

Research Article

Normative Tension Between Customary Law and Civil Law in the Native Amazonian Marriage: Analysis from the Pluralism Juridic y Human Rights

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Abstract

Marriage is a fundamental institution in the Peruvian legal system, recognized both in the Political Constitution of 1993 and in the Civil Code of 1984. However, in native Amazonian communities this institution is regulated by customary law that frequently contravenes provisions of civil law, generating structural tensions regarding capacity, minimum age and marital consent. The objective of this research was to examine the internal marriage regulations of eight native Peruvian communities, of which seven in the north of Amazonas and one in the central jungle region, in order to evaluate their contradictions with the ordinary legal framework and their implications for the fundamental rights of minors. An exploratory-descriptive qualitative design was used that combined documentary analysis of internal community regulations, constitutional and legal regulations, with interviews with fifteen indigenous inhabitants between the ages of 25 and 70 years. The data were processed through qualitative thematic analysis with methodological triangulation. The results reveal that the internal regulations of the communities of Huaracayo, Cayamas, Wawik, Winchu Temashnum, Nazaret and Shipibo Konibo allow marriages of minors under eighteen years of age, in some cases from the age of fourteen or fifteen with parental authorization, in contravention of articles 241-246 of the Civil Code and Law No. 31945 that prohibits marriages of minors. It was identified that minors under sixteen years of age lack the capacity to exercise and fully discern to manifest valid legal will, essential constituent elements of marriage. Also, community regulations that delegate marriage decisions to parents constitute structural coercion that violates the autonomy of girls and adolescents, compromising their educational development, reproductive health and future opportunities. It is concluded that there is an unresolved tension between customary and civil law that requires legislative intervention through the regulation of article 262 of the Civil Code, intercultural human rights education programs developed in a participatory manner with indigenous organizations, and the strengthening of culturally sensitive protection mechanisms. Indigenous normative autonomy must be articulated with standards for the protection of human rights, as demonstrated by the Awajun Territorial Ordinance that prohibits forced marriages, constituting a replicable model that balances cultural diversity with the inalienable fundamental rights of minors.

Keywords

Marriage, Native Community, Capacity to Exercise, Expression of Will, Sexual Compensation

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Received: 1 December 2025; **Accepted:** 26 December 2025; **Published:** 2 February 2026



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1. Introduction

In Peru's vast multicultural tapestry, marriage emerges as a pivotal institution that weaves ancestral traditions with the imperatives of state law. According to Peruvian law, marriage stands as a pillar of civil society, regulated by rules that require full capacity, free consent and minimum age to guarantee its validity and legal effects. In the native communities of the northern Peruvian Amazon—a territory of rich indigenous worldviews such as those of the Awajun, Wampis, and Shipibo—this union represents a collective ritual that strengthens cultural identity, community cohesion, and the perpetuation of ancestral lineages, rooted in customary law that prioritizes social harmony over state formalities [1-3].

However, this symbiosis generates some problems. Traditional practices, protected by the Peruvian Constitution and international conventions such as International Labour Organisation (ILO) Convention 169, often contravene the Civil Code, which imposes a uniform framework: prohibitions on forced marriages, age restrictions, and state registration requirements. In the northern Amazon, where seven communities under study – along with one in the jungle region – display variants of communal marriages, controversies arise over the legal recognition of unions without a notarial act, the violation of individual rights such as free will and the collision with principles of gender equality. These conflicts not only question indigenous cultural autonomy, but also expose gaps in the application of legal pluralism, affecting human rights, inheritance, and access to state services [4-7].

The importance of this analysis is to illuminate how Amazonian customary law challenges civil order by omitting essential elements such as full volitional capacity, fostering an urgent dialogue on legislative reforms that balance tradition and modernity. The objective of this review article was to examine the internal marriage regulations of eight native Peruvian communities, of which seven in the north of Amazonas and one in the central jungle region, evaluating their marital manifestations and discussing the contraventions of the ordinary legal framework. In fact, it reveals that, despite the cultural richness of these practices, unresolved tensions persist that demand a hybrid framework to safeguard both indigenous diversity and universal rights.

2. Indigenous Marriage and Servinakuy in the Pre-Inca and Inca Periods

2.1. Marriage

Marriage is the union between a man and a woman who assume a permanent and exclusive commitment, which is naturally fulfilled by having and raising children together, and is renewed through acts that constitute the behavioral component of the reproductive process. Marriage represented the

control by the colonial authorities imposed on sexual practices and the construction of a family model according to the demands of the colonial model [8, 9].

In this context, the institution of marriage constitutes an ancestral heritage recognized in contemporary Peruvian legislation, whose roots extend deep into pre-Inca and Inca history. During the pre-Inca period, the marriage structure presented distinctive characteristics linked to the organization of the *ayllu* as a basic social cell. Marriage was configured through ceremonial rites before the tribal chief of the *ayllu*, regulated by ancestral uses and customs. Thus, the presentation of the *lunchuy* or 'new bride', not only implied a rite of symbolic marriage or fertility [10], but also ensured the social reproduction of the town, since it consolidated the cohesion of the community and the inclusion of a new family whose new members became part of the community's workforce [11]. According to Hernández, the exogamous nature of these unions predominated, through which women from different clans or *ayllus* were sought, possibly motivated by instinctive eugenic considerations or by the rejection of the taboo of bloodshed. This era was characterized by severe sanctions against marriages between close relatives of common origin, evidencing a clear prohibition of incest. The obtaining of wives operated through systems of economic exchange, configuring predominantly monogamous unions whose minimum age varied according to the specific regulations of each clan. The family structure functioned as an economic unit, manifesting patriarchal patterns in the Peruvian south and matriarchal patterns in the north [12].

In the Inca period, although the marriage bond lacked sacramental connotation in the Western sense, its legal effectiveness derived from family consent. Once the Inca Empire was consolidated, marriage acquired relevance as a matter of State at the social level. Chronicle sources provide unanimous testimony that these ceremonies frequently involved the collective participation of the *Ayllu group*. The procedure operated through the acquisition of the bride, where the suitor gave a gift to her father, while the curaca – chief and representative of the monarch – limited himself to registering the agreement between the contracting parties [13].

Basadre documents that sexual union was achieved through the purchase of the bride or the exchange of goods, the price of which fluctuated according to the social status of the woman, expressed in *auquénidos*, *chicha*, *ají* or other goods of relative contextual value. The union between people of the opposite sex was established with family consent and was conceptualized as indissoluble. Among the common population, marriage took a monogamous form under the guiding principle that each man could have only one wife. The marriage celebration included festivities where all the members of the *ayllu* participated, constituting a formal ceremonial characteristic [14].

Complementing these historical perspectives, contemporary research on marriage and subjective well-being in traditional cultural contexts, such as Wang, Hanafiah, and Ariffina's study of gender disparities in contemporary China, reveals that traditional cultural values continue to significantly influence marital experiences, generating differential benefits according to gender, confirming that the asymmetrical gender structures observed in the Inca marriage, where women assumed complementary roles focused on child care and household chores [15].

Rejas notes that marriage ceremonies were held annually throughout the empire. In Cusco, the Inca personally presided over the ceremony, while in the ayllus of the rest of the territory this function fell to the local authorities. The Inca family was inserted within the ayllu, a social organization made up of family groups residing in the same territorial district. Within this structure, men assumed primary responsibility for agricultural work and, consequently, directed both the family unit and the ayllu organization. Women participated in complementary activities, with primary responsibility for child-care and household chores. Hernáñez identifies the contemporary persistence of ancestral practices, evidenced in the current custom among indigenous peoples where the groom gives gifts to the bride's family, a practice known as *rimayucuy* or marriage by purchase [16].

2.2. Trial Marriage or Servinakuy

Hernáñez documents that the *servinakuy*, or Andean family union, probably dates from the pre-Inca period, surviving the cataclysm of the conquest and three centuries of colonial domination, persisting to the present day as a real and operational institution. The *servinakuy* was a premarital institution where couples lived together for six months to a year, allowing mutual compatibility to be evaluated before formalizing the marriage bond [17].

The etymology of the term presents ambiguities that explain the diversity of the word. *Servinakuy* is a hybrid Spanish-Quechua expression, composed of the Spanish verb "to serve" and the Quechua term "nakuy", a conjunction that expresses the concept of "to serve each other", alluding to the reciprocal services that both genders provided through this premarital union [18].

This institution is also called *tincunakuspa*. Dr. Carlos Romero analyzes this denomination by deriving it from two Quechua words: *tincuna/cusgna* (to unite, to ally), *tinku* (the union of two) and *tinkuni* (to meet). Among the Aymara people, the expressions *tinkusiu* or *tinkusiña* express harmony between two people [19].

The *Tempera*, according to Ella Dunbar, is a pre-Inca custom that survived during the Inca Empire and continues to be practiced in numerous contemporary localities [20]. Luis Baudin places the *servinakuy* in the time of the Inca Empire, arguing that this type of union was achieved by agreement with the

woman's parents, who considered the request for a "probationary period" honorable [14].

According to Basadre, the *servinakuy*—also called *rimayucuy* in the Cusco Andes—constitutes what is conceptualized as a trial marriage. It does not represent an isolated legal institution but a gradual process in the family life of the couple, configuring itself as a form of sexual union characteristic of an initial stage within a ritual set related to the temporary union of people of different genders [14].

