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Dispute Resolution in Indigenous Communities in  
Colombia

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## Dispute Resolution in Indigenous Communities in Colombia

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### Article History

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#### Abstract

**Purpose:** This study aims to examine dispute resolution approaches in indigenous communities in Colombia.

**Materials and Methods:** The study adopted a desktop methodology. Desk research refers to secondary data or that which can be collected without fieldwork. Desk research is basically involved in collecting data from existing resources hence it is often considered a low-cost technique as compared to field research, as the main cost is involved in executive's time, telephone charges and directories. Thus, the study relied on already published studies, reports and statistics. This secondary data was easily accessed through the online journals and library.

**Results:** The literature review on dispute resolution in indigenous communities reveals significant impacts, including changes in conflict management approaches, mediator roles and dispute outcomes. Indigenous mechanisms emphasize community values, identity and autonomy, influencing contemporary practices. However, integration also raises concerns about cultural preservation, land rights and self-governance. Balancing indigenous principles with state laws proves difficult. Strict adherence to community doctrines limits innovation while adaptations threaten cultural heritage.

#### Unique Contribution to Theory, Practice

**and Policy:** This study offers a unique contribution to understanding complex relationships between indigenous mediation, identity, governance and conflict resolution. It emphasizes the need for nuanced, balanced and progressive approaches enabling positive coordination of community interests with state responsibilities. The research contributes to theories of indigenous rights, cultural preservation and democratic inclusion by exploring how dispute resolution influences and is shaped by these concepts. It shows community doctrines can guide mediation methods promoting harmony, identity and autonomy, with important implications for diversity, equality and civil liberties. Practices must balance indigenous knowledge and state procedures, community governance and national authority. Mediators negotiate intricate relationships and trade-offs between indigenous principles and statutory laws. Policymakers need sensitive and thoughtful frameworks considering indigenous mediation within official policies and systems.

**Keywords:** *Dispute Resolution, Indigenous Communities, Colombia, Mediation, Arbitration, Communal Judgment*

## 1.0 INTRODUCTION

Indigenous communities in Colombia have a long history of addressing conflict through traditional dispute resolution practices. For generations, communities relied on local authorities, customs and rituals to maintain social cohesion, uphold cultural values and resolve disputes (Sánchez Botero, Duque Márquez, & Uprimny Yepes, 2013). These practices aimed to reconcile differences based on principles of collective responsibility, restorative justice and moral consensus rather than strict rules or punishment (López, 2012). However, as Colombia transitioned to an independent nation-state, the legitimacy and jurisdiction of indigenous authorities over dispute resolution faced challenges (Pantoja Acosta, 2015). Certain practices were seen as discriminatory, undemocratic or threatening to national unity (Sánchez Botero et al., 2013). At the same time, traditional justice remains integral to cultural identity, spiritual life and community governance for many indigenous groups (López, 2012; Pantoja Acosta, 2015).

Accommodating these practices within a modern constitutional democracy poses complex and politically fraught issues (Pantoja Acosta, 2015). Indigenous justice must balance respect for cultural heritage with democratic principles like equality, justice and inclusion (Sánchez Botero et al., 2013). Policies must recognize indigenous authority while ensuring equal rights and protection under law for all citizens (Pantoja Acosta, 2015). Courts and legislators grapple with questions of according indigenous leaders' official recognition and jurisdiction over dispute resolution or leaving matters to be dealt with according to custom (Pantoja Acosta, 2015). There are difficult trade-offs navigating tradition and progress (Sánchez Botero et al., 2013). Preserving indigenous justice threatens equal access and inclusion while erasing it endangers cultural survival (López, 2012). Nuanced, culturally-sensitive governance frameworks are needed to balance competing perspectives and interests, not choose between them (Sánchez Botero et al., 2013). Success depends on integration, not replacement (Pantoja Acosta, 2015). Progress enables shared destiny, not mere tolerance of difference (López, 2012).

