| 0105/2018-S1 | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 0015/2018 | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0153/2018-S4 | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – | – | – | – | – |
| 0153/2018-S2 | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – |
| 0206/2018-S1 | – | – | – | 1 | – | – | 1 | – | – | – | – | – | – | 1 | – | – | – | – | 1 | – | – | 1 | – | – | – | – | – | – |
| 0211/2018-S4 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0018/2018 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – |
| 0022/2018 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0023/2018 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0303/2018-S3 | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 0028/2018 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0065/2018 | – | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – |
| 0073/2018 | 1 | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 0433/2018-S1 | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| 0031/2018 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0508/2018-S4 | – | 1 | – | – | – | – | 1 | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0036/2018 | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0647/2018-S2 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 0041/2018 | 1 | – | – | – | – | – | – | 1 | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0040/2018 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0721/2018-S4 | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | 1 | – | – | – | – |
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| 0677/2018-S1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | 1 | – | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| 0346/2018-CA | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0046/2018 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0093/2018 | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 0048/2018 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
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| 0006/2019 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0015/2019-S1 | 1 | – | – | – | – | 1 | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 0016/2019 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
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| 0306/2019-S1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 0364/2019-S4 | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 0371/2019-S4 | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| 0481/2019-S2 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | 1 | – | – | – | – | – | – |
| 0156/2019-CA | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0518/2019-S4 | 1 | – | – | – | – | 1 | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 0610/2019-S1 | 1 | – | – | – | 1 | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0055/2019 | – | 1 | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| 0034/2019 | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| 0035/2019 | 1 | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| 0037/2019 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |

| Case number | PCC | | | | LRC | | | | Coord. & Coop. | | | | Claimants | | | | Defendants | | | | JK acceptance | | | | JK claims | | | |
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| *0737/2019-S2* | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – |
| *0046/2019* | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – |
| *0047/2019* | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
| *0563/2019-S3* | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – |
| *0064/2019-S4* | – | – | 1 | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
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| *0985/2019-S1* | – | – | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – |
| *0059/2019* | – | 1 | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | 1 | – | – |
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| *0026/2020-S2* | – | 1 | – | – | – | 1 | – | – | – | – | – | – | – | – | – | 1 | – | 1 | – | – | – | 1 | – | – | – | – | – | – |
| *0433/2020-S3* | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| *0016/2020* | 1 | – | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
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*Note*: More effective (+E), effective (E), less effective (-E), and ineffective (xE), Plurinational Constitutional Court (PCC), and lower-ranking courts (LRC).

# Annex C: Lower-Ranking Courts' Case Analysis

Below are the tables that contain the cases to this investigation concerning the lower-ranking courts settled in Jach'a Karangas (JK), ordered by date, from the oldest (2015) to the most current (2019), followed by their case name, the court, the finishing year, the place the natter, and the case type. Finally, an abstract and analysis are established for each case.

## Cases of 2015

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2015 | 09/2018 Complainant: Public Ministry, victim: Sixto Mamani, accused: Felipe Mamani | Ordinary - Mixed public court in civil, commercial, family, childhood, adolescence and criminal matters Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, Jiluta Manasaya community | Criminal<br>Severe and minor injuries |

| Case type |
|---|
| Criminal |

| Abstract | Analysis |
|---|---|
| JK's Apu Mallku claimed jurisdiction to decide the dispute in a criminal proceeding for severe and minor injuries inflicted on an older person. It is noted that just before the hearing for pre-trial detention, the indigenous authority claimed the competence. The prosecutor indicted the case as severe and minor injuries. The judge accepted the request of the indigenous authority and forwarded the file to the indigenous jurisdiction.<br>The parties were in the way of reaching an agreement, as shown in A.2019.09.04a. | Although the judge accepted the case and did not communicate to the indigenous authorities the existence of the criminal process, breaching his duty to cooperate and not intervene in indigenous cases, when the indigenous authority claimed the competence, the judge immediately accepted the request, rendering indigenous jurisdiction less effective but with ineffective cooperation.<br>The indigenous authority legally claimed the competence, making the indigenous jurisdiction effective. Furthermore, the indigenous jurisdiction was effective since it accepted to resolve the case.<br>The parties rendered the indigenous jurisdiction ineffective as they chose the agri-environmental one. It is noted that the defendant changed his mind about the competent jurisdiction after realizing he would be incarcerated in the process. These facts suggest that his late preference for indigenous jurisdiction was only for convenience, i.e., avoid the future criminal outcome. As a consequence, her actions are considered ineffective. |

## Cases of 2017

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2017 | 06/2017/Curahuara Benito Huarachi Coria y otro contra Rosaldo Huarachi Churqui | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, with competency on Provincia Sajama, Nor Carangas y San Pedro de Totora | Agrarian. Land dispute |

| Case type |
|---|
| Possessory action |

| Abstract | Analysis |
|---|---|
| In a land possession dispute between two families regarding a Sayaña divided into two parts and located in Totora Marka, the claimants justified having tried to resolve the dispute through the indigenous jurisdiction without success. Consequently, they filed a lawsuit in the agri-environmental jurisdiction. The defendant denied the claim but accepted the competence of the agri-environmental jurisdiction.<br>Faced with the lawsuit, the judge requested INRA (National Institute of Agrarian Reform) to certify the property's quality to accept or reject the case. Surprisingly, the judge accepted the case, although INRA certified the land was part of the collective indigenous property (TCO).<br>However, just before the judge issued a decision, the Apu Mallku of JK claimed the competence to resolve the dispute at the verbal | The JDL imposes that indigenous peoples' internal division of collective lands is under its jurisdiction (Art. 10.II.c). Likewise, it orders that the indigenous jurisdiction matters not be known to the other jurisdictions (Art. 10.III). Consequently, the agri-environmental judge acted without jurisdiction, especially since INRA certified Totora Marka's territory as collective property. This situation worsened when he rejected Apu Mallku's claim of jurisdiction and resolved the dispute. Thus, the judge's actions rendered indigenous jurisdiction ineffective. Furthermore, he breached his duty to coordinate and cooperate with the indigenous jurisdiction because he did not summon the indigenous authority.<br>The parties also rendered the indigenous jurisdiction ineffective as they chose the agri-environmental one. Since the |

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| request of the defendant. The latter rejected it, arguing that a) no law obliges him to refrain from hearing a case when the parties voluntarily accepted his jurisdiction, b) he has the competence under the law, c) everyone has the right to claim before any jurisdiction, and d) the parties to the process would have tacitly accepted the agri-environmental jurisdiction.<br>Although the PCC notified this judge about the conflict of competencies promoted by Apu Mallku (August 3, 2017), a) the judge continued the process, b) decided the dispute in favor of the plaintiffs (August 21, 2017), c) which in turn was appealed and confirmed by the Agri-environmental Court (2018).<br>The PCC decided in favor of the indigenous jurisdiction arguing that the three validity areas concur since the parties are members of the community (personal validity area), it is a dispute over the distribution and possession of collective lands within the indigenous people (material validity area) and the lands are in JK (territorial validity area). Additionally, it held that the action of the Jurisdictional Competency Dispute suspended the process and that all actions subsequently taken in the agri-environmental jurisdiction are null and void. | claimants could not resolve the dispute with the indigenous authorities, they should have requested a higher indigenous authority for assistance. It is noted that the defendant changed his mind about the competent jurisdiction after realizing he would lose the process. These facts suggest that his late preference for indigenous jurisdiction was only for convenience, i.e., to revoke the future agri-environmental outcome.<br>The lower-ranking indigenous authorities who could not resolve the conflict should have requested the higher-ranking authorities' support. By not doing so, they gave up on dealing with the conflict, rendering the indigenous jurisdiction ineffective.<br>The highest-ranking indigenous authority made the indigenous jurisdiction effective by presenting a jurisdiction claim to the agri-environmental judge and then to the PCC, grounding duties regarding the right to exercise indigenous jurisdiction to its duty bearers (agri-environmental judge and indigenous parties). |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2017 | 01/2018 Complainant: Public Ministry, victim: Candida Calle, accused: Jhudith Mollo | Ordinary - Mixed public court in civil, commercial, family, childhood, adolescence and criminal matters Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, San Pedro de Totora | Criminal. Severe and minor injuries |

| Case type |
|---|
| Criminal |

| Abstract | Analysis |
|---|---|
| JK's Apu Mallku claimed jurisdiction to decide the dispute for minor and severe injuries in a criminal proceeding. It is noted that just before the hearing for pre-trial detention, the indigenous authority claimed the competence to resolve the dispute. The judge accepted the request of the indigenous authority and referred the case to the indigenous jurisdiction.<br>Following, the parties reached an agreement concluding the procedure. | Although the judge accepted the case and did not communicate to the indigenous authorities the existence of the criminal process, breaching his duty to cooperate and not intervene in indigenous cases, when the indigenous authority claimed the competence, the judge immediately accepted the request, rendering indigenous jurisdiction less effective but with ineffective cooperation.<br>The indigenous authority legally claimed the competence, making indigenous jurisdiction effective.<br>The parties, on the contrary, accepted the ordinary jurisdiction, rendering indigenous jurisdiction ineffective. However, allegedly the defendant requested the indigenous authority to claim jurisdiction. As a consequence, her actions are considered effective. |

# Cases of 2018

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2018 | 20/2018 Complainant: Public Ministry, victim: Sergio Villca, accused: Oscar Villca and Basilia Gomez | Ordinary - Mixed public court in civil, commercial, family, childhood, adolescence and criminal matters Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, San Pedro de Totora, Pachacama Ayllu, Culta community | Criminal. Domestic violence |

| Case type |
|---|
| Criminal |

| Abstract | Analysis |
|---|---|
| JK's Apu Mallku claimed jurisdiction to decide the dispute in a criminal proceeding for minor injuries to an older person within a family context. It is noted that just before the hearing for pre-trial detention, the indigenous authority claimed the competence. The prosecutor indicted the case as domestic violence.<br>The judge accepted the request of the indigenous authority and forwarded the file to the indigenous jurisdiction.<br>The parties reached an agreement concluding the procedure. | Although the judge accepted the case and did not communicate to the indigenous authorities the existence of the criminal process, breaching his duty to cooperate and not intervene in indigenous cases, when the indigenous authority claimed the competence, the judge immediately accepted the request, rendering indigenous jurisdiction less effective but with ineffective cooperation.<br>The indigenous authority legally claimed the competence, making the indigenous jurisdiction effective. Furthermore, the indigenous jurisdiction was effective since it accepted to resolve the case.<br>The parties rendered the indigenous jurisdiction ineffective as they chose the agri-environmental one. It is noted that the defendant changed his mind about the competent jurisdiction after realizing he would be incarcerated in the process. These facts suggest that his late preference for indigenous jurisdiction was only for convenience, i.e., avoid the future criminal outcome. As a consequence, her actions are considered ineffective. |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2018 | 11/2018 Complainant: Public Ministry, victim: Sergio Gomez, accused: Lucas Quispe | Ordinary - Mixed public court in civil, commercial, family, childhood, adolescence and criminal matters Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Totora Marka, Ayllu Pachacama | Criminal. Severe and minor injuries, and threat of death |

| Case type |
|---|
| Criminal |

| Abstract | Analysis |
|---|---|
| JK's Apu Mallku claimed jurisdiction to decide the dispute in a criminal proceeding for severe and minor injuries inflicted on an older person. It is noted that just before the hearing for pre-trial detention, the indigenous authority claimed the competence. The prosecutor indicted the case as severe and minor injuries. The judge accepted the request of the indigenous authority and forwarded the file to the indigenous jurisdiction.<br>The parties reached an agreement, as shown in A.2019.09.04b. | Although the judge accepted the case and did not communicate to the indigenous authorities the existence of the criminal process, breaching his duty to cooperate and not intervene in indigenous cases, when the indigenous authority claimed the competence, the judge immediately accepted the request, rendering indigenous jurisdiction less effective but with ineffective cooperation.<br>The indigenous authority legally claimed the competence, making the indigenous jurisdiction effective. Furthermore, the indigenous jurisdiction was effective since it accepted to resolve the case.<br>The parties rendered the indigenous jurisdiction ineffective as they chose the agri-environmental one. It is noted that the defendant changed his mind about the competent jurisdiction after realizing he would be incarcerated in the process. These facts suggest that his late preference for indigenous jurisdiction was only for convenience, i.e., avoid the future criminal outcome. As a consequence, her actions are considered ineffective. |

