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Special Indigenous Jurisdiction: Intercultural Dialogue and Harmonization with Ordinary Jurisdiction in Colombia and Ecuador

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Abstract

By means of this document, it was possible to analyze the main characteristics of the volume of scientific production related to the study of the Special Indigenous Jurisdiction variable. A bibliometric analysis was proposed to analyze details such as Year of Publication, Country of Origin of the publication, Area of Knowledge in which the published research is carried out and the Type of Publication most frequently used by the authors of each document published in high-impact journals indexed in the Scopus database during the period between 2013 and 2023. Among the main findings, it was possible to determine that, for the execution of the different research methodologies, the report of 32 scientific documents related to the study of the Special Indigenous Jurisdiction was achieved. The maximum number of publications made in a year was 10 papers submitted in 2023. The country of origin of the institutions that reported the highest number of records in Scopus was Colombia with 7 documents. The area of knowledge with the greatest influence at the time of executing the research projects that resulted in scientific publications was Social Sciences, with 23 documents. Finally, the type of publication most frequently used to publicize findings from the analysis of the aforementioned variables was Journal Articles, which represented 69% of the total scientific production.

Keywords: *Special Indigenous Jurisdiction, Ordinary Jurisdiction, Intercultural Dialogue, Colombia, Ecuador*

INTRODUCTION

In Colombia, since the 1991 constitution, it has been declared a social state governed by the rule of law. In this context, among other advances of this constitutional reform, legal pluralism was presented, in which indigenous communities are recognized as having a special jurisdiction, providing them with this right in particular vis-à-vis other civilians in Colombian territory, with the aim of rescuing and not abandoning ancestral customs and traditions.

It is necessary to specify that the uses and customs of indigenous communities are not considered positive norms, but rather a set of practices and customs accepted as obligatory norms of conduct of a community. Likewise, indigenous justice, which proceeds in accordance with their customs, has as its fundamental characteristic, absorbed in its cultural identity, the orality of its actions and its patterns of internal social control, which is transmitted from generation to generation. (Plaza, 2001, pág. 21)

In conjunction with the above, it is important to know that this new provision annexed to the 1991 Constitution created a new right for indigenous communities, but involuntarily gave way to the violation of rights within the communities, which now demand that the right granted to them not be violated.

Indigenous peoples are calling for recognition that cuts across issues of national importance such as land, political status, forms of government and administration of justice, respect for their cultures, and participation — at different levels — in government decision-making. The point is to discern to what extent it is convenient to introduce substantive modifications in the Magna Carta (which has already happened in the vast majority of Latin American countries), which incorporate the issue of recognition as one of their citizen guarantees in the Constitution (Ramírez, 2005, pág. 4)

With regard to the proposed approaches, the claim faced by indigenous communities with respect to their forms of government and administration of justice is of greater relevance, and this is due to the different legal controls carried out by the Colombian State against government norms, since there is evidence of internal violations of

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fundamental rights. as is the right to human dignity, to non-torture of every Colombian citizen, this in accordance with international treaties on human rights.

Consequently, it is specified that flogging is the contradiction inherent in the constitutional foundations of the violation of human dignity, since it is evident that these are inhuman acts, while the indigenous communities consider that their legal covering and the right of the indigenous jurisdiction to resort to this punishment is legitimate.

Ours, because it was born right here from the communities and the American land, from a mother with whom we must live and never exploit and degrade [...] because it is totalizing, like our way of thinking that involves all the knowledge that we acquire and handle [...] because it is current and is a guide to our individual and collective conduct, obliging us to guarantee its permanence in our thinking, in our languages, in our social organization, in our forms of education and in our economic and social reconstruction [...] because it is pre-existing, since no one in the world can deny our existence in these lands for thousands of years in which we constituted our societies. (Martínez A., 2017, pág. 16)

From the previous section, it is worth highlighting the property with which indigenous communities believe they have ownership over the norms, even when they violate fundamental rights, since for them they are protected in the reconstruction and cultural legacy that constitutes a large part of history that cannot be erased.

Based on the above premise, it is clarified that the customary law of indigenous communities, although legally established by the constitution, must have limitations and privacy in relation to the fulfillment of the fundamental rights annexed in the political charter. This is in relation to the special indigenous jurisdiction, which is a subjective right, from an orbit of legal supremacy.

