Diagnosis of the Special Testimony of Children and Adolescents

From Traditional Peoples and Communities

CNJ

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LIST OF ABBREVIATIONS AND ACRONYMS

CNJ	NATIONAL COUNCIL OF JUSTICE
FONINJ	National Courthouse for Children and Youth
CONANDA	National Council for the Rights of Children and Adolescents
GT	Working Group
PCT	Traditional Peoples and Communities
DE	Special Testimonial
FUNAI	National Indigenous Foundation
DSEI	Special Indigenous Health District
SESAI	Special Secretariat for Indigenous Health
CRAS	Social Assistance Reference Center
CREAS	Specialized Social Assistance Reference Center
UNDP	United Nations Development Programme
ILO	International Labor Organization
UN	United Nations
TJ	Court of Justice
TJMS	Court of Justice of Mato Grosso do Sul
TJAM	Court of Justice of Amazonas
TJBA	Court of Justice of Bahia
TJRR	Court of Justice of Roraima

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SUMMARY

1. Presentation

The document "**Report of the situational diagnosis on the special testimony of Traditional Peoples and Communities in 4 Courts of Justice** " is the third consulting product[1] stipulated by Contract BRA10-38678/2021, signed between the anthropologist Luciane Ouriques Ferreira and the United Nations Development Programme, under Project BRA/19/007
- Early Childhood - CNJ[2] axis. The third product was validated by the working group for special testimony of traditional peoples and communities of the National Council of Justice (CNJ) on November 18, 2021.

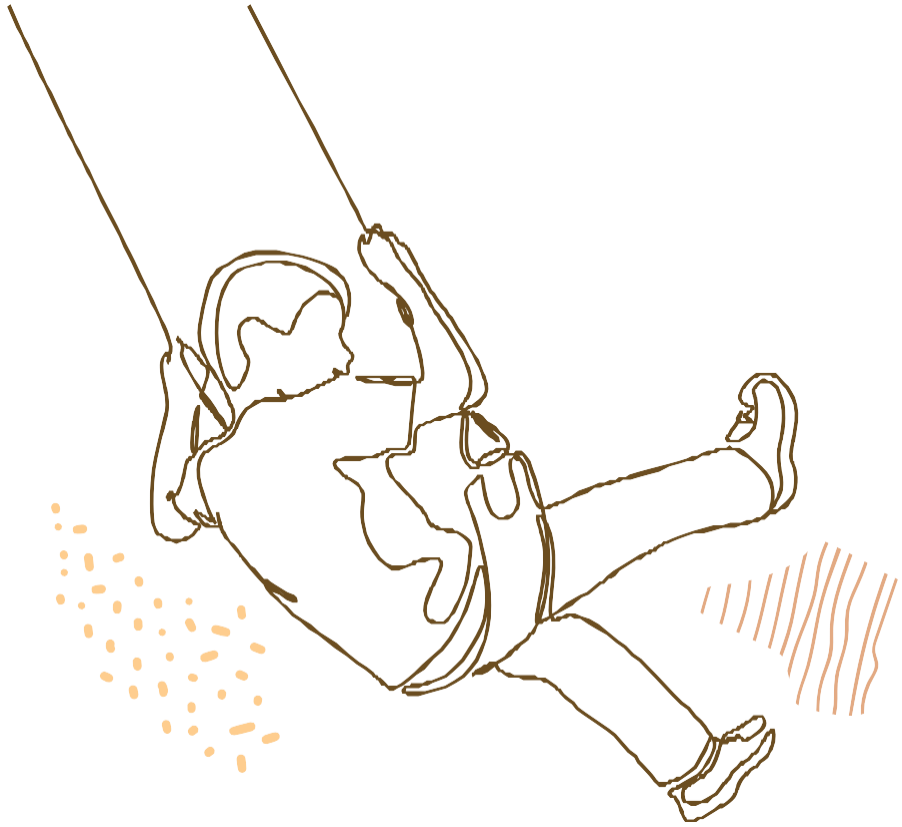
1 In the Term of Reference that informs the BRA10-38678/2021 Contract, the third product is described as a **Report with the diagnosis of the situation observed, containing data and information gathered from the pilot project implementers through interviews, document survey, and case study or ethnographic research, among other methodologies.**

2 This consultancy is located in Axis 2 - Strategy for strengthening judicial policies aimed at children, developed from the results of the diagnostic of Project BRA/19/007 - Project to Strengthen the Management of Information on Child Care in the Brazilian Justice System.

