



Decolonizing Justice: Legal Pluralism, Gender, and Indigenous Criminology in the Peruvian Amazon

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Abstract

This article examines the limitations of legal pluralism and the implementation of intercultural justice in the Peruvian Amazon, focusing on Loreto. While Peru's legal framework formally recognizes Indigenous jurisdiction, this recognition remains fragmented due to structural racism, institutional inertia, and the absence of interpreters and anthropological expertise. Based on 16 interviews with justice system operators, Indigenous community members, and public defenders, the study documents how Indigenous practices regarding sexuality, family formation, and conflict resolution are criminalized, reinforcing colonial hierarchies within the penal system. Findings reveal the urgent need for intersectional, intercultural approaches that respect Indigenous systems while protecting fundamental rights, particularly in gender-based violence cases. By centering Indigenous perspectives within Indigenous Criminology and Southern Criminology frameworks, the article underscores the need to decolonize criminal justice systems in the Global South. It calls for institutional reforms to advance genuine legal pluralism, transforming justice systems into spaces of cultural recognition and collective reparation.

Keywords: Legal pluralism; Indigenous Criminology; decolonial justice; Amazon; Peru; gender; structural racism.

Introduction

The recognition of legal pluralism in Latin America has constituted a key step toward acknowledging the rights of Indigenous peoples to maintain their own legal systems and cultural practices in the administration of justice (Sieder, 2002; Van Cott, 2000). In Peru, the Constitution and international instruments such as ILO Convention 169 formally recognize the jurisdiction of Indigenous communities within their territories (International Labour Organization, 1989). This allows them to administer justice according to their customary norms, provided these do not violate fundamental rights.

However, this formal recognition coexists with a justice system historically shaped by colonial legacies and the imposition of a monocultural legal framework that frequently fails to recognize Indigenous legal practices in everyday judicial practice (Mignolo, 2000; Quijano, 2000). As a result, legal pluralism in Peru often remains symbolic rather than operative, constrained by institutional inertia, structural racism, and limited operational capacities. These constraints are particularly evident in the absence of qualified interpreters, anthropological expertise, and culturally appropriate procedural mechanisms within the criminal justice system (Meléndez Guerrero & Vergara, 2010; Yrigoyen Fajardo, 2000).

In this context, the Loreto region, located in the Peruvian Amazon, offers a clear example of the tensions and contradictions inherent in the coexistence of state law and Indigenous customary law. The largest region of Peru, Loreto is situated in the Amazon basin, which is characterized by vast riverine territories, limited road infrastructure, and a high concentration of Indigenous peoples belonging to diverse linguistic and cultural groups. The region is marked by long-standing structural



inequalities, weak state presence outside urban centers, and a plural legal landscape in which state justice institutions coexist with Indigenous normative systems and community-based forms of conflict resolution. These conditions profoundly shape access to justice and the implementation of intercultural legal frameworks. Yet these normative systems frequently come into conflict with the Peruvian penal system, resulting in processes of criminalization that reinforce patterns of exclusion and marginalization.

This article examines how the Peruvian criminal justice system operates under conditions of formal legal pluralism in Loreto. It argues that intercultural justice is applied in a fragmented and exceptional manner that ultimately reinforces colonial hierarchies rather than dismantling them. Drawing on qualitative data from interviews with justice system operators and Indigenous individuals deprived of liberty, the study analyzes how the penal system systematically fails to recognize cultural specificities while rendering Indigenous identities invisible within judicial and penitentiary processes. At the same time, it identifies limited but significant instances in which tools such as anthropological expert reports and culturally contextualized interpretations of the law have enabled judicial decisions more closely aligned with the principles of intercultural justice.

Situated within Indigenous Criminology, this article engages with critical scholarship that interrogates the colonial foundations of criminal justice systems and advocates for the inclusion of Indigenous epistemologies and legal practices (Cunneen & Tauri, 2016; Goyes & South, 2021). Recent work has highlighted the persistent marginalization of Indigenous perspectives within mainstream criminology, underscoring the need to decolonize criminological knowledge and practice, particularly in Global South contexts (Carrington et al., 2018; Deckert, 2024). By foregrounding Indigenous experiences and justice practices in the Peruvian Amazon, this article contributes empirical evidence to ongoing debates on legal pluralism, coloniality, and intercultural justice. It demonstrates how state-centered legal systems continue to exclude Indigenous epistemologies in practice while formally recognizing them at the normative level.

Theoretical Framework

Legal pluralism refers to the coexistence of multiple normative systems within the same geographical, social, and political space (de Sousa Santos, 1987; Griffiths, 1986). This coexistence may be formally recognized by the state—such as when Indigenous jurisdictions are constitutionally acknowledged—or may operate through everyday practices that sustain community-based forms of regulation in tension with state law (Yrigoyen Fajardo, 2000).

The Constitution of the Republic of Peru recognizes the jurisdiction of Indigenous and peasant communities (art. 149), and international instruments such as ILO Convention 169 affirm the right of Indigenous peoples to maintain their legal systems. However, these formal recognitions coexist with state institutions that privilege legal uniformity and frequently delegitimize Indigenous justice systems in practice. This tension is reflected in the criminalization of cultural practices that form part of Indigenous systems of conflict resolution, particularly when such practices are interpreted through the lens of Western criminal law (Meléndez Guerrero & Vergara, 2010; Sieder, 2002).