In addition, it should be emphasized that the construction of dialogue and participation with indigenous authorities in the transitional context can be carried out in two ways; the first through intercultural dialogues and the second through interjurisdictional coordination. The first requires a series of prior accreditation processes, this must be a special intervention, either as a victim due to the damage caused individually or collectively, or as an ethnic authority in defense of one's own legal system. On the other hand, interjurisdictional coordination is carried out by virtue of the recognition of the special indigenous jurisdiction. This tells us that a prior accreditation process is not required, but rather a direct dialogue with the judicial authorities.

Finally, it is important to analyze the elements identified in normality, horizontality, proximity and the generation of trust and the dignifying element, which have been incorporated in different decisions of the JEI and have made possible intercultural dialogue and interjurisdictional coordination in the two scenarios, the side of the victim and the violation of human rights. For this reason, this article seeks to describe the main characteristics of the compendium of publications indexed in the Scopus database related to the variables Special Indigenous Jurisdiction, as well. Such as the description of the position of certain authors affiliated with institutions, during the period between 2013 and 2023.

General Objective

To analyze, from a bibliometric approach, the characteristics in the volume of scientific production related to the study of the Special Indigenous Jurisdiction, registered in Scopus during the period 2013-2023.

METHODOLOGY

This article is carried out through research with a mixed orientation that combines the quantitative and qualitative method.

On the one hand, a quantitative analysis of the information selected in Scopus is carried out under a bibliometric approach of the scientific production corresponding to the study of the Special Indigenous Jurisdiction. On the other hand, examples of some research works published in the area of study mentioned above are analyzed from a qualitative perspective, based on a bibliographic approach that allows describing the position of different authors on the proposed topic.

It is important to note that the entire search was carried out through Scopus, managing to establish the parameters referenced in Figure 1.

Methodological Design

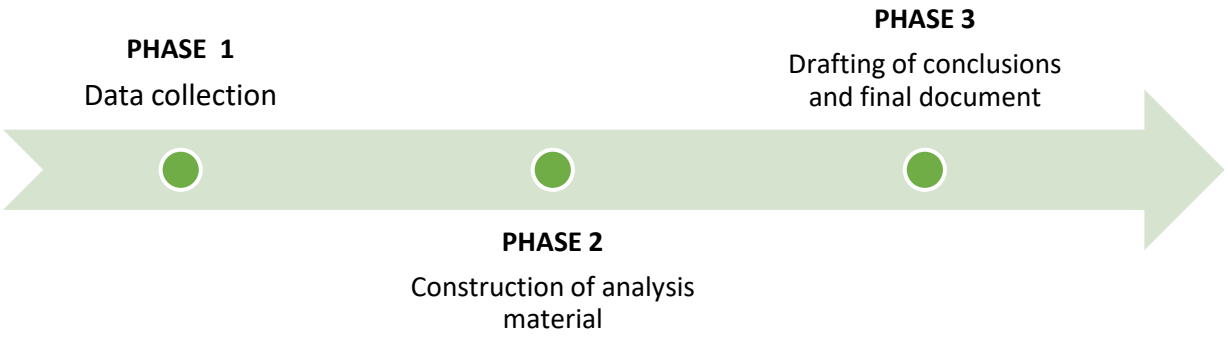

Figure 1. Methodological design
Source: Authors' own creation

Data collection was carried out from the Search tool on the Scopus website, where 32 publications were obtained from the following filters:

TITLE-ABS-KEY (special AND indigenous AND jurisdiction) AND PUBYEAR > 2012 AND PUBYEAR < 2024

Published documents whose study variables are related to the study of the Special Indigenous Jurisdiction.
Works published in journals indexed in Scopus during the period 2013-2023.
Without distinction of country of origin.
No distinction in areas of knowledge.
No distinction of type of publication.

Phase 2: Construction of analytical material

The information collected in Scopus during the previous phase is organized and then classified by graphs, figures and tables as follows:

Co-occurrence of Words.
Year of publication.
Country of origin of the publication.
Area of knowledge.
Type of Publication.

Phase 3: Drafting of conclusions and outcome document

In this phase, the results of the previous results are analysed, resulting in the determination of conclusions and, consequently, the obtaining of the final document.