This perspective of marriage as an evolutionary process that integrates premarital phases is supported by contemporary research on relational development. Park and Harris, in their analysis of social-emotional skills and quality of marital romantic relationships, demonstrate that gradually developed relational competencies—including emotional awareness, regulation, and empathy—are associated with favorable marital outcomes, mediated by commitment. Likewise, Tang and Wu, researching family history and romantic experiences in China, show that premarital romantic experiences can promote social inclusion by influencing attitudes towards love and marriage, particularly among men from diverse socioeconomic strata. These contemporary findings suggest that the Inca *servinakuy* could have operated functionally as a mechanism for the development of relational competencies and assessment of compatibility, anticipating modern understandings about the importance of premarital experiences in the formation of stable marriage bonds [21, 22].

3. Peruvian Multiculturalism: The Existence of Customary Law

3.1. Multiculturalism

Article 2, paragraph 19 of the Peruvian Constitution establishes that ethnic and cultural identity constitute fundamental rights, which is why the State recognizes and protects the ethnic and cultural plurality of the nation [23]. This recognition configures Peru as a multicultural country. In this context, multiculturalism represents, from a certain perspective, the complex and dynamic coexistence of different rationalities, different worldviews and different ways of living or constructing time and space, where each culture has its own unique notion of the universal [24].

In the context of liberal democracies, ethnic groups with different religious and cultural beliefs, and with different, often opposed, value systems, demand equal opportunities to exercise their rights and lifestyles as resident members of society [25].

Guerra argues that adhering to multiculturalism transcends the mere perception of fellow citizens from other latitudes as an alien otherness. In a multicultural homeland, diverse cultures coexist, where several of the cultures that are perceived as isolated request their incorporation into the complex society called the State. Currently, through the study of other cultures,

guidelines for their inclusion and integration are perceived and should be established, constituting the basis for the incorporation of numerous rural and indigenous communities [26].

Reflection on multiculturalism demands moving towards interculturalism, which recognizes the differences between people and groups, as well as their affinities, the ties that unite them and tolerance towards shared rights and values, thus helping to generate responses where a multiculturalism without limits or a rigid national civility can have difficulties [27]. It also includes the rules of coexistence already legitimized and accepted, through predictive links through personality traits, mediators that include attitudes, subjective norms and perceived behavioral control, intention of intercultural behavior and real intercultural behavior [28].

This conceptualization of multiculturalism as a complex phenomenon that requires public policies finds foundations in contemporary research on the intersection between culture, gender, and normative frameworks. Maitra, in her reflective ethnography on intercultural healing, evidences how integrative therapeutic practices must emerge organically from local rituals of sociability to be effective, illustrating that culturally competent care transcends mere tolerance to become embodied reintegration [29]. This anthropological finding underscores the need for multicultural public policies in the Peruvian context not to be limited to formal recognition, but to facilitate integration mechanisms that respect local cultural particularities.

With respect to local governments, in accordance with article 82, paragraph 20 of Law 27972 "Organic Law of Municipalities" which regulates education, culture, sports and recreation, specific powers are established shared with the national and regional governments: to promote the consolidation of a culture of democratic citizenship and to strengthen the cultural identity of rural, indigenous and Afro-Peruvian populations [30].

3.2. Common Law

According to Silva, customary law, also called "indigenous law" or "legal custom", has a limited scope in the legal system, being nothing more than the law of a society not recognized as equivalent to national state law. The concept of custom is used separately from official law, and the fact that custom has corresponded to originally dominated societies minimizes it, as does its frequent particularity limited to small ethnic groups [31, 32]. Seen in this way, customary law constitutes a partial recognition of different cultures, and its consideration represents practically a concession [33].

The tension between customary law and state law observed in the Peruvian context finds significant parallels in other Latin American jurisdictions. Domínguez Riquelme and Alvarado, in their analysis of the application of forced marriage in Mexican indigenous communities during 2015-2019, document how practices adopted as uses and customs in indige-

nous communities generate continuous human rights violations, particularly affecting women and children. This research reveals that such vulnerable groups lack the capacity to eradicate harmful practices, evidencing that the Mexican State fails to comply with international conventions for the protection of women and children due to deficiencies in public and economic policies. Similarly, Castro Pabón, in her legal analysis of marriage in Wayuu indigenous communities from the universal human rights system, identifies that indigenous women face triple discrimination – for being women, indigenous and predominantly poor – deepening their experience of oppression. Castro Pabón documents that in marriages officiated in the Wayuu community, the impossibility of women to refuse to marry and the social consequences derived constitute an infringement of the Universal System of Human Rights, especially violating freedom, equality, dignity and physical and moral integrity. These comparative results underline that the tension between customary law and universal human rights is not an isolated phenomenon of the Peruvian context, but a cross-cutting challenge in Latin America that demands hybrid legal frameworks capable of safeguarding both cultural diversity and fundamental rights [34, 35].

3.3. Legal Pluralism

Legal pluralism is perceived as the coexistence of several legal systems or forms of justice within a country, respecting the ethnic and racial multiculturalism of the territory. In all the social areas examined, there is an apparent multiplicity of legal orders. Other forms of law exist in many societies, such as indigenous law, customary law, religious law, and the law of distinct ethnic or cultural communities. Legal pluralism refers to the coexistence of more than one legal system in a society. The term can be used in two ways. Legal pluralism refers to the recognition by state law of the customary law of particular groups, as in the case of colonial legal pluralism. Empirical legal pluralism refers to the situation in which an actor's conduct is subject to more than one set of rules [36-38].

As a result of the study and concern for the indigenous reality, a trend is promoted towards the recognition of legal systems parallel to the official or state system, such as the indigenous system. For Yrigoyen, legal plurality implies the coexistence, within the same state space, of diverse systems of social regulation and conflict resolution based on cultural, ethnic, racial, occupational, historical, economic, ideological, geographical, and political issues, or on the diverse location of social actors within the social structure [26, 39].

The practical implementation of legal pluralism in the Bolivian context, analyzed by Zegarra Argandoña in his study on the notarial function in the contexts of indigenous and original peasant peoples within the plurinational constitutionalism of Bolivia, reveals significant deficiencies in compliance with specific regulatory frameworks that affect indigenous communities by limiting their access to and understanding of the no-

tarial system. This evaluation shows that the formal recognition of legal pluralism requires concrete institutional mechanisms that operationalize the coexistence of normative systems, a challenge that the Peruvian context also faces in the articulation between indigenous customary law and the state legal system [40].

3.4. Indigenous Peoples

According to Guerra, various terms have historically been used to refer to Indigenous Peoples, whose rights are protected by the International Labor Organization (ILO) Convention No. 169. Different national and supranational legislations use terms such as natives, indigenous peoples, indigenous communities or groups, ethnic groups, indigenous populations and minorities. ILO Convention No. 169 adopts the concept of indigenous peoples, establishing a direct relationship with peasant and native communities, which effectively constitute indigenous peoples. For a considerable proportion of people, the meaning of the concepts of Indigenous Peoples, Peasant Communities and Indigenous Peoples, as well as the scope of their special jurisdictional competences, is unknown. It is therefore important to specify that, in the case of peasant and indigenous communities, it is their leaders who exercise jurisdictional powers, provided that they are representative and legitimate. In addition, it should be noted that these limitations — especially those relating to respect for fundamental rights — are provided for in Convention 169, article 8, paragraph 2, which provides that indigenous peoples have the right to maintain their own customs and institutions, provided that they are not incompatible with fundamental rights defined by national law or internationally recognized human rights. Similarly, where appropriate, they should have procedures in place to resolve conflicts that may arise in the application of this principle [4, 26, 41].

The recognition of the collective rights of indigenous peoples and their autonomous exercise is evidenced in Territorial Ordinance No. 08-2023-GTAA-I of the Awajun Autonomous Territorial Government, which declares the need to implement article 262 of the Civil Code on the celebration of marriage in native Awajun communities to be of collective interest. This ordinance, based on the right to self-determination recognized in various human rights treaties and on the powers established in the Statute of the Awajun Autonomous Territorial Government, exemplifies the concrete exercise of indigenous normative autonomy. The document points out that "the precedent set by the Constitutional Court in the judgment of the Tres Islas case, in its ground 23, clarifies that indigenous peoples with their own customs have their own forms of creation of rights," recognizing that its vision is based on the right to self-determination of indigenous peoples, in accordance with articles 3 and 4 of the United Nations Declaration on the Rights of Indigenous Peoples. This ordinance is particularly relevant in that it establishes in its third article that "all marriages,

within the original Awajun nation, shall be based on the mutual will of the contracting parties, preventing forced marriages that could prejudice the right of women to their dignity and happiness," demonstrating that indigenous autonomy can be articulated with the protection of fundamental human rights, especially women and girls [42].

3.5. Rural and Indigenous Communities in Peruvian Legislation

The terms Indigenous Community, Rural Community and Native Community refer to the same entities. The native community and the rural community are understood as one of the oldest forms of organization, being mainly located in rural areas. The Rural and Native Communities constitute the traditional cells still in force in Peru. Peasant communities (formerly Indigenous Communities) are based on pre-Inca institutions, which were the cornerstone of the organization of the Tahuantinsuyo Empire. Originally, the 1920 Constitution, considered the constitutional pillar for communal rights, recognized the legal existence of indigenous communities. Subsequently, article 207 of the 1933 Constitution also dealt with indigenous communities by granting them existence and legal capacity [23, 43-45]. In the same way, article 71 of the Civil Code of 1936 established the obligation for indigenous communities to be included in a special registry. Later, in 1969, through statutory regulation, the term "indigenous" was abolished and replaced by "rural communities", defining them as a congregation of families that claim and identify with a specific territory, united by common social and cultural reasons, community work, mutual aid and, basically, activities related to agriculture. The 1979 Constitution incorporates the new name and establishes in article 162 that the State promotes the integral development of rural and indigenous communities. Rural communities are those located in coastal and mountainous areas, and native communities are those located in jungle areas [46]. This type of organization is characterized by the preservation of cultural traits, the maintenance of its own distribution of resources, democratization, reciprocity and control of its territory. Its main activities are agriculture and livestock, without excluding others such as crafts, trade, goldsmithing and weaving [47].