To move beyond a static understanding of legal coexistence, de Sousa Santos (2002) proposes the concept of interlegality, understood as the dynamic process through which different legal orders interact, overlap, and reshape one another within the same social space. Rather than existing in isolation, state law and Indigenous law give rise to hybrid and provisional legal arrangements structured by asymmetrical power relations (de Sousa Santos, 2002, 2014; Griffiths, 1986).

While interlegality offers a valuable framework for understanding the coexistence of multiple legal orders, Latin American Indigenous scholarship cautions against overly celebratory readings of legal pluralism. Rivera Cusicanqui (2010) warns that state-driven forms of recognition often operate through processes of symbolic inclusion that leave colonial power relations fundamentally intact. From this perspective, intercultural justice risks becoming a form of controlled translation, in which Indigenous norms are selectively recognized only insofar as they can be assimilated into state legal rationalities. Thus, hierarchies are reinforced, rather than genuine dialogue or epistemic plurality being enabled.

In Amazonian contexts, interlegality frequently manifests through the forced translation of Indigenous conflicts into the categories of Western criminal law, without meaningful recognition of Indigenous worldviews or normative logics. This process results in judicial practices that obscure cultural meanings and transform legitimate communal practices into criminal offenses, reinforcing exclusion and mistrust toward the ordinary justice system (Meléndez Guerrero & Vergara, 2010; Yrigoyen Fajardo, 2000).

Indigenous Criminology provides a critical framework for analyzing these dynamics. This perspective foregrounds the colonial foundations of criminal justice systems and emphasizes Indigenous peoples' agency in resisting imposed legal structures while

asserting their own epistemologies and justice practices (Cunneen & Tauri, 2016; Goyes & South, 2021). Recent scholarship has underscored the marginalization of Indigenous voices within mainstream criminology, calling for the decolonization of criminological knowledge, particularly in Global South contexts where colonial legacies remain deeply embedded in legal institutions (Carrington et al., 2018; Deckert, 2024).

These dynamics are rooted in what Quijano (2000) conceptualizes as the coloniality of power: a historical pattern through which non-Western knowledges, practices, and institutions are subordinated under the logic of modernity/coloniality, embedded within broader historical structures of the capitalist world-system (Wallerstein, 1983). In the legal field, this translates into the privileging of state-centered, rationalized law as the only legitimate form of justice. Weber's conception of modern law as coherent, unified, and sustained by the legitimate use of state violence (1978) helps explain why legal diversity is often framed as a threat to order. As Guevara Gil (2009) argues, Latin American nation-states pursued projects of homogenization that rendered cultural diversity invisible in order to sustain Criollo nation-building projects.

This analysis is further enriched by Lugones's (2008, 2010) concept of the coloniality of gender, which highlights how modern gender systems were imposed through colonial domination, reshaping Indigenous forms of kinship, sexuality, and social organization. From this perspective, the criminalization of Indigenous practices related to sexuality and family formation cannot be understood solely as a legal conflict. Rather, it must be considered as part of a broader colonial project that redefined gender, consent, and adulthood according to Western norms. Incorporating Lugones's framework allows for a critical interrogation of how gender-based protection policies, when detached from Indigenous epistemologies, may reproduce colonial hierarchies rather than dismantle them.

These gendered colonial logics are materially enacted through the operation of the penal system. In unequal societies, criminal justice operates through selective criminalization, disproportionately targeting marginalized populations. Wacquant (2009) argues that neoliberal states manage poverty and exclusion through punitive containment strategies, transforming prisons into mechanisms for regulating surplus populations. For Indigenous peoples, this results in incarceration for behaviors linked to cultural practices, within a justice system that ignores both diversity and structural inequality (Meléndez Guerrero & Vergara, 2010; Sieder, 2002). Feminist critiques further demonstrate how gender protection frameworks, when aligned with punitive state systems, can reproduce carceral logics that reinforce colonial and structural violence rather than addressing the root causes of gender-based violence in Indigenous contexts (DesLandes et al., 2022).

Comparative experiences in Latin America illustrate the limits of formal legal pluralism. In Bolivia and Ecuador, Indigenous justice has been constitutionalized, allowing communities to exercise jurisdictional functions within their territories. However, state legal frameworks continue to impose restrictions, particularly in cases classified as serious crimes, such as sexual violence or homicide (Sieder, 2002; Van Cott, 2000). Recent scholarship also highlights how constitutional recognition can be coopted or emptied of substantive content, resulting in plural legal frameworks that reproduce state prerogatives rather than Indigenous legal autonomy (e.g., critiques of the Bolivian experience; see Apaza Huanca, 2019). In Colombia, despite constitutional recognition of Indigenous jurisdiction, persistent tensions with the ordinary justice system reveal institutional resistance and entrenched prejudices that hinder the effective exercise of legal pluralism (Sieder, 2011; Olarte Delgado, 2025).