RESULTS

Co-occurrence of words

Figure 2 shows the co-occurrence of keywords found in the publications identified in the Scopus database.

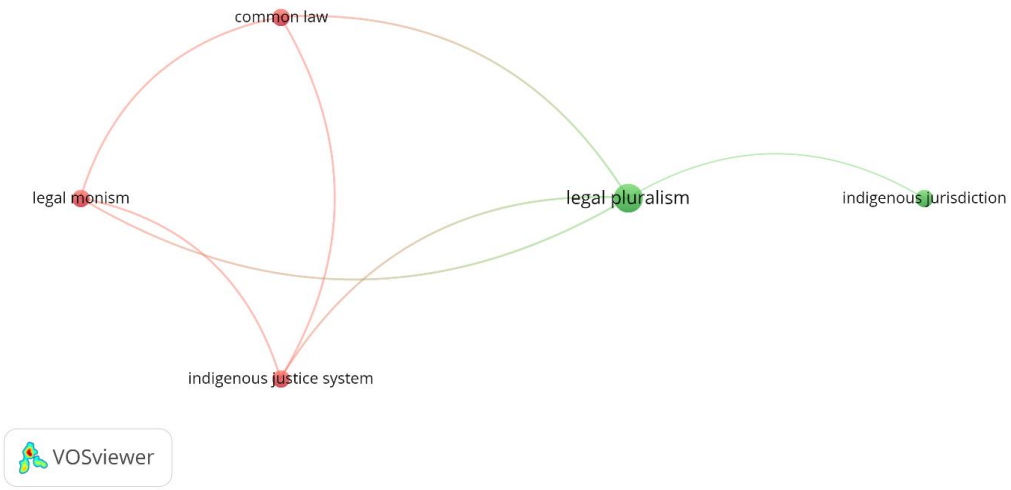

Figure 2. Co-occurrence of words

Source: Authors' own elaboration (2024); based on data exported from Scopus.

Indigenous Judicial System was the most frequently used keyword within the studies identified through the execution of Phase 1 of the Methodological Design proposed for the development of this article. Legal Pluralism is among the most frequently used variables, associated with variables such as Indigenous Jurisdiction, Common Law, Legal Monism. From the above, it is striking that interjurisdictional coordination in Colombia is correlated, especially when indigenous jurisdiction is correlated, since Colombian interjurisdictional jurisdiction carries out egalitarian legal pluralism, given that there are countless interpretations given by those in charge of ordinary justice which are not homogeneous. Some point out that pluralism is reduced to implementing jurisprudential rules of coordination automatically; Others deny the special indigenous jurisdiction despite its constitutional recognition, and there are opponents who reiterate the inability of this jurisdiction to exercise justice through its own governments.

