LEGITIMACY OF COMMUNITY JUSTICE. A LOOK FROM THE AYMARA COMMUNITIES OF PERU

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ABSTRACT

Objective: The objective is to identify the designation of communal authorities in the form of election, its organizational structure, its attributions, roles, functions and legitimacy in the community. Finally, to explain the prevailing norms, forms of conflict resolution within the framework of the administration of communal justice, considering as a source the cultural patterns as a mechanism of access to justice.

Results: The study is carried out in the district of Chucuito, Puno, Peru, where the ancestral social-political organization persists and the administration of justice is based on its cultural practice, especially rooted in the ancestral historical legacy. In the article, an analysis is made regarding the scope and limitations of the administration of community justice.

Method: The method used is ethnographic-qualitative. In the procedural aspect, it was carried out through the analysis of the Communal Minutes Book, where the cases dealt with in the communal assemblies are recorded. Observation guides and in-depth interviews were used as research instruments. The field work was carried out following a program of visits coordinated with the communal authorities for a period of one year.

Conclusions: The ancestral practices of justice administration are in force in the Aymara communities practiced by the families of the community and authorities, mainly Lieutenant Governors, based on custom, ancestral traditions and the legitimacy attributed to them by the community population, and they seek to lay the foundations for the understanding and incorporation to the official state justice spheres.

Keywords: Aymara Community, Legitimacy Of Justice, Resistance, Communal Authority, Community Justice.

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LEGITIMIDADE DA JUSTIÇA COMUNITÁRIA. UMA VISÃO DAS COMUNIDADES AYMARA DO PERU

RESUMO

Objetivo: O objetivo é identificar a designação de autoridades comunitárias na forma de eleição, sua estrutura organizacional, suas atribuições, papéis, funções e legitimidade na comunidade. Por fim, explicar os regulamentos vigentes, as formas de resolução de conflitos no âmbito da administração da justiça comunitária, considerando como fonte os padrões culturais como um mecanismo de acesso à justiça.

Método: O método utilizado foi o etnográfico-qualitativo. No aspecto processual, foi realizado por meio da análise do Livro de Atas Comunais, onde são registrados os casos tratados nas assembleias comunais. Como instrumentos de pesquisa, foram utilizados guias de observação e entrevistas em profundidade. O trabalho de campo foi realizado de acordo com um programa de visitas coordenado com as autoridades comunitárias durante um período de um ano.

Resultados: O estudo foi realizado no distrito de Chucuito, Puno, Peru, onde a organização social e política ancestral persiste e a administração da justiça se baseia em sua prática cultural, especialmente enraizada no legado histórico ancestral. O artigo analisa o escopo e as limitações da administração da justiça comunitária.

Conclusões: As práticas ancestrais de administração da justiça estão em vigor nas comunidades aimarás, praticadas pelas famílias da comunidade e pelas autoridades, principalmente os tenentes governadores, com base nos costumes, nas tradições ancestrais e na legitimidade que lhes é atribuída pela população da comunidade, e buscam estabelecer as bases para a compreensão e a incorporação às esferas oficiais da justiça estatal.


LEGITIMIDAD DE LA JUSTICIA COMUNITARIA. UNA VISIÓN DESDE LAS COMUNIDADES AYMARAS DEL PERÚ

RESUMEN

Objetivo: Se pretende identificar la designación de autoridades comunitarias en forma de elecciones, su estructura organizativa, atribuciones, roles, funciones y legitimidad en la comunidad. Finalmente, explicar la normativa vigente, las formas de resolución de conflictos en el marco de la administración de justicia comunitaria, considerando los patrones culturales como fuente de acceso a la justicia.

Método: El método utilizado fue etnográfico-qualitativo. En términos procesales, se llevó a cabo mediante el análisis del Libro de Actas Comunales, que registra los casos tratados en las asambleas comunales. Como instrumentos de investigación se utilizaron guías de observación y entrevistas en profundidad. El trabajo de campo se realizó según un programa de visitas coordinado con las autoridades comunales a lo largo de un año.

