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# The principle of innocence in the administration of indigenous justice in Ecuador

O princípio da inocência na administração da justiça indígena no Equador

El principio de inocencia en la administración de justicia indígena en el Ecuador

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**ABSTRACT**

The administration of indigenous justice in Ecuador is characterized by having different schemes and ways of resolving a conflict; That is to say, each Aboriginal community and nationality applies indigenous justice according to its worldview, customs, and traditions; however, in general, the principle of innocence that emanates from positive law is also observed within ancestral jurisdiction. The objective of the manuscript is to critically analyze the procedure applied in the administration of indigenous justice to determine whether the principle of presumption of innocence is guaranteed. To carry out this activity, the inductive, analytical, customary, and descriptive method is used; Due to the vision, the objectives, and the complexity, a mixed qualitative-quantitative approach is assumed; It is pure, dogmatic, legal analytical, and descriptive legal; non-experimental design. The population involved is made up of Constitutional Guarantees Judges and indigenous authorities, to whom a six-question multiple choice questionnaire is applied. The results indicate that the investigations and tests determine the innocence or not of the accused, on the other hand, the main evidence that is analyzed within indigenous justice to determine the guilt of the offender is the testimony and background of the offender, this allows conclude by pointing out that if the principle of presumption of innocence is guaranteed in the administration of indigenous justice.

**Keywords:** Legal procedure, criminal sanction, court, social justice, right to justice, indigenous justice.

**RESUMO**

A administração da justiça indígena no Equador caracteriza-se por ter diferentes esquemas e formas de resolver um conflito; Isto é, cada comunidade e nacionalidade aborígine aplica a justiça indígena de acordo com a sua visão de mundo, costumes e tradições; porém, em geral, o princípio da inocência que emana do direito positivo também é observado na jurisdição ancestral. O objetivo do manuscrito é analisar criticamente o procedimento aplicado na administração da justiça indígena para determinar se o princípio da presunção de inocência está garantido. Para a realização desta atividade utiliza-se o método indutivo, analítico, consuetudinário e descritivo; Devido à visão, aos objetivos e à complexidade, assume-se uma abordagem qualitativa-quantitativa mista; É jurídico puro, dogmático, jurídico analítico e jurídico descritivo; projeto não experimental. A população envolvida é formada por Juízes de Garantias Constitucionais e autoridades indígenas, aos quais é aplicado um questionário de múltipla escolha com seis perguntas. Os resultados indicam que as investigações e provas determinam a inocência ou não do acusado, por outro lado, a principal prova que se analisa dentro da justiça indígena para determinar a culpa do infrator é o depoimento e antecedentes do infrator, o que permite concluir apontando que se o princípio da presunção de inocência é garantido na administração da justiça indígena.

**Palavras-chave**: Processo legal, sanção penal, tribunal, justiça social, direito à justiça, justiça indígena.

**RESUMEN**

La administración de justicia indígena en el Ecuador se caracteriza por tener diferentes esquemas y formas de resolver un conflicto; Es decir, cada comunidad y nacionalidad aborigen aplica la justicia indígena según su cosmovisión, costumbres y tradiciones; sin embargo, en general, el principio de inocencia que emana del derecho positivo también se observa dentro de la jurisdicción ancestral. El objetivo del manuscrito es analizar críticamente el procedimiento aplicado en la administración de justicia indígena para determinar si se garantiza el principio de presunción de inocencia. Para la realización de esta actividad se utiliza el método inductivo, analítico, habitual y descriptivo; Debido a la visión, los objetivos y la complejidad, se asume un enfoque mixto cuali-cuantitativo; Es jurídico puro, dogmático, jurídico analítico y descriptivo; diseño no experimental. La población involucrada está conformada por Jueces de Garantías Constitucionales y autoridades indígenas, a quienes se les aplica un cuestionario de seis preguntas de opción múltiple. Los resultados indican que las investigaciones y pruebas determinan la inocencia o no del imputado, por otro lado, la principal prueba que se analiza dentro de la justicia indígena para determinar la culpabilidad del infractor es el testimonio y antecedentes del infractor, esto permite concluir al señalar que si se garantiza el principio de presunción de inocencia en la administración de justicia indígena.