# Cases of 2019

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2019 | 40/2019 Bibsor Alá Mollo | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, with competency on Provincia Sajama, Nor Carangas y San Pedro de Totora | Indigenous jurisdiction request cooperation |

| Case type |
|---|
| Coordination and cooperation for expert opinion (GPS plan and quantifying torts) |

| Abstract | Analysis |
|---|---|
| Indigenous authorities requested cooperation from the Agri-environmental judge to make an expert opinion without specifically mentioning what it was about (in the file, it is known that it was to assess damage to poles and wires that delimited two Ayllus: Wara Wara (Island) and Aymarani). They also requested GPS measurements of the boundaries (8 milestones) between the two Ayllus. Their purpose was to attach the expert opinion to the transactional agreement reached in the indigenous jurisdiction. The judge ordered the engineer, who provides technical support to the court, to conduct the GPS survey and measurement. The request and the court order were made on the same day that the GPS survey and measurement were conducted, but the engineer had already participated in the concerted establishment of landmarks two days before. | The cooperation between jurisdictions and the exercise of indigenous jurisdiction were effective:<br>The indigenous jurisdiction requested the support of an agri-environmental judge to define the damages and landmarks through GPS. It follows that this request seeks to reduce the costs of direct hiring of professional assistance (according to the documents, there is no charge for the court's service). Due to the dates in the documents, the activity was requested orally, although it was later documented (JDL, article 13.II). The judicial authority commissioned the engineer, who provides technical support and is part of the agri-environmental court, to cooperate with indigenous jurisdiction.<br>The definition of damages could be carried out by the indigenous authorities, even more so in this case because it was a simple situation to resolve. However, no formal judicial decision was requested to define damages but only a technical opinion that, in the end, it is unknown whether it has been adopted or has served to decide the damages. On the other hand, GPS measurements require technical support, which is not feasible for the indigenous authorities. In sum, the indigenous jurisdiction kept its possibility to decide the case with the aid of the agri-environmental court. Moreover, the indigenous parties remained faithful to the indigenous jurisdiction, rendering it effective. |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2019 | 14/2019 Roberto Pinto Colque c/ Bartolomé Colque Nina | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, with competency on Provincia Sajama, Nor Carangas y San Pedro de Totora | Agrarian<br>Land dispute and damages |

| Case type |
|---|
| Preparatory legal action: judicial inspection for burning of poles and disturbance of possession |

| Abstract | Analysis |
|---|---|
| The claimant required the agri-environmental judge to conduct a judicial inspection as a preparatory action against a community neighbor in the Ayllu Sullca Uta Manazaya. The reason was the possession disturbance of his Sayaña due to the burning of its limits (poles and wires). The judge accepted the request and summoned the parties to a public hearing. However, the hearing was delayed for different reasons. For instance, the indigenous authority, tata Awatiri, requested to adjourn the hearing because of the defendant's health. He is not a procedural party and was not summoned for the hearing (as occurred in other cases, e.g., LRFJ.AE.Curahuara de Carangas 2019.2019.03). Finally, the hearing took place and the parties reached a conciliation. It is noted that the parties, their families, neighbors, and the indigenous authorities Tata Awatiri, Mama Awatiri, and Sullca Awatiri were present at this hearing. | The indigenous jurisdiction was ineffective because, although it is competent to decide its internal collective land distribution (article 10.II.c of JDL), the judge, the indigenous parties, and the indigenous authorities accepted the agri-environmental jurisdiction decide the case through conciliation.<br>The agrarian process was initiated to carry out a conciliation. In these types of cases, it could be argued that they are not jurisdictional acts that may interfere with indigenous jurisdiction. However, these acts prevent the indigenous jurisdiction from assuming jurisdiction in the way they exercised it, that is, through conciliation (PCC's cases 0069/2017 and 0005/2018 confirm this criterion). The judge invaded the conciliatory role of the indigenous authorities and the parties made the indigenous jurisdiction ineffective. Moreover, it is observed that material, territorial and personal validity areas concur since the case regards the internal distribution of indigenous lands among its members.<br>The judge did not summon indigenous authorities breaching his duty to coordinate or cooperate with indigenous jurisdiction. However, the indigenous authorities decided to get involved in the case and the hearing, even helping the judge and parties reach the agreement, but they did not claim the competence to resolve the matter. Consequently, indigenous authorities made the indigenous jurisdiction ineffective by not claiming the competence and less effective by partially refusing to take charge of the conciliation. |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2019 | 40/2019 Gregorio Alvarado Mamani y Guillermo Mamani Alvarado | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, with competency on Provincia Sajama, Nor Carangas y San Pedro de Totora | Agrarian. Land dispute |

| Case type |
|---|
| Coordination and cooperation for expert opinion (GPS plan) to avoid incidents with neighbors |

| Abstract | Analysis |
|---|---|
| As indigenous members (not authorities), the claimants requested technical support from the Agri-Environmental Court to make an expert opinion on their land's limits and mapping to avoid incidents with their neighbors (Sayaña Tangallani Huajruma, Huacullani zone). It should be noted that there are no current disputes. The judge appointed a conciliatory and measurement public hearing, summoned the neighbors, and commanded the claimants to invite their indigenous authorities to coordinate. Two hearings were held with different neighbors, reaching agreements and minutes held before the Court.<br>It is clarified that a) third parties, whose neighboring lands pertain to La Paz's department, observed that they were not summoned despite their interest in the hearings (they are not from JK). b) As a result, a second hearing was held. c) There was no presence of indigenous authorities in both hearings, and it is unknown if the parties invited them. | Regarding relations between community members where personal, territorial and material validity areas concur, if the parties require their indigenous authorities to define their land boundaries limits, or the indigenous authorities ask cooperation from the agri-environmental judge, the indigenous justice would be effective. However, in this case, the opposite happened.<br>The agrarian process was initiated to carry out a conciliation. In these types of cases, it could be argued that they are not jurisdictional acts that may interfere with indigenous jurisdiction. However, these acts prevent the indigenous jurisdiction from assuming jurisdiction in the way they exercised it, that is, through conciliation (PCC's cases 0069/2017 and 0005/2018 confirm this criterion). The judge invaded the conciliatory role of the indigenous authorities and the parties made the indigenous jurisdiction ineffective. Moreover, it is observed that material, territorial and personal validity areas concur regarding the JK's indigenous members since the case regards internal distribution of indigenous lands among its members.<br>Furthermore, although the judge decided to summon indigenous authorities to coordinate, he did not ensure their presence in the hearings or even had certainty if they were aware of them. As a result, a) there was no actual coordination or cooperation between jurisdictions but only the accomplishment of a formality, making them less effective. b) Since there is no evidence that the indigenous authorities were aware of the hearings, it is not possible to affirm that they have refused to claim the competence or decide the case. Still, and according to the circumstances, it seems odd that they were unaware of the hearings.<br>Finally, the competence belongs to the agri-environmental jurisdiction regarding the agreements reached with indigenous members and non-members. |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2019 | 04/2019 Walter Copaja Godoy y otros contra Sabino Huarachi y otra | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, with competency on Provincia Sajama, Nor Carangas y San Pedro de Totora | Agrarian. Damages |

| Case type |
|---|
| Preparatory legal action: judicial inspection, technical expertise of crops and georeferenced plan for disturbance of possession |

| Abstract | Analysis |
|---|---|
| The indigenous authority, called Corregidor of the Ayllu Wara Wara of San Pedro de Totora, requested the agri-environmental judge a land inspection, expert opinion on crop damages, and a georeferenced survey | The antecedents suggest that the indigenous authorities and members used agri-environmental court services (inspection and expertise) to reach an agreement within |

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| plan on the Sayaña of two community members. The indigenous authority clarified that he requested those services to agri-environmental jurisdiction since his community members asked him to. The judge admitted the request and set a conciliatory hearing to conduct the inspection and the expert opinion. The court's support staff performed a detailed expert opinion on the damages. There are no more acts in the process. | the exercise of their jurisdiction. As a consequence, they rendered indigenous jurisdiction effective. Furthermore, the agri-environmental jurisdiction had effectively cooperated with the indigenous jurisdiction without invading the competence of indigenous jurisdiction, rendering it effective. |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2019 | 31/2019 Joaquin Quispe contra Juvenal Nina Ramos | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, with competency on Provincia Sajama, Nor Carangas y San Pedro de Totora | Agrarian. Land dispute |

**Case type**

Conciliation

| Abstract | Analysis |
|---|---|
| A community member from Sullka Uta Manasaya complained to his indigenous authority about the cutting wire fences and the destruction of boundary posts in his land. The authority ordered in writing that the defendant immediately fix the damage. However, the authority did not solve the problem. At the claimant's insistence, the indigenous authority issued him a certificate that a) described the complaint and b) stated that it was required to solve the dispute immediately before the 'propper jurisdiction.' As a result, the community member resorted to the agri-environmental judge, who held two hearings ending with a written agreement between the parties. | The indigenous authority's negligent actions to resolve the dispute may well be construed as a rejection of the exercise of indigenous jurisdiction, even though it is competent to deal with it. Such standing was confirmed when the authority refused to decide the case and sent the claimant to another jurisdiction. Faced with this situation, the interested party resorted to the agri-environmental jurisdiction instead of claiming the conflict resolution to an indigenous higher authority. Following, when the agri-environmental judge accepted the claim and resolved the dispute, he transgressed the competence of the indigenous jurisdiction. The judge accepted the case and did not communicate it to the indigenous authorities breaching his cooperation and coordination duties. Finally, the defendant (indigenous member) accepted the agri-environmental jurisdiction to resolve the conflict instead of challenging it. Therefore, the actions of the indigenous authority, indigenous parties, and the judge made ineffective the indigenous jurisdiction. |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2019 | 14/2019 Rogelio Tanga Villca c/ Tiburcio Bustillos Gonzalo | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, with competency on Provincia Sajama, Nor Carangas y San Pedro de Totora | Agrarian. Damages |

**Case type**

Conciliation

| Abstract | Analysis |
|---|---|
| A member of the Ayllu Sapana Crucero and holder of the Sayaña Castilluma claimed against his neighbor to the agri-environmental court of Curahuara de Carangas to hold a hearing to solve his crop damages. The request was made orally and transcribed by the court secretariat. The judge admitted the request, the court's technical support carried out the damages appraisal, and a judicial conciliation hearing was held in which the parties did not reach an agreement. Therefore, they requested to adjourn the hearing to reach an agreement. At the new hearing, the defendant did not appear. At the time of review, the process was unfinished. | Despite being a case that belongs to the indigenous jurisdiction, the judge accepted the indigenous's complaint but did not summon the indigenous authority to establish a cooperative relationship. As a result, the judge's actions made ineffective the indigenous jurisdiction and his duties to cooperate and coordinate. Furthermore, the parties chose agri-environmental jurisdiction to resolve their dispute, rendering indigenous jurisdiction ineffective. Since there is no evidence that the indigenous authorities were aware of the hearings, it is not possible to affirm that they have refused to claim the competence or decide the case. |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2019 | 39/2019 Silvia Basilia Estrada Alvarado contra Cecilio Estrada Apaza | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, with competency on Provincia Sajama, Nor Carangas y San Pedro de Totora | Agrarian<br>Land division or distribution for hereditary succession |

**Case type**

Conciliation

| Abstract | Analysis |
|---|---|
| The indigenous jurisdiction could not reach an agreement of land division in a hereditary succession dispute. Then, the indigenous members in dispute requested the agri- | The indigenous authorities made its jurisdiction ineffective by not deciding the case when indigenous members could not reach an agreement. Instead, they should have resolved the dispute or referred it to a higher hierarchy indigenous authority. Moreover, the indigenous authorities should have claimed the competence to resolve the dispute and ground duties on its bearers under the legally defined limits.<br>The parties also rendered indigenous jurisdiction ineffective when they requested the agri- |

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|---|---|
| environmental judge to resolve the case. The judge admitted the case, summoned the parties to a conciliation hearing, and invited the indigenous authorities to participate. However, they could not reach an agreement either, so the parties requested to adjourn the hearing to reach an agreement later. The court's technical support defined the division area by GPS and satellite images. At the time of review, the process was unfinished. | environmental jurisdiction to resolve their dispute.<br>The agri-environmental judge carry out a conciliation. In these types of cases, it could be argued that they are not jurisdictional acts that may interfere with indigenous jurisdiction. However, these acts prevent the indigenous jurisdiction from assuming jurisdiction in the way they exercised it, that is, through conciliation (PCC's cases 0069/2017 and 0005/2018 confirm this criterion). The judge invaded the conciliatory role of the indigenous authorities and the parties made the indigenous jurisdiction ineffective. Moreover, it is observed that material, territorial and personal validity areas concur since the case regards the internal distribution of indigenous lands among its members.<br>Finally, given that the judge invited the indigenous authorities to the hearing, implicitly he gave them the possibility to claim their competence and decide the case. Although the indigenous authorities were present at the hearing, they did not intervene and the judge did not give them the floor. As a result, there was no cooperation or coordination, but only the fulfillment of a formality that made them less effective. |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2019 | 12/2019 Marlene Canaza Coria contra Alejandro Tanga Marca y otro | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, with competency on Provincia Sajama, Nor Carangas y San Pedro de Totora | Agrarian. Land dispute |

**Case type**

Conciliation

| Abstract | Analysis |
|---|---|
| The agri-environmental judge admitted the claimant's request for a conciliation hearing with her neighbors to resolve her possession disturbance and seek a fair land division. It is highlighted that an indigenous authority helped to summon the defendant, even though hi was not summoned to the process. After three hearings, the parties could not reach an agreement. Meanwhile, the technical support of the court mapped the land with GPS. At the time of review, the process was unfinished. | The agri-environmental jurisdiction rendered the exercise of the indigenous jurisdiction ineffective by accepting an indigenous case. The agrarian process was initiated to carry out a conciliation. In these types of cases, it could be argued that they are not jurisdictional acts that may interfere with indigenous jurisdiction. However, these acts prevent the indigenous jurisdiction from assuming jurisdiction in the way they exercised it, that is, through conciliation (PCC's cases 0069/2017 and 0005/2018 confirm this criterion). The judge invaded the conciliatory role of the indigenous authorities and the parties made the indigenous jurisdiction ineffective. Moreover, it is observed that material, territorial and personal validity areas concur since the case regards the internal distribution of indigenous lands among its members. Furthermore, the judge accepted the case and did not communicate it to the indigenous authorities breaching his cooperation and coordination duties.<br>The parties made indigenous jurisdiction ineffective when they chose and accepted the agri-environmental jurisdiction to resolve their dispute.<br>The indigenous authority acted against indigenous jurisdiction by cooperating with the agri-environmental jurisdiction notify the parties instead of claiming the competence to resolve the dispute. |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2019 | 19/2019 Guido Álvarez Ramírez contra N.N. | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, with competency on Provincia Sajama, Nor Carangas y San Pedro de Totora | Agrarian. Land mapping |