Resultados: El estudio se realizó en el distrito de Chucuito, Puno, Perú, donde persiste una organización social y política ancestral y la administración de justicia se basa en su práctica cultural, especialmente enraizada en el legado histórico ancestral. El artículo analiza los alcances y limitaciones de la administración de justicia comunitaria.

Conclusiones: En las comunidades aymaras están vigentes prácticas ancestrales de administración de justicia, ejercidas por las familias de la comunidad y por las autoridades, principalmente los tenientes gobernadores, sobre la base de costumbres, tradiciones ancestrales y la legitimidad que les atribuye la población de la comunidad, y buscan establecer las bases para su comprensión e incorporación en las esferas oficiales de la justicia estatal.

Palabras clave: Comunidad Aymara, Legitimidad de La Justicia, Resistencia, Autoridad Comunal, Justicia Comunitaria.
1 INTRODUCTION

The indigenous peoples developed their own knowledge and conditions within the Andean organization. In the 16th century, the Spanish imposed the structure and hierarchization of a legal system that gradually absorbed the indigenous communities "a network of complicities between landowners, laymen or ecclesiastics, bureaucrats, magistrates and judges-visitors, who pushed to destroy the community cohesion of the ayllus or the more recent Indian communities regrouped and organized into villages" (Escárzaga, 2017, p. 52).

The imposition of the European legal system, by means of legal institutions, was established by the State through municipal mayors and peace courts in districts and provinces as a policy of homogenization and domination. In spite of this, the indigenous Aymara communities persisted and persist in their dynamic of cyclical rotation of communal authorities, typical of their organization and administration of justice.

In this context, the indigenous communities built through oral tradition a socio-legal principle based on collectivity, communal rotation and complementarity, "each member is responsible for all the others, and the collective group is responsible for each of its members. There is a collective co-responsibility that goes not only beyond individual freedom, but beyond life" (Estermann, 2008, p. 89). These principles are strongly rooted and developed in the historical past intrinsically, fixed, anchored, in historically given organizational principles, such as the territory, the family and the social system (Guzman, 2011).

The Aymara community in the historical process has demonstrated a balance of socio-cultural and political organization, with a cyclical dynamic of individual and collective participation and representation, therefore, there is a root to maintain a community based on principles and values that in times of difficulty is the source of collective energy (4). For this reason, the right to autonomy, self-government and the right to appoint their authorities through community procedures is maintained and demanded (González & Mesri, 2015).

2 MATERIALS AND METHODS

The research was conducted in the Aymara communities of the district of Chucuito, Puno, Peru, based on the jurisdiction of the Lieutenant Governors, with the Subprefecture and the Governor's Office.

The research was carried out using the qualitative method based on the historical collection of information from the Aymara communities that resist the imposition of the
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positivist legal system. The historiography was used to review the book of conciliation minutes of the Peace Courts, and the cases of trials in the Regional Archive of Puno were analyzed. In the communities of the district of Chucuito, despite the hybridization of many categories, the Aymara communities, due to their organizational system rooted in ancestral patterns, persist in their traditional political and legal practice. Ethnographic work was carried out in the communities of Chucuito, using the techniques of participant observation on the administration of the justice system, in-depth interviews and focus groups with lieutenant governors. In addition, data validation was corroborated with semi-structured interviews with former authorities who assumed the position of lieutenant governor and former community presidents. We also had the collaboration of the sub-prefect, which was corroborated with communal minutes and bibliographic references.

3 RESULTS

The incipient social organizations of the Aymara kingdoms part of the Tiahuanaco are of Aymara tradition, was part of the Lupaca kingdom, the political social organization of the peoples of the Peruvian Altiplano settled geographically in places of summit for being in constant conflicts for territorial control, The main seat of the Lupaqa ethnic group was the western margin of the lake and was known as the province of Chucuito name in force today; located in the department of Puno, Republic of Peru (Salles, 2016).