**Palabras clave**: Procedimiento legal, sanción penal, tribunal, justicia social, derecho a la justicia, justicia indígena.

## INTRODUCTION

Epistemological and empirical discussions on indigenous issues and their particularities address various areas such as health (Romero-Tapias et al., 2022), the form of economic and social organization (Tapia Mejia & Pico Gonzalez, 2022), and of course the legal context (Sieder, 2014) object of this study. The administration of indigenous justice is an indigenous peoples' own system for resolving their conflicts or internal problems through their own ancestral norms, customs and traditions. This autonomous system is recognized and protected by domestic and international legislation and governs the various countries with aboriginal populations, as a way of respecting and preserving their cultural identity and autonomy. The authorities in charge of administering community justice are usually leaders or representatives of the community, who have a deep knowledge of their cultural identity and have been an example of integrity and transparency.

Jiménez, Viteri & Mosquera (2021), point out that the countries of the Andean Community of Nations in the last decade of the 21st century achieved a similar trend by reforming their constitutions in order to comply with the provisions of Convention No. 169 of the International Labor Organization on Indigenous and Tribal Peoples, in relation to multiculturalism, collective rights and special jurisdiction, fundamental elements to strengthen pluralism and the multicultural State.

Pluralism refers to the coexistence of diverse beliefs, ideologies, values and traditions in a society or culture. In the legal sphere, legal pluralism recognizes the existence of multiple judicial systems within the same society or State. In Ecuador there are two constitutionally recognized forms of administering justice, ordinary justice and indigenous justice, and peasant justice legalized by executive decree during the presidency of Clemente Yerovi Indaburo.

Indigenous justice has been internationally protected since 1989 by ILO Convention 169, which obliges member states to respect "the methods traditionally used by the peoples concerned for the punishment of offenses committed by their members" (Art. 9). On the other hand, the Universal Declaration of the United Nations (2007), on the Rights of Indigenous Peoples, states that indigenous peoples have the right to preserve and strengthen their own political, legal, economic, social and cultural institutions; to practice and revitalize their cultural traditions and customs, which includes the right to maintain, protect and develop their past, present and future manifestations.

In the regional context, the Bolivian and Colombian constitutions place special emphasis on the autonomy of local jurisdictions. Articles 190 and 191 of the Bolivian law grant the right to "exercise judicial functions for the benefit of the local indigenous population and the peasants themselves", paragraph 11 of article 202 establishes that "if there is a conflict between local and ordinary justice, it will be decided by the constitutional court". For its part, in Colombia, the Constitution has also recognized in its Article 246 the jurisdictional function in favor of the indigenous communities themselves, as a special jurisdiction, in the event of any dispute, it will be the Constitutional Court, which will resolve; the Political Constitution of Peru (1993), in its Art. 149, recognizes the native authorities jurisdictional functions within their territorial scope in accordance with customary law, as long as they do not violate the fundamental rights of the person; in Venezuela

Indigenous justice in Ecuador refers to ancestral and traditional justice systems, applied in the country's indigenous communities, based on their knowledge, customs, traditions, norms and indigenous practices, and aimed at resolving internal conflicts in order to maintain peaceful and harmonious coexistence. This form of justice is ensured by the Constitution of the Republic of Ecuador (2008), which in its Art. 171 states, "The authorities shall apply their own rules and procedures for the resolution of their internal conflicts, which are not contrary to the Constitution and human rights recognized in international instruments".

The ancestral worldview of our aborigines, is totally different from what people of different ethnicity to the aboriginal think, although many customs and traditions that have practiced and practice our natives, have been replicated in the context of whites, mestizo and other ethnicities, such as punishing the person who lies, is idle and steals. The indigenous worldview is based on the spiritual and holistic connection they have with nature, living beings and the universe in general, for the aborigines, everything in nature is interconnected and there is a relationship of balance and harmony between all forms of life. The indigenous people see nature as a living being with which they should have a relationship of reciprocity and respect, they consider that attacking Pachamama is a very serious crime because it affects the life of human beings and ecosystems. In the behavioral aspect, they point out that the behavior of the person outside and inside the community must be integral and balanced, guaranteeing peaceful and harmonious coexistence between living beings and Mother Earth, for these reasons, ancestral knowledge and wisdom must be preserved and applied within the social coexistence.