Meanwhile, in the current 1993 Constitution, the recognition of Peasant and Indigenous Communities is not only based on their legal status, but also on their recognition and power to apply customary law through communal authorities within their communal area, albeit with limitations. In turn, article 134 of the Substantive Code establishes that the Peasant and Indigenous Communities, as traditional and stable organizations of public interest, are constituted by natural persons whose objectives are aimed at the best use of their assets for the general and equitable benefit of the members of the community, promoting their integral development. It is necessary to mention that the law only recognizes duly registered com-

munities as institutions, which makes their registration necessary to enjoy the benefits offered by the supreme law.

The historical evolution of the recognition of indigenous communities in the Peruvian legal system finds significant parallels in other colonial and postcolonial Latin American jurisdictions. Mullor, in his analysis of marriage in the Indies, documents that "since the fifteenth century the Indians have been equated with the Spaniards, so they must be persons of free legal status," although it was not until the Junta of 1542, with the drafting of the New Laws of the Indies, that the natives were recognized not only as vassals of Castile, but also as vassals of Castile. but the ability to be able to govern themselves. Mullor Cabrera identifies that the New Laws, as a means of protecting the natives, established that the lawsuits of the Indians should be summary and respect pre-Columbian uses and customs, with the "General Protectors" or "Protectors of Indians" being in charge of ensuring that the natives received special treatment and protection both in lawsuits and in other institutions of the New World. In a complementary way, Borrastero, in his analysis of regulations on marriage and indigenous residence in the Jurisdiction of Córdoba (Gobernación del Tucumán, 1573-1598), documents how Abreu's ordinances of 1576 "legalized" the system of encomiendas of "personal services," authorizing the encomenderos to keep the Indians as vassals, that is, to keep "subject under their jurisdiction" the entire family over which a "dominion" would be established without state control. Borrastero shows that, in the jurisdiction of Córdoba during the early colonial period, the encomenderos and their wives especially valued the work carried out by native women—dedicated, among other things, to the elaboration of fine textile trades—while in the rural area the male indigenous service was more appreciated. This comparative historical analysis reveals that the contemporary tensions between formal legal recognition and the effective exercise of the rights of indigenous communities have deep colonial roots, where the recognition of autonomy historically coexisted with mechanisms of control and exploitation that subordinated indigenous interests to those of dominant groups [48, 49].

4. Peruvian Multiculturalism: The Existence of Customary Law

4.1. Marriage in the Constitutional Framework

In Peru, to refer to marriage in the common sense means to refer strictly to what is established in various national regulations, from the constitutional level to the lower legal level. Based on the latter, there is a civil marriage, which can be celebrated in a notarial or municipal office, and of course without prejudice to the fact that this type of marriage is regulated by the Civil Code.

Articles 4 and 5 of the Peruvian Constitution recognize marriage, establishing the following: the first indicates that the

community and the State protect the family, but also promote the existence of marriage, these institutions being considered natural and fundamental within a society. The second article also provides that the union between a man and a woman forming a *de facto* household gives rise to a regime of community property, provided that such union is free of any impediment to marriage.

However, when talking about marriage, the reference is strictly to the family: an entity known as a private, natural and essential legal institution of society. This institution is natural because it is recognized by the natural law and has an inherent value in law, so it belongs to those things that the written law neither creates nor extinguishes. According to Rubio, when it is stated that it is a fundamental institution of society, it is expressed that it constitutes one of the pillars that sustains it, insinuating that a society without families would be impossible: human socialization would be absent, there would be no security mechanisms, there would be no blood ties, no one would take care of the elderly, and many dead would be in plain sight [50, 51].

The legal protection of the family provided for in Article 4 begins with the adequate legal promotion of marriage, required by the same constitutional provision, thus promoting as far as possible the legal stability of the bond that duly reflects the perpetual and indelible biological connection — inevitably personal, for our fellow human beings — that exists between humans for generations [52].

4.2. Marriage in the Constitutional Framework

It is also pertinent to clarify that family law is not constituted only by the celebration of marriage, but also arises from the *de facto* union provided for in article 326 of the Civil Code. Although the current Constitution mainly regulates the patrimonial effects of such a union, it is clear to jurists that the text recognizes the existence of a *de facto* household. And, naturally, each home is based on the affection of the couple, with the aim of forming a family, sharing goals, projects and values and, in many cases, having children, which gives rise to personal relationships between the members of the family circle. Therefore, reference is made to the naturalness or freedom to form a family outside of marriage.

Specifically, marriage is defined in article 234 of the Civil Code as follows: marriage is a voluntary union between a man and a woman without legal impediments, for the purpose of living together. Within this marriage, both the man and the woman have equal responsibilities, equal rights and duties, and both have authority within the home. In other words, this article establishes equality within marriage, where neither party has more authority or privileges than the other. On the contrary, if there are no impediments, the marriage must be celebrated by the corresponding municipal official, whether provincial or district, depending on the domicile of any of the contracting parties, a provision regulated in the first paragraph of article 248 of the Civil Code.

As mentioned, article 234 of the Civil Code defines the institution of marriage, and this legislative choice is of vital importance, since, in addition to having a central implication, the Peruvian constitutional system considers marriage, together with the family, as a fundamental institution within society [53].

An essential reference for the development of this research is Law No. 31945: "Law that modifies the Civil Code, Legislative Decree 295, to prohibit the marriage of minors". This law modifies articles 241 and 248 of the regulatory body in question, establishing that persons under eighteen years of age cannot marry and that, if the contracting parties are minors, such act will be considered null and void [54].

The problem of child marriage and its regulation finds relevant comparative analysis in the research of Kalam et al. on the role of social norms in early child marriage decisions among parents of married and unmarried adolescent girls in Bangladesh. This study reveals that decisions about child marriage are conditioned by a complex interplay of social norms, prudential reasons, and attitudes, where parents of married girls were more likely to agree on items related to sexuality, autonomy, violence, and religious beliefs. The research concludes that effective interventions must address these interrelated factors to interrupt the cycle of child marriage. This finding is particularly relevant to the Peruvian context, where Law No. 31945 prohibits child marriage, but its effectiveness in Amazonian indigenous communities—where traditional social norms persist that can favor early unions—requires not only legislative modification, but also the transformation of entrenched social norms, a challenge that demands culturally sensitive multidimensional interventions [55].

From the text of the law in question, it can be seen that the institution of marriage is oriented towards cohabitation. That is why Enneccerus unequivocally considered that marriage is strictly the union of two persons of the opposite sex recognized by corresponding law, but that such permission is subject to legal considerations aimed at establishing a community of life. From this it can be concluded that the purpose of marriage is not only to enjoy or enjoy married life, but also to form an alliance so that life between both people is much better and they can develop mutually [56].

Although since the entry into force of the substantive law of 1984, the marriage could only be celebrated before the district or provincial mayor, this situation changed with the publication, on December 15, 2022, of Organic Law No. 31643 in the Official Gazette El Peruano. This law empowers notaries to celebrate civil marriages and gives them the same authority as provincial or district mayors, meaning that marriages celebrated by notaries have full legal effect [57].

That is why part of the State's policy is to encourage people to marry, but to achieve this, it is done through advertising, promotion and, of course, convincing or presenting to the population that marriage is an appropriate way to form a family as the basis of society. The Constitution establishes or enshrines this principle of promotion, but the basis of this is to

convince people to get married, which indicates that it is a quick and simple process, but it is also based on preserving this marriage so that it is not dissolved [58].

The conceptualization of marriage as a solemn contract in the Peruvian Civil Code raises relevant dogmatic questions analyzed comparatively by Naranjo and Núñez in the Ecuadorian context, who conclude that, although marriage could present similarities with the notion of directed contract, in reality it is not, since the source of its obligations is not contractual, but legal. They argue that marriage constitutes a legal transaction that simply modifies the civil status of a person, and only as a consequence of this new status do the spouses acquire obligations directly derived from the law. This dogmatic reflection is pertinent to the analysis of native marriage in the northern Peruvian Amazon, where the conceptualization of marriage transcends the individualistic contractual logic of civil law to be inserted into community frameworks where the marriage bond has collective, ritual, and cosmogonic dimensions that can hardly be reduced to the structure of a contract between individuals. once again evidencing the tension between Western legal categories and indigenous socio-cultural realities [59].

5. Marriage in the Native Communities of the Northern Peruvian Amazon

According to article 149 of the Constitution, the authorities of the Native and Peasant Communities have the power to exercise their own jurisdiction within their territorial scope, clearly based on customary law. Therefore, in order to understand how marriage is celebrated in the native communities of the northern Peruvian Amazon, it is essential to know what native peoples are from a legal perspective. In this sense, peasant and indigenous communities constitute institutions recognized in article 89 of the Peruvian Constitution. They consist of groups of collective subjects whose origins can be traced back to the indigenous peoples who initially inhabited the territory of Peru. Peasant and indigenous communities existed before official recognition by the State. Although constitutional acceptance is recognized as dating back to 1920, its presence has been recognized since earlier times in history, as well as in the current de facto situation.