They were organized in family units, forming ethnic groups on the shores of Lake Titicaca with great skill in agriculture, livestock, fishing, crafts, territorially, socially, culturally and politically constituted. The Andes were occupied by ayllus and tribes. The smallest social entity in ancient Peru was the ayllu or clan. The primitive ayllu of the times before the Incas obeyed two main objects: the fair distribution among the families of the land occupied by the ayllu, and the need to dispose and organize its military force (Ainsworth, 1919). The "ayllu" embodied the socialist utopia, both as a point of arrival and as an engine of struggle. Thus, the farm and the community represent two poles that tense the disputes and discourses on the Puno territory(8). Source framed in the family, social group and collective institution founded as an Andean principle based on tradition.
3.1 IMPLEMENTATION OF COMMUNITY JUSTICE IN THE INCAN EMPIRE

In this section of the search for antecedents of the administration of justice from pre-Hispanic times, whose main source of reference are the writings of the chroniclers, which, in spite of the generally scarce information, at least offer us records that allow us to reconstruct the system of administration of justice.

Just as Jesus Christ tells us, “We are proud of our position, we are Jilaqata, our great-great-grandparents have left us this legacy, and the authority of the lieutenant represents that millennial heritage” Interviewee 7.

The information available on the implementation of pre-Hispanic community justice is based on the writings of the chroniclers.

Juan de Betanzos (1551). (The Inca) Ordered and commanded that if someone steals anything from another that was a small or a large amount that the said thief would be seriously tormented and that the owner of the stolen thing would be returned to him with double the amount and if he did not have the thief with which to pay it nor did he have for that reason that such a thief was given to the lord whose thing was for his perpetual servant and not for a slave because among them it was not customary to have slaves with whom they and their descendants dealt and contracted if not perpetual servants of these such were from the sons of such gentlemen to whom he sent and ascertaining it to be a lie that he would not have stolen from him than because of such a stain that he had put on him by making him a thief, not being that the such that he had informed him thus without the guilt would give two so much that the thing that he asked for that he had stolen would be worth it and that if the offender did not have another as much to pay the offender that the offender would enter the offender’s house and take everything that is found publicly and that there he would make him resent in front of everyone what he had raised in this way and make him make a sacrifice there in front of everyone with which he would be restored to his honor (Chivi, 2009).

Times and logics are abysmally different from implementation and sanction. A public sanction is an exemplary punishment in the communitarian logic, while in today's modern logic it has no relevance. We speak of honor as a consubstantial element of existence as a human being.

In the section referring to the Inca's punishments, he refers as one of the important points of divergence between community justice and ordinary justice.

Punishment of lazy, dirty and pigs that do not have clean things: of them dirty head and face, stinking mouth, feet and hands and the clothes that bring their dresses, punished them.
with a hundred lashes with a huaraca [slingshot], and all the dirt of the body, face, head, feet and hands, this dirt was given himself or her to drink as punishment. And if they did not clean it or apply manure to their chacra (cultivation field), all the bitter or non-bitter herb was ground and mixed with urine. So that they would not hurt themselves, they were given two queros (wooden cup) or large mates to drink in public, punishment for laziness and guilt. These punishments were executed on the dirty and lazy (Chivi, 2009).

In the same way, in modern and ordinary law, personal freedom includes the fact that a person can live as they want, in reference to the previous quote. However, in community logic, being lazy or living dirty or not carrying out agricultural activities on their own plot affects the organizational system of the community, which is why they are also sanctioned.

3.2 COLONIAL JUSTICE SYSTEM

Thus, in the 16th century, the colony organized a governmental system of taxation and political control against the indigenous population, generating uncertainty in its organization to the point of subordinating the indigenous society to a kind of socio-cultural and territorial political reordering, forming new territorial jurisdictions in repartimientos, later to colonial cities and districts, and thus in corregimientos, As can be seen, these mayors not only executed the orders of their corregidores, but also issued their own writs, pronounced sentences, ordered arrests and imposed penalties in the name of royal justice and in favor of the common people. As the San Damiano injunction affirms, the alcaldes were that royal justice (De la Puente, 2016).