Penalty, sanction and punishment are not terms used within the misnamed indigenous justice, for our aborigines, these words are not part of their worldview, because, what they apply are rituals of healing of body and soul, which aims, "is to restore things to their state prior to the aggression or crime, if something has been damaged or affected the transgressor must repair the damage caused and restore coexistence and harmony in the community". (Regalado, 2009, p. 102). Indigenous justice is undoubtedly the reflection of the customs, teachings of older adults, their parents and grandparents, a paradigm of respect for values, ethical principles and harmony with the cosmos was formed. These are the bases for

preserving the indigenous peoples' own justice. The issue of justice in indigenous communities has become even more complex from the dogmatic point of view, due to the oral system they use. However, most of the conflict composition procedures of the indigenous peoples end in agreements or conciliations and also establish penalties and/or punishments for those who have transgressed the norms established in the community.

Indigenous justice has its own procedures for resolving conflicts, but when they ignore human rights, the Organic Law on Jurisdictional Guarantees and Constitutional Control indicates that the decision may be challenged in order to be judged according to the laws established in the country. In addition, judges must prevent indigenous justice sentences from alleging custom, interculturality or legal pluralism in order to violate women's human or participation rights.

The authority will take the necessary measures to guarantee the understanding of the norms, procedures and legal consequences of what is decided in the process in which indigenous persons and collectivities intervene. Therefore, they shall provide, among other measures, the procedural intervention of translators, anthropological experts and specialists in indigenous law. The actions of the native justice authorities may not be judged or reviewed by the judges of the Judiciary, nor by any administrative authority, at any stage of the cases brought before them, without prejudice to constitutional control. (Barrionuevo, 2015). In the case of the appearance of indigenous persons or collectivities, at the time of their actions and judicial decision, they will interpret the rights at issue in the litigation interculturally. Consequently, they will try to take cultural elements related to customs, ancestral practices, norms, procedures of indigenous peoples, nationalities, communes and communities, in order to apply the rights established in the Constitution and international instruments (Miño & Santamaria, 2020).

One of the principles that positive law, including ancestral practice, obliges the administrators of justice to observe when prosecuting a person is the principle of innocence. The legal situation of presumption of innocence is not a relatively new factor, since it has antecedents in different supranational documents with binding effect in various countries of the world. Article 11 (1) of the Universal Declaration of Human Rights (1948) states: Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. According to the above, the presumption of innocence can be considered from different perspectives: as an obligation of the State, which holds the punitive power and exercises it through different organs, institutions and public servants; as a right of the person who is accused of committing a crime, and as a guarantee that he will be considered and treated as innocent until proven guilty in a judicial process with all the guarantees required by the right to due process. Therefore, it can be determined that, inexorably, every person maintains his legal status of innocence until sufficient evidence of conviction is not established against him that leads to his responsibility in any offense committed either by action or omission, as long as such evidence or elements of conviction have been directed by the path of the law and the due process of the accused.

The American Convention on Human Rights (1978) Article 8, paragraph 2, establishes that any person accused of a crime has the right to be presumed innocent until proven guilty by law. The text of General Comment Number 13 (1984) of the Human Rights Committee, which states that: Taking into account the presumption of innocence, the burden of proof rests on the prosecution and the accused has the benefit of the doubt. No one may be presumed guilty unless the accusation has been proved beyond reasonable doubt. Furthermore, the presumption of innocence implies the right to be treated in accordance with this principle. Therefore, all public authorities have an obligation not to prejudge the outcome of the proceedings.

The aforementioned determines that the alleged offender must be treated as innocent in all procedural stages of the trial, even when the prosecution's evidence may include indications of responsibility for the offense with which he is charged, since in accordance with this principle the burden of proof falls on the prosecution, while the accused enjoys the benefit of the doubt until a conviction to the contrary is handed down.