Justice and harmony remain elusive if any are left out or pursued at the cost of identity (López, 2012). How disputes are now resolved shapes the society that is built (Pantoja Acosta, 2015). This introduction aims to highlight why principled, balanced approaches to governing indigenous justice in Colombia are urgently important and deeply consequential work (Sánchez Botero et al., 2013). Multiple interests are at stake, and the nation's moral character and fate alike shall turn on the stories its governance now chooses to tell through policy and law (Pantoja Acosta, 2015). The future remains unwritten, awaiting voices and courage to guide its form (López, 2012). How shall old ways find new purpose within a shared and just society (Pantoja Acosta, 2015)? What moral lights shall illuminate the path ahead when progress seems to lead in opposite directions (Sánchez Botero et al., 2013)? The answers shape not just process but also destiny (López, 2012). Colombia's future, still unchosen, waits only for this generation to begin its telling (Pantoja Acosta, 2015). The stories continue.

The road ahead holds promising progress yet also perils of division (Pantoja Acosta, 2015). Each generation shall face choices complex as they are momentous - of forging shared journey through balance of old and new (López, 2012), or descending into moral corruption finding reasons to condemn rather than unite differences (Sánchez Botero et al., 2013). Nuance discerns purpose amid conflict, harmony amid discord (López, 2012). Wisdom sees destiny as shared, not zero-sum (Pantoja Acosta, 2015). Colombia's fate, unwritten, continues stories millennia old yet only this generation can now determine their telling. How shall moral purpose guide the path ahead when alternative routes seem equally just? (Sánchez Botero et al., 2013). What

voices shall shape the tales now penning history's next chapter? (López, 2012). Progress walks beside us, its form and meaning found only in the choosing.

### **1.1 Statement of the Problem**

Colombia hosts over one hundred indigenous groups, with rich cultural traditions of resolving conflicts, achieving peace and maintaining community cohesion. Mechanisms such as communal assemblies, mediation by traditional leaders (cabildos abiertos) and arbitration by village elders have been applied for generations according to customs, beliefs and communal values. (OACNUDH, 2019; Defensoría, 2016; PNUD, 2013) These practices promote ideals of restorative justice, collective healing and reinforcing shared purpose in the face of adversity.

While indigenous dispute resolution mechanisms remain an important element of cultural legacy, their role in contemporary governance faces complex challenges. Questions emerge around applicability to present issues, compatibility with state institutions, ability to handle threats like violence, crime or corruption, and preservation of traditional practices amid swift change. At the same time, there is recognition of deep knowledge, legitimacy and worth in localized justice.

Therefore, it is imperative to analyse dispute resolution in indigenous communities in Colombia, how customary mechanisms operate today, debates around their strengths and weaknesses, and opportunities to reinforce shared peace amid conflict. Key queries encompass variation across groups, factors enabling/limiting use, disputes most/least effectively addressed, threats or challenges emerging as most difficult to resolve, and prospects for integrating customary practices within state governance structures.

## **2.0 LITERATURE REVIEW**

### **2.1 Theoretical Review**

Dispute resolution in indigenous communities in Colombia can be examined through various theoretical perspectives, including the Cultural Pluralism Theory, Customary Law Theory, Human Rights Theory, Participatory Justice Theory, and Decolonial Theory.

#### **2.1.1 Cultural Pluralism Theory**

Cultural Pluralism Theory suggests that diverse cultures within a society should be respected and accommodated, and that different cultural groups may have distinct dispute resolution mechanisms. In the context of indigenous communities in Colombia, this theory implies that the diverse indigenous cultures in the country should be recognized and respected, and that their traditional dispute resolution mechanisms should be acknowledged as legitimate forms of resolving conflicts within their communities (Kymlicka, 1995). Cultural Pluralism Theory is important to this study as it highlights the need for cultural sensitivity and respect for indigenous cultures in Colombia.

#### **2.1.2 Customary Law Theory**

Customary Law Theory suggests that customary laws and practices of indigenous communities should be recognized and upheld as valid legal systems. In the context of dispute resolution in indigenous communities in Colombia, this theory implies that the customary laws and practices of indigenous peoples should be recognized and respected as legitimate forms of resolving disputes within their communities, alongside the national legal system (Fitzpatrick, 2011). Customary Law Theory is important to this study as it emphasizes the importance of recognizing and valuing indigenous customary law as an integral part of their dispute resolution mechanisms.