The Spaniards generated the administrative governmental apparatus in jurisdictions attributing to the corregidores the administration of justice, the form of how they established the bureaucratic system of dominant culture, understanding the intelligible breaking of the indigenous customs, from the Spanish conquest arose two conflicting interpretations on justice: one vision of justice that was based on the virtual enslavement of the Indians as a means to develop the resources of the New World for the benefit of the Crown; and the other that upheld the priority of the person of the Indian, his preservation and his conversion to the Catholic faith (Vargas, 2020). The other, domination by force full of abuse and injustice assumed exclusively by the feudals and it is they who assumed the positions of mayors and not a dweller, a form of social control.
3.3 IMPOSED JUSTICE, THE JUSTICE OF THE PEACE COURTS

At the beginning of the republic the constitution of 1823 in its Article N° 142 indicates, The Mayors are the Justices of the Peace of their respective population. In large towns this office will also be exercised by the Aldermen. Article No. 143 states, The Justices of the Peace shall hear civil verbal lawsuits of minor amount; and criminal lawsuits on minor offenses and misdemeanors that only deserve a moderate correction (Constitución política del Perú, 1823).

The mayors exercised functions of justices of the peace and the aldermen assumed positions in extensive populations, also the justices of the peace in the towns for civil and criminal verbal trials of minor amount, on cases of less complexity, then the Constitution of 1826 in the article N°126 includes the justices of the peace, in each town for acts of conciliation, The municipalities, after electing the justices of the peace, communicated to the sub-prefects and these to the prefects the lists of the elected judges each year, so that they would be published in the newspapers. Without prejudice to this, the lists were posted in the public places of the respective districts (Ledesma, 2010).

Since the year 1825 by constitutional mandate by the Peruvian state provides for the existence of peace courts, a form of justice imposed by the state were conducted through trials on the disputes that existed between citizens of different provinces and districts in the capital of Puno, and citizens resorted to the peace courts, in order to bring their complaints to bring conciliatory trials, we present the transcript of a criminal trial held in the district.

“Pedro, the Chucuiteño settler, accompanied by the witness Manuel of the fact about the complaint, it turned out that Melchor hit him with a hammer whose wound shows on the side of the hundred on the left side and the eye on the same side was injured that this was done because Pedro pushed him that he threw him to the ground after having insulted each other insulting words in the presence of Manuel who witnessed the blow of the hammer. In this state, when I asked the plaintiff if he wanted to compose himself, he replied that, if the defendant stopped him from work for the time he was sick and paid for the healing of the wound, the defendant told him that he is committed to the procedure, signing with me the parties and witness. [...]”

the act of conciliation of 1825 has as actors the inhabitants of the district of Chucuito, it shows the way in which they conclude a crime by agreement of the parts and the judicial authority formalizes giving faith of the conciliation raised by the parts of the trial, acts of conciliation in the Regional Archive of Puno.
Table 2

*Items on crimes processed in the Magistrates' Courts*

<table>
<thead>
<tr>
<th>Items on crimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Civil verbal trials</td>
</tr>
<tr>
<td>- Land appropriation</td>
</tr>
<tr>
<td>- Land dispossession</td>
</tr>
<tr>
<td>- Domestic abuse</td>
</tr>
<tr>
<td>- Acknowledgment of child</td>
</tr>
<tr>
<td>- About partitioning</td>
</tr>
<tr>
<td>- Partition of assets</td>
</tr>
<tr>
<td>- Partition of equal parts</td>
</tr>
<tr>
<td>- Land distribution</td>
</tr>
<tr>
<td>- Heritage</td>
</tr>
<tr>
<td>- Inheritance of land</td>
</tr>
<tr>
<td>- Partition rectification</td>
</tr>
<tr>
<td>- Property debt</td>
</tr>
<tr>
<td>- Fulfillment of the promise of marriage.</td>
</tr>
<tr>
<td>- Garnishment of assets</td>
</tr>
<tr>
<td>- Transaction</td>
</tr>
<tr>
<td>- Sale of land</td>
</tr>
<tr>
<td>- Cattle debt</td>
</tr>
<tr>
<td>- Land appraisal</td>
</tr>
<tr>
<td>- On paternity of children</td>
</tr>
<tr>
<td>- Verbal criminal trials</td>
</tr>
<tr>
<td>- Violent dispossession of pastures</td>
</tr>
<tr>
<td>- Injury</td>
</tr>
<tr>
<td>- Mutual offenses</td>
</tr>
<tr>
<td>- Mistreatment.</td>
</tr>
<tr>
<td>- Attempted murder</td>
</tr>
<tr>
<td>- Murder</td>
</tr>
<tr>
<td>- Violation of domicile</td>
</tr>
<tr>
<td>- Women's grievance over merchandise</td>
</tr>
<tr>
<td>- Aggression due to cattle invasion</td>
</tr>
<tr>
<td>- Cattle theft</td>
</tr>
<tr>
<td>- Dispossession of land</td>
</tr>
<tr>
<td>- Theft</td>
</tr>
<tr>
<td>- Cattle rustling.</td>
</tr>
<tr>
<td>- Return of Sheep</td>
</tr>
<tr>
<td>- Insult with indecent and clumsy words</td>
</tr>
</tbody>
</table>