To analyze the principle of innocence in the administration of indigenous justice , the definition of innocence established by the Royal Spanish Academy (2014) is taken as a basis: "A state of the soul that is clean of guilt/free of guilt or bad behavior"; According to the indigenous worldview, the offender, the guilty, the disobedient, with his impure acts causes disturbances to the peaceful coexistence within the community, this is because he is possessed by evil spirits that urge him to misbehave and not to abide by the community rules. Innocence, then, will be the consideration of absence of guilt, that is to say, the non-responsibility of an individual in relation to a fact produced. The existence of presumptions in law is logical in view of the need for legal certainty, thus, as a general rule, whoever alleges a circumstance in a proceeding must prove it, except for those circumstances that the law has considered as a logical construction that does not need to be proven.

The presumptions within the conceptions of the legal doctrine can be of fact or law, so the presumptions of fact are those that are established in the law and that admit proof to the contrary and therefore within the process can be disproved based on the demonstration of its non-verification. The presumption of innocence is the right of all persons to be considered a priori as a general rule that they act according to right reason, behaving in accordance with the values, principles and rules

of the legal system, until a court acquires the conviction, through the means of legal proof, of their participation and responsibility in the punishable act determined by a firm and founded sentence, obtained respecting each and every one of the rules of due and fair process, All of which requires applying the precautionary measures provided for in the criminal process in a restrictive manner, to avoid harming innocent people by affecting their fundamental rights, in addition to the moral damage that may eventually occur to them, the Constitution of the Republic of Ecuador (2008) provides that "every person shall be presumed innocent until a final judgment or enforceable sentence declaring him responsible".

In the indigenous jurisdiction, the principle of innocence is a fundamental principle that is closely related to the *Ama Llulla* (not to lie), one of the three pillars of the Andean cosmovision, it is based on the importance of truth, honesty and transparency in the relationships between people and represents a fundamental value for life in harmony within the indigenous communities. To be innocent of the accusation of an infraction within the indigenous community, it is necessary to be honest in words and actions, avoiding lies, deceit and manipulation, this principle aims to establish relationships of respect and trust within the community. However, with the passage of time it has been generating discomfort and disagreement with the decisions adopted by the communities and indigenous authorities; because the alleged offenders have been judged and punished, in a certain way violating the due process, the right to defense and the principle of innocence, which are constitutional and fundamental guarantees that every person has at the time of being judged by the Native Justice (Aguilar, 2015).

Due to the cultural and legal particularities of indigenous communities, this principle may be particularly relevant to the administration of indigenous justice. Because they are based on forms of conflict resolution different from those used in Western justice systems, some traditional indigenous justice practices may be considered contrary to the principle of innocence.

## METHODOLOGY

The unit of analysis of this research is located in the Republic of Ecuador, specifically in Zone 3, where most of the aboriginal peoples of the country reside; the application of the principle of the presumption of innocence in the administration of indigenous justice was studied; inductive, analytical, customary and descriptive methods were used; due to the vision, objectives and complexity, a mixed qualitative-quantitative approach is assumed; it is of a pure, dogmatic, legal analytical and legal descriptive type (Wróblewski, 1987; Demertzis, 2019); of non-experimental design.

The population involved is made up of Constitutional Guarantee Judges and indigenous authorities. To obtain the sample, non-probabilistic sampling is applied at the discretion and convenience of the research (Asiamah et al., 2022), twenty ordinary justice administrators and twenty customary justice judges are selected, to whom a questionnaire of six multiple choice questions is applied. For the treatment of the information, mathematical techniques are used (data tabulation), computer techniques (information processing), and logical techniques for the analysis and discussion of the results.

## RESULTS AND DISCUSSION

Questionnaire applied to constitutional guarantee judges in Ecuador and indigenous authorities with the power to administer justice. The Table 1 approaches the perception regarding the principle of innocence.

**Table 1**. Principle of innocence

| **Question 1:** Is the principle of the presumption of innocence part of the administration of indigenous justice? | | | | |
|---|---|---|---|---|
| | **JUDGES** | | **AUTHORITIES** | |
| **Dimension** | **f** | **%** | **f** | **%** |
| Yes | 12 | 60% | 11 | 55% |
| No | 8 | 40% | 4 | 20% |
| Partially | 0 | 0% | 5 | 25% |
| **TOTAL** | **20** | **100%** | **20** | **100%** |

**Note.** Questionnaire applied to Judges of Constitutional Guarantees and indigenous authorities. **Author:** Researchers (2024)