**Case type**

Conciliation

| Abstract | Analysis |
|---|---|
| A possessor of sayaña requested the agri-environmental judge make a georeferenced map of his land [sayaña] through the court's technical support. The judge admited the request as a conciliatory procedure. However, there is no other judicial record in the case except for the technical mapping. | Although the judge admitted the case as a conciliatory procedure possibly preventing the indigenous jurisdiction from assuming jurisdiction in the way they exercised it, the case finished with the mapping's technical support of the agri-environmental jurisdiction without actually invading the competence of indigenous jurisdiction. Furthermore, the antecedents suggest that the expertise was applied to reach an agreement through the indigenous jurisdiction (outside the agri-environmental jurisdiction). Therefore, the actions of the agri-environmental judge and the claimant made indigenous jurisdiction's effective.<br>Under this context, even though the agri-environmental jurisdiction would have indirectly cooperated with the indigenous jurisdiction, the former breached its duty to coordinate and cooperate with the latter because it did not summon the indigenous authority. |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2019 | 05/2019 Julio Paco Gomez contra René Paco Choque y otra | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara Marka, Sullca Tunca | Agrarian. Land dispute and damages |

| Case type | |
|---|---|
| Conciliation | |
| **Abstract** | **Analysis** |
| The claimant reported damages caused to the land he possesses to the agri-environmental judge. He required the judge to a) admit the case and b) order the indigenous authorities to i) assess the damages, ii) certify that they had witnessed the damages and that iii) the claimant is a community member entitled to land. The judge refused to request the appraisal of the damages and the certification that the claimant is a community member. However, the judge accepted the claim and set a date for a conciliatory hearing. It is emphasized that the defendants asked the judge to withdraw from the process on two occasions, arguing that the indigenous jurisdiction has the competence to decide the case. As a result of the defendants' complaint, the judge requested the presence of the indigenous authorities at the hearing, who, in turn, construed that it was about cooperation between jurisdictions to map and measure the Sayaña. Once the technical support of the court concluded the mapping, the indigenous authorities requested a copy. After the judge authorized the copy, the process ended. | What began as an agri-environmental process of possession and damage was transformed, with the defendants' and the indigenous authorities' actions, into technical expertise of mapping the Sayaña, which arguably indigenous jurisdiction used to resolve the case.<br>Although the judge did not intend to grant the competence to the indigenous jurisdiction, it is what actually happened when the process advanced. As a result, the judged rendered indigenous jurisdiction ineffective. Since the judge invited the indigenous authorities to the hearing, implicitly he gave them the possibility to claim their competence and decide the case. However, he did not cooperate with the indigenous jurisdiction at the beginning.<br>On the other hand, the claimant preferred agri-environmental jurisdiction. His posture did not change throughout the process. In this sense, he breached his duties with the indigenous jurisdiction, rendering it ineffective.<br>The indigenous authorities, for their part, although they accepted the dispute from their community members, did not request collaboration from the agri-environmental jurisdiction, nor did they claim jurisdiction against the agri-environmental judge. On the contrary, the indigenous authorities' activity suggests that they understood the agri-environmental judge's actions as cooperation between jurisdictions. In the end, the indigenous jurisdiction decided the case. For this reason, the indigenous jurisdiction was effective. |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2019 | 03/2019 Julio Paco Gomez contra René Paco Choque y otros | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, with competency on Provincia Sajama, Nor Carangas y San Pedro de Totora | Agrarian<br>Land division or distribution for hereditary succession |

| Case type | |
|---|---|
| Conciliation | |
| **Abstract** | **Analysis** |
| An indigenous lawyer residing in the city and belonging to the Ayllu Sullca Tunca argued to indigenous jurisdiction that his father had died and his Sayaña should be distributed among his successors. However, he asserted that the indigenous jurisdiction tried to resolve the dispute but could not due to his nephew's violent behavior, who is currently possessing the Sayaña. Then, considering the indigenous jurisdiction has no more participation in resolving the dispute, he claimed the succession division before the agri-environmental jurisdiction. The defendants responded by opposing the agri-environmental jurisdiction and filing their request to the indigenous jurisdiction instead. The judge accepted the defendants' request and sent the process to the indigenous jurisdiction within a hearing. Furthermore, the indigenous authorities argued in the same hearing that the former indigenous authorities had already decided the case and that if the case were referred to them, they would resolve the conflict dividing the land into equal parts. It is noted the judge did not summon the indigenous authorities to the hearing. | The claimant rendered the indigenous jurisdiction ineffective by preferring the agri-environmental jurisdiction.<br>The defendants acted faithfully with the indigenous jurisdiction by requesting the judge refer the case to it. Thus, they had made it effective.<br>Although the judge accepted the case and did not communicate to the indigenous authorities the existence of the process, breaching his duty to cooperate and not intervene in indigenous cases, when the defendant challenged the agri-environmental competence, the judge immediately accepted the request, rendering indigenous jurisdiction less effective but with ineffective cooperation.<br>Finally, the indigenous authorities also requested the competence to tackle the land division during the hearing, rendering the indigenous jurisdiction effective. |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2019 | 49/2019 Curahuara Fidel Condori Villca | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, with competency on Provincia Sajama, Nor Carangas y San Pedro de Totora | Indigenous jurisdiction request cooperation |

| Case type | |
|---|---|
| Coordination and cooperation | |
| **Abstract** | **Analysis** |
| The indigenous authority, Tata Awatiri, presented a report showing that, despite having decided an indigenous dispute over land and damages due to the breaking of fences and poles, the community member who was sanctioned and lost refused to sign | The JDL refers to cooperation and collaboration in exchanging information and experiences but does not include that the State's agri-environmental jurisdiction acts in tandem with indigenous authorities to resolve community disputes. In the |

| | |
|---|---|
| the settlement minutes. Then, he asked the agri-environmental judge to accompany and support a new hearing that will take place within the framework of cooperation. The agri-environmental judge accepted the request and ordered the court's secretariat and technical support staff to participate in the hearing.<br>During the hearing, as the parties to the conflict were unable to reach an agreement, the indigenous authorities offered solutions. These proposals were rejected by the parties in conflict, who later preferred to survey the land by GPS to reach an agreement. As a result, there are no more actions in the process. | present case, this is what happened, as the indigenous authorities explicitly requested help to resolve the dispute that they could not satisfactorily conclude. As a result, the agri-environmental judge agreed to be at the indigenous hearing and brought in the court personnel to help solve the problem. In this way, cooperation and coordination were more effective.<br>At the same time, the indigenous authorities were effective in finding ways to maintain their possibility to resolve the dispute. The parties of the process also made indigenous jurisdiction effective by respecting and submitting their dispute to it. |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2019 | 44/2019 Leonardo Calle Pacajes y Paulina Nina Jiménez | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, with competency on Provincia Sajama, Nor Carangas y San Pedro de Totora | Indigenous cooperation and coordination<br>Land possession |

**Case type**

Coordination and cooperation

| Abstract | Analysis |
|---|---|
| The indigenous authority Mallku of Marka requested the agri-environmental judge to accompany a conciliation hearing within the cooperation framework. During the hearing, the agri-environmental judge and the court's secretariat and technical support staff were present. According to the minutes, although the parties could not settle the dispute, the indigenous authorities finally decided it (there is no detail on the proceedings). In addition, the technical support helped to define the limits between neighbors.<br>There are no more actions in the process. | The agri-environmental jurisdiction helped indigenous authorities resolve community disputes without deciding the case and respecting legal limits between jurisdictions, rendering indigenous jurisdiction effective. However, the agri-environmental judge agreed to be at the indigenous hearing and brought in the court personnel to help solve the problem, surpassing his inter-jurisdictional duty to cooperate, rendering it more effective.<br>The dispute was decided by the indigenous jurisdiction rendering it effective. The parties of the process also made indigenous jurisdiction effective by respecting and submitting their dispute to it. |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2019 | 25/2019 Justiniano Condori Cahuana contra Andrés Condori Mamani y otro | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, with competency on Provincia Sajama, Nor Carangas y San Pedro de Totora | Agrarian<br>Damages |

**Case type**

Conciliation

| Abstract | Analysis |
|---|---|
| An indigenous community member requested damages assessment from the agri-environmental court. The judge ordered the engineer (who provides technical support to the court) to carry out the expert opinion through a conciliation hearing. The expert opinion concluded the process.<br>Even though it is unknown whether the community member used this opinion to resolve the dispute with his neighbors through the indigenous jurisdiction's intervention, the context of damages assessment might imply it was the case. | Although the judge admitted the case as a conciliatory procedure possibly preventing the indigenous jurisdiction from assuming jurisdiction in the way they exercised it, the case finished with the mapping's technical support of the agri-environmental jurisdiction without actually invading the competence of indigenous jurisdiction. Furthermore, the antecedents suggest that the expertise was applied to reach an agreement through the indigenous jurisdiction (outside the agri-environmental jurisdiction). Therefore, the actions of the agri-environmental judge and the claimant made indigenous jurisdiction's effective. Under this context, even though the agri-environmental jurisdiction would have indirectly cooperated with the indigenous jurisdiction, the former breached its duty to coordinate and cooperate with the latter because it did not summon the indigenous authority. |

| Starting year | Case name | Court | Finishing year |
|---|---|---|---|
| 2019 | 22/2019 Nicolás Quisbert Marin | Agri-environmental - Curahuara de Carangas | 2019 |

| Place | Matter |
|---|---|
| Curahuara de Carangas, with competency on Provincia Sajama, Nor Carangas y San Pedro de Totora | Agrarian. Land mapping |

| Case type |
|---|
| Conciliation |

| Abstract | Analysis |
|---|---|
| Two indigenous community members requested a plan survey from the agri-environmental court to define neighbours' cattle invasion on their lands. The judge ordered the engineer (who provides technical support to the court) to conduct the expert opinion through a conciliation hearing. The expert opinion concluded the process.<br>Even though it is unknown whether the community member used this opinion to resolve the dispute with his neighbors through the indigenous jurisdiction's intervention, the context of damages assessment might imply it was the case. | Although the judge admitted the case as a conciliatory procedure possibly preventing the indigenous jurisdiction from assuming jurisdiction in the way they exercised it, the case finished with the expert oipnion of the agri-environmental jurisdiction's technical support without actually invading the competence of indigenous jurisdiction. Furthermore, the antecedents suggest that the expertise was applied to reach an agreement through the indigenous jurisdiction (outside the agri-environmental jurisdiction). Therefore, the actions of the agri-environmental judge and the claimant made indigenous jurisdiction's effective.<br>Under this context, even though the agri-environmental jurisdiction would have indirectly cooperated with the indigenous jurisdiction, the former breached its duty to coordinate and cooperate with the latter because it did not summon the indigenous authority. |

# Effectiveness Evaluation

*Table 33: Effectiveness evaluation of the cases of the lower-ranking courts settled in Jach'a Karangas*

| *Case name* | *PCC* | | | | *LRC* | | | | *Coord. & Coop.* | | | | *Claimants* | | | | *Defendants* | | | | *JK acceptance* | | | | *JK claims* | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | *E* | -E | *xE* |
| *40/2019 Bibsor Alá Mollo* | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| *14/2019 Roberto Pinto Colque c/ Bartolomé Colque Nina* | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | 1 | -- | -- | -- | -- | 1 |
| *40/2019 Gregorio Alvarado Mamani y Guillermo Mamani Alvarado* | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | 1 | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- | -- | -- |
| *04/2019 Walter Copaja Godoy y otros contra Sabino Huarachi y otra* | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| *31/2019 Joaquin Quispe contra Juvenal Nina Ramos* | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 |
| *14/2019 Rogelio Tanga Villca c/ Tiburcio Bustillos Gonzalo* | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- | -- | -- |
| *39/2019 Silvia Basilia Estrada Alvarado contra Cecilio Estrada Apaza* | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | 1 | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 |
| *12/2019 Marlene Canaza Coria contra Alejandro Tanga Marca y otro* | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 |
| *19/2019 Guido Álvarez Ramírez contra N.N.* | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | 1 | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| *05/2019 Julio Paco Gomez contra René Paco Choque y otra* | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |

| Case name | PCC | | | | LRC | | | | Coord. & Coop. | | | | Claimants | | | | Defendants | | | | JK acceptance | | | | JK claims | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE |
| 03/2019 Julio Paco Gomez contra René Paco Choque y otros | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- |
| 06/2017/Curahuara Benito Huarachi Coria y otro contra Rosaldo Huarachi Churqui | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | 1 | -- | -- |
| 49/2019 Curahuara Fidel Condori Villca | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 44/2019 Leonardo Calle Pacajes y Paulina Nina Jiménez | -- | -- | -- | -- | -- | 1 | -- | -- | 1 | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 25/2019 Justiniano Condori Cahuana contra Andrés Condori Mamani y otro | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | 1 | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 22/2019 Nicolás Quisbert Marin | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | 1 | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 01/2018 Complainant: Public Ministry, victim: Candida Calle, accused: Jhudith Mollo | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- |
| 20/2018 Complainant: Public Ministry, victim: Sergio Villca, accused: Oscar Villca and Basilia Gomez | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | 1 | -- | -- | -- | 1 | -- | -- |
| 11/2018 Complainant: Public Ministry, victim: Sergio Gomez, accused: Lucas Quispe | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | 1 | -- | -- | -- | 1 | -- | -- |
| 09/2018 Complainant: Public Ministry, victim: Sixto Mamani, accused: Felipe Mamani | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | 1 | -- | -- | -- | 1 | -- | -- |

*Note*: More effective (+E), effective (E), less effective (-E), and ineffective (xE), Plurinational Constitutional Court (PCC), and lower-ranking courts (LRC).