Source: Archive of minutes of conciliatory trials Chucuito Peace Court

We present a list of the cases handled in civil and criminal proceedings, from very minor to very complex cases, all of which were solved with economic sanctions or imprisonment. The process began when the affected people went to court to denounce a grievance and the justice of the peace summoned the parties to carry out conciliatory trials, where the villagers presented the facts of the conflict.

Thus began the vortex of the imposition of the mandate of European positivist justice on the native peoples attributed in the indigenous historical collective conscience, in spite of which the Indian peoples continue to exist, with their own cultures distorted by almost five centuries of colonial domination, but without having lost their identity and conserving a
cultural matrix (Ledesma, 2010). The colonial imposition restructured the Andean cultural system.

The structure of domination subjugates to the solution of their problems should be solved through state apparatus in this case the justices of the peace for their conciliations in order to solve through the substantial conciliations, justice applied by the policies established by the peace courts, justice to the inhabitants of Chucuito, access to justice can be analyzed as the individual or collective power of any member or community of society regardless of social and economic inequalities to go to state and parastatal institutions that administer justice for a dignified defense during the judicial procedure (Nava, 2017).

In spite of homogenizing policies, the native peoples still persist with their own organic and collective identity according to their codes built and shared through their long historical process based on their everyday life. Indigenous social movements have as one of their main axes the issue of identity. This is considered a constant challenge to the homogeneous nationalist state (Nanda, 2017).

3.4 INDIGENOUS COMMUNITIES

Peru is considered one of the countries with the greatest geographical, biogenetic and above all cultural diversity, from peasant communities, native and ethnic groups that live in the Peruvian Amazon and show their own way of life with respect to the society to which they belong such as the Peruvian State, but unfortunately we find it difficult to recognize this cultural and ethnolinguistic diversity and above all, rather than recognizing it as an ego, we take it as a burden for the development of the "Peruvian culture".

If we refer to the indigenous communities in Peru, we can undoubtedly remember the political and denominative conjunctures through which they have passed until the time of the agrarian reform when they were catalogued as “indigenous” with certain rights; however, the history starts before, with a recognition in the Constitution of 1920, where they are called indigenous communities.

Regarding the denomination of peasant community, there are several studies that have been given to provide an explanation about the origin of these communities. Among them we can affirm the indigenist and on the other hand, the hispanist thesis (Figallo, 2007).

The indigenist thesis affirms that the indigenous communities have indisputable pre-Hispanic roots; that is, they are derived from the ayllus that existed in the Andean civilization; on the other hand, for the Hispanist thesis, the CC are not antecedents of the Inca ayllus, but
are a product of the colonial stage that Peru went through, inspired by the “reductions or towns or commons of Indians” that were implanted by the Spanish invaders.

These thesis are the ones that have been most widely accepted to provide a theoretical explanation of the origin of the CC, but there is a third thesis with which we combine our research effort and that is that the communities are hybrids resulting from the cross-cultural fusion or amalgamation of the remnants of the Inca ayllu, after the conquest, with the Iberian community existing in the Hispanic rural world in the 16th century.

In this regard, Matos (1976) indicates:

“(…) whichever point one situates oneself, one will undoubtedly find as antecedents both the Andean ayllu and the Iberian commune. The specific way in which both institutions, from the 16th century onwards, intervened in its constitution, as well as in its historical process, is not sufficiently clarified and still requires a more systematic analysis, even though there is no doubt that the ayllu was the nucleus of its structure and the commune the external reference pattern that made it possible” (Figallo, 2007).