Distribution of Scientific Production By Year Of Publication

***Figure 3* shows how scientific production is distributed according to the year of publication**.

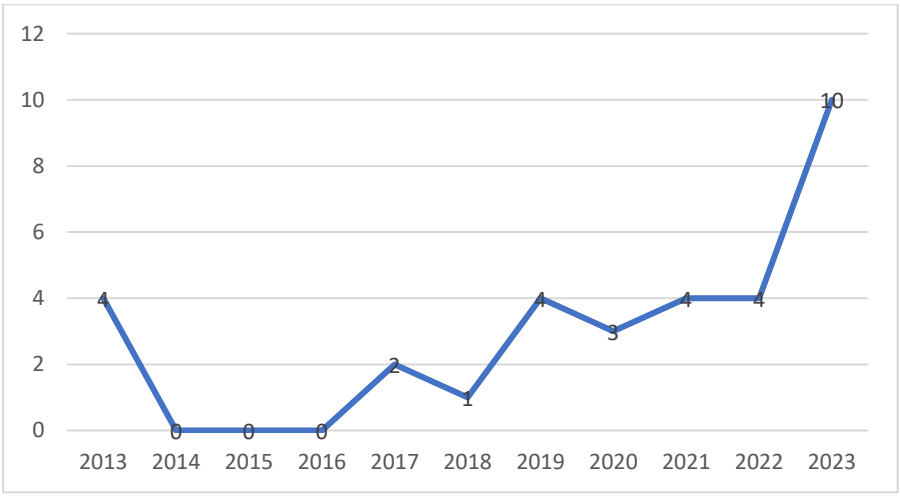

Figure 3. Distribution of scientific production by year of publication**.**

Source: Authors' own elaboration (2024); based on data exported from Scopus

Among the main characteristics evidenced through the distribution of scientific production by year of publication, an increase in the number of publications registered in Scopus during the years 2023 is noticeable, reaching a total of 10 documents published in journals indexed on this platform. This can be explained by articles such as the one entitled "Holding Corporations Accountable for Violations of Indigenous Peoples' Right to a Healthy Environment in Colombia: Chimera or Reality?" The article examines whether companies can be held liable for violations of indigenous peoples' right to a healthy environment in Colombia. After explaining the scope of the right in the international, regional and Colombian legal systems, it addresses Colombia's obligation to protect it against violations committed by third parties and to provide judicial remedies in case of violations. It then discusses how the absence of binding international and national legal frameworks that impose obligations on corporations in environmental matters affects the judicial remedies available to indigenous peoples. He argues that Colombia's Constitutional Court and the Special Jurisdiction for Peace have tried to fill the void left by the legislature. While the former has recognized the existence of corporate obligations in environmental matters, the latter has recognized indigenous territories as subjects of rights to further protect indigenous rights and the environment in general. It concludes with some recommendations.(Martini, 2023).

Distribution of scientific output by country of origin

Figure 4 shows how the scientific production is distributed according to the nationality of the authors.

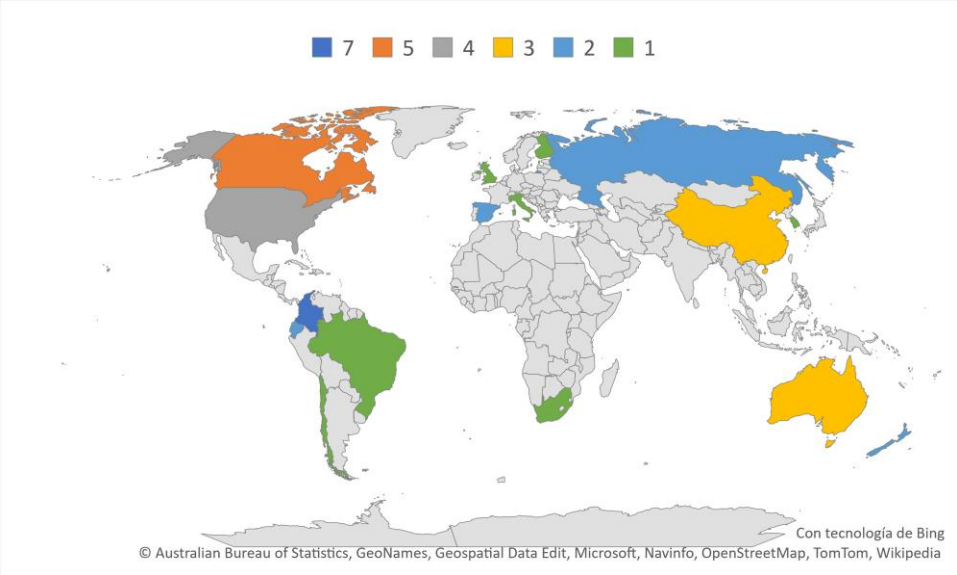

Figure 4. *Distribution of scientific production by country of origin.*

Source: Authors' own elaboration (2024); based on data provided by Scopus.

Within the distribution of scientific production by country of origin, the records from institutions were taken into account, establishing Colombia as the country of this community, with the highest number of publications indexed in Scopus during the period 2013-2023, with a total of 7 publications in total. In second place, Canada with 5 scientific papers, and the United States occupying the third place presenting to the scientific community, with a total of 4 documents among which is the article entitled "Some notes on indigenous law and special indigenous jurisdiction" The recognition of the rights of indigenous peoples leads, in their necessary evolution, to the recognition of a particular indigenous jurisdiction, understood as the power to administer justice in the different branches of law, following ancestral uses and customs, its own rules and procedures and, in short, a certain legislation. It implies that, along with state law, there is a kind of exceptionality when specific requirements are met, which these lines address. Its application reveals problems related to jurisdiction and applicable law, and the recognition of decisions rendered in a particular jurisdiction; This exception has its objective limits in the impact on the Constitution, human rights and public order. All of this is based on the

recognition of legal pluralism, ethnic plurality, multiculturalism and cultural identification and self-determination of peoples, understood within the respect for the sovereignty and integrity of the State.(Iglesias, 2023).