# Annex D: Semi-Structured Interview Questionnaires

*Table 34: Questionnaires by groups, research questions (aim) and year in which they were conducted*

| Group | Aim | Questions | Year |
|---|---|---|---|
| A | Exploration | 1. Can you tell me what your position in the community is? What charges have you fulfilled before (S*ara Thaki* or path in indigenous customs)? | 2018 |
| A | Exploration | 2. What is your experience as an indigenous authority solving problems and doing indigenous justice? | 2018 |
| A | Exploration | 3. What solutions have you given? | 2018 |
| A | Exploration | 4. Did the parties accept the solution provided? | 2018 |
| A | Exploration | 5. There are always people who do not comply with resolutions. In ordinary justice, there are coercive and punitive measures. What is done in indigenous justice to enforce a decision? | 2018 |
| A | Exploration | 6. Do other authorities participate in the solutions? How does it happen, and what do they do? | 2018 |
| A | Exploration | 7. What is the symbol of justice in indigenous justice? | 2018 |
| A | Exploration | 8. How is the ritual done before the start of an indigenous audience? | 2018 |
| A | Exploration | 9. Before, in indigenous justice, customs were applied. For example, the offenders were whipped publicly or banished. Do you know what happens now? | 2018 |
| A | General | 11. Do you think that political parties or groups outside the community interfere with and impede indigenous justice? (In what / How) | 2019 |
| A | General | 1. Has indigenous justice been modified since the change of government in November 2019? | 2020 |
| A | General | 2. What has changed in indigenous justice due to the Covid-19 pandemic, the health emergency that Bolivia is experiencing and the lockdown imposed? | 2020 |
| A | 2a (courts allow to resolve disputes) | 4. Do you think that the State courts are currently processing many cases that belong to the indigenous jurisdiction? What kind of cases would they be? Is the same thing happening with indigenous justice? (That is, the indigenous justice would be processing many cases that belong to the state justice) | 2020 |
| A | 2a (courts cooperate and coordinate) | 5. Do you think that indigenous justice needs help to do justice? (What for / Why / In what) | 2019 |
| A | 2a (courts cooperate and coordinate) | 6. In your experience as an authority (or ex-authority), does the State help or cooperate with Indigenous Justice or, on the contrary, interfere with and impede it? (In what / How) | 2019 |
| A | 2a (courts cooperate and coordinate) | 7. In the exercise of your position and as an authority, could you tell us if the police help Indigenous Justice? Is it easy to get this help? / In what cases do you ask for this help? | 2019 |

| Group | Aim | Questions | Year |
|---|---|---|---|
| A | 2a (courts cooperate and coordinate) | 3. In the exercise of your position and as an authority, have you ever requested cooperation from the ordinary justice, the police or the prosecutors to solve a case? Have they helped indigenous justice? (How / What for / In what) Have they ever asked indigenous justice to cooperate in solving a case? | 2020 |
| A | 2b (indigenous people behavior) | 8. If the community members have causes or problems, do they prefer to go to Indigenous Justice, or do they prefer to go to State justice? (In which cases) (If there is an indigenous resolution or judgment, does the losing party accept or go to the ordinary courts to try to change the ruling?) | 2019 |
| A | 2b (indigenous people behavior) | 10. Do you believe, in your experience, that the community members themselves interfere and hinder Indigenous Justice? (In what / How) | 2019 |
| A | 2b (indigenous people behavior) | 5. In your opinion, what is better and what is worse in indigenous and state justice? | 2020 |
| A | 2b (indigenous people behavior) | 6. In your opinion, do you think that a member of the community is going against the uses and customs of Jach'a Karangas if he goes to the ordinary or agri-environmental justice to resolve litigation or disputes that occur within Jach'a Karangas? (If it were against the uses and customs, is there any sanction against those members?) | 2020 |
| A | 3a (JK's jurisdiction excercise) | 3. Are there causes or problems that Indigenous Justice has not been able to solve? (Why / Which) | 2019 |
| A | 3a (JK's jurisdiction excercise) | 4. In your experience, do you know if Indigenous Justice solves causes or problems outside the competencies of the Constitution and the law? (Why / Which) | 2019 |
| A | 3a (JK's jurisdiction excercise) | 13. As an authority (or ex-authority), do you feel that indigenous justice is strengthened or weakened since the new Constitution? (Which strengths or weaknesses / What strengthens or weakens it) | 2019 |
| A | 3a (JK's jurisdiction excercise) | 7. In your experience, what are the most common cases of disputes resolved by indigenous justice? | 2020 |
| A | 3a (JK's jurisdiction excercise) | 8. In the framework of your knowledge, could you tell us about some difficult, complicated or very interesting cases that you have known and that have been resolved by indigenous justice in recent years? | 2020 |
| A | 3a (JK's jurisdiction excercise) | 9. What is the most challenging and daring dispute that you have known and that indigenous justice has resolved in recent years? In other words, even outside the limits established by the State's Political Constitution itself. | 2020 |
| A | 3a (JK's jurisdiction excercise) | 10. In your opinion, do you think there are disputes that indigenous justice prefers not to resolve? That is, disputes that the community members present to the authorities and that they prefer not to deal with? (Why / in what cases) Is it the same with formal justice? | 2020 |
| A | 3b (JK's jurisdiction claim) | 1. Do you, as an authority (or former authority), consider that there are disputes that should be decided by the indigenous justice that is not currently resolving? (Why / what happened before?) | 2019 |
| A | 3b (JK's jurisdiction claim) | 2. In your experience, do you consider that there are causes or problems that indigenous justice does not want to solve, and that leaves them to the justice of the State? (Why / Which) | 2019 |

| Group | Aim | Questions | Year |
|---|---|---|---|
| A | 3b (JK's jurisdiction claim) | 9. In your experience, do you know if claims are being made to enforce indigenous justice by preventing State justice from resolving those cases? (How) | 2019 |
| A | 3b (JK's jurisdiction claim) | 12. What is your opinion about the Law on Jurisdictional Demarcation? | 2019 |
| A | 3b (JK's jurisdiction claim) | 11. Do you think that state justice is taking cases away from indigenous justice or is it the other way around? Why? | 2020 |
| A | 3b (JK's jurisdiction claim) | 12. If you get to know that the members of the Nación Originaria Suyu Jach'a Karangas are filing lawsuits in the ordinary or agri-environmental justice system, do you, as an indigenous authority, claim jurisdiction in favor of the Jach'a Karangas indigenous justice? (why / in what cases would you do it / if you have, would you do it again) | 2020 |
| A | 3b (JK's jurisdiction claim) | 13. In the exercise of coordination and cooperation between jurisdictions established in the Political Constitution of the State, do you visit ordinary and agri-environmental courts to hear or find out about processes that pertain to indigenous justice? If you make these visits and find these cases, do you claim jurisdiction in favor of the indigenous jurisdiction? | 2020 |
| A | 3b (JK's jurisdiction claim) | 14. In your personal opinion, do you think that JK should claim jurisdiction before the ordinary and agri-environmental justice when it concerns disputes between members of JK or, on the contrary, do you consider it is preferable that the State justice resolve these cases? (Why?) | 2020 |
| A | 3b (JK's jurisdiction claim) | 15. Have you ever received a claim for jurisdiction by the ordinary courts or by any of the parties? (How did you proceed) | 2020 |
| B | 2a (courts allow to resolve disputes) | None | None |
| B | 2a (courts cooperate and coordinate) | None | None |
| B | 2b (indigenous people behavior) | 1. Do you believe that indigenous justice could or will solve your problem? (Why) | 2019 |
| B | 2b (indigenous people behavior) | 2. Do you think that state justice could better solve your problem? (Why) | 2019 |
| B | 2b (indigenous people behavior) | 3. According to your experience, would you go back to the Indigenous Justice to solve your problem or would you prefer to go to the State justice? (Why) | 2019 |
| B | 2b (indigenous people behavior) | 4. Do you know if there are causes or problems that Indigenous Justice has not been able to solve? (Why could not) | 2019 |
| B | 2b (indigenous people behavior) | 5. Do you think that the community members themselves interfere and hinder Indigenous Justice? (In what / How) | 2019 |
| B | 2b (indigenous people behavior) | 6. In your experience, do you believe that when there is an indigenous ruling or decision, the party that loses accepts and complies with it or, on the contrary, does not comply with it? (Why) | 2019 |
| B | 2b (indigenous people behavior) | 1. Would you like to tell me what the lawsuit for which you went to the indigenous justice system was about? Has your problem already been solved? Have you won or lost? Are you satisfied with the result? | 2020 |

| Group | Aim | Questions | Year |
|---|---|---|---|
| B | 2b (indigenous people behavior) | 2. For what reasons have you preferred to go to indigenous justice to resolve your dispute instead of the State courts? If you were sued in state justice, would you ask the judge to resolve the case in indigenous justice? | 2020 |
| B | 2b (indigenous people behavior) | 3. During the hearings held before the indigenous authorities, has the other party wanted to go to the State justice or agreed to submit to the indigenous justice? | 2020 |
| B | 2b (indigenous people behavior) | 4. Do you trust your indigenous authorities to resolve disputes and administer indigenous justice? | 2020 |
| B | 2b (indigenous people behavior) | 5. Would you go to indigenous justice again? | 2020 |
| B | 2b (indigenous people behavior) | 6. In your opinion, what is better and what is worse in the indigenous and State justices? | 2020 |
| B | 2b (indigenous people behavior) | 7. If you went to the State courts, would you feel betraying the customs and traditions of Jach'a Karangas? | 2020 |
| B | 3a (JK's jurisdiction excercise) | 7. Do you feel that Indigenous Justice is strengthened or weakened since the new State Constitution? (Which strengths or weaknesses / What strengthens or weakens it) | 2019 |
| B | 3b (JK's jurisdiction claim) | None | None |
| C | 2a (courts allow to resolve disputes) | None | None |
| C | 2a (courts cooperate and coordinate) | None | None |
| C | 2b (indigenous people behavior) | 1. Do you believe that State Justice could or will solve your problem? (Why) | 2019 |
| C | 2b (indigenous people behavior) | 2. Do you think that Indigenous Justice could better solve your problem? (Why) | 2019 |
| C | 2b (indigenous people behavior) | 3. According to your experience, would you go back to the State Justice to solve your problem or would you prefer to go to the indigenous justice? (Why) | 2019 |
| C | 2b (indigenous people behavior) | 4. Do you think that the community members themselves interfere and hinder Indigenous Justice? (In what / How) | 2019 |
| C | 2b (indigenous people behavior) | 5. In your experience, do you believe that when there is a state ruling or decision, the party that loses accepts and complies with it or, on the contrary, does not comply with it? (Why) | 2019 |
| C | 2b (indigenous people behavior) | 1. Would you like to tell me what the lawsuit for which you went to court was about? Has your problem already been solved? Have you won or lost? Are you satisfied with the result? | 2020 |
| C | 2b (indigenous people behavior) | 2. For what reasons have you preferred to go to the State courts to resolve your dispute? If you were called before the indigenous justice, would you ask your indigenous authority to resolve the case in the state justice? | 2020 |
| C | 2b (indigenous people behavior) | 3. During the proceedings before the state justice, has the other party wanted to go to the indigenous justice or agreed to submit to the state justice? | 2020 |
| C | 2b (indigenous people behavior) | 4. Do you rely on ordinary judges to resolve disputes and administer justice? | 2020 |
| C | 2b (indigenous people behavior) | 5. Would you go to a State court again? | 2020 |