While it is true that marriages can be celebrated under ordinary law, as explained above, they are also celebrated in the native Amazonian communities of northern Peru, but it is no longer the mayor or the notary who officiates, but the authority of each community. However, the most important thing is to clarify who can marry. Although both ordinary and customary law do not prevent two adults from marrying, the problem arises within customary jurisdiction when it allows people of different ages to marry, i.e., when the man is of legal age and the woman is a minor. This raises the following questions: why is it permissible under customary law for a woman who

has not reached the age of majority to marry? How is the capacity for discernment justified in customary law, which according to ordinary law is acquired when reaching the age of majority or reaching the age of 16? And in general, what is the discrepancy between ordinary law and customary law when the latter allows marriage between a man over 18 years of age and a woman who has not reached the age of majority?

The problem of the capacity to marry in contexts of legal pluralism has been analyzed from various doctrinal perspectives. Hidalgo, in his study on capacity and suitability to marry, addresses the uneven, if not incoherent, legal evolution of the regulation of the capacity to marry, referring to the past and present of the institution of marriage and covering issues such as impediments, the capacity to contract marriage and the forms of celebration. Despite the evolution in the social perception of marriage, which in some aspects has been evidenced legislatively through the stripping of a good part of its traditional characteristics, the survival of certain ideas that can only be described as reminiscences of the past is perceived. This reflection is particularly pertinent to the Peruvian Amazonian context, where marital capacity is defined from customary logics that can radically diverge from the standards of civil law, generating unresolved tensions on the protection of the fundamental rights of girls and adolescents [60].

These questions will be answered in the development of this article, but first the legal regulation of marriage in the rural communities of northeastern Peru will be addressed, and then the discussion itself on the antagonism between customary law and ordinary law will be focused.

5.1. Rules Governing Native Communities

The regulation of native communities is subject to various regulations, from the global to the local level. First, at the international level, there is ILO Convention 169 on Indigenous and Tribal Peoples, which clearly states in its first article: this convention applies to all tribal peoples belonging to independent countries, who have social, economic and cultural conditions, provided that such conditions are different from those of the rest of the national population and are regulated by their own customs or special legislation.

Second, at the Peruvian state level, starting from a constitutional level and then addressing lower-ranking regulations. On 2 December 1993, by Legislative Resolution No. 26253, the Peruvian Democratic Constituent Congress (CCD), in the exercise of its powers, resolved to approve ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, adopted on 27 June 1989. In the Political Charter of Peru, the Native Communities mentioned in articles 89 and 149 are found, the first of which recognizes the Native Communities as legal entities with legal existence; but it also adds that they have absolute autonomy to organize, either in work or in the use of their land. They also have autonomy in economic and administrative matters, and the State is obliged to respect their cultural identity. On the other hand, article 149

of the same set of laws regulates and recognizes the jurisdictional functions of the indigenous communities, always within their territorial scope in accordance with customary law and with the support of peasant patrols, and most importantly, without violating or resorting to the violation of fundamental human rights.

The practical implementation of these indigenous jurisdictional norms presents significant challenges documented in other Latin American jurisdictions. As evidenced earlier in Zegarra's analysis of the notarial function in the contexts of indigenous and original peasant peoples within Bolivia's plurinational constitutionalism, there are significant deficiencies in compliance with specific regulatory frameworks that affect indigenous communities by limiting their access to and understanding of state legal systems. Similarly, Territorial Ordinance No. 08-2023-GTAA-I of the Awajun Autonomous Territorial Government represents an indigenous institutional effort to articulate the recognition of marriages celebrated according to their own customs with the state legal system, seeking that marriages celebrated in the communities – valid within the indigenous territory – obtain recognition outside it through the implementation of Article 262 of the Civil Code that allows the celebration of the civil marriage in peasant and native communities. This ordinance evidences the tension between internal community validity and external state legal recognition, a central problem in the analysis of native Amazonian marriage [40, 42].

There are also laws hierarchically inferior to the constitution that regulate indigenous communities, such as Law 22175, "Law on Indigenous Communities and Agrarian Development in the Jungle and the Edge of the Jungle", which in article 7 specifies that indigenous communities have legal existence and also legal status, both recognized by the Peruvian State [61].

There are also the norms that govern Indigenous Communities in the Peruvian Civil Code of 1984, where in the first book entitled "Rights of the Person" in "Section Four: Peasant and Indigenous Communities", article 134 prescribes the definition and purposes as follows: Peasant and indigenous communities are organizations of a traditional and stable nature, with public interest, but they are also constituted only by natural persons, and their purposes are oriented or directed to the appropriate use of their assets, but with the sole intention of providing a general and equitable benefit, so that they can develop in an integral way. In addition, article 135 of the same code recognizes the legal existence of native communities, but for this existence to be recognized, it is necessary that they be officially recognized, which is an additional requirement for their registration in the public registries.

The definition of communities prescribed by the code includes only a few characteristics common to other legal entities that are also covered by the civil law system, such as their form of organization, their stability, and their economic purpose, with the intention of making the most of their assets and

promoting comprehensive development. However, it is accepted that peasant and indigenous communities constitute a cultural, economic and social reality, characteristics that in reality go beyond what is described in Article 134 of the Civil Code [62].

5.2. Communal Marriage Protected by the Constitutional Framework of Customary Law

Although the constitutional law does not expressly regulate marriage in rural communities, article 89 implicitly recognizes that indigenous communities have autonomy in administering their internal affairs. This autonomy includes the preservation of its own cultural identity, which the State is obliged to respect. In this sense, it can be argued that these communities have the authority to celebrate marriages in accordance with their customs, always with the authorization of their traditional authorities, known as *Apus*, who constitute the highest communal authority.

The celebration of marriage according to its own ritual forms in diverse cultural contexts has been the subject of analysis from the perspective of private international law. Lorente, in his study on verbal marriage and divorce without judicial intervention analysing a crossing from Smara to Alicante, examines the consequences of a judicial decision that denies exequatur to a divorce processed without judicial intervention in Western Sahara, where the couple married verbally according to the ritual of the tribes of the area. Lorente analyzes the applicable legislation, the rigidity of the Spanish procedural rules and the axiological lacuna that this poses. This comparative analysis is pertinent to the Peruvian Amazonian context, where marriages celebrated according to verbal and ceremonial rituals typical of native communities frequently lack formal recognition outside the territorial scope of the community, generating situations of legal insecurity for the spouses with respect to property, inheritance and filiation rights [63].

However, this autonomy cannot justify the celebration of marriages involving minors under sixteen years of age. Moreover, such a practice cannot be protected by customary law, as it contravenes the principle of the best interests of the child, considering that children lack the full capacity to properly evaluate their decisions.

The problem of forced marriage and child marriage has been recognized as a serious violation of human rights in multiple international jurisdictions. Abrisketa, in its analysis of forced marriage as a crime against humanity in light of the Ongwen case, documents that in 2022, the International Criminal Court (ICC) convicted Mr. Ongwen. The ruling was considered a milestone in ICC jurisprudence for having assessed the commission of gender-based crimes, including forced marriage, that had never before been litigated before the Court. Although the Rome Statute does not expressly include forced marriage among crimes against humanity, the Court called it

an "inhuman act of a nature similar to those enumerated in article 7 of the Rome Statute concerning crimes against humanity." This international jurisprudence establishes standards on the seriousness of forced marriage, particularly when it affects minors who lack full volitional capacity to freely consent to the marriage union [64].

In addition, research on cultural communication strategies in the prevention of child marriage in regions with strong cultural resistance, developed by Putri et al., demonstrates that child marriage persists due to strong cultural values, social norms and ethnic influences, compounded by inadequate strategic cultural communication. The findings confirm that decisions about child marriage are conditioned by complex interplay of social norms, prudential reasons and attitudes, requiring effective interventions to address these interrelated factors to interrupt the cycle of child marriage. This analytical framework is applicable to the Peruvian Amazonian context, where the persistence of early marriages in native communities responds not only to isolated cultural practices, but also to complex structures of social norms, perceptions of sexuality, autonomy and gender roles that demand culturally sensitive and not merely punitive interventions [65].

The tension between indigenous cultural autonomy and the protection of the fundamental human rights of girls and adolescents poses complex hermeneutical challenges that require careful consideration. As previously documented in the analysis of Territorial Ordinance No. 08-2023-GTAA-I of the Awajun Autonomous Territorial Government, this indigenous regulation establishes in its third article that "all marriages, within the Awajun original nation, shall be based on the mutual will of the contracting parties, preventing forced marriages that could harm the right of women to their dignity and happiness." This provision shows that indigenous normative autonomy itself can be articulated with standards for the protection of human rights, particularly with respect to the voluntary nature of marital consent and the prohibition of forced marriages. However, the issue of the minimum age of marriage and the volitional capacity of minors to validly consent remains an area of unresolved tension between customary law and ordinary law, calling for hybrid legal frameworks that respect both cultural diversity and the inalienable fundamental rights of indigenous girls and adolescents [42].

6. Materials and Methods

The research employed a qualitative exploratory-descriptive design, combining normative documentary analysis with oral testimonies of indigenous settlers to examine the tensions between customary law and civil law in the context of native marriage. The methodological approach integrated the systematic review of specialized legal literature with the direct collection of community narratives, allowing a holistic understanding of indigenous marriage practices and their legal implications.