This consultancy has as its object the elaboration of a **Manual for the special testimony of children and adolescents from traditional peoples and communities**, with parameters for the consolidation of a service protocol and criteria for the special testimony of traditional peoples and communities.

The data and information gathering from the implementers of the pilot project for the special testimony of traditional peoples and communities, because it takes place in the context of the coronavirus pandemic, was carried out using technological devices and digital videoconferencing platforms. It is noteworthy that the production of knowledge had as its main objective to generate subsidies for the elaboration of the aforementioned Manual.

With the delivery of the third product, the objective is to present an analysis about the implementation of the special testimony procedure and the enforcement of the rights of children and adolescents from traditional peoples and communities to non-revictimization and to full protection, as established by the Protected Listening Law, in the context of the pilot projects carried out by the Courts of Mato Grosso do Sul, Amazonas, Roraima, and Bahia.



2. Introduction

The document Report of the situational **anthropological diagnosis on the special testimony with Traditional Peoples and Communities in 4 Courts of Justice** presents the systematization and anthropological analysis of the data and information that emerged in the context of the implementation of the pilot projects of special testimony of traditional peoples and communities. To this end, the methodological strategy of ethnographic action research was adopted, with the aim of supporting the preparation of the **Manual for Special Testimony of Children and Adolescents Belonging to Traditional Peoples and Communities**.

It is known that the violence perpetrated against traditional peoples and communities throughout the history of colonization has generated profound impacts on their sociocultural organizations and their subjectivities. As far as the native peoples in particular are concerned, they have suffered countless violations:

> the reduction and destruction of their territories, depopulation in the face of armed onslaughts, the seizures and epidemics brought by the colonizers (genocide), the subjection of the bodies to the tutelary regime and the impossibility to live their ways of life, practice their rituals and speak their languages (ethnocide), the stigmas attributed to the indigenous bodies and the disqualification and production of their knowledge (epistemicide) as non-existent were devices employed by the colonizers to exercise their domination over the native populations. (...) Besides this, the insertion of distilled alcoholic beverages promoted by the interethnic encounter between natives and colonizers, associated to other colonization strategies (the missionary fronts, the persecutions and arrests of natives, the mortality due to epidemics, the forced labor in the colonists' enterprises, etc.), had a destructuring impact on the forms of sociocultural organization of the indigenous peoples (FERREIRA et al, 2021, 85).

There are two faces that the phenomenon of violence among traditional peoples and communities assumes in contemporary times: one concerns the violence exercised in the context of relations with the hegemonic national society, institutional violence being one of its modes; the other refers to the intra-community violence that erupts in the context of communities as an effect of the colonial process and that makes women, youth and children the most affected social segments (Fiocruz, 2021).

The data presented by the judicial processes analyzed here corroborate this finding by demonstrating that the main type of violence that reaches the rights guarantee system coming from communities and traditional peoples (indigenous peoples) is sexual violence perpetrated against female children and adolescents. Such violence, in most cases, is experienced within the domestic nucleus itself, and incest is not uncommon. According to a Kayowá Guarani leader, the recurrence of this form of violence points to the deep crisis of traditional values faced by indigenous families today, a result of the historical violence to which these people have been subjected. However, recognizing that sexual violence constitutes the main type of violence addressed by the lawsuits analyzed here does not imply that this is the only mode of violation to which children and adolescents from traditional peoples and communities are subjected. This data reveals that, in the context of the Courts of Justice participating in the pilot project of special testimony of traditional peoples and communities, the cases of violence against children and adolescents that have been judicialized are those of sexual violence.

Thus, the analytical approach adopted by this report is based on the data identified by the consultant through an ethnographic reading of the judicial proceedings[3].

In any case, the child or adolescent that gives testimony in the context of a judicial process is a victim twice over: both for being part of peoples and communities that are targets of prejudice, discrimination, stigma, and stereotyping; and for having their way of life made precarious throughout the history of conquest and colonization of Brazil. If the traditional peoples and communities are victims of this violent colonial process and continue to be stigmatized by the institutional subjects that must attend to them, there is no way to prevent their children from being revictimized.

Thus, this report aims to present an overview of the phenomenon of judicialized violence against children and adolescents belonging to traditional peoples and communities, and to analyze the agency and flow of services, of which special testimony is a part, carried out by the institutions of the rights' guarantee system operating in the territories of the districts covered by the study. In addition, it focuses on one of the fundamental pillars for taking the special testimony of people from other linguistic and sociocultural backgrounds, namely: the work of professionals qualified as forensic interviewers, interpreters, and anthropologists.