| Group | Aim | Questions | Year |
|---|---|---|---|
| C | 2b (indigenous people behavior) | 6. In your opinion, what is better and what is worse in the indigenous and State justices? | 2020 |
| C | 2b (indigenous people behavior) | 7. When you go to the State courts, have you ever felt betraying the customs and traditions of Jach'a Karangas? | 2020 |
| C | 3a (JK's jurisdiction excercise) | 6. Do you feel that Indigenous Justice is strengthened or weakened since the new State Constitution? (Which strengths or weaknesses / What strengthens or weakens it) | 2019 |
| C | 3b (JK's jurisdiction claim) | None | None |
| D | 2a (courts allow to resolve disputes) | 1. Can you tell us what kinds of processes you carry out in your functions? | 2020 |
| D | 2a (courts allow to resolve disputes) | 2. Do you wait for the interested parties to present the demands or complaints or do you have a more proactive attitude and go looking for the cases? | 2020 |
| D | 2a (courts allow to resolve disputes) | 3. Do you think that state justice is taking cases away from indigenous justice or is it the other way around? Why? | 2020 |
| D | 2a (courts allow to resolve disputes) | 4. Have you ever participated claiming jurisdiction to indigenous justice? In what case? How do you act in those cases? | 2020 |
| D | 2a (courts allow to resolve disputes) | 7. Do you think that indigenous justice has the possibility of solving problems or is it preferable for problems to be solved in judicial processes? | 2020 |
| D | 2a (courts allow to resolve disputes) | 8. Do you think that the State courts are currently processing many cases that belong to the indigenous jurisdiction? What kind of cases would they be? Is the same thing happening with indigenous justice? (That is, the indigenous justice would be processing many cases that belong to the state justice). | 2020 |
| D | 2a (courts cooperate and coordinate) | 5. Do you think that indigenous justice needs help to do justice? (What for / Why / In what) | 2019 |
| D | 2a (courts cooperate and coordinate) | 6. Do you, as a judge (or former judge), cooperate or coordinate with indigenous justice? (In what / How) | 2019 |
| D | 2b (indigenous people behavior) | 7. If the community members have problems or litigation, do they prefer to go to indigenous justice, or do they prefer to go to ordinary or agri-environmental justice? (In which cases) (If there is an indigenous resolution or judgment, does the losing party accept or go to the ordinary courts to try to change the ruling?) | 2019 |
| D | 2b (indigenous people behavior) | 9. Do you think that the community members themselves interfere and hinder Indigenous Justice? (In what / How) | 2019 |
| D | 2b (indigenous people behavior) | 6. In your opinion, what is better and what is worse in indigenous and state justice? | 2020 |
| D | 2b (indigenous people behavior) | 10. At present, and in your opinion, do you consider that indigenous justice has relevance and utility? Why? | 2020 |
| D | 3a (JK's jurisdiction excercise) | 1. Do you, as a judge (or former judge), consider that there are disputes that should be resolved by the indigenous justice that is not currently resolving? (Why / what happened before?) | 2019 |
| D | 3a (JK's jurisdiction excercise) | 2. As a judge, do you think there are some disputes that should not be decided by the Indigenous Justice that are currently deciding? (Why / Do you think I used to do it?) | 2019 |

| Group | Aim | Questions | Year |
|---|---|---|---|
| D | 3a (JK's jurisdiction excercise) | 4. Do you know if indigenous justice resolves causes or problems outside the competencies of the Constitution and the law? (Why / Which) | 2019 |
| D | 3a (JK's jurisdiction excercise) | 10. Do you believe that the State (in general) interferes and hinders Indigenous Justice? (In what / How) | 2019 |
| D | 3a (JK's jurisdiction excercise) | 11. As an authority (or ex-authority), do you feel that Indigenous Justice is strengthened or weakened since the new Constitution? (Which strengths or weaknesses / What strengthens or weakens it) | 2019 |
| D | 3a (JK's jurisdiction excercise) | 9. In your opinion, do you think there are disputes that indigenous justice prefers not to resolve? That is, disputes that the community members present to the authorities and that they prefer not to deal with? (Why / in what cases) Is it the same with formal justice? | 2020 |
| D | 3b (JK's jurisdiction claim) | 3. Do you consider that there are causes or problems that Indigenous Justice does not want to solve, and that leaves them to the justice of the State? (Why / Which) | 2019 |
| D | 3b (JK's jurisdiction claim) | 8. Do you know if the indigenous authorities of Jach'a Karangas claim to enforce their competencies and prevent the State's ordinary or agri-environmental justice from resolving those cases? (How / How often-often, ever or never-) | 2019 |
| D | 3b (JK's jurisdiction claim) | 5. Have you ever received a claim of jurisdiction from the indigenous justice system? In what case? How do you act in those cases? | 2020 |
| E | 2a (courts allow to resolve disputes) | 8. Do you think that the State courts are currently processing many cases that belong to the indigenous jurisdiction? What kind of cases would they be? Is the same thing happening with indigenous justice? (That is, the indigenous justice would be processing many cases that belong to the state justice) | 2020 |
| E | 2a (courts cooperate and coordinate) | 5. Do you think that the indigenous justice of JK needs help to do justice? (For what / Why / In what) | 2019 |
| E | 2a (courts cooperate and coordinate) | 6. In your experience, does the State help or cooperate with the indigenous justice of JK or, on the contrary, does it interfere and obstruct it? (In what / How) | 2019 |
| E | 2a (courts cooperate and coordinate) | 7. Do the Police or the Prosecutor's Office help the indigenous justice of JK? Is it easy to get this help? / In which cases do you ask for this help? | 2019 |
| E | 2b (indigenous people behavior) | 3. Are there causes or problems that the indigenous justice of JK has not been able to solve? (Why / Which) | 2019 |
| E | 2b (indigenous people behavior) | 8. If the community members have disputes to resolve, do they prefer to go the indigenous justice of JK or do they prefer to go to the State justice? (In which cases) (If there is an indigenous resolution or sentence, does the losing party accept or go to the ordinary court to try to change the ruling?) | 2019 |
| E | 2b (indigenous people behavior) | 9. Do you believe, in your experience, that the community members themselves interfere and obstruct the indigenous justice of JK? (In what / How) | 2019 |
| E | 2b (indigenous people behavior) | 11. Do you think that the State Justice can solve problems between community members better than the indigenous justice or, on the contrary, the indigenous justice can do it better? (Why and what problems) | 2019 |

| Group | Aim | Questions | Year |
|---|---|---|---|
| E | 2b (indigenous people behavior) | 12. In your experience, do you think that when there is a ruling or sentence of a State judge, the losing party accepts it and complies with it or, on the contrary, they do not comply with it? (Why) (Is the same thing happening with the decisions of the indigenous authorities?) | 2019 |
| E | 2b (indigenous people behavior) | 7. In your opinion, what is better and what is worse in indigenous and state justice? | 2020 |
| E | 2b (indigenous people behavior) | 9. At present, and in your opinion, do you consider that indigenous justice has relevance and utility? Why? | 2020 |
| E | 3a (JK's jurisdiction excercise) | 1. Do you consider that there are causes or problems that the indigenous justice of JK should solve that is currently not solving? (Why / Did I do it before?) | 2019 |
| E | 3a (JK's jurisdiction excercise) | 2. Do you feel that the indigenous justice of JK is strengthened or weakened since the new Bolivian Constitution? (What strengths or weaknesses / What makes it stronger or weaker) | 2019 |
| E | 3a (JK's jurisdiction excercise) | 4. In your experience, do you know if the indigenous justice of JK solves causes or problems outside of the competences given by the Constitution and the law? (Why / Which) | 2019 |
| E | 3a (JK's jurisdiction excercise) | 1. In your experience, what are the most common cases of disputes resolved by indigenous justice? | 2020 |
| E | 3a (JK's jurisdiction excercise) | 2. In the framework of your knowledge, could you tell us about some difficult, complicated or very interesting cases that you have known and that have been resolved by indigenous justice in recent years? | 2020 |
| E | 3a (JK's jurisdiction excercise) | 3. What is the most challenging and daring dispute that you have known and that indigenous justice has resolved in recent years? In other words, even outside the limits established by the State's Political Constitution itself. | 2020 |
| E | 3a (JK's jurisdiction excercise) | 4. In your opinion, do you think there are disputes that indigenous justice prefers not to resolve? That is, disputes that the community members present to the authorities and that they prefer not to deal with? (Why / in what cases) Is it the same with state justice? | 2020 |
| E | 3b (JK's jurisdiction claim) | 2. In your experience, do you consider that there are disputes that the indigenous justice of JK does not want to solve and leaves them to the State justice? (Why / Which) | 2019 |
| E | 3b (JK's jurisdiction claim) | 10. What opinion do you have about the Law of Jurisdictional Demarcation? | 2019 |
| E | 3b (JK's jurisdiction claim) | 5. Do you think that state justice is taking cases away from indigenous justice or is it the other way around? Why? | 2020 |
| E | 3b (JK's jurisdiction claim) | 6. According to your opinion and experience, when the indigenous authorities claim jurisdiction from the ordinary or agri-environmental justice, why do they do it and why do they do it? | 2020 |

*Source:* Self-made, according to questionnaires conducted in Nación Originaria Suyu Jach'a Karangas between 2018-2020.

*Table 35: Interviews and Identification Codes*

Group A:
Indigenous authorities and ex-authorities who participated in resolving or helping resolve indigenous disputes

| Code | Place | Gender |
|---|---|---|
| G-2018-01 | -- | Male |
| G-2018-02 | Corque Marka | Male |
| G-2018-03 | Andamarca Marka | Male |
| G-2018-04 | -- | Male |
| G-2018-05 | -- | Male |
| G-2018-06 | Corque Marka | Male |
| G-2018-07 | Andamarca Marka | Female and male |
| G-2018-08 | Corque Marka | Male |
| G-2018-09 | Totora Marka | Male |
| G-2018-10 | Huachacalla Marka | Male |
| G-2018-11 | Huachacalla Marka | Male |
| G-2018-12 | -- | Male |
| G-2018-13 | -- | Male |
| G-2018-14 | Curahuara Marka | Male |
| G-2019-01 | Totora Marka | Male |
| G-2019-02 | Totora Marka | Male |
| G-2019-03 | Corque Marka | Male |
| G-2019-04 | Mayacht'asita Markanaka | Male |
| G-2019-05 | Turco Marka | Male |
| G-2019-11 | Sabaya Marka | Male |
| G-2019-12 | Corque Marka | Male |
| G-2019-13 | -- | Male |
| G-2019-14 | Huayllamarca Marka | Male |
| G-2019-15 | -- | Male |
| G-2019-17 | Corque Marka | Male |
| G-2019-18 | Corque Marka | Male |
| G-2019-21 | Corque Marka | Male |
| G-2019-22 | Corque Marka | Male |
| G-2019-23 | Corque Marka | Male |
| G-2019-24 | -- | Male |
| G-2019-25 | -- | Male |
| G-2019-26 | Andamarca Marka | Male |
| G-2019-29 | -- | Male |
| G-2019-30 | Corque Marka | Female |
| G-2019-31 | Corque Marka | Female |
| G-2019-32 | Totora Marka | Male |
| G-2019-33 | Corque Marka | Female |

| Code | Place | Gender |
|---|---|---|
| G-2019-35 | Corque Marka | Male |
| G-2019-36 | Sabaya | Male |
| G-2019-37 | Curahuara | Male |
| G-2019-39 | Ribera | Female |
| G-2019-42 | -- | Male |
| G-2019-43 | -- | Male |
| G-2019-45 | Turco Marka | Male |
| G-2019-46 | Andamarca Marka | Female |
| G-2020-03 | Orinoca Marka | Male |
| G-2020-05 | Corque Marka | Male |
| G-2020-07 | Corque Marka | Male |
| G-2020-08 | Corque Marka | Male |
| G-2020-11 | Turco Marka | Female |
| G-2020-12 | Curahuara Marka | Male |
| G-2020-13 | Huayllamarca Marka | Male |
| G-2020-16 | Sabaya | Female |
| G-2020-20 | Turco Marka | Male |
| G-2020-21 | Mayacht'asita Markanaka | Male |
| G-2020-22 | -- | Male |
| G-2020-23 | Andamarca Marka | Male |
| G-2020-29 | Andamarca Marka | Female |
| G-2020-30 | Corque Marka | Male |

**Group B:**
**JK's indigenous members who experienced indigenous processes, whether they have already resolved or are about to solve their disputes and whether they have lost or won**

| Code | Place | Gender |
|---|---|---|
| G-2019-34 | Corque Marka | Male |
| G-2019-40 | Corque Marka | Male |
| G-2019-44 | Choquecota Marka | Female |
| G-2019-47 | Andamarca Marka | Female |
| G-2019-48 | -- | Female |
| G-2020-02 | Corque Marka | Male |
| G-2020-06 | Choquecota | Female |
| G-2020-09 | Choquecota | Female |
| G-2020-10 | Corque Marka | Male |
| G-2020-14 | Corque Marka | Female |
| G-2020-15 | Totora Marka | Female |
| G-2020-26 | Corque Marka | Female |
| G-2020-27 | Totora Marka | Female |

**Group C:**

| Indigenous individuals who experienced formal jurisdictions' processes, whether they have already resolved or are about to solve their disputes, and whether they have lost or won | | |
|---|---|---|
| **Code** | **Place** | **Gender** |
| G-2019-16 | Corque Marka | Male |
| G-2020-25 | Andamarca Marka | Male |
| G-2019-19 | Huachacalla Marka | Male |

| Group D: Non-indigenous judges who are or have been judges in JK's territory | | |
|---|---|---|
| **Code** | **Ordinay or Agri-environmental Judge** | **Gender** |
| G-2019-07 | Agri-environmental judge | Male |
| G-2019-08 | Ordinary judge | Male |
| G-2019-10 | Agri-environmental judge | Female |
| G-2019-27 | Agri-environmental judge | Female |
| G-2019-28 | Ordinary judge | Male |
| G-2019-41 | Agri-environmental judge | Male |
| G-2019-50 | Ordinary judge | Male |
| G-2020-18 | Worked for the agri-environmental judge | Male |
| G-2020-24 | Agri-environmental judge | Male |

| Group E: Indigenous lawyers who rendered legal advice to indigenous people before indigenous and formal jurisdiction | | |
|---|---|---|
| **Code** | **Place** | **Gender** |
| G-2019-06 | Andamarca Marka | Male |
| G-2019-09 | -- | Male |
| G-2019-20 | Huachacalla Marka | Male |
| G-2019-38 | Suras Urus Chipaya | Male |
| G-2019-49 | Turco Marka | Male |
| G-2020-01 | Mayacht'asita Markanaka | Female |
| G-2020-04 | Andamarca Marka | Male |
| G-2020-17 | An Andamarca Marka | Female |
| G-2020-19 | Sabaya Marka | Male |
| G-2020-28 | Curahuara Marka | Female |

*Source:* Self-made.
*Note*: The interviewees who preferred not to answer the place of their origin were marked with two dashes. The G-2018-07 interview was conducted with a couple (chacha-warmi) of former indigenous authorities.