The study focused on eight native Peruvian communities:

seven located in the northern Amazon, predominantly of the Awajun and Wampis ethnic groups, and an additional community in the central jungle region of Peru. The selection of these communities responded to criteria of geographical accessibility, available historical documentation on their customary marriage practices, and willingness of the communal authorities to participate in the research.

The period of analysis spanned from 1970 to 2025, incorporating significant Peruvian constitutional reforms (Constitutions of 1979 and 1993), the ratification of ILO Convention 169 through Legislative Resolution No. 26253 of 1993, and the recent Law No. 31945 that prohibits the marriage of minors, and indexed scientific articles that have addressed the subject matter of research.

The primary data collection consisted of semi-structured interviews with fifteen indigenous settlers, aged between twenty-five and seventy years, selected through purposive sampling that ensured diversity of age, gender, and community roles. The interviews were conducted during field visits, in the corresponding native languages (Awajun, Wampis) with the support of community interpreters when necessary, and subsequently transcribed into Spanish.

The interview protocol included thematic axes on: a) traditional procedures of marriage celebration in the community, b) customary criteria of age and capacity to marry, c) community authorities competent to officiate unions, d) perceptions about the state recognition of communal marriages, e) tensions experienced between customary and civil norms, and f) known cases of legal conflicts arising from native marriages.

Informed verbal consent was obtained from all participants, explaining the objectives of the research, the academic use of the information, and guaranteeing anonymity by assigning alphanumeric codes to each testimony. The interviews were recorded through audio recordings with the express permission of the interviewees, respecting the customary restrictions on sensitive information that some communities established.

Secondarily, a systematic review of legal and academic documents available in public repositories and specialized databases was carried out. Documentary sources included: a) relevant international regulations, b) Peruvian constitutional and legal regulations, c) relevant jurisprudence of the Peruvian Constitutional Court and Judiciary on indigenous jurisdiction and customary rights, d) publicly accessible indigenous territorial ordinances, e) technical reports of state entities, and f) specialized academic literature on legal pluralism, indigenous marriage, and human rights in contexts intercultural.

The documentary selection criteria included: direct thematic relevance to indigenous marriage and its contrast with the Peruvian Civil Code, no older than 55 years to capture contemporary regulatory developments, ethical accessibility in public repositories or through express community authorization, and verifiability of the source. Multiple triangulation was prioritized, requiring at least two independent sources for each factual statement about marriage practices or normative pro-

visions. Unverifiable materials, documents of dubious provenance, and those with manifest political biases that compromised the objectivity of the analysis were excluded.

Access to internal community documents (minutes of assemblies, customary marriage records, resolutions of traditional authorities) was significantly restricted by the communities' own customary laws, which protect the confidentiality of internal affairs from outsiders. Consequently, the documentary review was limited to open sources explicitly authorized by the communal authorities, respecting indigenous autonomy over their internal archives.

The data collected were processed using manual thematic qualitative analysis. Transcripts of interviews and normative documents were reviewed by iterative reading, identifying units of meaning relevant to the research objectives.

The oral testimonies were analyzed through a hermeneutical narrative approach, identifying recurrent patterns in community experiences, tensions expressed between normative systems, and perceptions of the legitimacy of both legal orders. The reports were systematically contrasted with normative provisions, identifying convergences, divergences and normative gaps.

Methodological triangulation was a central strategy to strengthen the validity of the findings, systematically cross-referencing: a) oral testimonies of multiple participants from different communities, b) state and indigenous normative documents, c) constitutional and ordinary jurisprudence, and d) national and international specialized academic literature on indigenous marriage in contexts of legal pluralism. This triangulation made it possible to identify consistent patterns, resolve apparent contradictions, and contextualize findings within broader theoretical frameworks.

The research rigorously adhered to ethical principles contained in the Declaration of Helsinki for Research with Human Subjects, the Law on Prior Consultation (Law No. 29785), verbal authorizations from community leaders (Apus, traditional authorities), and verbal, culturally appropriate consent. Finally, all interview transcripts were anonymized, assigning alphanumeric codes to the participants, where customary restrictions on access to sensitive information were complied with without question, limiting the scope of the research to those aspects that the communities expressly authorized to disclose.

7. Results

7.1. Communal Marriage Regulated by the Rules of the Native Communities of Northeastern Peru

In order to facilitate the geographical contextualization of the communities under study, cartographic representations are provided that illustrate their territorial location. [Figure 1](#) presents the location of the department of Amazonas within the

Peruvian national territory, evidencing its position in the northeastern region of the country, adjacent to the Ecuadorian border. Figure 2 details the location of the province of Condorcanqui, characterized by its vast jungle territorial extension and its significant demographic concentration of Awajun and Wampis indigenous peoples. Figure 3 shows the province of Bagua, which has geographical characteristics of transition between the Andean and Amazonian regions, also housing native communities with current customary practices in matrimonial matters.



Figure 1. Department of Amazonas - Peru.

Accessibility to Community regulatory instruments was conditioned by the restrictions that the communities themselves establish on internal documentation, in the legitimate exercise of their jurisdictional autonomy. Consequently, the analysis is based on those statutes, internal regulations and territorial ordinances that the communal authorities expressly authorized to share for academic research purposes, complemented by oral testimonies on customary marriage practices not necessarily codified in written documents, but operationally in force in the regulation of community family relations.

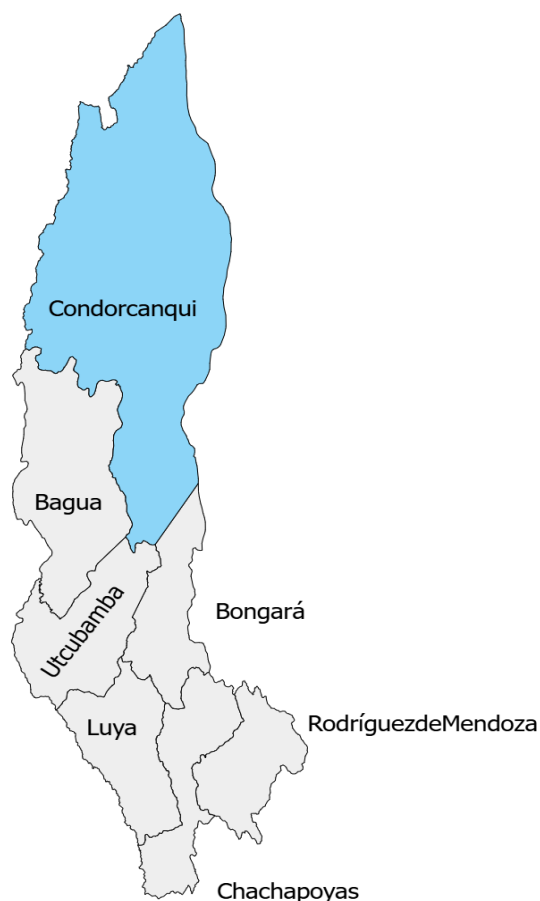


Figure 2. Condorcanqui Province - Amazonas Department.



Figure 3. Imaza District - Bagua Province - Amazonas Department.

7.1.1. Native Community of Huaracayo (Amazonas, Condorcanqui)

This Native Community regulates marriage in its internal regulations, specifically in Article 30:

Article 30. Marriages celebrated in the community require men to be at least twenty years old and women at least eighteen, with the prior presentation of a national identity card.

Men can marry from the age of eighteen and women from the age of fifteen, with the prior authorization, consent and responsibility of their parents [66].

7.1.2. Native Community of Cayamas (Amazonas, Condorcanqui, Santa María de Nieva)

This is provided for in the internal regulations of the community and can be found in the following articles:

Article 16. Young people under the age of 18 who wish to form a household will not be allowed to do so. The authorities, with the consent of the couple's parents, can declare them boyfriend and girlfriend until they reach the age of 18. The same acts must be carried out through the Law of Agreements. However, they are required to complete their secondary education in accordance with Article 15-b of the Community Statute of the Native Community of CAYAMAS.

Article 17. For a person from another community who wishes to marry an unmarried woman from the Native Community of CAYAMAS, the president of the Community must request:

- 1) Proof of good conduct of the groom, issued by his highest authority.
- 2) A guarantor (parent or another close relative).
- 3) Proof of reaching the age of 18 (non-students and students commit to completing their secondary education)
- 4) The groom must have full knowledge of child care. Taking care of his wife, being a professional or worker with human qualities, knowing medicinal plants, taking care of his in-laws, all the tasks of an adult man, among others. The same goes for women. She knows all the tasks of a woman, she takes care of her husband, she takes care of her children, she takes care of and cleans the house and domestic animals, she knows contraceptive plants, among other things.
- 5) Once all the requirements have been met, they can get married without difficulty.

Forms of marriage: once the requirements for marriage have been met, marriages are celebrated in the presence of the parents of the bride and groom and the community authorities, and the marriage is celebrated with the signing of the marriage certificate. The EU authority will issue a marriage certificate.

Article 18. If the bride's parents have married their minor child without the knowledge of the community authorities, all acts performed will have no legal relevance, i.e., marriages must be celebrated in the presence of witnesses, especially the parents of the bride and groom, and by the community author-

ities. If the parents do so without the knowledge of the authorities, they will be severely punished with 36 hours in prison and a fine in favor of the community in the amount of five hundred (500.00) and 001100 *nuevos soles*.