Currently, according to the Information System on Peruvian Peasant Communities (SICCAM), there are around 7267 peasant communities (PC) that have changed their organizational structures, maintaining a greater social and political role.

Table 2

Peruvian Rural Communities

<table>
<thead>
<tr>
<th>PC</th>
<th>Total PC</th>
<th>Recognized and titled</th>
<th>Recognized and by owner</th>
<th>To recognize and owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Native (Highlands and Coast)</td>
<td>6138</td>
<td>5093</td>
<td>1045</td>
<td>0</td>
</tr>
<tr>
<td>Riparian (Amazon)</td>
<td>1129</td>
<td>44</td>
<td>66</td>
<td>1019</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>7267</strong></td>
<td><strong>5137</strong></td>
<td><strong>1111</strong></td>
<td><strong>1019</strong></td>
</tr>
</tbody>
</table>

Source: SICCAM

It is interesting to highlight the information available to date; However, we must be aware that there is still not a hundred percent systematication of the number of communities in Peru, but on the other hand, it is also necessary to point out that just as there is an immense number of PC and native communities, these same communities are the ones that maintain a diversity in their form of administration of justice that implies being respected by Western law, since one of the main problems we have today is the lack of recognition of the administration of native justice, logically within the legal margin established in Peruvian law. “Within the various regions where it has been possible to identify the highest presence of PC is the region
of Puno, followed by Cusco, Loreto and Ayacucho, with 1303; 927; 921 and 691 respectively” (Nanda, 2017).

In this sense, to speak of custom as a source of law effectively shows that the law as such is born of society; that is to say, “it is born of the collective needs of social coexistence” (Tamayo, 1992). This conception that has been analyzed is not new in the legal field and manifesting it as such would not offend the methodology of legal science, or by indicating that the law is born from the “spirit of the people” (Alzamora, 1987). Furthermore, when considering that Law No. 24656 alludes to the existence of an indigenous customary law with respect to the PC.

Therefore, we can mention that custom is considered as the first formal source historically speaking for the consolidation of law, as long as it respects the integrating norms of the nation, since at this stage of the formation of the State there is still a divorce between the State and its peoples, communities, whether native or peasant, as expressed by the Supreme Court of Justice itself when analyzing the case of the Native Community of Bajo Guacamayo – Perené - The Political Charter affirms two fundamental collective rights: i) the right to the cultural identity of the Peasant and Native Communities and to their legal existence, legal personality and autonomy from the law (article eighty-nine); and ii) the right to communal jurisdiction with respect to events occurring within the territorial scope of the Peasant and Native Communities in accordance with customary law, provided of course that it does not violate the fundamental rights of the individual (article one hundred and forty-nine) R.N. N°3266-2011-Junín - so it could be concluded that in the case of the Community “the explicit customs and norms, then, were not simply repressive, to maintain the similarity, but also civil, that is, regulatory of the global functionality of the society” (Krotz, 2002).

“They come to me for family problems, sometimes to deal with problems that they do not want other people in the community to know about, so they come to the lieutenant so that he can guide them and reconcile. Problems between spouses who do not understand each other. The solutions that we give or suggest, a lot depends on our lived experience” Interviewee 3

In these problems “it is considered that the first instance in which the problem must be solved is the family, because the problem that one of its members has affects the tranquility of all its members. For this reason, family members of “affection” intervene, such as godparents, characters who should help to restore understanding between the parties” (Rivera, 2010).
The approach to the issues is sometimes long “Sometimes they don't pay attention and I can't do any more, we stay all day talking, they express all their frustrations to the authority” Interviewee 4.

“Those who do not pay attention to the authorities, who are not registered in the community, lose their rights in the community, they could even be expelled or the water is cut off through the JAS”.