Distribution of scientific production by area of knowledge

Figure 5 shows the distribution of the elaboration of scientific publications based on the area of knowledge through which the different research methodologies are implemented.

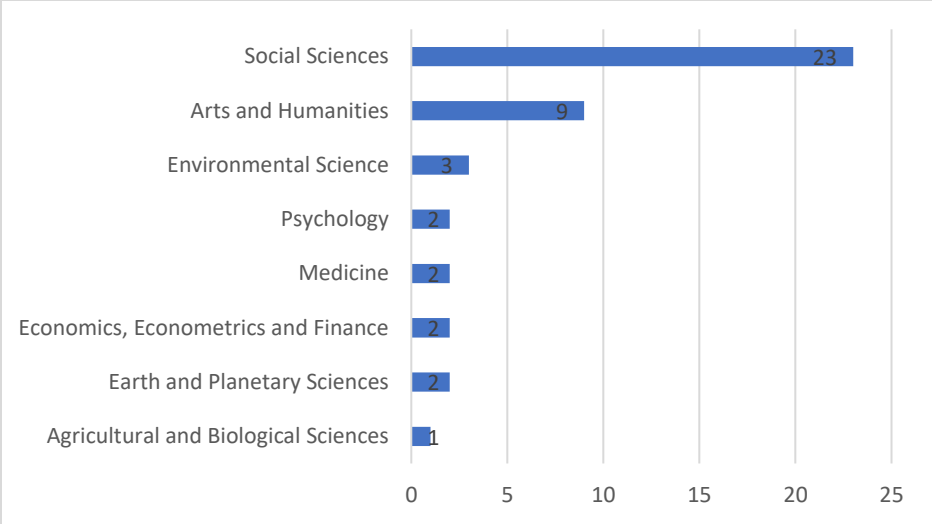

Figure 5. Distribution of scientific production by area of knowledge.

Source: Authors' own elaboration (2023); based on data provided by Scopus.

Social Sciences was the area of knowledge with the highest number of publications registered in Scopus, with a total of 23 documents that have been based on their methodologies. In second place, Arts and Humanities with 9 articles and Environmental Sciences in third place with 3. This can be explained thanks to the contribution and study of different branches, the article with the greatest impact was registered by Social Sciences entitled "Between Two Worlds: Indigenous Peoples and Punitive Spaces in Colombia" Since the enactment of the Colombian Constitution in 1991, a legal and institutional framework has been established to address the political demands of multiculturalism. This article examines the incarceration of Indigenous individuals in this multicultural context and highlights the various factors influencing the adoption of penal confinement as a response to Indigenous criminal behavior. The article traces the process by which the special indigenous jurisdiction has adopted incarceration over the past two decades and examines the potential factors that have led to transcending the multicultural border with incarceration as the dominant punitive form. The emergence of a special legal subject—the incarcerated indigenous individual—indicates the result of this collision between legal worlds, placing them in the liminal space of identity uncertainty, the impossibility of reintegration, and the latent potential for the disappearance of their cultural identity.(Viana, 2023)

Type of Publication

In the following graph, you will see the distribution of the bibliographic finding according to the type of publication made by each of the authors found in Scopus.