Taken together, these perspectives show that legal pluralism in Latin America remains constrained by colonial power structures, punitive legal frameworks, and limited mechanisms for intercultural dialogue. Analyzing how these dynamics unfold in the Loreto region of the Peruvian Amazon allows this study to contribute empirical evidence to debates on interlegality, Indigenous Criminology, and intercultural justice. It highlights how state-centered penal systems continue to hierarchize legal orders and marginalize Indigenous epistemologies in practice.

Indigenous Peoples in Peru: Presence, Representation, and Criminal Justice

Peru is one of the countries with the greatest cultural and linguistic diversity in Latin America. According to the 2017 National Census, approximately 25% of the population self-identifies as belonging to an Indigenous or original people. Quechua and Aymara are the majority groups in the Andes, coexisting with over 51 Amazonian Indigenous peoples (Instituto Nacional de Estadística e Informática [INEI], 2018). The Loreto region has one of the largest concentrations of Indigenous peoples and native languages in Peru, within a territory characterized by a diversity of normative systems, cultural practices, and concepts of justice that coexist with state structures.

The Peruvian legal framework recognizes the collective rights of Indigenous peoples through instruments such as the Constitution of the Republic of Peru (arts. 89, 149), the Law on Native and Peasant Communities (Law No. 24656), and the

ratification of ILO Convention 169. These frameworks establish the right of Indigenous peoples to maintain their customs, communal property, and special jurisdiction for the administration of justice within their territories.

However, this formal recognition contrasts with institutional practices that have historically marginalized Indigenous peoples from political decision-making processes and effective access to rights, reproducing asymmetric power relations and structural racism (Frisancho & Delgado, 2017; Guevara Gil, 2009). In civil society, Indigenous peoples have articulated local, regional, and national forms of organization to defend territorial, cultural, and political rights. At the national level, the Interethnic Association for the Development of the Peruvian Rainforest (AIDSESP), founded in 1980, represents Amazonian Indigenous peoples and has played a central role in advocating for territorial protection, cultural recognition, and Indigenous self-determination. AIDSESP has also been a key interlocutor in national debates on legal pluralism and intercultural justice, positioning Indigenous jurisdiction as an essential component of democratic governance. Despite these organizational efforts and sustained political engagement, Indigenous demands frequently encounter institutional indifference, bureaucratic obstruction, or even criminalization by the state.

The situation of Indigenous individuals deprived of liberty reveals the tensions between normative recognition and the practice of justice. According to the 2016 National Census of the Prison Population, Peru had 76,180 individuals deprived of liberty. Of these, 7,096 had Quechua as their mother tongue, 770 Aymara, 101 Ashaninka, and other Indigenous languages in smaller proportions, while 67,188 had Spanish as their first language (INEI, 2016). However, this census also reveals a significant underreporting of Indigenous identities within the prison system, often linked to forced self-identification practices under discriminatory conditions.

Records indicate that only 0.1% of inmates declared speaking another native language nationwide (Instituto Nacional Penitenciario [INPE], 2016). However, this figure does not adequately reflect the Indigenous presence in prisons due to methodological limitations and forced self-identification in contexts of discrimination. The census reported a prison population of 1,246 individuals in Loreto, with an ethnic distribution that renders Indigenous populations invisible: 19 identified as Quechua, while the categories of “native or Indigenous” and “other original people” registered zero. (INPE, 2016). However, during fieldwork at the San Jacinto Prison (Iquitos), it was identified that there were at least 104 convicted individuals who were members of Indigenous communities but were neither processed nor registered as such. It is presumed that many of them were classified as *mestizo* or “does not know/does not respond,” evidencing the absence of effective mechanisms for recording ethnic affiliation in criminal and census processes.

The significant presence of Indigenous peoples in Loreto, along with the cultural and linguistic diversity of the territory, demands that the administration of justice incorporate cultural difference as a key aspect in criminal and civil processes (Meléndez Guerrero & Vergara, 2010; Yrigoyen Fajardo, 2000). However, in practice, the authorities of the ordinary justice system operate without interpreters, without knowledge of customary law, and without incorporating intercultural justice frameworks. This leads to the criminalization of cultural practices, violations of due process, and the perpetuation of historical inequalities.

In Amazonian contexts such as Loreto, where state justice structures coexist with Indigenous normative systems, the absence of policies that operationally recognize legal pluralism produces concrete effects on the lives of communities. These range from fear of approaching authorities due to ignorance and discrimination to processes of criminalization that result in prison sentences for practices that are legitimate within the communal sphere. This scenario demonstrates that the formal recognition of legal pluralism in Peru lacks effective implementation, reproducing colonial hierarchies within the penal system and limiting the construction of a truly intercultural justice system.

Methodology

This qualitative study aims to understand, in a situated and interpretive manner, the tensions, gaps, and challenges in the administration of intercultural justice in the Loreto region, and the experiences of Indigenous individuals subjected to criminal proceedings. Rather than seeking statistical representativeness, the research prioritizes depth; contextualization; and the analysis of meanings, practices, and institutional logics that shape the operation of justice in culturally diverse settings.