The legitimacy of the lieutenant governor in a conciliatory authority lies in the fact that the families have confidence that it is a space for the resolution of controversies, a space for sincerity between the parties and for the expression of frustrations that the parties in conflict are not able to hear, however, the lieutenant's authority has the capacity to channel these currents seeking meeting points for the sake of reintegration into the community. “By operating according to the community's own norms, they act with great acceptance and legitimacy. By dealing consensually and comprehensively with conflicts, in search of resocialization and reconciliation” (Ardila, 2016).

Another case is that at one time there were many vehicle control operations at the exits of the city. That is why we met with the lieutenants of the upper, middle and lower zones. We met with the governor to discuss this matter. We forced the governor to summon the chief of police to our meeting. So, it happened, the chief of police in the province came. There we supported our claim, some lieutenants are exalted, others with a certain prudence. They should not be controlled, in many cases for small things he charges “bribe” money, we asked him, for whom does he collect that money? Is it for his birthday? Is that what the state puts the policemen for? Then we argue that the control should be inside the city, there is no need to control at the exits, we bring our products to sell, when they stop us it generates many problems for the community members, we do not manage to sell, if we bring small animals, they suffer. Since that time there have been no more interventions, and corruption has been avoided, since then there are no more controls of this type. Interview 9.

A pluralist model is one that protects equally the different ethical or religious conceptions, that accepts indistinctly the variety of beliefs and life projects, even considering them as an enriching element that facilitates the exercise of freedom (Prieto, 1990).
4 DISCUSSION

4.1 COMMUNITY JUSTICE A PENDING AGENDA

Despite significant progress in community justice, there is still a very large agenda to work on, since it is subordinated to the ordinary justice system.

“Despite their great contributions, which have involved mobilizations, humiliations, sacrifices and even death, the native indigenous communities and peoples of Bolivia have not yet managed to obtain guarantees from the State to respect their individual and collective rights. Despite having constitutional and international legal protection, their rights are being systematically violated, and being increasingly, in the name of development, unprotected and cornered, since the new public policies and laws aimed at the exploitation of natural resources do not consider respect for their territory, their worldview and their identity” (Armata, 2015).

The resolutions or decisions, even having legitimacy, have legal certainty and can be annulled by the ordinary justice system without any objection.

“The decisions of the communal justice system are not officially recognized, since they do not enter into force like the rulings of the state justice system. For this reason, there is no legal certainty for the users or convicted persons of this justice, since these resolutions do not acquire the force of "things judged", i.e., the state justice can take up a case already resolved by the communal justice” (H.-J. Brandt, 2017).

In many cases the native communal authorities perceive that the “political, judicial and economic institutions of the modern country almost never arrive, and if they do, they arrive deformed, only to harm them” (L. E. González, 2011). This is supported by facts throughout history.

Still anchored in the colony, ordinary justice survives, that any position that confronts this situation is harshly sanctioned the “decolonization of law requires a dialogue of knowledge whose implementation faces stiff resistance from the most oligarchic sectors of the judiciary because it alters the configuration of economic power that has always been the foundation of the liberal state in Latin America.” (Ricobom & Friggeri, 2019).

This Eurocentric position is formed from the university cloisters that privilege an alien right, since they are supported by economic power elites “the Eurocentric mentality of our jurists is usually unaware of this reality and they limit themselves to repeat the analyses,
explanations and conclusions on each situation and on each feature of the crises that plague us.” (Ardila, 2016).

4.2 THE CRITICAL POSITION OF COMMUNITY JUSTICE

Despite the fact that in community leaders and authorities we find “critical views of their own justice, but confronted with the justice they get from the state, it is still perceived as a better justice in the sense that it is faster, less costly and less biased” (H. Brandt & Franco, 2007).

Despite the difficulties and weaknesses of community justice, it is understood as a cleaner justice, without corruption and a vision of reconciliation and not revenge as in the ordinary justice system.

A state justice system loaded with bureaucracy considering the “requirements required throughout a judicial process makes it difficult and discourages the follow-up of the process. Within this bureaucratization we can mention the presentation of written documents for each procedural act, as well as the failure to comply with procedural deadlines, to which lawyers often contribute through strategies of delay and frustration of procedural acts” (Fundación Debido Proceso Legal, 2007).