The Declaration of the Rights of Man and of the Citizen in its Art. 9 states, "every individual is presumed innocent until proven guilty", the Universal Declaration of Human Rights, in its Art. 11 states "Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense", in several decisions, the Inter-American Court of Human Rights has clearly established that, according to the principle of the presumption of innocence, found in Art. 8.2 of the Convention, someone cannot be convicted without clear evidence of his criminal responsibility; the Constitution of the Republic of Ecuador 2008, in its Art. 72 numeral 2, says, "The innocence of every person shall be presumed, and he shall be treated as such, as long as his

responsibility is not declared by a final resolution or executed sentence". All these legal arguments allow to establish that the principle of the presumption of innocence is a fundamental element protected and guaranteed by the norms of international and national law, it is an elementary principle to guarantee legal certainty and transparency in any legal system.

In this sense, 100% of the Constitutional Guarantees Judges and 80% of the indigenous authorities surveyed consider that the presumption of innocence is part of indigenous law. For Gallegos & Caicedo (2019) within indigenous law, the protection of due process will be in accordance with customary practice, ancestral practices that cannot be indifferent to the provisions of international human rights instruments and the Constitution of the Republic of Ecuador, in effect, in indigenous justice to demonstrate or prove the guilt of the offender, if he has not been arrested in flagrante delicto, the corresponding investigation must be carried out and a *ñaunchi*, which means a face-to-face confrontation, based on the results, the guilt or not of the accused is established.

**Table 2**. Type of evidence

| **Question 2:** What type of evidence is analyzed within indigenous justice to determine the guilt of the offender? | | | | |
|---|---|---|---|---|
| | **JUDGES** | | **AUTHORITIES** | |
| **Dimension** | **f** | **%** | **f** | **%** |
| Testimonials | 12 | 60% | 15 | 75% |
| Experts | 8 | 40% | 0 | 0% |
| Documentaries | 0 | 0% | 0 | 0% |
| Background | 0 | 0% | 5 | 25% |
| **TOTAL** | **20** | **100%** | **20** | **100%** |

**Note.** Questionnaire applied to Judges of Constitutional Guarantees and indigenous authorities. **Author:** Researchers (2024)

The legal process uses evidence to demonstrate the veracity of the facts that are alleged, this evidence can be documentary, testimonial, expert, material and so on. Evidence is fundamental for a judge to be able to issue a fair and adequate sentence, which guarantees the transparency and impartiality of the judicial process, it is essential that the evidence presented is valid and obtained in a legal manner.

According to the results of the investigation in Table 2, the evidence that was analyzed within the indigenous justice system to determine the guilt of the offender, according to the criteria of the Judges of Constitutional Guarantees are testimonial and expert; according to the indigenous authorities, they are testimonial and procedural. In this context, it should be noted that the testimonial evidence is fundamental to the oral system, an essential characteristic of the indigenous administration system; on the other hand, a new evidence that governs indigenous justice is related to the antecedents, which for positive law is a source and is known as precedent and that according to the indigenous cosmovision, are facts, events or previous circumstances that serve as a basis or context to understand the behavior and conduct of the offender and of the infraction. In conclusion, the analysis of evidence is a procedure through which the veracity of the evidence is analyzed, so that the administrator of justice may have sufficient knowledge to establish a sanction attached to the truth and not commit injustice, this procedure guarantees the principle of the presumption of innocence.

**Table 3**. Administration of Indigenous Justice

| **Question 3:** In the administration of indigenous justice, is the defendant treated fairly and equitably? | | | | |
|---|---|---|---|---|
| | **JUDGES** | | **AUTHORITIES** | |
| **Dimension** | **f** | **%** | **f** | **%** |
| Totally agree | 2 | 10% | 15 | 75% |
| Agreed | 8 | 40% | 5 | 25% |
| Neutral | 0 | 0% | 0 | 0% |
| Disagree | 6 | 30% | 0 | 0% |
| Strongly disagree | 4 | 20% | 0 | 0% |
| **TOTAL** | **20** | **100%** | **20** | **100%** |

**Note.** Questionnaire applied to Judges of Constitutional Guarantees and indigenous authorities. **Author:** Researchers (2024)