Fieldwork was conducted in November 2018 in the city of Iquitos, the capital of the Loreto region. A total of 16 semi-structured interviews were carried out: 11 with representatives of the Judicial Branch of the Loreto Superior Court (including judges and court officials), one with a representative of the Public Defender’s Office, one with the coordinator of the Indigenous ward at San Jacinto Prison, two with Indigenous individuals deprived of liberty in that prison, and one with a regional representative of AIDSESP. Interviews were conducted in person, except for one follow-up interview conducted by telephone. Access to

interviewees was coordinated through the National Office of Justice of the Peace and Indigenous Justice (ONAJUP), Loreto branch.

Two semi-structured interview guides were developed. The first was directed at judges, prosecutors, and public defenders. This guide focused on their knowledge and interpretations of the legal framework governing Indigenous rights, and their understanding of legal pluralism and Indigenous justice. It also explored their evaluations of institutional tools designed to address cultural diversity, such as the use of interpreters, anthropological expert reports, and specific procedural protocols in criminal cases involving Indigenous defendants.

The second interview guide targeted Indigenous individuals deprived of liberty at San Jacinto Prison. These interviews explored their trajectories through the criminal justice system, from detention to sentencing; their experiences during judicial proceedings; their access to information and interpretation in their native languages; and their perceptions of fairness, recognition, and treatment by judicial authorities. Particular attention was paid to how language barriers, cultural misunderstandings, and institutional practices shaped their experiences of criminalization and punishment.

Data analysis followed an interpretive thematic approach guided by three analytical axes defined during the research design phase. The first examined the recognition—or lack thereof—of legal frameworks concerning Indigenous rights within judicial practices. The second focused on institutional routines, discretionary practices, and operational constraints in handling criminal cases involving Indigenous individuals. The third explored cultural tensions, moral assumptions, and perceptions of justice articulated by both state actors and Indigenous interlocutors. These axes were used to systematically organize, code, and interpret the interview material, allowing for cross-comparison between institutional perspectives and lived experiences.

Ethical considerations were central to the research process. This study originated as an applied research project commissioned by the Ministry of Justice of Peru, specifically for the Executive Council of the Judiciary through ONAJUP. At the time of fieldwork, the study followed the commissioning institution's ethics and access protocols, including permissions for institutional access. As such, the research protocol and data collection instruments were reviewed and authorized by ONAJUP as part of the project approval process, rather than through a university-based ethics board. In all cases, informed consent was obtained, participation was voluntary, and strict measures were taken to ensure confidentiality and anonymity, particularly given the vulnerability of Indigenous individuals deprived of liberty. All names used in this article are pseudonyms.

While this research originated as an applied study commissioned by a state institution, its transformation into an academic article involved a process of analytical reworking oriented toward critical interpretation rather than institutional evaluation. This entailed revisiting the interview material beyond the immediate policy objectives of the original commission, foregrounding tensions, contradictions, and silences that are often minimized in applied justice assessments. The analytical focus thus shifts from measuring institutional performance to examining how legal pluralism, intercultural justice, and criminalization are experienced, negotiated, and contested in practice. This methodological repositioning allows the study to contribute to broader debates on legal pluralism and state power, while remaining grounded in empirical material produced within an institutional research setting.

Findings

The analysis of the interviews reveals that, although Peruvian legislation formally recognizes legal pluralism and Indigenous special jurisdiction, intercultural justice in Loreto is applied in a fragmented, exceptional, and restrictive manner. Justice system operators consistently reported that cultural specificities are rarely considered in criminal proceedings. As Manuel, a judge, explained, “in a year and a half here, we have had a couple of cases where the Indigenous status was considered, and it was only for a release under supervision, nothing more.”

The ordinary justice system operates through a homogenizing logic that treats equality as sameness, effectively rendering cultural differences invisible. This approach ignores linguistic barriers, cultural meanings, and historical inequalities faced by Indigenous communities. Another judge noted, “sometimes lawyers mention that the defendant is from a community, but if there is no document, we cannot do much,” revealing how documentary requirements act as barriers to intercultural consideration.

A significant finding is the invisibility of Indigenous identity in judicial and prison records. At the San Jacinto Prison in Iquitos, Indigenous individuals deprived of liberty were identified who were neither registered nor processed as members of Indigenous communities. According to Tapia, a prison worker, “there are inmates here who are from communities, but it is not reflected

in their file, no one asked, and they went through the process like anyone else.” This omission is linked to the lack of mechanisms for cultural self-identification during hearings and the absence of interpreters, which affects due process.

One of the most persistent structural obstacles to the effective implementation of intercultural justice identified in the interviews is the shortage and precarious availability of qualified Indigenous language interpreters within criminal proceedings. Although Peruvian law formally guarantees the right of Indigenous defendants to be assisted by an interpreter, this right is inconsistently implemented and frequently reduced to a procedural formality. Justice operators acknowledged that interpreters are often unavailable at critical stages of the judicial process, or that untrained community members are relied upon, undermining meaningful communication and participation. One judge explained, “once we had to ask the defendant’s brother to translate, but it is complicated because it is not the same as having an interpreter.” In this context, language operates not merely as a technical issue, but as a mechanism through which access to rights, recognition, and legal agency is structured and restricted. This directly affects defendants’ understanding of proceedings and the quality of legal defense.