# Annex E: Indigenous Minutes and Documents Analysis

Below are the tables that contain the indigenous minutes and documents concerning the indigenous jurisdiction of Jach'a Karangas (JK), ordered by date, from the oldest (2009) to the most current (2019), followed by their decision-making body, place, and matter. Finally, an abstract and analysis are established for each case.

## Cases of 2009

| Minute date | Decision-making body | |
|---|---|---|
| 21/7/2009 | Apu Mallku | |
| Place | | Matter |
| Totora Marka | | Land possession |
| Abstract | Analysis | |
| In a land dispute, an indigenous hearing was held in which the parties agreed to make a site visit to discuss the matter further and decide the dispute. Consequently, the hearing was adjourned. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. | |

| Minute date | Decision-making body | |
|---|---|---|
| 10/9/2009 | Apu Mallku | |
| Place | | Matter |
| Totora Marka, Aymarani Ayllu, Rosasani y Calacalani communities | | Land possession |
| Abstract | | Analysis |
| The indigenous authorities summoned the parties to resolve their land dispute. However, they could not reach an agreement, so the hearing was suspended. In addition, one of the parties to the conflict did not want to pay the transportation costs of the indigenous authorities and did not want to sign the document drawn up for that purpose.<br>Interestingly, the Oruro Agri-Environmental Court and the Oruro Superior Court of Justice presidents attended the hearing. However, there is no record that they had intervened or signed it in the minutes or why they had participated. | | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. |

## Cases of 2010

| Minute date | Decision-making body | |
|---|---|---|
| 27/2/2010 | Apu Mallkus | |
| Place | | Matter |
| Corque Marka, Tanqa Ayllu, Cullpani Kollo community | | Fenced land |
| Abstract | Analysis | |
| In a land dispute, a second hearing was held in which the defendants did not attend either.<br>Given the lack of compliance with the summons and respect for the Suyu indigenous authorities, the latter summoned the parties to attend the third hearing to be held in the place of dispute. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the claimant accepted the indigenous jurisdiction, rendering it effective. The defendants, however, did not accept and respect the indigenous jurisdiction. | |

| Minute date | Decision-making body |
|---|---|
| 19/3/2010 | Apu Mallku |

| Place | Matter |
|---|---|
| Corque Marka, Ayu Cata Ayllu, Anda Pata Lupe community | Land possession and threat of death |

| Abstract | Analysis |
|---|---|
| In a land dispute and threat of death (the defendant allegedly chased the claimant to his house, where he hid, and the defendant trashed it), after some hearings in which the defendant did not attend, the Apu Mallku and Ayllu authorities held a new hearing in the community. Given the lack of compliance with the summons and respect for the Suyu indigenous authorities, and the lack of interest of the defendant to find a solution, the Apu Mallku requested the Ayllu's authorities for suggestions. They all recommended dividing the land into equal parts, and one of them asked the Apu Mallku to decide the case. As a result, the Apu Mallku determined that a) the land possessors [sayañeros] of the community shall gather to resolve the land dispute, b) the threat of death shall be resolved through the 'legal means,' and, finally, c) he instructed to community members to stop the violence. | According to the JDL, the indigenous jurisdiction can resolve the dispute given that material, personal and territorial validity areas concur.<br>The Apu Mallku, as the highest authority of JK, rendered less effective the indigenous jurisdiction ordering to resolve the land dispute through lower-ranking indigenous authorities (accepting and having the possibility to resolve the land conflict) but rejecting to resolve the death threats. It is construed that when this authority expressed 'legal means,' he allegedly implied referring the case to the ordinary jurisdiction. Additionally, the claimant accepted indigenous jurisdiction, rendering it effective. On the contrary, the defendant did not accept and respect the indigenous jurisdiction, making it ineffective. |

# Cases of 2011

| Minute date | Decision-making body |
|---|---|
| 18/3/2011 | Apu Mallku |

| Place | Matter |
|---|---|
| Corque Marka, Ayu Cata Ayllu, Anda Pata Lupe community | Land possession |

| Abstract | Analysis |
|---|---|
| Following the A.2010.03.19 minutes, the parties reached an agreement regarding land possession: a) the claimant paid money to the defendant to help build his house foundations, b) the existing house will belong to the claimant, and c) the defendant will be able to reap what was sown in that year, but then he will hand over possession of the land to the claimant. Although there is no other reference in the minutes regarding the threat of death, apparently, they were resolved as well. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. |

| Minute date | Decision-making body |
|---|---|
| 2/12/2011 | Apu Mallku |

| Place | Matter |
|---|---|
| Totora Marka, Aymarani Ayllu, Urinsaya, Caquengoriri community | Comply with a sanction and assume an indigenous position |

| Abstract | Analysis |
|---|---|
| Following the community's request, the Apu Mallku ordered a community member to comply with an economic sanction and assume the indigenous position of Tamani in his community under the alternative to present a legitimate relative to take his position through hereditary succession on the Caquengoriri community. | The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. |

# Cases of 2013

| Minute date | Decision-making body |
|---|---|
| 2/3/2013 | Totora Awki Marka open council |

| Place | Matter |
|---|---|
| Totora Awki Marka | Fights, attacks and threats and corruption |

| Abstract | Analysis |
|---|---|
| An open community council was held due to a fight caused during the consecration of indigenous authorities between a couple and an individual, all of them indigenous and municipal councilors. Several people testified in the indigenous council regarding the couple's arrogant, threatening and violent attitude, especially the husband. In addition to the fight between the couple and the individual, the council also dealt with the embezzlement of money that the latter made in his municipal office since the position represented the indigenous people.<br>The council decided against the couple, finding they were guilty and repeated offenders. The council also suspended the husband definitively from the municipal office, prohibited his wife from taking his place, prohibited them from holding indigenous positions, and threatened them with expulsion in the event of a repeat | The indigenous jurisdiction has the competence to resolve the fight given that material, personal and territorial validity areas concur. Consequently, the indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. The parties did not accept the indigenous jurisdiction because they claimed against it, rendering it ineffective (case 0152/2014-S3).<br>However, it was not the case regarding the |

| | |
|---|---|
| offense. Regarding the other party, his position as a municipal councilor was suspended, leaving open the possibility of assuming indigenous positions in the future at the population's discretion.<br>Documents related to this act include a) Resolution 05/2013 of the first Jach'a Tantachawi of 2013 confirming the decision. b) The written jurisdiction's claim of the Council of Mallkus against the ordinary jurisdiction for the criminal process followed by the couple against the attacked indigenous, in which they requested that the court withdraw from the knowledge of the process and release the attacked from jail because there is already a solution adopted in the indigenous jurisdiction. c) Letter from the attacked and imprisoned indigenous, addressed to the indigenous authorities in which he states that he is outraged with justice, requests their pronouncement, or otherwise will start a hunger strike.<br>This case is related to 0152/2014-S3 that annulled the indigenous decision and rendered the indigenous jurisdiction ineffective. | decision on embezzlement since it is a corruption crime outside the indigenous competence (material validity area defined by the JDL). As a result, the indigenous jurisdiction was more effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters outside its competence. Additionally, the party accepted the indigenous jurisdiction, rendering it more effective. However, the case is irrelevant for the indicator of the lower-ranking judge because it respected legal limits and the indigenous jurisdiction's effectiveness was not affected. |

| Minute date | Decision-making body | |
|---|---|---|
| 30/8/2013 | Apu Mallku | |
| Place | | Matter |
| Curahuara Marka | | Aggravated robbery |
| Abstract | | Analysis |
| By letter, the Mallkus of Marka requested the Apu Mallku intervene in a criminal process carried out in the ordinary jurisdiction. A community member had sued them for aggravated robbery, for which they asked the JK's highest authority to take measures to avoid invalid jurisdictional actions.<br>It is related to the case 0007/2016, in which the PCC decided in favor of indigenous jurisdiction. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving the disputes / or having the possibility to resolve the disputes reported on matters within its competence. Furthermore, it was effective in claiming the competence against the ordinary jurisdiction to resolve the dispute. The indigenous defendants of the criminal action made the indigenous jurisdiction effective by making their authority aware of the criminal process and requesting him to claim the competence. On the other hand, the indigenous claimant in the criminal process and the ordinary jurisdiction rendered the indigenous jurisdiction ineffective. |

| Minute date | Decision-making body | |
|---|---|---|
| 18/10/2013 | Apu Mallku | |
| Place | | Matter |
| Totora Marka | | Land possession |
| Abstract | Analysis | |
| The indigenous authority of the Suyu ordered the authorities of Marka to resolve a dispute that community members claimed. | The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. It is noted that the indigenous claimant made the indigenous jurisdiction effective by claiming to the higher indigenous authority to resolve his conflict. | |

# Cases of 2014

| Minute date | Decision-making body | |
|---|---|---|
| 30/4/2014 | Three Markas: Curahuara de Carangas, Totora, and Turko. | |
| Place | | Matter |
| Turko Marka, Cosapa district, Sajama province | | Aggravated robbery cattle rustling |
| Abstract | | Analysis |
| In March 2014, 100 heads of camelid cattle were stolen, including llamas and alpacas. The indigenous authorities formed an investigation commission among the three Markas involved (Curahuara de Carangas, Totora, and Turko). The indigenous authorities requested the ordinary jurisdiction (OJ) and the prosecutor to help them carry out the investigations. However, they felt that the ordinary judge and the prosecutor assigned to the case did not fulfill their work and did not collaborate with the indigenous jurisdiction (IJ). Therefore, together with the indigenous commission, the indigenous authorities arrested five community members after conducting their investigations. During the detention of the accused, they were fed and interrogated, keeping a record of the responses through minutes. Then, they requested help from the ordinary jurisdiction and the prosecution to attend an oral hearing to decide the sanction of these people. However, neither the prosecution nor the judge showed up to carry out this activity, even though they verbally offered to do so. For these reasons, the | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur. The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. The parties accepted and respected the indigenous jurisdiction. This case had repercussions in the media and caused concern that indigenous justice could turn into a lynching. However, none of this occurred, and the indigenous jurisdiction acted within the framework of due process.<br>In this process, the indigenous jurisdiction requested cooperation from the ordinary jurisdiction, the prosecutor's office, and the police to conduct the corresponding investigations. Unfortunately, despite the verbal offers, neither of them attended the indigenous jurisdiction, which produced deep anger of the related communities and the issuance of their resolutive vote. |

| | |
|---|---|
| indigenous authorities and the community members emitted a resolutive vote a) declaring that the IJ would take charge of the entire process of investigation and sanction of theft, and b) they expressed their distrust in the prosecutor's office and the OJ for the failure in their performance, violation of collaboration and discrimination against the IJ. Immediately afterward, they carried out the indigenous hearing to decide on cattle theft. At the hearing in the town square, they decided that the detainees were guilty of the robbery, sentencing them with an economic sanction. Furthermore, the IJ conditioned the detainees to be released as long as they complied with the damages to the victims and gave them and the indigenous authorities a guarantee of not threatening, insulting, or attacking them later. | The release of the detainees responded to the fact that, in the indigenous justice of JK, there is no prison sentence. In addition, regardless of the payment of damages, the conditional release of the perpetrators to give guarantees to the indigenous authorities that resolved the conflict is because the indigenous positions in JK have brief durations of one or two years, after which they are vulnerable to physical or verbal attacks by the accused. In other words, those who conclude the position of authority take off their poncho and other symbols of indigenous authority, becoming wawaq'allos (community members without authority) and losing the protection that their position offered them. |