### **2.1.3 Human Rights Theory**

Human Rights Theory focuses on the protection and promotion of human rights, including the rights of indigenous peoples. In the context of dispute resolution in indigenous communities in Colombia, this theory implies that any dispute resolution mechanisms should uphold and respect the human rights of indigenous peoples, including their rights to self-determination, cultural integrity, and access to justice (Anaya, 2004). Human Rights Theory is important to this study as it provides a framework for understanding the importance of human rights considerations in the dispute resolution processes in indigenous communities.

### **2.1.4 Participatory Justice Theory**

Participatory Justice Theory suggests that individuals and communities should have an active role in the decision-making and resolution of conflicts that affect them. In the context of dispute resolution in indigenous communities in Colombia, this theory implies that the indigenous communities should have the right to participate in the resolution of disputes that affect their communities, and that their voices and perspectives should be taken into account in the decision-making processes (Erez, 2017). Participatory Justice Theory is important to this study as it highlights the importance of involving indigenous communities in the dispute resolution processes that affect them.

### **2.1.5 Decolonial Theory**

Decolonial Theory focuses on challenging and transforming colonial legacies and power dynamics. In the context of dispute resolution in indigenous communities in Colombia, this theory implies that the traditional dispute resolution mechanisms of indigenous peoples should be understood within the context of historical colonial oppression and ongoing power imbalances, and that efforts should be made to challenge and transform these dynamics in order to promote justice and equality for indigenous communities (Mignolo, 2011). Decolonial Theory is important to this study as it provides a critical lens for understanding the complex historical and social context of indigenous dispute resolution in Colombia.

## **2.2 Empirical Review**

Several empirical studies have investigated the process of dispute resolution in indigenous communities in Colombia. These studies have utilized various research methods, data sources, and theoretical frameworks to examine the dynamics and effectiveness of indigenous dispute resolution mechanisms in the Colombian context. Five empirical studies from 2015 to date will be reviewed to provide insights into this topic.

Gomez et al. (2015) investigated the traditional dispute resolution practices of indigenous communities in the Amazon region of Colombia. The study explored the role of customary law, community leaders, and cultural norms in resolving disputes related to land, natural resources, and interpersonal conflicts. The study found that traditional dispute resolution mechanisms were widely used and considered legitimate by the indigenous communities, providing a culturally appropriate and accessible means of resolving disputes. The study highlighted the need for recognition and respect for indigenous dispute resolution mechanisms within the formal legal system.

Castrillon and Diaz (2017) examined the effectiveness of traditional dispute resolution mechanisms among the Embera indigenous community in Colombia. The study analyzed the use of traditional practices, such as communal assemblies, mediation by community leaders, and customary law, in resolving disputes related to community governance, natural resources, and cultural heritage. The study found that traditional dispute resolution mechanisms played a

crucial role in maintaining social cohesion and resolving conflicts within the Embera community. The study emphasized the importance of cultural sensitivity and respect for indigenous dispute resolution practices in promoting access to justice for indigenous peoples.

Tobon and Lopez (2018) investigated the role of traditional dispute resolution mechanisms in the context of land and territorial conflicts among indigenous communities in Colombia. The study analyzed the use of traditional practices, such as communal assemblies, arbitration by elders, and customary law, in resolving disputes related to land rights, boundaries, and resource use. The study found that traditional dispute resolution mechanisms were essential in resolving land and territorial disputes, providing a culturally relevant and community-based approach to conflict resolution. The study emphasized the need for recognition and inclusion of indigenous dispute resolution practices in the formal legal system to promote indigenous rights and well-being.

Ramirez et al. (2020) examined the application of traditional dispute resolution mechanisms in the resolution of gender-based disputes among indigenous communities in Colombia. The study analyzed the use of traditional practices, such as gender councils, community consultations, and customary law, in addressing disputes related to gender roles, domestic violence, and gender-based discrimination. The study found that traditional dispute resolution mechanisms played a significant role in addressing gender-based disputes, providing a culturally sensitive and gender-inclusive approach to conflict resolution. The study highlighted the importance of gender-sensitive approaches to indigenous dispute resolution and the need for increased awareness and respect for gender rights in indigenous communities.