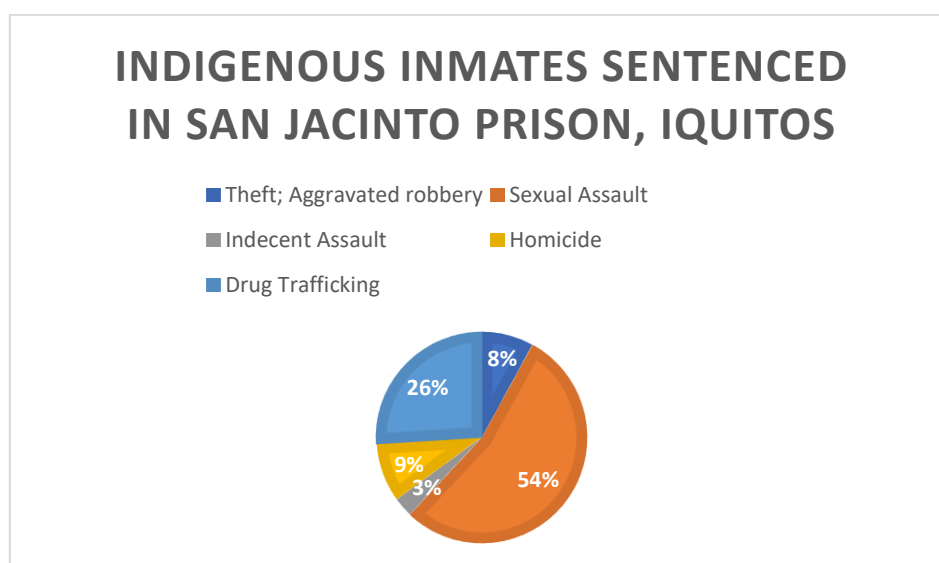
Similarly, anthropological expert reports, which could contextualize cultural practices in conflict with criminal law, are rarely used and often lack quality due to budget constraints and the shortage of specialists. As Piaglio, a judge, mentioned, “the reports we get are very general; they say he is from community X, but they don’t explain how issues are handled there, so in the end, they are not very useful.”

These linguistic and procedural barriers do not operate in isolation; rather, they intersect with substantive areas of criminal law where intercultural considerations are most systematically foreclosed. This is particularly evident in cases involving sexuality, family formation, and community justice. Several interviewees linked the absence of interpreters and cultural mediation to recurrent misunderstandings regarding early unions, kinship relations, and community-based forms of regulation. In these contexts, communication failures are not merely technical obstacles: they amplify punitive responses and contribute to the criminalization of Indigenous practices as judicial reasoning tends to rely primarily on standardized categories of age, consent, and coercion.

To further contextualize these patterns, institutional case records from San Jacinto Prison were examined. The application of intercultural criteria within criminal proceedings involving Indigenous defendants was found to be limited and highly selective. Despite the diversity of offenses represented among the incarcerated population (as shown in Figure 1), explicit consideration of cultural context, language, or Indigenous normative frameworks appeared in only three cases. This limited application reflects not only institutional constraints but also prevailing judicial assumptions regarding the relevance of cultural difference in criminal adjudication.

Figure 1

Offenses Among Convicted Indigenous Individuals Incarcerated at San Jacinto Prison, Loreto, Perú (2018)



Note. Data collected from interviews and institutional case records during fieldwork conducted at San Jacinto Prison, Loreto (2018).

Justice system operators acknowledged the complexity of these situations but consistently emphasized that offenses classified as serious crimes fall outside the scope of customary norms. As one judge stated, “we cannot allow serious crimes to be handled according to customs; that is non-negotiable.” This position exposes a structural tension between the normative framework of ILO Convention 169—which recognizes Indigenous jurisdiction—and judicial practices that prioritize punitive, homogeneous approaches over the recognition of Indigenous autonomy and normative systems.

Interviews revealed that the limited implementation of intercultural justice is reinforced not only by institutional constraints but also by racialized perceptions that frame Indigenous communities as “backward” or incompatible with legal order. Several justice operators portrayed Indigenous normative systems as deficient and misaligned with fundamental rights, positioning them as inferior to state law. As one judicial actor stated, “those peoples are not very civilized, and they administer justice through punishments that go against fundamental rights.” Another interviewee explained that “communities are far removed from modernity, and when they exercise positions such as local authorities, their lack of knowledge of the legal system leads them to make many mistakes.” These statements illustrate how intercultural justice is constrained by entrenched hierarchies of knowledge and personhood, in which Indigenous practices are interpreted through deficit-based and evolutionary framings rather than recognized as legitimate normative orders.

Justice operators repeatedly framed early unions and adolescent sexuality through moral and protectionist narratives aligned with state gender policies and non-governmental organization (NGO) interventions. In these accounts, intercultural justice was treated as secondary to the imperative of punishment and protection, especially when the alleged victim was a minor. As one judge explained:

With the new human rights and gender approaches, it is now questioned that in a native community a girl who has reached menarche [first menstrual period] can assume the role of wife and mother; this generates a conflict between intercultural justice and the gender approach.