7.1.3. Wawik - Native Community of Nuevo Belén (Amazonas, Bagua, Imaza)

This is provided for in the internal regulations of the community and can be found in the following articles:

Article 004.- The union of a man and a woman free of marital impediments that form a *de facto* home gives rise to a community of property subject to the regime of the society as appropriate.

Article 005.- The woman or man who contracts marriage must marry in the presence of the Chief or Vice-Apu of the place where the woman resides.

- 1) If they are Christians, they will be married in the Church, in the presence of the pastor and his Board of Directors, and they will request the Vice Apu and invite the Chief.
- 2) The drafting of the marriage certificate will have a value of S/ 50.00 *nuevos soles*.

(.....)

Article 018.- Minors under 18 years of age may not marry, even if their relatives wish to do so.

Article 019.- If a marriage is celebrated, the agreement of the father shall be recorded by the community leader in a certificate.

a.- Persons who have committed to be married before the Community Authority office and have not complied after more than 3 consecutive months will be called to the attention of the Chief's office, along with both parents, so that they can coordinate. Otherwise, the wayward young man will be punished with 3 weeks and fined 30 days of work.

Article 20.- The requirements for marriage are as follows

- 1) Identification cards of both parties
- 2) Birth certificates of both parties.
- 3) Be 18 years old.
- 4) Proof of address, issued by the APU of the community.
- 5) Proof of good health, issued by health personnel.
- 6) Proof of good conduct issued by the APU of the community.
- 7) Each party to the marriage must present two witnesses of legal age who have known them for at least three years, who will testify under oath as to whether or not there is any impediment to the marriage.

Article 21.- The person who marries must make his marriage public and inform the Head of the Community. Failure to comply with the established requirements will be punished with 6 days in jail.

Article 22.- When a mestizo marries a native woman, he must submit to the Regulations of the Community; otherwise, the community will decide where to live.

(.....)

Article 50.- Young people may not marry until they have their personal documents and while they are still studying. A

young person who has completed his secondary education cannot marry until he has all his documents.

7.1.4. Wawik - Chapi Indigenous Community (Amazonas, Bagua, Imaza)

This is provided for in the internal regulations of the community and can be found in the following articles:

Article 1. Marriage: the union between a free man and a free woman, without impediment to marriage, who form a de facto household, gives rise to a community of property subject to the regime of co-ownership of property, applicable under customary law, provided that this does not violate the fundamental rights of individuals.

Article 2. The marriage union will be formally carried out by the municipal agent and the communal authorities.

Subparagraphs

- 1) Those who meet the requirements issued by the agency will be married by the communal authorities of its annexes.
- 2) Those who do not meet all the requirements to marry will not be married by the municipal agent.

Article 3. Marriage will continue from the age of 20 for men and 15 for women.

- 1) Women who are still in school (primary or secondary) will not be allowed to marry.
- 2) In the case of early pregnancy, the parents will be determined in accordance with the regulations.

Article 4. Those who wish to marry must be of legal age or widowers and of good character; otherwise, their marriage will not be accepted.

- 1) Parents who are aware of the negative behavior of the young man and/or the man to whom they hand over their daughter will be arrested in accordance with the section of the section.
- 2) Similarly, knowing the rules, if the father arrogantly hands over his daughter, the deputy chief will denounce him and arrest the mother for 15 days in jail.
- 3) If they are evangelical brothers and sisters, they will be married in a church ceremony and then go to the deputy chief and/or municipal agency.
- 4) If they come from other annexes or if the girl is to be presented to the community, when the father of the girl applies for marriage, he shall submit the application to the authority, which shall request a document specifying the conduct of the interested party from whom the man comes.
- 5) *Mestizos (Apash)* who wish to marry Awajun women from the community must commit to a document guaranteed by their relatives and the competent authorities.

Article 5. Individuals forming a household in another community must register directly without giving a deadline to indicate where the girl's parents belong.

Anyone who gets married in the community will be supported by community members in terms of cooking services and other activities.

Article 6. The people in the annexes will not be obliged to carry out public works in their village because they have already left their annex. With a period of 12 months.

Article 7. Anyone who wishes to get married must meet the following points:

- 1) Agape love
- 2) Romantic love
- 3) Amor fraternal
- 4) Love language.

Those who are committed and practice the four aspects of Article 7 but do not comply will be removed, and justice will not advance.

7.1.5. Wawik Native Community (Amazonas, Bagua, Imaza)

This is provided for in the internal regulations of the community and can be found in the following articles:

Article 38. Requirements for a de facto marriage:

(...)

- 1) Submit a request addressed to the *APU* of Annex requesting that a date and time be set for the civil union ceremony.
- 2) Copy of the identity documents of both parties
- 3) Original birth certificate
- 4) Certificate of absence of criminal record issued by the *APU* of the Annex of origin
- 5) Certificate of good conduct issued by the *APU* of the Annex
- 6) Certificate of good health, issued by the health personnel.
- 7) Two witnesses of legal age for each spouse who have known them for at least three years.

Article 39. A de facto marriage is established between a man and a woman who are free of impediments and who form a de facto home.

Article 40. Those who enter into a de facto union must appear before the *APU Annex* of the spouse's place of origin:

- 1) To be able to register as a member of the Community without a time limit.
- 2) If the members belong to a religion, they must submit to its ecclesiastical rules, after coordinating and inviting the *APU* of the Annex to draw up the corresponding certificate.
- 3) The drafting of the certificate for the de facto union has a cost of S/ 50.00 *nuevos soles*.

(.....)

Article 50. Minors under the age of 18 are not allowed to form de facto unions.

In exceptional cases, with the prior consent of the parents and relatives of the parties concerned, it is allowed from the age of 14.

Article 51. Couples who enter into de facto unions will do so publicly in the Annex, and the *APU* of the Annex will notify the Chief of Wawik by means of a document indicating that there is one more member in their community as a result of the de facto union.

Article 52. If a Spanish speaker enters into a de facto union with a Wawik Awajun woman, he or she will be subject to the internal rules of the community; otherwise, he or she will be removed from Wawik's jurisdiction at his or her own risk.

7.1.6. Native community of Winchu Temashnum (Amazonas, Bagua, Imaza)

This is provided for in the internal regulations of the community, and we find it in the following articles:

Article 97. To get married in the community, the following requirements must be met:

- 1) Be over 18 years old or have parental authorization.
- 2) Be physically and mentally healthy, or have your parents' consent.
- 3) Marriages with non-Aguaruna people must maintain and respect the norms of the Aguaruna culture.
- 4) Communal marriages, municipal agents and the municipality must comply with the rules in accordance with them.

Article 98. Marriage with young women from another community, in the case of marriage between young people or widowers, once the head has been informed, the father will be notified and the consent of both families will be obtained, in accordance with all the rules of marriage.

- 1) Marriages between women will not be accepted.
- 2) In case of discovering romantic relationships between members of the same sex (between women) and (between men), they will be subject to sanctions by the community administration. They will be deprived of food for 48 hours and then an enema will be applied to their toes. Minors will be deprived of food for half a day.

Article 99. If a woman is in love before she gets married, she claims to be pregnant and is forced to marry. The community leader will investigate to uncover these cases.

If the truth cannot be ascertained, she will be sent to the Health Center for testing.

- 1) Following the investigation, the community leader will impose a sentence of seven days in prison and a fine of 300,000 *nuevos soles* for defamation.
- 2) A young man who defames a woman by saying she is pregnant will be punished with seven days in jail and fined 300,000 *nuevos soles*.
- 3) First- and second-degree relatives who commit the crime of marrying without the consent of their families will be punished as follows: 15 days in jail and forced to smoke tobacco at the expense of the boss and their families.

Article 100. Young people under the age of 18 will not be allowed to marry because they are minors.

Article 101. In case of non-compliance with article 100, the parents will be punished with 7 days in jail.

Article 102. Couples who marry without their parents' consent will be punished with the finger, and those over 18 will be punished with 10 days in jail. Pregnant or breastfeeding women will only be fined for 10 days.

7.1.7. Native Community of Nazareth (Amazonas, Bagua, Imaza)

RIGHTS AND OBLIGATIONS OF WOMEN AND MEN WEDDING

Article 6. A man who is married and enters into another marriage assumes all the responsibilities.

Article 8. A man who has impregnated a woman and does not want to marry her will be punished with 6 days in jail and is obliged to recognize the child.

Article 9. The father of the newborn must recognize the child within 15 days of birth. If he fails to do so, a report is submitted to the chief of the native community, and if he persists in his refusal, the case will be referred to the native justice system.

Article 11. Minors under 18 are not obliged to marry, even if their father wants them to.

Article 12. If a marriage is celebrated, the father's agreement will be recommended by the Head of the Community by means of a certificate.

Article 13. The person who marries must make his marriage public and inform the Head of his Community.

Article 14. When a mestizo marries a native woman, he must submit to the Internal Regulations of the Community. If they do not, the Assembly will decide where they will live.

Article 17. When a community member wishes to marry another person belonging to another community, there must be an immediate agreement between both families as to where they will live, and such agreement must be made public to the Native Justice Authority.

Up to this article in the book that the members of the community of Nazareth have called Marriage, we can observe their usual norms. In this case, according to the Regulations for the Administration of Native Justice, in accordance with its regulations, the political organization is presided over by the Head of the Community, to whom recourse must be had to contract communal marriage.