The first concept of the judicial system is that it is a place where money is wasted for an unjust result, that is why community justice is preferred “We spend a lot of money, the lawyer says five little hands (it means 25 Soles), if we don't give him, he says I don't have time, another day you come, it's all money” interviewee 5.

It should also be noted that in the name of community justice, according to the investigations carried out, major crimes are also committed.

In June 2004, the people of La Paz were shocked to learn of the lynching of the mayor of Ayo Ayo, Benjamín Altamirano, who on June 15 was first kidnapped, then tortured and finally killed. His body was found in the town's central square at dawn. Although the police and the Public Prosecutor's Office initiated investigations and arrested the alleged perpetrators, it was highly striking that they had absolutely no help from the population: no one knew anything, no one had heard anything, and no one had seen anything (De Alarcón, 2009).

Similarly, “A few years ago there was the case of the application of community justice to the perpetrator of the theft of a wheelbarrow and the Chaqui school bell, who after six months of investigation was identified and apprehended in a neighboring community where he was from, Once he was taken to the place of the event, when he refused to
recognize that he was the author, he was stripped naked and tied to the wheelbarrow by hands and feet, then he was threatened with electric current by the leader of the place in the presence of all the community members of the region, before the danger of dying electrocuted, he confessed to be the author and committed to compensate the damage caused” (Montecinos, 2015).

4.3 PROJECTION OF COMMUNITY JUSTICE

One of the most important qualities of community justice is that it leads to the closure of the conflict contrary to the logic of ordinary justice administration that the sanction in one way or another initiates a new escalation of hatred and violence as referred by Gorjón and Sauceda (2018) “beyond a procedure that concludes with a reparation agreement and the understanding of the duty to be, a paradigm shift is necessary to achieve reconciliation and in its case to forgiveness, blurring feelings of hatred or revenge, avoiding a new escalation of conflicts”.

Without this taking away the redress of the damage, although “community agreements are not perfect or imperfect, there should only be agreements created based on the needs and interests of those involved in the conflict, for which, in addition to the principles of mediation, reparation of the damage, material or immaterial, tangible or intangible, is required”(Gorjón & Sauceda, 2018).

The new commitment to intercultural processes that “also bets on building dialogues, but from new contexts that recognize the historical injustices that have marked the lives of indigenous peoples and other minority groups”(Sierra, 2009).

A necessary leap is the recognition requested and required to initiate a process of intercultural dialogue is the recognition of the great injustices committed by the ordinary justice system towards the native peoples, which is still far from happening, since there is a marked posture and still dependent on colonial law.

The search from the original authorities is to build the concept of “legal pluralism which means that, together with the state system, there are other autonomous and independent systems that operate in parallel and alternatively”(Martinez, 2003).

5 CONCLUSIONS

Community justice or indigenous justice has been in force since pre-Hispanic, pre-Inca times, and which is valid to this day, it operates in the original communities in a kind of
clandestinity, minimized by the state legal system, made invisible, but with legitimacy within of the communal environment.

Community justice is always the first door to knock on, the first trusted option to achieve justice and redress the damage and does not involve embezzlement of money for the peasant families, which happens in the ordinary justice system, even with adverse results in achieving justice.

The principle of truth and verbal statement in community justice has a lot of value, facing each other means that both support their point of view without being untruthful. It is very important the social image that it achieves in the environment of the community that affects positively or negatively to the extended family, even to the following generations. The care of the family image is part of the very life of the families.

6 LIMITATIONS AND RECOMMENDATIONS

Access to data reserved for the community. Many topics, given their nature, communal authorities are very careful in their management.

The complex cultural reality of the Aymara communities makes the study limited to the scope of the study.

It is recommended that the authorities who make decisions on issues related to the Aymara communities consider the historical process.

The study can be used as a reference for the implementation of social and cultural policies.

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REFERENCES


Ardila, É. (2016). De la justicia judicial a la justicia comunitaria. In Universidad Carlos III de Madrid (Vol. 1). http://hdl.handle.net/10016/23873


Constitución Política de 1823, 1 (1823).


Fígallo, G. (2007). Origen, exclusión y reafirmación de las Comunidades Campesinas del Perú (San Marcos (ed.)).


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