This statement reveals how the language of gender rights is mobilized in judicial settings to draw a rigid boundary between legitimate cultural difference and unacceptable practices, leaving little room for contextual interpretation of kinship, consent, or community norms.

A key empirical finding concerns the prevalence of cases involving sexuality and early unions in the criminalization of Indigenous populations. As shown in Figure 1, justice operators identified sexual assault-related offenses as the most frequent type of case involving Indigenous defendants. Data from San Jacinto Prison indicate that of the 104 Indigenous individuals deprived of liberty, more than half were convicted of sexual offenses. Despite the prevalence of these cases, they are rarely examined through an intercultural lens. Criminal law automatically categorizes sexual relations involving persons under 14 years of age as violations of sexual freedom, without consideration of cultural context or community-based understandings of consent, maturity, and family formation.

Interview material further suggests that this legal categorization reflects a broader normative clash between Western legal frameworks and Indigenous Amazonian conceptions of body, sexuality, and social reproduction. Justice operators repeatedly described these tensions as a conflict between intercultural justice and the gender and human rights frameworks increasingly mobilized in criminal adjudication.

Within judicial settings, however, these cases tend to be interpreted through standardized legal assumptions about age, consent, and coercion, leaving limited room for intercultural interpretation. In practice, these tensions are often activated through institutional pathways external to the community. Several interviewees described cases in which contact with health services triggered criminal proceedings. When a pregnant adolescent attends a medical consultation and is identified as being under the legal age threshold, hospitals are required to report the case, regardless of the social context of the relationship. Once a complaint is filed, judicial processes advance under standardized assumptions of coercion and victimhood, frequently without interpreters or cultural mediation. In some cases, interviewees noted that families themselves strategically resort to the ordinary justice system—such as when conflicts arise between families or when a union is no longer socially desirable—demonstrating how Indigenous actors may engage with state law as a punitive resource. These dynamics contribute to the systematic criminalization of practices locally understood as family arrangements or community-based conflict resolution.

These dynamics contribute to the systematic criminalization of practices locally understood as family arrangements or community-based conflict resolution. Consequently, such situations are frequently prosecuted under criminal categories such as sexual violence or kidnapping. This pattern is reflected in the penitentiary population of San Jacinto Prison, where over half of Indigenous inmates are incarcerated for sexual offenses in 2018, while only three cases were adjudicated under the legal

framework applicable to Indigenous peoples. These processes reinforce distrust toward the justice system and deepen perceptions of state justice as punitive and culturally misrecognizing.

A small number of cases were identified in which the use of anthropological expert reports and the application of culturally conditioned error—a legal doctrine that recognizes how cultural norms may shape a defendant’s understanding of the law—enabled judicial decisions that were sensitive to Indigenous cultural contexts. In one such case, Indigenous worldviews regarding early marital alliances were explicitly considered in the judicial reasoning.¹ Such cases demonstrate that intercultural justice is not entirely absent from the Peruvian penal system. However, they remain isolated and fragile exceptions, highly dependent on the individual willingness and sensitivity of judges or public defenders rather than on standardized institutional mechanisms. The absence of a robust and systematic framework to ensure the regular use of anthropological expertise means that culturally sensitive justice operates as a discretionary practice rather than as an enforceable right.

Taken together, these findings reveal that the limitations of intercultural justice in Loreto are not merely the result of logistical constraints or lack of institutional resources but are rooted in deeper structural logics embedded within the criminal justice system. These include a homogenizing understanding of equality that renders cultural difference invisible, racialized assumptions that portray Indigenous practices as deficient or incompatible with legal order, and a punitive orientation that prioritizes criminal prosecution over recognition of Indigenous normative systems. In practice, these logics shape how cases involving Indigenous defendants are interpreted, categorized, and processed, particularly in matters related to sexuality, family relations, and community-based forms of regulation. As a result, intercultural justice operates in a fragmented and exceptional manner, reinforcing patterns of criminalization and institutional mistrust rather than enabling meaningful legal pluralism.

Discussion

The findings of this study confirm that, while Peru formally recognizes legal pluralism and Indigenous special jurisdiction, its effective implementation in the Amazon—particularly in the Loreto region—remains constrained. Persistent colonial structures, monocultural legal frameworks, and institutional practices systematically exclude Indigenous peoples from equitable access to justice. This disjuncture between normative recognition and everyday judicial practice aligns with long-standing concerns within Indigenous Criminology regarding the marginalization of Indigenous voices and legal systems within state-centered justice regimes (Cunneen & Tauri, 2016; Deckert, 2024). In this sense, the Peruvian case does not constitute an exception but rather illustrates how colonial power relations continue to shape criminal justice systems in the Global South (Carrington et al., 2018; Goyes & South, 2021).

In this context, the fragmented and exceptional application of intercultural justice observed in Loreto demonstrates that legal pluralism in Peru often remains aspirational rather than operational. Although justice operators are formally aware of the existence of Indigenous jurisdiction, its application is typically reduced to isolated procedural gestures that do not challenge the underlying punitive logic of criminal law. As the interviews reveal, intercultural criteria are rarely incorporated into substantive legal reasoning, particularly in cases categorized as serious crimes. This confirms insights from socio-legal scholarship showing that the recognition of legal pluralism frequently operates as a symbolic concession rather than as a transformative legal arrangement capable of redistributing authority and recognizing Indigenous autonomy (Meléndez Guerrero & Vergara, 2010; de Sousa Santos, 2014).