As can be seen, in this community, as in the previous ones we have studied, there is a legal notion of marriage, a notion that is clearly based on the knowledge of their ancestors and mainly on their culture. It should be noted that this concept is similar to certain civil contexts related to marriage, so it can be said that this legal instrument is being adapted every day. However, it persists in the face of a foreign culture that wants to impose itself and make its ancestral practices disappear.

Therefore, it is necessary to insist on the regulatory regulation of these practices, not only in customary law, which has received very little relevance, but also to recognize this right to form a family in the administration of ordinary justice. In this way, not only are their traditions and cultural identity preserved, but also one of the fundamental pillars of the Peruvian State is promoted, which, by the way, is a fundamental right established in Article 4 of the Peruvian Constitution.

7.2. Native Marriage in Comparative Customary Law

The customary marriage practices documented in the northern Peruvian Amazon are not an isolated phenomenon, but are replicated transversally in the national jungle region. According to the United Nations Development Programme, Peru is home to 55 indigenous peoples, 41 of them Amazonian, each maintaining its own regulatory systems that regulate marriage as a central institution of social and cultural reproduction [67].

International comparative research corroborates these tensions. Dom ínguez and Alvarado showed that forced marriage practices persist in Mexican indigenous communities as uses and customs, violating the human rights of women and children. Castro Pab ón identified in the Colombian Wayuu community that indigenous women face triple discrimination and marriage arrangements without freedom of choice. Kalam et al. showed that decisions about child marriage are conditioned by the complex interplay of social norms, prudential reasons

and cultural attitudes. Abrisketa documented that the International Criminal Court classified forced marriage as a crime against humanity in the Ongwen case. Putri et al. proved that cultural communication-based interventions with educational modules effectively improve knowledge and attitudes in child marriage prevention, suggesting that culturally sensitive dialogic approaches are more effective than merely punitive strategies for the Peruvian Amazonian context [34, 35, 55, 64, 65].

7.2.1. Shipibo Konibo Native Community (Ucayali, Loreto, Madre de Dios, Huanuco)

This is provided for in the internal regulations of the community, specifically in Article 30:

Article 30. Marriages in the community can be contracted by men from the age of twenty and women from the age of eighteen, provided they have a national identity card.

Men can marry from the age of eighteen and women from the age of fifteen, with the prior authorization, consent and responsibility of their parents.

Table 1. Comparative Table: Regulation of Marriage in Native Communities of Amazonas.

Native Community	Minimum Age of Marriage	Main Requirements	Competent Authority	Penalties for Non-Compliance
Huaracayo (Condorcanqui)	Men: 20 years old	National identity card	Communal authorities	Not specified in the document
	Female: 18 years old			
	With parental authorization: Male 18 years old, Female 15 years old	Parental Consent and Responsibility (Minors)		
	18 years old for both	Proof of good conduct		
Cayamas (Condorcanqui, Santa Mar á de Nieva)	Must complete secondary education	Family Warranty	President of the Community	Marriage without the knowledge of authorities: 36 hours in prison + a fine of S/ 500.00 to S/ 1,100.00
		Knowledge of adult tasks		
		Signing of marriage certificate		
		Presence of parents and authorities		
Wawik - Nuevo Belen (Bagua, Imaza)	18 years old	ID cards	Chief or Vice-Apu	Failure to report marriage: 6 days in jail
		Birth certificates	Pastor (if they are Christians)	Failure to comply with commitment (3+ months): 3 weeks + fine of 30 days of work
		Proof of address		
		Proof of good health		
		Proof of good conduct		
		Two witnesses for each party		
		Complete personal documents		
	Men: 20 years old	Be of legal age or widowed	Municipal	Parents aware of misbehavior: arrest

Native Community	Minimum Age of Marriage	Main Requirements	Competent Authority	Penalties for Non-Compliance
			agent and communal authorities	according to regulations
Wawik - Chapi (Bagua, Imaza)	Females: 15 years old	Good character	Deputy Chief	Father who delivers daughter knowing rules: 15 days in jail for the mother
	Forbidden for women who study	Conduct document (foreigners) The four types of love (agape, romantic, fraternal, love)		Separation if they do not meet the four aspects of love
Wawik (Bagua, Imaza)	18 years old	Application to the APU for an Annex Copy of identity documents Birth certificate	Annex APU	Cost of the certificate: S/ 50.00
	Exceptions: 14 years old with parental and family consent	Certificate with no criminal record Certificate of Good Conduct Certificate of Good Health Two witnesses per spouse Be physically and mentally healthy Parental consent	Head of Wawik Community Chief/Leader	Spanish speakers must submit to internal rules or be removed from jurisdiction Married minors: parents punishable by 7 days in jail Couples without parental consent: punishment with finger, more than 10 days in jail
Winchu Temashnum (Bagua, Imaza)	18 years old or with parental permission	Respect the rules of the Aguaruna culture (not Aguarunas) Consent of both families Notification to the boss	Municipal agents	Defamation for false pregnancy: 7 days in jail + fine of S/ 300.00 Marriage without family consent: 15 days in jail + smoking tobacco Homosexual intercourse: 48 hours without food + enema on toes
	18 years old	Parent Agreement Certified by Chief Make the marriage public		Man who gets pregnant and does not marry: 6 days in jail + obligation to recognize the child Not recognizing a child in 15 days: referral to native justice
Nazareth (Bagua, Imaza)	Not mandatory even if parent wants it	Inform the Head of Community Inter-family agreement on residence (inter-community marriages) Mestizos must submit to Internal Regulations		Polygamy: the man assumes all responsibilities

Note. This table shows a comparison of marriage regulations in the Amazon region, specifying seven indigenous communities.

8. Discussion

The research has identified a structural tension between the customary law of native communities in the northern Peruvian Amazon and the civil legal system in matrimonial matters, particularly with respect to capacity, minimum age and consent. The findings reveal that the internal community regulations examined—including regulations of the native communities of Huaracayo, Cayamas, Wawik, Winchu Temashnum, Shipibo Konibo, and Wawik-Chapi—allow marriages of minors under eighteen years of age, in some cases as young as fourteen or fifteen years of age, with parental authorization, in contravention of Articles 241-246 of the Peruvian Civil Code and the recent Law No. 31945 that categorically prohibits the marriage of minors under eighteen years of age.

This normative contradiction transcends the formal conflict between legal systems to delve into the violation of the fundamental rights of indigenous girls and adolescents. The dogmatic analysis shows that minors under sixteen years old lack the capacity to exercise according to article 42 of the Civil Code, understood as the ability to exercise rights recognized by themselves. Also, minors of this age have not fully developed discernment – the ability to differentiate between what is beneficial and harmful – an essential constituent element of the legal will together with intention and freedom, in accordance with article 140 of the Civil Code. Consequently, marriages celebrated without full volitional capacity suffer from a structural defect that should lead to nullity, regardless of their customary community recognition.

These findings converge with international comparative research documenting the persistence of early marriages in contexts of legal pluralism. Kalam et al., in their study on child marriage in Bangladesh, demonstrated that parental decisions about child marriage are conditioned by a complex interplay of social norms, prudential reasons and cultural attitudes related to sexuality, autonomy, violence and religious beliefs. The strongest association identified was the combined index of prudential norms and reasons, followed by prudential attitudes and reasons. This analytical framework is directly applicable to the Peruvian Amazonian context, where community regulations that authorize early marriages through parental consent reflect entrenched normative structures that prioritize family prudential considerations—preservation of alliances between lineages, protection of family honor, economic subsistence strategies—over the decision-making autonomy of girls and adolescents [55].

The situation of Mexican indigenous communities documented by Dom ínguez and Alvarado offers troubling parallels. The authors showed that in Mexican indigenous communities during 2015-2019, forced marriage practices adopted as uses and customs persist, generating continuous human rights violations that mainly affect women and children. They identified that these vulnerable groups lack the capacity to eradicate harmful practices, and that the Mexican State fails to comply with

international conventions for the protection of women and children due to deficiencies in public and economic policies. The convergence with the Peruvian case is remarkable, because in both contexts customary marriage practices are exhibited that, protected by constitutional recognition of indigenous autonomy, perpetuate systematic violations of the fundamental rights of minors, particularly girls, in contexts of absence or insufficiency of State policies for effective protection [34].

More profoundly, Castro, in her analysis of marriage in the Colombian Wayuu community, identified triple discrimination faced by indigenous women—for being women, indigenous, and predominantly poor—deepening their experience of oppression. Castro documents that in Wayuu marriages, the fact that women cannot refuse to contract them and that this represents social consequences constitutes an infringement of the Universal System of Human Rights, especially violating freedom, equality, dignity and physical and moral integrity. However, Castro recognizes that this reading would be in tension with the cultural vision and autonomy of native peoples, suggesting that it would have to be evaluated in each specific case. This case-by-case weighting is problematic in the Peruvian context, where documented community regulations establish general rules that systematically authorize child marriages, not constituting exceptional cases but normatively institutionalized practices [35].

The international jurisprudence on forced marriage analyzed by Abrisketa in the Ongwen case establishes relevant standards for evaluating these practices. The International Criminal Court called forced marriage an "inhuman act of a nature similar to those listed in Article 7 of the Rome Statute on crimes against humanity," identifying as constituent elements the absence of genuine consent, coercion exercised on the victim, and serious consequences for dignity and personal integrity. Although Abrisketa clarifies that this classification refers to forced marriages in contexts of armed conflict, the constituent elements are analogously applicable to evaluate marriages in indigenous communities where minors, particularly girls of fourteen or fifteen years of age, lack full volitional capacity to consent freely. Community regulations that delegate the decision to marry parents and relatives – as evidenced by the articles of the internal regulations of Huaracayo, Cayamas, Wawik and Winchu Temashnum – configure forms of structural coercion that replace the will of the minor with family or community decisions, violating her personal autonomy [64].