# Cases of 2015

| Minute date | Decision-making body | |
|---|---|---|
| 28/1/2015 | Government Council of JK | |
| **Place** | **Matter** | |
| Jach'a Karanga office in Oruro city regarding Ayllu Jila Uta Manasaya, Corque Marka, Cataza Ayllu, Antacahua community) | Land dispute and compliance with a dispute settlement agreement | |
| **Abstract** | | **Analysis** |
| Due to land possession conflicts between two families, a division agreement was reached in 1957, before the agrarian court. However, the conflict between families restarted in 2012. One of the interested parties requested compliance with the 1957 minute, and the Governing Council recommended that the parties comply with the agreements reached. Interestingly, JK's indigenous authorities (Apu Mallku, Awatiri de Ayllu, corregidor, and agent) helped them agree to comply with the 1957's minute but this time submitting their issues to the indigenous jurisdiction.<br>The current case is related to PCC's case 1016/2015-S3, when one of the family members claimed the breach of due process on the enforcement of the final decision made by JK's authorities (removal of the dividing posts of her sayaña). The PCC decided in favor of JK's authorities rendering indigenous jurisdiction effective. | | The indigenous jurisdiction was effective in claiming the competence to resolve the disputes and in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. It is highlighted that indigenous jurisdiction recovered the possibility to resolve a dispute that initially pertained to the agrarian jurisdiction. |

| Minute date | Decision-making body | |
|---|---|---|
| 20/3/2015 | Andapata Lupe community council | |
| **Place** | **Matter** | |
| Comunidad Andapata Lupe, Ayllu Ayucata | Land dispute | |
| **Abstract** | | **Analysis** |
| Two community members discussed the possession of a sayaña. The person currently in possession apparently lives in the community and holds indigenous positions. The other party, on the contrary, although allegedly not living in the community, claims possession after many years by arguing he is entitled to possess the Sayaña since he has old property titles. The community summoned the parties to resolve their disputes in a council meeting. However, considering the parties still could not reach an agreement, it was decided to call a new hearing later. | | The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. |

| Minute date | Decision-making body | |
|---|---|---|
| 14/8/2015 | Apu Mallku of JK and Mallkus of Marka | |
| **Place** | **Matter** | |
| Turko Marka | Land possession | |
| **Abstract** | | **Analysis** |
| In a land dispute, in which the defendant plowed the claimant's pastures, a second hearing was held before indigenous authorities, in which the defendant did not attend either. Given the lack of compliance with the summons and respect for the Suyu and the Marka's indigenous authorities, the former decided that the indigenous authorities of the Marka should issue a resolution to decide the case. | | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the claimant accepted the indigenous jurisdiction, rendering it effective. The defendant, however, did not accept and respect the indigenous jurisdiction. |

| Minute date | Decision-making body |
|---|---|
| 23/10/2015 | -- |

| Place | Matter |
|---|---|
| Jach'a Karanga office in Oruro city | Coordination |

| Abstract | Analysis |
|---|---|
| The first indigenous justice summit sponsored by the PCC was held at the office of Suyu Jach'a Karangas (city of Oruro). In the summit participated: one of the PCC magistrates, Efren Choque Capuma, indigenous authorities from the four Suyus of Oruro, Bartolina Sisa (Confederación Nacional de Mujeres Campesinas Indígenas Originarias de Bolivia), CSUTCB (Conferedación Sindical Única de Trabajadores Capensinos de Bolivia), and the community of Zongo (La Paz). After keynotes on the exercise of indigenous jurisdiction, it was decided to work in a single commission on a) spirituality, b) shortcomings of the indigenous jurisdiction, c) the formal jurisdiction's invasion on the competencies of the indigenous jurisdiction, d) procedures, e) institutionality, and f) proposals. Unfortunately, the minutes do not state the result of the commission. | The minutes are relevant to demonstrate a space to reflect on legal pluralism and the principal matters related to the exercise of indigenous jurisdiction, fulfilling the JDL's coordination duties between jurisdictions. |

| Minute date | Decision-making body |
|---|---|
| 12/11/2015 | Apu Mallku of JK Aransaya and Urinsaya |

| Place | Matter |
|---|---|
| Corque Marka, Sullcavi Ayllu, San Francisco community | Agrarian. Land division or distribution for hereditary succession |

| Abstract | Analysis |
|---|---|
| Five families had land disputes over a hereditary succession. After exchanging their positions, they reached an agreement to divide the land between them, including common grazing land. The Apu Mallkus of aransaya and urinsaya asked the parties to collect the resolution in 25 days. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. |

| Minute date | Decision-making body |
|---|---|
| 19/11/2015 | Apu Mallkus and Mama Thallas of JK Aransaya and Urinsaya |

| Place | Matter |
|---|---|
| Corque Marka, Ayocato Ayllu, Anda Pata Lupe community | Land possession |

| Abstract | Analysis |
|---|---|
| Two cousins had a land dispute: one of them was the owner (possessor) and left to the city to work, giving a power of attorney to his cousin to take care of his mother and lands. After more than twenty years, the landowner returned, but his cousin wanted to keep the totality of the lands forbidding his cousin's entrance. After discussing in an indigenous hearing summoned by indigenous authorities, the landowner offered to concede 20% of the land to his cousin. However, the proposal was not accepted since the cousin wanted at least 40%. Therefore, the indigenous authorities suspended the hearing to resolve the dispute during the next one. Both parties settle for 25% of the land in favor of the cousin during the next hearing, following Apu Mallkus' advice. However, they could not agree on the procedural and related expenses. The Apu Mallkus said they would resolve the dispute and communicate it to the parties within the next four days. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. |

| Minute date | Decision-making body |
|---|---|
| 19/12/2015 | Apu Mallkus and Mama Thallas of JK Aransaya and Urinsaya |

| Place | Matter |
|---|---|
| Jach'a Karanga office in Oruro city | Creation of a Marka |

| Abstract | Analysis |
|---|---|
| The community members of San Miguel proposed to create the Marka Mayacht'asita Markanakas under the commitment of not dismembering JK. The indigenous authorities accepted the proposal and gave six months to document the creation of the Marka. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. |

| Minute date | Decision-making body |
|---|---|
| 19/12/2015 | Apu Mallkus |

| Place | Matter |
|---|---|
| Totora Marka, Culta community | Undetermined dispute |

| Abstract | Analysis |
|---|---|
| The Apu Mallkus decided that a land dispute shall be resolved with Ayllu and Marka's authorities since there exists a pre-agreement between them. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. |

# Cases of 2016

| Minute date | Decision-making body | |
|---|---|---|
| 12/1/2016 | Apu Mallku | |
| Place | | Matter |
| Kinsani hill | | Sheeps exchange |
| Abstract | Analysis | |
| In a dispute not explained in the minute, the parties agreed on a solution exchanging four sheep. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. | |

| Minute date | Decision-making body | |
|---|---|---|
| 6/4/2016 | Tata and mama Awatiris y Sullka Awatiris | |
| Place | | Matter |
| Jilata Uta Manasaya Community, Urinsaya partiality, Curahuara de Carangas Marka | | Cattle trespassing and damages |
| Abstract | | Analysis |
| At the claimants' request, the indigenous authorities of the community summoned a community member due to his cattle trespassing on neighboring lands and breaking down their fences. It is noted that the community member already had agreements signed with his neighbors. At first, the community member was 'arrogant' and did not listen to reasons. He said that the cattle belonged to his sons and that he had no problem if the community wanted to confiscate it. Then, the authorities gave him a few minutes to reflect on the matter and propose a fair solution. Finally, the community member promised to pay the damages and watch over the cattle. | | The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. |

| Minute date | Decision-making body | |
|---|---|---|
| 11/5/2016 | Apu Mallku y Mama Thalla | |
| Place | | Matter |
| Mitma Ayllu | | Land possession for rent |
| Abstract | Analysis | |
| The parties had a land dispute over the breach of a rent contract. The indigenous authorities decided that collective lands are not for rental. Consequently, the tenant must leave the lands. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. | |

| Minute date | Decision-making body | |
|---|---|---|
| 30/5/2016 | Apu Mallkus | |
| Place | | Matter |
| Choquecota Marka, Mallkunaca Ayllu | | Land possession |
| Abstract | Analysis | |
| In a land dispute, a second hearing was held in which the defendants did not attend either. Given the lack of compliance with the summons and respect for the Suyu indigenous authorities, the latter requested the claimant present his documentation. Then, they summon the parties to attend the third hearing. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the claimant accepted the indigenous jurisdiction, rendering it effective. The defendant, however, did not accept and respect the indigenous jurisdiction. | |

| Minute date | Decision-making body | |
|---|---|---|
| 13/6/2016 | Apu Mallkus | |
| Place | | Matter |
| Corque Marka, Kollana Ayllu | | Due recognition of the partiality authority |
| Abstract | Analysis | |
| Community members claimed that the other's partiality authority disregarded them (there is no further explanation on the dispute). The Apu Mallkus resolved that Mallkus of Marka shall decide the dispute first. If they cannot, then Apu Mallkus will decide the case. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. | |

| Minute date | Decision-making body | |
|---|---|---|
| 30/11/2016 | Apu Mallkus | |
| Place | | Matter |
| Corque Marka, Quita Quita Ayllu | | Land registration [empadronamiento] |
| Abstract | Analysis | |
| The community member claimed that his community and Ayllu's authorities did not register his land possession. The authorities responded that the community member had a land dispute to resolve. The Apu Mallkus gave the community and Ayllu's authorities ten days to resolve the issue. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. | |

# Cases of 2017

| Minute date | Decision-making body | |
|---|---|---|
| 17/2/2017 | Apu Mallku and Apu Thalla | |
| Place | | Matter |
| Choquecota Marka | | Land possession |
| Abstract | Analysis | |
| Because the parties did not reach an agreement to resolve a land possession dispute, the indigenous authorities asked them to deliver documents supporting their claims to be analyzed. As a result, the authorities adjourned the hearing to review the documents. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. | |

| Minute date | Decision-making body | |
|---|---|---|
| 14/3/2017 | Apu Mallku | |
| Place | | Matter |
| Pocorcollo Ayllu | | Land possession |
| Abstract | Analysis | |
| Because the parties did not reach an agreement to resolve a land possession dispute, the indigenous authorities asked them to deliver documents supporting their claims to be analyzed. As a result, the authorities adjourned the hearing to review the documents. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. | |

| Minute date | Decision-making body | |
|---|---|---|
| 15/3/2017 | Apu Mallku and Apu Thalla | |
| Place | | Matter |
| -- | | Land possession |
| Abstract | Analysis | |
| Because the parties did not reach an agreement to resolve a land possession dispute, the indigenous authorities asked them to deliver documents supporting their claims to be analyzed. As a result, the authorities adjourned the hearing to review the documents. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. | |

| Minute date | Decision-making body | |
|---|---|---|
| 16/3/2017 | Apu Mallku and Apu Thalla | |
| Place | | Matter |
| Corque Marka and Choquecota Marka | | Robbery of coca leaves |
| Abstract | | Analysis |
| In a dispute over the collection of coca leaves in a Marka, the indigenous authorities opened a recess to summon another community member, as he also collected the coca. In the next hearing, the authorities showed their concern and expressed that it is an important issue that concerns the good image of the Ayllus [allegedly for the sacredness of coca leaves and the principle of not stealing or 'ama sua' in Aymara culture]. Even though some authorities claimed that ordinary jurisdiction should have the competence to investigate the case, they | | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties |

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| decided to do it themselves and discuss the conflict in front of the Community Council (Cabildo). It is clarified that the minutes do not further detail the dispute. | accepted the indigenous jurisdiction, rendering it effective. |

| Minute date | Decision-making body | |
|---|---|---|
| 21/3/2017 | Apu Mallku and Apu Thalla | |
| **Place** | **Matter** | |
| Mallkunaca Ayllu, Centro Bolívar community | Land dispute and position of indigenous authority | |
| **Abstract** | | **Analysis** |
| Due to a land dispute between community members, the elected authority had to resign from office. The community was divided, as one party supported the appointment of alternate authority and the other party rejected its legitimacy. A hearing was held with the highest indigenous authority, the Apu Mallku del Suyu, to resolve the dispute. A final agreement was reached in which the indigenous authority was chosen to occupy the position, and the parties in dispute apologized. | | The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. |

| Minute date | Decision-making body | |
|---|---|---|
| 17/5/2017 | Apu Mallku | |
| **Place** | **Matter** | |
| Jach'a Karanga office in Oruro city regarding Ayllu Jila Uta Manasaya | Domestic violence and suspension of indigenous position | |
| **Abstract** | | **Analysis** |
| In a fight between a concubine couple of indigenous authorities (Sullka Awatiris) of the Ayllu Jila Uta Manasaya of Curahuara Marka, there were physical attacks and threats due to the woman's alleged infidelity. Consequently, the woman filed a complaint with the Council of Marka about the slander of infidelity from her partner. The Council met and decided that the couple should resolve their problems within a given period. As the concubine husband did not appear, the Council decided to remove him from office. Simultaneously, the concubine husband denounced the Council before the Apu Mallku for dismissing him without complying with due process. As a result, the Apu Mallku ordered a council be convened in the Ayllu to resolve the matter. | | The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. |

# Case of 2018

| Minute date | Decision-making body | |
|---|---|---|
| 12/11/2018 | Apu Mallku | |
| **Place** | **Matter** | |
| Cala Cala Ayllu, Marka Andamarca | Land possession and mior injuries | |
| **Abstract** | | **Analysis** |
| A site visit was held to resolve a dispute over land limits (the dispute reasons are unknown) that ended in a fight. Authorities and parties of the process discussed the possibility of a settlement under the condition that the aggressor pays healing expenses emerging from the fight and gives public satisfaction. However, considering the parties still could not reach an agreement, it was decided to call a new hearing. | | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The parties and indigenous authority accepted the indigenous jurisdiction to resolve land and fighting disputes, along with torts, making indigenous jurisdiction effective. |