Moreover, the requirement that Indigenous defendants demonstrate their cultural identity through documentary evidence further undermines the practical exercise of intercultural justice. By conditioning recognition on state-issued certificates or administrative validation, the justice system reproduces a paradox in which cultural difference is acknowledged only insofar as it is legible to bureaucratic forms of state knowledge. This dynamic resonates with analyses of legal pluralism in Latin America that emphasize how Indigenous identities are filtered through administrative categories that often erase lived experience and self-identification (Guevara Gil, 2009; Quijano, 2000; Yrigoyen Fajardo, 2000). As a result, the right to special jurisdiction becomes contingent and selective, reinforcing structural inequalities rather than mitigating them.

Closely linked to this bureaucratic logic is the structural absence of qualified Indigenous language interpreters within criminal proceedings. As shown in the findings, interpretation is formally recognized as a procedural right, yet in practice it is inconsistently implemented and frequently reduced to a symbolic gesture, sometimes requiring untrained relatives to translate in court. This reliance on informal translation, or the complete absence of interpretation, indicates that language operates not merely as a technical issue but as a mechanism through which access to legal subjecthood is regulated. Without meaningful interpretation, Indigenous defendants may be physically present in court while remaining unable to fully understand the proceedings, articulate their narratives, or participate substantively in their defense. This produces a form of epistemic exclusion

that undermines due process and reinforces colonial hierarchies of knowledge (de Sousa Santos, 2014; Meléndez Guerrero & Vergara, 2010).

Furthermore, the absence of interpreters should not be understood solely as an administrative deficiency but as a structural feature of a monocultural justice system that privileges Spanish as the sole language of legality and authority. By failing to institutionalize interpretation as a core component of judicial practice, the state effectively denies the legitimacy of Indigenous epistemologies and modes of legal expression. In this sense, linguistic exclusion becomes a central mechanism through which legal pluralism is neutralized in practice, despite its formal recognition in constitutional and international frameworks (Yrigoyen Fajardo, 2000).

These procedural and linguistic barriers intersect with substantive areas of criminal law where intercultural considerations are most systematically foreclosed, particularly in cases involving sexuality, family formation, and community justice. As documented in the findings section, cases related to sexual assault constitute the most common type of offense among Indigenous individuals incarcerated at San Jacinto Prison (see Figure 1), accounting for more than half of the recorded convictions. Despite their prevalence, these cases were almost never examined within an intercultural framework: during the period analyzed, intercultural criteria were applied in only three cases.

Interview data further show that this exclusion is not incidental but grounded in dominant judicial reasoning. Justice operators repeatedly emphasized that crimes classified as “serious” fall outside the scope of customary norms, framing intercultural justice as inapplicable in matters involving sexuality and family relations. As illustrated by judges’ statements discussed in the findings, this position reaffirms the dominance of punitive and homogeneous legal reasoning. In doing so, it exposes a structural tension between the formal recognition of Indigenous jurisdiction under ILO Convention 169 and judicial practices that prioritize state sovereignty and penal authority over Indigenous autonomy. At the same time, these cases illustrate how universalized legal and moral frameworks concerning age, consent, and sexuality are imposed without meaningful engagement with Indigenous worldviews. While Peruvian law, in line with international human rights standards, classifies sexual relations with minors under 14 as sexual assault, this legal standard often clashes with Amazonian Indigenous perspectives in which *menarche* (first menstrual period) marks the transition to adulthood and legitimizes family formation. When state institutions intervene without intercultural mediation, culturally embedded practices are translated into criminal offenses through a process that lacks contextual analysis. This reinforces what DesLandes et al. (2022) describe as the convergence between gender protection policies and punitive colonial logics.

Latin American feminist critiques further problematize these dynamics by questioning the assumption that state-centered legal frameworks inherently guarantee gender justice. Curiel (2007, 2013) argues that feminist engagements with law and the state may reproduce racialized and colonial forms of governance, particularly when they rely on universal categories that erase difference. From this perspective, gender protection policies articulated through punitive criminal justice systems risk reinforcing colonial control over Indigenous bodies and territories, rather than advancing emancipatory forms of justice grounded in community autonomy and self-determination.

Importantly, this analysis does not seek to romanticize Indigenous practices or to deny the existence of gender-based violence within communities. Rather, it underscores the limitations of punitive universalism as a response to complex and culturally situated social realities. The blanket application of criminal law collapses diverse experiences into a single category of criminality, obscuring the distinction between consensual early unions and situations of coercion or abuse. As a result, the penal system prioritizes incarceration over prevention, dialogue, and culturally grounded forms of conflict resolution. This reproduces patterns of mass incarceration that disproportionately affect Indigenous men while failing to address the structural conditions underlying gendered violence (DesLandes et al., 2022).