The gender dimension of this problem is unavoidable. Kilgallen et al., in their research on urbanization and perceptions of women's empowerment in Tanzania, documented severe social costs—reputational damage and social ostracism—faced by men who support women's empowerment, evidencing that both men and women question the sexuality, desirability, and reproductive prospects of those who engage in gender-atypical behaviors. These findings illuminate the mechanisms of social control that operate in communities with tra-

ditional patriarchal norms, where departing from cultural gender expectations carries severe social sanctions. In the Peruvian Amazonian context, girls and adolescents who tried to refuse marriages agreed upon by their families would likely face community exclusion, questioning of their family honor, and limitation of future opportunities, perpetuating their subordination through customary normative structures that do not recognize their individual agency [68].

However, the solution to these tensions cannot consist of the vertical imposition of civil norms through punitive or coercive mechanisms, a strategy that would ignore the constitutional autonomy of indigenous communities and would be counterproductive by generating cultural resistance. Putri et al., in their study on cultural communication strategies in child marriage prevention in regions with strong cultural resistance in Indonesia, demonstrated that interventions based on cultural communication with educational modules and family mentoring effectively improve knowledge, attitudes and self-efficacy in child marriage prevention, with sustained long-term impact. Crucially, these authors confirmed that effective interventions must address interrelated factors—social norms, prudential reasons, cultural attitudes—to interrupt the cycle of child marriage [65].

This culturally sensitive intervention framework offers promising avenues for the Peruvian Amazon context. Instead of declaring community regulations null and void—a legally defensible but pragmatically ineffective strategy—the Peruvian state should develop intercultural dialogue programs that work with community authorities, indigenous leaders, and native women's organizations to gradually transform the social norms that perpetuate early marriages. Territorial Ordinance No. 08-2023-GTAA-I of the Awajun Autonomous Territorial Government, which establishes that "all marriages, within the Awajun original nation, shall be based on the mutual will of the contracting parties, preventing forced marriages that could harm the woman's right to dignity and happiness," demonstrates that indigenous normative autonomy itself can be articulated with human rights protection standards when there is community political will and Respectful state accompaniment [42].

The findings on dual validity—internal customary versus external civil validity dependent on state registration—identified in Zegarra's research on notarial function in Bolivia are equally relevant. Zegarra Argandoña identified significant deficiencies in compliance with regulatory frameworks that affect indigenous communities by limiting their access to and understanding of the notarial system. In the Peruvian context, the absence of registry services in indigenous territories, combined with language, economic, and cultural barriers, perpetuates the disconnect between customary marriages and state recognition. This situation generates legal uncertainty for spouses and descendants, who lack documentation that proves their marital status for access to property rights, inheritance, social benefits and state services. The implementation of Article 262 of the Civil Code—which allows civil marriage to be

celebrated in peasant and native communities—requires specific regulations that establish accessible, culturally appropriate, and respectful procedures for customary ceremonies, while guaranteeing verification of civil requirements of capacity and minimum age [40].

However, the central question remains: can customary law legitimately authorize marriages of minors under eighteen years of age under the argument of cultural autonomy? The answer must be categorically negative when it comes to minors who lack the capacity for full discernment. ILO Convention 169, in its article 8.2, establishes that indigenous peoples have the right to maintain their own customs and institutions "as long as they are not incompatible with the fundamental rights defined by national law or with internationally recognized human rights." This normative limit does not constitute an arbitrary Western imposition, but an essential safeguard that recognizes that certain rights – particularly those of children and adolescents – are inalienable even in the face of ancestral cultural traditions.

The principle of the best interests of the child, recognized in the Convention on the Rights of the Child ratified by Peru, requires that in all decisions affecting minors, their present and future well-being be considered primarily. Marriages of girls of fourteen or fifteen years of age, regardless of their community cultural acceptance, severely compromise their educational development, reproductive health, personal autonomy and future opportunities, constituting an objective violation of the best interests of the child. Parental authorization does not remedy this defect, since parents cannot dispose of their daughters' fundamental rights through delegated consent.

The dogmatic position of this research maintains that respect for the autonomy of native communities is compatible and necessary in multiple dimensions of their community life – political organization, resolution of internal conflicts, administration of communal resources, preservation of languages and traditional knowledge – but finds an insurmountable limit in the protection of fundamental rights of minors, particularly when it comes to girls and adolescents in patriarchal contexts where their vulnerability is intensified. Customary law must adhere to the ordinary law regulated in the Civil Code with respect to the minimum age of marriage, not as a colonial imposition but as compliance with international human rights obligations that bind the Peruvian State and, indirectly, the indigenous communities that exercise jurisdiction under its national territory.

In this context, the results demand legislative reforms and specific public policies. First, urgent regulation of Article 262 of the Civil Code establishing procedures for the celebration and registration of marriages in native communities that guarantee verification of minimum age and free consent, through the periodic presence of itinerant civil registrars in indigenous territories or the training of certified community registrars. Second, intercultural human rights education programmes for community authorities, indigenous leaders and families, de-

veloped in a participatory manner with indigenous organizations in accordance with culturally appropriate methodologies. Third, strengthening of Ombudsmen's Offices for Children and Adolescents in rural areas of the Amazon with bilingual personnel trained in legal pluralism. Fourth, accessible and culturally sensitive complaint mechanisms for girls and adolescents at risk of forced marriages, guaranteeing effective protection without community stigmatization.

This research has limitations that should be considered. The sample size of eight communities and fifteen interviewees, although sufficient to identify patterns, does not allow generalization to the 51 Peruvian Amazonian indigenous peoples. Future research should employ larger-scale quantitative designs to establish the prevalence of early marriages in native communities, correlating with variables such as access to education, state presence, and level of geographic isolation. Second, the transversal design does not capture temporal evolutions in customary norms; Longitudinal studies could document transformations in community marriage practices in response to generational changes, urbanization, or state interventions. Third, the research did not include perspectives of directly affected indigenous girls and adolescents; Future studies should prioritize their voices through child-appropriate participatory methodologies, documenting their experiences, aspirations, and perceptions of marriage and autonomy.

In addition, systematic comparative research between communities that have adopted ordinances prohibiting forced marriages—as in the Awajun case—versus communities that maintain traditional practices allowing them could identify facilitating factors for endogenous regulatory change, informing more effective public policy strategies. Finally, an exhaustive jurisprudential analysis of judicial cases where the Peruvian Judiciary has had to resolve conflicts between customary and civil law in matrimonial matters would shed light on the balancing criteria used and consistency in the protection of the fundamental rights of minors, contributing to the development of more consistent jurisprudential doctrine on constitutional limits of legal pluralism.

9. Conclusions

In conclusion, marriage is regulated in the Peruvian State under articles 4 and 5 of the current Constitution and in the Civil Code, specifically in *article 234*. However, within native communities, the regulation of their own norms is protected by Articles 89 and 149 of our Constitution, which also establishes supranational and national regulations such as ILO Convention 169, Article 8, paragraph 2, which promote the autonomy of these human groups. In this context, while it is true that these groups are granted a degree of self-employment, the problem arises when native legislation conflicts with the Civil Code's provisions on marriage, where, as seen in each of its regulations, this legal act seriously undermines the ability of those who wish to marry, since this characteristic is not considered by indigenous communities, where underage women

marry someone older than them. Although these marriages, when the woman is a minor, are certainly granted with parental consent, this is contrary to the manifestation of free and intentional will and proper discernment. Analyzing each of the regulations of these communities, we can reflect on the contradiction or discrepancy with the ordinary law regulated in the Civil Code, where the articles evaluated present a clear violation of the ability to exercise rights regulated in civil law, since no person acquires such capacity before the age of sixteen.

Meanwhile, in the absence of intention, discernment, and freedom to express will, these legal acts of marriage within native communities should be considered null and void, since, in light of our civil legal system, one of the most important elements, the expression of will, is absent. On the other hand, the celebration of these acts also tends to violate the sexual integrity of minors, since they are not in a position to express their sexual orientation or even decide when to initiate their sexual activity.

In this case, we reflect on the existence of respect for the autonomy of indigenous communities, with their own customs and traditions. However, in the face of a conflict of interests such as safeguarding the authenticity of a legal act and protecting the sexual integrity of minors, we refer to the need to adhere to customary law in accordance with the ordinary law regulated in the Civil Code, with the sole purpose of ensuring that the rights already recognized are not violated and that these rights prevail over cultural practices.

In view of the above, it would be extremely important for legislators in Peru to pass a special law that regulates marriage in accordance with the customs and beliefs of rural and indigenous communities, but without affecting or violating the nature of the family, let alone undermining the sexual integrity of minors. Making these marriages legally valid would not only allow for the customary recognition of native communities, or their social inclusion, but would also contribute to the registration of their solemn acts and thus be a way to reduce practices considered illegal under ordinary law.

Abbreviations

ILO	International Labour Organisation
CCD	Peruvian Democratic Constituent Congress
ICC	International Criminal Court

Authors Contributions

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Funding

This work is not externally funded.

Data Availability Statement

The data supporting the results of this research work have been reported in this manuscript.

Conflicts of Interest

The authors do not declare conflicts of interest.

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Biography



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