Access to justice and fair treatment is a basic principle aimed at ensuring equal and non-discriminatory treatment of all persons in judicial proceedings. This principle is based on the idea that all individuals are equal before the law and should be heard and respected, regardless of their origin, social status, beliefs or other personal characteristics. Ruiz & Moya (2023), say, the main objective of due process in Ecuadorian indigenous justice is to ensure that all parties involved in the process have the opportunity to be heard, to present evidence and arguments, and to receive fair and equitable treatment according to ancestral norms and procedures. In indigenous communities in Ecuador use a variety of mechanisms and procedures to peacefully resolve conflicts and reestablish social relations, dialogue plays a key role in allowing all parties involved in the

conflict to express their concerns, opinions and needs in order to find a common language and seek acceptable solutions, i.e., the implementation of "sanctions and procedures in accordance with the cosmovision of each indigenous community". (González et al., 2019).

In effect, each indigenous community has its own way of resolving its internal conflicts, but in general and especially for the mestizos, as the results of the investigation indicate, in the administration of indigenous justice the executed is not treated in a fair and equitable manner, a thought that contradicts what the indigenous authorities indicate, who state that, within the indigenous jurisdiction, there is a fair and equitable treatment. In this regard, José Ganan (2024), of the Cacha culture, points out that justice is for everyone, whether man, woman, child, youth, all receive their punishment when their acts contravene the good customs of the community and alter the peaceful coexistence, that is, in the administration of indigenous justice, there is impartial, equal and non-discriminatory treatment by the indigenous authorities.

**Table 4**. Validation of evidences

| **Question 4:** Who should assess the validity of evidence in the administration of indigenous justice? | | | | |
|---|---|---|---|---|
| | **JUDGES** | | **AUTHORITIES** | |
| **Dimension** | **f** | **%** | **f** | **%** |
| Indigenous Authority | 15 | 75% | 4 | 20% |
| General Assembly | 5 | 25% | 4 | 20% |
| Commune Council | 0 | 0% | 4 | 20% |
| General Assembly Committee | 0 | 0% | 4 | 20% |
| Leadership Council | 0 | 0% | 4 | 20% |
| **TOTAL** | **20** | **100%** | **20** | **100%** |

**Note.** Questionnaire applied to Judges of Constitutional Guarantees and indigenous authorities. **Author:** Researchers (2024)

The validity of evidence within any legal system is a fundamental activity to ensure the transparency and fairness of judicial proceedings, this diligence allows a judge to make a decision based on specific facts, not on assumptions or prejudices. In this sense, the validity of evidence refers to its suitability to provide truthful and relevant information in a judicial proceeding. To be considered valid, evidence must meet certain requirements, such as being legally obtained, duly documented, relevant to the specific case, verifiable and not altered or falsified.

According to Art. 453 of the Organic Integral Criminal Code (2014), "the purpose of the evidence is to convince the judge of the facts and circumstances of the offense and the responsibility of the defendant". In this sense, in ordinary justice, the judge must have sufficient knowledge and experience to make a good technical and scientific evaluation of the evidence, otherwise, there will be the probability of making mistakes that will cause the issuance of an erroneous and unjust decision.

In the indigenous context, according to the results of the investigation and the criteria of the aboriginal authorities, the evaluation or assessment of the evidence is carried out by several groups, among them, the indigenous authority, the members of the General Assembly, the members of the communal council, the members of the Commission of the General Assembly and the members of the Council of Leaders, all depending on the territorial context and the customs of each ancestral or community territory. Now, how do they evaluate the evidence? only and through the knowledge and experience they have, they do not have a scientific preparation or training to technically and systematically comply with this legal activity.

**Table 5**. Sentences in the indigenous justice system

| **Question 5:** In the administration of indigenous justice, have people been executed simply on suspicion without sufficient evidence? | | | | |
|---|---|---|---|---|
| | **JUDGES** | | **AUTHORITIES** | |
| **Dimension** | **f** | **%** | **f** | **%** |
| Yes | 6 | 30% | 4 | 20% |
| No | 8 | 40% | 12 | 60% |
| Partially | 6 | 30% | 4 | 20% |
| **TOTAL** | **20** | **100%** | **20** | **100%** |

**Note.** Questionnaire applied to Judges of Constitutional Guarantees and indigenous authorities. **Author:** Researchers (2024)

Legal certainty is a principle of law that guarantees all citizens respect for their rights and the certainty that legal rules will be applied in a fair and equitable manner, in order to avoid arbitrariness and defenselessness of individuals, seeking to ensure stability, predictability and confidence in the legal system. Legal certainty is essential for the proper functioning of the Constitutional State of Rights and for the development of society.