In this regard, the findings underscore the relevance of interlegality as a framework for understanding justice in the Peruvian Amazon (de Sousa Santos, 2002). State law and Indigenous normative systems coexist within the same social space; however, this coexistence is deeply hierarchical. Rather than facilitating dialogue or mutual recognition, state criminal law tends to assert its dominance by selectively acknowledging Indigenous norms only when they can be aligned with its own punitive logic. This form of hierarchical interlegality reproduces unequal power relations and severely limits the possibility of constructing genuinely intercultural forms of justice.

Finally, the identification of a small number of exceptional cases in which anthropological expert reports and culturally conditioned error enabled culturally sensitive judicial decisions highlights both the potential and the fragility of intercultural justice in Peru. These cases demonstrate that alternative legal reasoning is possible within the existing framework. However, their exceptional nature reveals a deeper structural limitation: intercultural justice operates as a discretionary practice,

dependent on the individual sensitivity and willingness of judges or public defenders, rather than as an enforceable right guaranteed by institutional mechanisms. The absence of standardized procedures for the regular use of anthropological expertise reinforces legal uncertainty and inequality, transforming intercultural justice into a fragile exception rather than a consistent practice.

Overall, this study demonstrates that the normative recognition of legal pluralism in Peru coexists with judicial practices that continue to reproduce colonial, punitive, and exclusionary dynamics. Advancing toward genuine intercultural justice requires moving beyond symbolic recognition toward institutional transformations that guarantee linguistic access, recognize Indigenous epistemologies as legally relevant, and promote sustained dialogue between state and Indigenous legal systems. Situating these findings within Indigenous and Southern Criminology contributes to broader debates on how justice systems in the Global South can be reimagined to address historical inequalities, challenge colonial legacies, and build forms of justice that are both culturally grounded and socially equitable.

Final Reflections

This study has shown that although legal pluralism is formally recognized within the Peruvian legal framework, its effective implementation in the Amazon remains deeply limited. In Loreto, intercultural justice operates in a fragmented and exceptional manner, largely dependent on the individual dispositions of justice operators rather than on consolidated institutional practices. The persistent shortage of qualified interpreters, limited anthropological expertise, and the absence of systematic protocols for identifying Indigenous defendants reveal structural constraints that reproduce historical inequalities and colonial hierarchies within the criminal justice system.

One of the most critical findings concerns the criminalization of cultural practices related to sexuality and family formation in Indigenous communities, particularly in cases involving adolescent partnerships. These cases expose the tensions between gender policies grounded in Western protection frameworks and Amazonian community logics, highlighting how punitive approaches often override intercultural dialogue. Rather than addressing gender-based violence through context-sensitive mechanisms, the penal system frequently operates as a tool of colonial control, reinforcing the mass incarceration of Indigenous men while failing to engage with community-based understandings of harm, consent, and responsibility.

The analysis further demonstrates that Indigenous cultural identities are rendered largely invisible within judicial and penitentiary processes. This invisibility undermines the effective exercise of the right to special jurisdiction recognized by ILO Convention 169 and the Peruvian Constitution, rendering intercultural justice into an exception rather than a guaranteed right. In this sense, legal pluralism functions more as a symbolic recognition than as a lived practice, constrained by institutional routines that privilege homogeneity over difference.

Advancing towards genuine legal pluralism requires moving beyond formal recognition and addressing the structural conditions that limit intercultural justice in practice. This includes strengthening intercultural training for justice operators, guaranteeing access to competent and independent interpreters, and institutionalizing the use of anthropological expert reports capable of contextualizing Indigenous norms within legal proceedings. It also requires procedural mechanisms that ensure cultural self-identification from the earliest stages of criminal processes, regardless of formal documentation or administrative bias.

A critical challenge lies in articulating gender justice and intercultural frameworks without reproducing cultural imposition or punitive colonial logics. Addressing gender-based violence in Indigenous contexts demands intersectional approaches that protect the rights of women and girls while recognizing Indigenous agency and normative systems (Crenshaw, 1991). Such approaches require dialogue rather than substitution, prevention rather than criminalization, and community engagement rather than carceral expansion.

Incorporating perspectives from Indigenous Criminology into analyses of legal pluralism offers an important path toward epistemological decolonization and institutional transformation. As critical scholarship has argued, justice systems in settler and postcolonial contexts often manage Indigenous populations through punishment rather than recognition (Carrington et al., 2018; Cunneen & Tauri, 2016; Goyes & South, 2021). Situating the Peruvian Amazon within this broader debate allows for a more nuanced understanding of how colonial power continues to shape criminal justice practices.

Ultimately, this study calls for reimagining justice systems not as instruments of uniform control but as spaces capable of recognizing cultural diversity as a democratic value. Advancing toward effective legal pluralism is essential not only for guaranteeing Indigenous rights but also for transforming justice into a practice of recognition, repair, and coexistence in a culturally plural society.

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1 Case file 00129-2016-0-1903-SP-PE-01. This reference corresponds to a criminal case processed in Loreto in which anthropological expert evidence and the doctrine of culturally conditioned error were explicitly considered by the court. The case is used here as an illustrative example of the discretionary and exceptional nature of intercultural justice within the Peruvian penal system.

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