We adopted the concept of judicialization of violence against children and adolescents from traditional peoples and communities to give an edge to the phenomenon in question, considering that we are working with information from court cases[4].

3 The court cases analyzed in this report were selected by the magistrates of the districts participating in the pilot project for the special testimony of traditional peoples and communities. The main criterion used in the selection of these cases was the possibility of locating them, since the information systems of the justice institutions do not register the ethnic identity of the victims and witnesses of violence, which is an obstacle to their identification. However, the fact that sexual violence emerges from the ethnographic reading of the records as the main type of violence addressed in this report does not reduce the right of children and adolescents from traditional peoples and communities to be heard in the form of special testimony whenever they are victims or witnesses of violence and this situation is subject to judicialization.

4 The concept of judicialization as developed by Rifiotis (2015) is used to "designate the processes that become visible through the expansion of state action in 'social problem' areas as a mechanism to guarantee and promote rights." He also says about the risks of transferring responsibility to the state and making processes more cumbersome. We know that in the criminal justice system, judicialization, implies a criminalizing and stigmatizing reading contained in the 'victim-offender' polarity, introducing a series of obstacles to understanding and (non-criminal) intervention. After all, penal intervention does not always meet the expectations of the subjects served in the institutions (Rifiotis, 2015, pp. 265).

Judicialization is about the involvement of these collectives in the semantic networks of justice and the ways in which they appropriate the laws and institutions of the "non-traditional" to serve their own interests. Among the investigative techniques employed for this diagnosis, the ethnographic reading of the judicial proceedings was the main strategy for knowledge production. The analysis of the judicial processes was complemented by data gathered through open interviews with judges, specialized professionals from the Judiciary and leaders of the traditional peoples and communities, as well as by participant observation of the activities of the pilot projects for the implementation of the special testimony of children and adolescents from traditional peoples and communities developed by the four Courts of Justice that participated in the experience, namely: Mato Grosso do Sul, Amazonas, Roraima and Bahia.

The rights instituted by the Protected Listening Law will constitute the parameters by which the ways and practices of justice and the flows of care provided by the rights guarantee system will be analyzed.

For the Protected Listening Law to be applied fairly to traditional peoples and communities, it is necessary to consider the sociocultural specificities of these groups and their different ways of producing and protecting childhoods, as well as the particular configurations that the phenomenon of violence assumes in each of their communities. Traditional peoples and communities need to be consulted about the applicability of this legislation to their community contexts. Based on the dialogue between the institutions that make up the rights guarantee system and the leaders and representatives of the different segments that make up these ethnic groups - women, young people, elders, teachers, health agents, etc. - agreements can be reached on the best ways to enforce their differentiated rights, and intercultural flows can be agreed upon that take into account the uniqueness of each child and adolescent assisted. -, agreements can be reached on the best ways to enforce their differentiated rights, and intercultural flows can be agreed upon that contemplate the uniqueness of each child and adolescent attended to.

This report is organized as follows: after the chapter dealing with the methodological path adopted in carrying out the diagnosis, the characterization of the phenomenon of violence against children and adolescents from traditional peoples and communities is carried out based on the ethnographic reading of the court cases. At this point, we will consider the types of violence, the profiles of the victims and the defendants, the place where the situation of violence occurred, and some determining factors that converge to configure this phenomenon in the context of the affected communities.

The fifth and sixth chapters will present an overview of the services, the flows, and the procedure of special testimony in the scope of the Courts of Justice that have made access to court cases available - Mato Grosso do Sul, Amazonas, and Roraima. Here some case studies will be considered to illustrate issues and impasses generated when it comes to developing judicial policies applied to diversity.

It is important to register that the three initial chapters will not address the phenomenon of violence against children and adolescents of traditional peoples and communities served by the Court of Justice of Bahia, due to the difficulties in identifying court cases related to the subject. This situation, already mentioned in other consulting products (NATIONAL COUNCIL OF JUSTICE, 2022b), is due to the fact that there is no field in the Judiciary's information systems to identify the ethnicity and communities of victims and witnesses of violence belonging to the gypsy, quilombola, and terreiro communities. The invisibility of these groups before the Brazilian State constitutes a mode of institutional violence that needs to be faced through the development of public and judicial policies that recognize the diversity and contemplate the specificities of these population segments.

The seventh and eighth chapters, in turn, describe the current situation in the Courts of Justice with regard to the role of forensic interviewers and interpreters in the context of special testimony hearings for children and adolescents from traditional peoples and communities. Finally, the ninth chapter will return to the issue of anthropological expertise as an important device to guarantee the rights of children and adolescents to non-revictimization and full protection, presenting, among other things, some typical situations in which its assignment in the scope of judicial proceedings becomes indispensable.