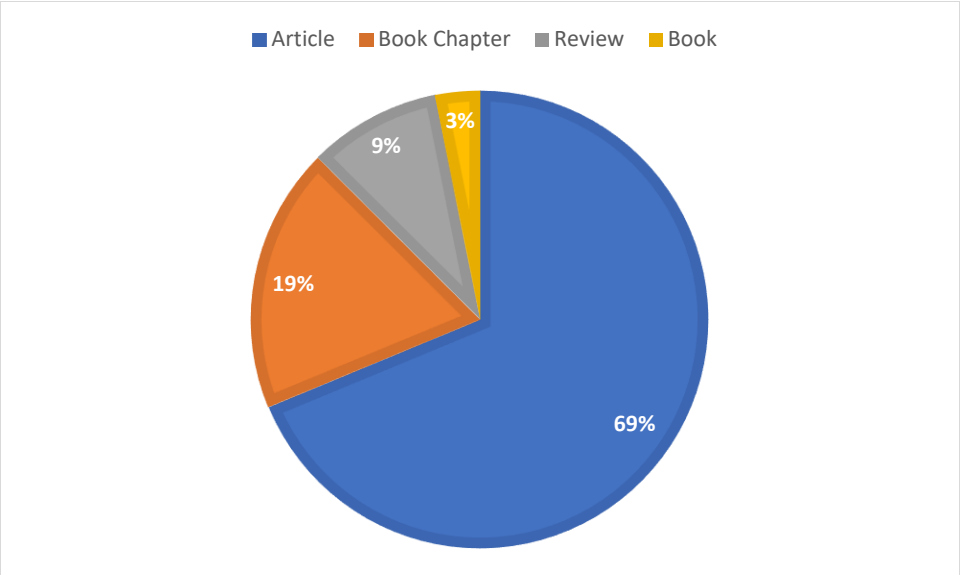

Figure 6. Type of publication

Source: Authors' own elaboration (2023); based on data provided by Scopus.

The type of publication most frequently used by the researchers referenced in the body of this document was the Journal Article with 69% of the total production identified for analysis, followed by Book Chapter with 19%. Journals are part of this classification, representing 9% of the research papers published during the period 2013-2023, in journals indexed in Scopus. In this last category, the one entitled "To approve or not to pass? A Comparative Analysis of Interactions between State, Business, and Indigenous Communities in Mining in Canada and Sweden" The overall objective is to identify the factors that shape the quality of interactions between the indigenous community, industry, and the state in mining and mining development. An underlying ambition of the research is to develop knowledge to help manage mining-related land-use conflicts in Sweden, drawing on Canadian comparisons and experiences. This article summarizes comparative research that has been conducted across jurisdictions in three Canadian provinces and Sweden. It focuses on the interaction between governance system properties, the quality of interaction, and governance outcomes. We combine institutional and interactive governance theory and use the concept of governance to assess how and why specific outcomes such as mutually beneficial interaction, collaboration, or opposition occurred. The analysis suggests that the Swedish government can take steps to improve the governance of mining-related issues, by developing alternative and more effective ways to recognize and protect Sámi rights and culture, broaden the scope and increase the legitimacy and transparency of EIAs, raise the quality of interaction and consultation, and develop tools to actively stimulate and support collaboration and partnerships on equal terms. Overall, we argue that indigenous communities' responses to mining should be understood within a broader framework of indigenous self-determination, in particular communities' own assessments of their opportunities to achieve their long-term goals using alternative modes of governance and types of interactions.(Beland Lindahl, 2024)

CONCLUSIONS

Through the bibliometric analysis carried out in this research work, it was possible to establish that Colombia was the country with the highest number of published records in terms of the Special Indigenous Jurisdiction variables. With a total of 7 publications in the Scopus database. In the same way, it was possible to establish that the application of theories framed in the area of Social Sciences, from the previous bibliometric analysis it is possible to establish that, the different legal system and in relation to state law, play two different realities with respect to legal legal pluralism: indigenous authorities that autonomously act and apply principles and procedures which go beyond the ordinary jurisdiction. The cases that are presented are either for control, or because it is the normal jurisdiction that governs it, or they must be examined constitutionally.

It is evident that the current constitutional model preserves the spirit of legal centralism, in which certain principles and procedures are endorsed or invalidated, indicating whether or not they are legally acceptable, given that state norms have preeminence in case of conflict. According to which it states that the principles and procedures of indigenous peoples must not be contrary to the Constitution and the law. What is not always clear is whether or not certain facts are contrary to the constitution. (G r o s, 1993)

However, there are still a number of difficulties in establishing a system of legal pluralism and its relationship with the special indigenous jurisdiction, since the former proposes the displacement of the state as the sole administrator of justice and producer of rights, while the special indigenous jurisdiction represents the protection of the rights of indigenous peoples. The 1991 Constitution recognizes its autonomy and its ability to administer justice according to its traditions and values.

As a positive trend and contrary to what normally happens to indigenous peoples with regard to their life and integrity as peoples, those other judges of the republic, the indigenous peoples, who decided to protect their alternative cultural existence through the exercise of their rights, are increasingly qualitatively respected.

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