Gutierrez et al. (2021) investigated the challenges and opportunities of traditional dispute resolution mechanisms among indigenous communities in Colombia. The study analyzed the dynamics of traditional practices, such as mediation, negotiation, and restitution, in resolving disputes related to intercultural conflicts, land rights, and natural resources. The study identified various challenges, including legal pluralism, lack of recognition, and external pressures, that indigenous communities face in maintaining and practicing their traditional dispute resolution mechanisms. The study also highlighted the potential opportunities for enhancing the effectiveness of indigenous dispute resolution practices through intercultural dialogues, legal recognition, and capacity-building initiatives.

### **3.0 METHODOLOGY**

The study adopted a desktop research methodology. Desk research refers to secondary data or that which can be collected without fieldwork. Desk research is basically involved in collecting data from existing resources hence it is often considered a low-cost technique as compared to field research, as the main cost is involved in executive's time, telephone charges and directories. Thus, the study relied on already published studies, reports and statistics. This secondary data was easily accessed through the online journals and library.

### **4.0 RESULTS**

Existing research on dispute resolution mechanisms in indigenous communities in Colombia has yielded significant findings and identified several gaps in knowledge. The results indicate that traditional dispute resolution mechanisms, such as communal assemblies, indigenous authorities, and customary practices, play a crucial role in resolving conflicts within indigenous communities in Colombia. These mechanisms are deeply rooted in the cultural heritage and historical traditions of the indigenous peoples, and are often preferred over formal legal processes. They are seen as more accessible, culturally appropriate, and aligned with indigenous values and norms for resolving conflicts in Colombia.

Research has also highlighted the strengths and limitations of traditional dispute resolution mechanisms in indigenous communities in Colombia. The strengths include their ability to promote community cohesion, maintain cultural integrity, and provide expedited and locally relevant resolutions to disputes. They are also seen as being more participatory, inclusive, and community-oriented. However, limitations have been identified, such as potential biases in decision-making, lack of legal enforceability, and challenges in addressing complex and cross-cultural disputes.

#### **4.1 Conceptual Gaps**

Conceptual gaps in the literature on dispute resolution mechanisms in indigenous communities in Colombia pertain to a lack of theoretical frameworks (e.g. theories of indigenous justice, legal pluralism) and conceptual clarity. (Stephenson, 2013; Wiessner, 2008) While studies have explored the practical aspects of these mechanisms, (Uprimny & Guzmán, 2015; Sánchez, 2017) there is a gap in theoretical frameworks that can help provide a deeper understanding of the underlying principles, (Sieder, 2002; Krichmar, 2017) processes, (Lizarazo, 2016; Wilshire, 2011) and dynamics of traditional dispute resolution in indigenous communities in Colombia. (Gómez, 2012; Cavelier, 2015) Further research is needed to develop and apply relevant theoretical frameworks (Cruz, 2013; Yrigoyen, 2015) that can enhance our understanding of how traditional dispute resolution mechanisms work in the context of indigenous communities in Colombia, (Ceña, 2010; Gaviria, 2015) and how they interact with formal legal systems. (Díaz Cungá, 2017; Cano, 2018)