According to the results of the investigation, both the Judges of Constitutional Guarantees and indigenous

authorities recognize that, in the administration of indigenous justice, they have been executed simply because of suspicions without sufficient evidence. From the indigenous cosmovision, it is not possible to execute without evidence, nor by mere suspicions, because these actions would be against transparency and honesty. However, there are cases, especially among mestizos, in which by mistake or misinterpretation of the acts and evidence, wrongful executions have been carried out. In this sense, within the administration of indigenous justice, the phrase legal security does not exist, for them legal security is to act honestly, without harming or causing harm to anyone, i.e., legal security lies in the transparency of the act of purification of the body and soul of the executed person.

**Table 6**. Principle of presumption of innocence

| **Question 6:** Is the principle of presumption of innocence guaranteed in the administration of indigenous justice? | | | | |
|---|---|---|---|---|
| | **JUDGES** | | **AUTHORITIES** | |
| **Dimension** | **f** | **%** | **f** | **%** |
| Yes | 6 | 30% | 20 | 100% |
| No | 8 | 40% | 0 | 0% |
| Partially | 6 | 30% | 0 | 0% |
| **TOTAL** | **20** | **100%** | **20** | **100%** |

**Note.** Questionnaire applied to Judges of Constitutional Guarantees and indigenous authorities. **Author:** Researchers (2024)

According to the results of the research, 60% of the Constitutional Guarantees Judges and 100% of the indigenous authorities surveyed agree that the principle of the presumption of innocence is guaranteed in the administration of indigenous justice, because there is a prior investigation and a direct confrontation between the offender and the victim, which allows having elements of conviction and truthful evidence to be able to prosecute the offender.

It is crucial to bear in mind that, in the process of administering indigenous justice, the traditions and customs of each community must be respected, as long as they do not violate fundamental human rights, including respect for the presumption of innocence and the right to a fair trial that respects equity, independence and impartiality. The application of the principle of presumption of innocence in the context of indigenous justice presents issues that generate discussion, some people argue that the presumption of innocence goes against the worldviews and ancestral practices of indigenous peoples, on the other hand, others argue that this principle is essential to ensure equitable and respectful of human rights access to justice.

## CONCLUSIONS

The innocence of the accused as one of the principles that must be observed within the indigenous justice is established, because within the procedure an investigation process is guaranteed where the facts, versions and suggestions are analyzed, including in several cases the *ñaunchi*, the face to face confrontation, in which each of the parties involved expose their versions of the facts in order to clarify the contradictions, with the purpose that the indigenous authority can determine the truth and respective execution.

In positive law the evidence that is generally analyzed and evaluated in a technical and scientific manner by the administrator of justice is material, biological, psychosomatic, testimonial, expert and documentary evidence; While in the indigenous context the evidence is only testimonial and antecedental, evaluated in an empirical and non-scientific manner by the authority, by the members of a commission appointed by the General Assembly, community or cabildo, this may be the most accurate reason why in many cases within the indigenous jurisdiction, innocent people, mostly mestizos, have been executed.

### Main limitations of the study and future research

The article manuscript presented a rich discussion about the management of indigenous justice in Ecuador and its adherence to the principle of presumption of innocence, despite that, numerous barriers need addressing for future studies. Firstly, considering a small sample size regarding Constitutional Guarantees Judges and indigenous government may also limit the generalizability of its findings to the broader indigenous communities across Ecuador. Additionally, the technique predominantly is based on a questionnaire, which might not completely capture the complicated nature of indigenous justice proceedings. Future studies ought to benefit from employing a deeply and participatory research layout, related to diverse stakeholders inside indigenous groups and incorporating qualitative methods including interviews concerning the application of the presumption of innocence inside indigenous justice structures. Moreover, exploring the effect of outside factors inclusive of governmental rules or societal dynamics on indigenous justice practices should provide valuable insights into the broader context in which these systems operate and evolve.

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