# Cases of 2019

| Minute date | Decision-making body | |
|---|---|---|
| 5/4/2019 | Apu Mallku and Apu Thalla in a council [cabildo] | |
| **Place** | **Matter** | |
| Curahuara Marka | Land possession and severe injuries | |
| **Abstract** | | **Analysis** |
| Because the parties fought over the fencing of land, one of them received severe injuries from the other. As a result, the injured person filed a criminal procedure for severe injuries. However, the Apu Mallku claimed the competence to resolve the dispute, and seemingly, the ordinary lower-ranking judge accepted it.<br>During the first hearing in front of the community [cabildo], the parties declared their interest in solving the dispute. However, the indigenous authorities adjourned the hearing to receive proof regarding the parties' healing | | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. The Apu Mallku made indigenous jurisdiction effective by claiming the competence against the ordinary jurisdiction to resolve the conflict. However, although the ordinary jurisdiction agreed to resolve the case, affecting JK's right to exercise indigenous jurisdiction at first, later, this same ordinary jurisdiction voluntarily agreed to hand over the case to the indigenous jurisdiction when required. For this reason, it is considered that the ordinary jurisdiction made the indigenous jurisdiction less effective.<br>Additionally, the defendant accepted the indigenous jurisdiction, rendering it |

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|---|---|
| expenses. The parties brought documents during the second hearing, and the authorities declared a new suspension to review them. | effective. However, the claimant did not accept and respect the indigenous jurisdiction, making it ineffective. |

| Minute date | Decision-making body | |
|---|---|---|
| 5/5/2019 | Apu Mallku | |
| Place | | Matter |
| Curahuara Marka | | Land possession and severe injuries |
| Abstract | Analysis | |
| Because the parties fought over the fencing of land, one of them received severe injuries from the other. As a result, the injured person filed a criminal procedure for severe injuries. However, the Apu Mallku claimed the competence to resolve the dispute, and seemingly, the ordinary lower-ranking judge accepted it.<br>During the first hearing in front of the community [cabildo], the parties declared their interest in solving the dispute. However, the indigenous authorities adjourned the hearing to receive proof regarding the parties' healing expenses. The parties brought documents during the second hearing, and the authorities declared a new suspension to review them. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. The Apu Mallku made indigenous jurisdiction effective by claiming the competence against the ordinary jurisdiction to resolve the conflict. However, although the ordinary jurisdiction agreed to resolve the case, affecting JK's right to exercise indigenous jurisdiction at first, later, this same ordinary jurisdiction voluntarily agreed to hand over the case to the indigenous jurisdiction when required. For this reason, it is considered that the ordinary jurisdiction made the indigenous jurisdiction less effective.<br>Additionally, the defendant accepted the indigenous jurisdiction, rendering it effective. However, the claimant did not accept and respect the indigenous jurisdiction, making it ineffective. | |

| Minute date | Decision-making body | |
|---|---|---|
| 5/5/2019 | Apu Mallku | |
| Place | | Matter |
| Totora Marka | | Severe and minor injuries |
| Abstract | Analysis | |
| Due to a fight between neighbors, some got severe injuries. During the indigenous hearing summoned to resolve the dispute, the parties reached an agreement after the Apu Mallku reflected on them. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence.<br>Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. | |

| Minute date | Decision-making body | |
|---|---|---|
| 15/5/2019 | Apu Mallkus | |
| Place | | Matter |
| -- | | Land possession |
| Abstract | Analysis | |
| Three brothers had a dispute over four sayañas. Even though they had ten hearings with indigenous authorities, they still could not settle their dispute. Moreover, some of the interested parties did not attend the current hearing. Therefore, the Apu Mallkus declared that the next hearing should take place in the community with all the parties involved to finally decide the case. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. Although some parties were not present at the last hearing, considering the number of hearings held before, their occasional lack of participation is not considered disrespect to indigenous jurisdiction. | |

| Minute date | Decision-making body | |
|---|---|---|
| 20/5/2019 | Apu Mallku | |
| Place | | Matter |
| Corque Marka | | Land possession and severe injuries |
| Abstract | | Analysis |
| Due to a dispute over land delimitation that an indigenous authority had already resolved, a new conflict emerged that the ordinary and indigenous jurisdictions are undertaking.<br>On the one hand, through a criminal process filed by the victim, the ordinary jurisdiction is prosecuting the injuries caused by the aggressor when he attacked the victim with a pickaxe handle when the latter was sowing in his alleged lands.<br>Finally, the indigenous jurisdiction through the Apu Mallku (the | | Given that material, personal and territorial validity areas concur, the indigenous jurisdiction has the competence to resolve the land dispute, the aggression and the injuries. As a consequence, a) the ordinary jurisdiction is invading the competence of the IJ, making it ineffective, b) the parties rendered ineffective the indigenous jurisdiction by preferring the ordinary jurisdiction to decide on injuries and effective regarding the land dispute and damages, and c) by not claiming |

| | |
|---|---|
| highest authority of JK) is trying to reach an agreement that definitively resolves the dispute (land delimitation and the damages caused by the fight). Therefore, the parties and the indigenous authority conducted a site visit to discuss the matter. Unfortunately, even though the parties reached an agreement on some landmarks and the Apu Mallku decided on the division of others, a final settlement could not be reached during the hearing. | the competence to resolve the criminal process, the indigenous authority made the IJ ineffective in this regard, even though it is possible to construe that he prefers to decide the conflict before claiming the competence and extinguish the criminal action. In this sense, it is noted that the indigenous authority agreed to resolve the conflict in its totality, rendering the indigenous jurisdiction effective. |

| Minute date | Decision-making body | |
|---|---|---|
| 22/5/2019 | Apu Mallku | |
| Place | | Matter |
| Corque Marka | | Land possession |
| Abstract | | Analysis |
| The Aransaya and Urinsaya's Apu Mallkus summoned the parties to one more hearing to intend to resolve a dispute over land delimitation between relatives (the dispute reasons are unknown). The case has remained unresolved since 2016, even though the parties tried first to solve their dispute through agri-environmental jurisdiction. One claimant complained and maintained that the interested parties were very patient due to the lack of a solution despite the multiple indigenous hearings. During the hearing, one Apu Mallku explained that old proprietary documents are for reference only since JK's territory concerns collective lands.<br>After a new frustrated attempt to reach an agreement, it was decided to call a council next June or July to decide the dispute. The hearing expenses were shared between the parties. | | JK is competent to resolve the dispute given that the territory of JK, where the dispute occurs, is governed under the regime of undivided co-ownership (no community member has a property right but simple possession). For this reason, the dispute concerns only the internal distribution of lands which, under the JDL, pertains to the indigenous jurisdiction's competence. Furthermore, the case regards indigenous members within the indigenous territory. Consequently, material, personal and territorial validity areas concur.<br>Even though the parties tried to resolve their dispute through agri-environmental jurisdiction, they rendered indigenous jurisdiction effective because the parties submitted their differences to the indigenous jurisdiction. Furthermore, JK authorities also made indigenous jurisdiction effective since they accepted to resolve the dispute and allowed the parties to agree on a concerted solution. |

| Minute date | Decision-making body | |
|---|---|---|
| 22/5/2019 | Apu Mallku | |
| Place | | Matter |
| Tholapampa Central community | | Land possession |
| Abstract | | Analysis |
| Because the parties did not reach an agreement, the indigenous authority a) asked the parties to deliver the documents that support their claims to be analyzed, and b) dialogue to find a settlement, or else he will decide the dispute. Therefore, the authority adjourned the hearing to review the documents. | | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. |

| Minute date | Decision-making body | |
|---|---|---|
| 5/6/2019 | Apu Mallkus | |
| Place | | Matter |
| Totora Marka | | Land possession |
| Abstract | | Analysis |
| Because the parties did not reach an agreement, the indigenous authorities a) asked the parties to deliver the documents that support their claims to be analyzed, and b) decided to carry on a site visit. Therefore, the authority adjourned the hearing. | | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. |

| Minute date | Decision-making body | |
|---|---|---|
| 10/7/2019 | Apu Mallku | |
| Place | | Matter |
| Totora Marka, Culta community | | Land possession |
| Abstract | | Analysis |
| The indigenous authority and the parties visited the milestones of the sayañas. The Apu Mallku decided that one of the families' land in conflict actually belongs to the community. | | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. |

| Minute date | Decision-making body | |
|---|---|---|
| 24/7/2019 | Apu Mallku | |
| Place | | Matter |
| Aymarani Ayllu | | Severe and minor injuries |
| Abstract | Analysis | |
| The parties to the conflict reached an agreement whereby the defendant agreed to pay the claimant's healing expenses. To guarantee the payment, the defendant will a) deposit Bs5000 (about $717 at the moment) and b) deliver the documents of a property existing in Cochabamba. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. | |

| Minute date | Decision-making body | |
|---|---|---|
| 4/9/2019 | Apu Mallku | |
| Place | | Matter |
| -- | | Severe and minor injuries |
| Abstract | Analysis | |
| The indigenous authority summoned the parties to resolve a dispute that previously was a criminal process under the ordinary jurisdiction (allegedly, the indigenous authority claimed the competence to resolve it).<br>The parties exposed their arguments during the first hearing but could not settle the dispute. Consequently, after consulting the parties, the indigenous authority summoned for a second hearing and the presentation of further documentation. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. The indigenous authority made the indigenous jurisdiction effective by claiming the competence against the ordinary jurisdiction to resolve the conflict. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. | |

| Minute date | Decision-making body | |
|---|---|---|
| 4/9/2019 | Apu Mallku | |
| Place | | Matter |
| Totora Marka, Aparu Ayllu, Marquiviri Challuhuma community | | Land possession and fight |
| Abstract | Analysis | |
| The Apu Mallku summoned the parties in conflict to resolve land and fight disputes. The defendant apologized to the other party, acknowledged his mistakes, and settled their dispute. | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. | |

| Minute date | Decision-making body | |
|---|---|---|
| 11/9/2019 | Apu Mallku | |
| Place | | Matter |
| Culta Marka, Pachacama Ayllu | | Land possession |
| Abstract | | Analysis |
| The indigenous authorities summoned the parties to resolve their land dispute. The defendant argued that, contrary to the claimants, they had done indigenous positions to legitimize their land possession and had won the land after resolving conflicts with others. Furthermore, the defendants claim that even though both parties are family, only they were in continuous possession of the land.<br>However, the parties could not settle, so the hearing was adjourned.<br>In the end, the indigenous authorities requested the parties to gather and present more proof of their claims. | | The indigenous jurisdiction has the competence to resolve the dispute given that material, personal and territorial validity areas concur.<br>The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. Additionally, the parties accepted the indigenous jurisdiction, rendering it effective. |

# Case with No Date

| Minute date | Decision-making body | |
|---|---|---|
| No date | Mallkus of Marka and Council | |
| Place | | Matter |
| San Pedro de Totora community, Totora Marka | | Land possession |

| Abstract | Analysis |
|---|---|
| The indigenous authorities of the Marka ordered the authorities of the Ayllu to resolve a dispute that community members claimed or else they will sanction de lower hierarchy authorities. | The indigenous jurisdiction was effective in accepting and resolving / or having the possibility to resolve the disputes reported on matters within its competence. It is noted that the indigenous claimant made the indigenous jurisdiction effective by claiming to the higher indigenous authority to resolve his conflict. |

# Effectiveness Evaluation

*Table 36: Effectiveness evaluation of indigenous minutes and documents' cases*

| MINUTE DATE | PCC | | | | LRC | | | | COORD. & COOP. | | | | CLAIMANTS | | | | DEFENDANTS | | | | JK ACCEPTANCE | | | | JK CLAIMS | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE | +E | E | -E | xE |
| 21/7/2009 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 10/9/2009 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 27/2/2010 | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | 1 | -- | 1 | -- | 1 | -- | 1 | -- | 1 | -- | -- | -- | -- | -- | 1 |
| 19/3/2010 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 18/3/2011 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 2/12/2011 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- |
| 2/3/2013 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 30/8/2013 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- |
| 18/10/2013 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 30/4/2014 | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- | -- | 1 | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- |
| 28/1/2015 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 20/3/2015 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 14/8/2015 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 23/10/2015 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 12/11/2015 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 19/11/2015 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 19/12/2015 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 19/12/2015 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | 1 | -- | 1 | -- | -- | -- | -- | -- | -- |
| 12/1/2016 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 6/4/2016 | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- |
| 11/5/2016 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 30/5/2016 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 13/6/2016 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 30/11/2016 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 17/2/2017 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 14/3/2017 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 15/3/2017 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | 1 | -- | 1 | -- | -- | -- | -- | -- | -- |
| 16/3/2017 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 21/3/2017 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 17/5/2017 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 12/11/2018 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 5/4/2019 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 5/5/2019 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | 1 | -- | 1 | -- | -- | -- | -- | -- | -- |
| 15/5/2019 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | 1 | -- | -- | 1 | -- | -- | -- | -- | -- |
| 20/5/2019 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 22/5/2019 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 22/5/2019 | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- |
| 5/6/2019 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 10/7/2019 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |
| 24/7/2019 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | 1 | -- | -- | -- | -- | -- | -- |

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| *4/9/2019* | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | **1** | -- | -- | -- | **1** | -- | -- | -- | **1** | -- | -- | -- | -- | -- | -- |
| *4/9/2019* | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | **1** | -- | -- | -- | **1** | -- | -- | -- | **1** | -- | -- | -- | -- | -- | -- |
| *11/9/2019* | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | **1** | -- | -- | -- | **1** | -- | -- | -- | **1** | -- | -- | -- | **1** | -- | -- |
| *NO DATE* | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | **1** | -- | -- | -- | **1** | -- | -- | -- | **1** | -- | -- | -- | -- | -- | -- |

*Note*: More effective (+E), effective (E), less effective (-E), and ineffective (xE), Plurinational Constitutional Court (PCC), and lower-ranking courts (LRC).

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