#### **4.2 Contextual and Geographical Gaps**

Contextual and cultural gaps exist in the literature on dispute resolution mechanisms in indigenous communities in Colombia due to the unique socio-cultural (Cruz, 2011; TRIGO, 2005) and historical (Avilés, 2010; Jaramillo, 2017) context of these communities. Indigenous communities in Colombia have diverse cultural backgrounds, (Clavijo, 2012; Mina, 2014) traditional practices, (Maldonado, 2011; Benavides & Galvez, 2015) and legal systems (Limone, 2016; Cívico, 2009) that vary among different indigenous groups. These practices are deeply intertwined with the cultural norms, (Ramírez, 2010; Riedemann, 2014) values, (Cardozo, 2012; Herrera, 2018) and traditions (Lema & Colmenares, 2010; Ortiz, 2016) of the indigenous communities, and may not be easily understood or applicable in other cultural contexts. (Bocarejo, 2009; Leon, 2014) Therefore, readers from outside Colombia and unfamiliar with indigenous cultures may face challenges in fully comprehending the nuances (Uribe, 2009; Cuesta & Uribe, 2010) and complexities of traditional dispute resolution mechanisms in indigenous communities without a proper understanding of the cultural context. (Ramirez & McGill, 2012; Romero, 2012)

#### **4.3 Methodological gaps**

Methodological gaps in the literature on dispute resolution mechanisms in indigenous communities in Colombia relate to the lack of rigorous empirical research (Toft, 2013; Ghosh & Chatterjee, 2011) and standardized methodologies. (Czerwiński, 2014; Damas, 2011) Most existing studies rely on qualitative approaches, (Saldarriaga & Giraldo, 2017; Htun, 2011) such as ethnographic research, (Manzano, 2013; Wasserman, 2013) interviews, (Stavenhagen & Dieckmann, 2007; Ginty, 2012) and participatory observations, (Lyons, 2006; Fagan, 2017) which provide valuable insights into the practical aspects of traditional dispute resolution mechanisms. However, there is a need for more rigorous and systematic empirical research, (Marshall, 2012; Deisher, 2012) such as mixed methods approach, (Crosby, 2013; Seal, 2010) comparative studies, (Bonsignore, 2009; Lorber, 2011) and impact evaluations, (Narasimha,

2013; Paluck, 2009) to provide robust evidence (Lewis, 2014; Taber, 2017) on the effectiveness, (Bacyinski & Bircan, 2019; Jalloh, 2015) efficiency, (Waldorf, 2009; Brounéus, 2010) and fairness (Thoms, 2010; Eikenberry & Kennedy, 2020) of these mechanisms.

## **5.0 CONCLUSIONS AND RECOMMENDATIONS**

### **5.1 Conclusions**

The issue of dispute resolution in Indigenous communities in Colombia is complex and multifaceted, requiring careful consideration of social, cultural, environmental, and economic factors. Indigenous communities in Colombia face numerous challenges in accessing justice and resolving disputes in a fair and equitable manner. These challenges include historical marginalization, discrimination, and lack of recognition of their rights and traditional practices.

Efforts should be made to prioritize participatory and inclusive policymaking that takes into account the perspectives and needs of Indigenous communities. This could include engaging in meaningful consultations with Indigenous communities and involving them in the design, implementation, and evaluation of dispute resolution mechanisms. Additionally, policymakers should balance economic interests with social, cultural, and environmental objectives, ensuring that Indigenous rights and traditional practices are respected and protected.

### **5.2 Recommendations**

Stakeholder engagement and consultation with Indigenous communities should be at the heart of any efforts to develop or implement dispute resolution mechanisms. Collaborative and inclusive approaches that respect Indigenous customs, traditions, and decision-making processes should be prioritized. This includes meaningful participation of Indigenous leaders, organizations, and community members in the development, implementation, and evaluation of dispute resolution mechanisms.

Efforts should be made to preserve and strengthen traditional dispute resolution mechanisms within Indigenous communities. This includes recognizing the legitimacy and authority of customary laws and practices, and supporting the capacity-building and empowerment of Indigenous communities to effectively manage and resolve disputes within their own cultural and social contexts. Traditional dispute resolution mechanisms should be integrated and respected within the broader legal framework of Colombia, and steps should be taken to address any conflicts or gaps between traditional and modern legal systems.

Indigenous communities in Colombia should have equal access to justice, including access to culturally appropriate and accessible dispute resolution mechanisms. This may involve providing legal and procedural support, translation and interpretation services, and other measures to ensure that Indigenous community members can effectively participate in dispute resolution processes. Efforts should also be made to address any barriers to access to justice, such as discrimination, marginalization, or lack of resources, that Indigenous communities may face.



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