3. Methodological Paths

The investigative activities of the situational diagnosis were carried out between April and November 2021 and occurred in the context of the pilot projects for the implementation of the special testimony with traditional peoples and communities in four Courts of Justice: Mato Grosso do Sul, Amazonas, Roraima, and Bahia. To carry out this diagnosis, we used the qualitative and participative methodology, from which the research techniques employed in this investigative undertaking were selected. The production of knowledge here was aimed at subsidizing the elaboration of the **Manual of Special Testimony of children and adolescents belonging to traditional peoples and communities**.

By allowing the production of knowledge to be associated with the set of practical actions developed by the pilot projects implemented by the Courts of Justice of Mato Grosso do Sul, Amazonas, Roraima, and Bahia, and considering the short period in which the consultancy was executed, the methodological strategy employed was that of action research combined with the use of ethnography.

While action researchconstitutes "a particular kind of participatory research and applied research that supposes participatory intervention in social reality" (Thiollent, 1986); ethnography constitutes the dense description of social phenomena considered by anthropo logical analysis (Geertz, 1989).

Action research constitutes a non-extractive collaborative methodology[5] that propitiates the emergence of emancipatory knowledge from "encounters and dialogues between people and social groups with their knowledge, cultures, and struggles for dignity" (Arriscado *et al.*, 2018, 398). The reflection instigated by the dialogues and meetings that take place in the scope of collaborative action research contains potential for transformation of the social and judicial reality during the very course of implementation of the pilot projects.

An exemplary situation that occurred within the scope of this diagnosis was in the context of the pilot project of the Court of Justice of Mato Grosso do Sul: based on issues identified during the ethnographic reading of the judicial proceedings made available by this Court, the consulting firm proposed to the team from the Children and Youth Coordination Department that a set of webinars be held to deepen the reflection on themes associated with the right to full protection of children and adolescents from traditional peoples and communities in light of the intercultural dialogue established between members of the Judiciary and indigenous professionals and leaders[6].

The methodological proposal of action research intends to overcome the dichotomy between research and practice: it does not dissociate the moment of knowledge production from the moment of its application to the investigated realities; it does not reduce the "other of the research", even when called "subject", to a mere recipient of information to be extractedIt does not deprive them of the right to participate in the research process and in the construction of policies and programs that will impact both their practices and their own lives.

5 "The notion of collaborative methodologies has been developed by Boaventura de Sousa Santos and his research group within the framework of the so-called epistemologies of the South, in close relationship with concepts such as abyssal line, post-abyssal thinking, ecology of knowledges, intercultural translation, and craftsmanship of practices. Santos' recent methodological discussion strongly articulates educational and pedagogical dimensions of social transformation" (Arriscado *et al.*, 2018, 398).

6 This action culminated with the *online* course **Intercultural Dialogues**: special testimony of traditional peoples and communities. Available at: https://www.youtube.com/results?-search_query=dialogos+intercultural+ejud.

Therefore, this is an interesting ethical and methodological strategy to be used in the formulation of this judicial policy, as it allows mobilizing and involving the subjects involved in the pilot project in a dialogical and participatory process that proposes reflection on the practices of justice and the development of concrete activities aimed at the cross-cultural adequacy of the flows and procedures of special testimony of children and adolescent victims or witnesses of violence from traditional peoples and communities.

In this way, the collaboration and implication of the subjects with the production of knowledge instituted by action research, through participation and adherence to interdisciplinary and intercultural dialogue, constitute the premise of ethics (Cardoso de Oliveira, 2006; Ferreira, 2010) to guide the process of construction of the **Manual of Special Testimony of children and adolescents belonging to traditional peoples and communities.**

The devices of dialogue and cultural translation that integrate the epistemological strategy of the ecology of knowledges (Santos, 2011), were also used by the consultancy both to produce emancipatory knowledge about the culturally adequate way of listening to children and adolescents from traditional peoples and communities, and to build bridges and favorable spaces for interdisciplinary and intercultural dialogue to be established in the scope of the Courts of Justice[7]. It is worth pointing out here that the interdisciplinary dialog instituted for the implementation of the pilot project, not only between the anthropologist and the magistrates, but also with the psychologists and social workers that work in the multidisciplinary teams of the Judiciary, also constitutes a form of intercultural dialog. The knowledge production techniques agencyed byethnographic action researchwere:

1. Questionnaire to collect preliminary information from the Courts of Justice of Mato Grosso do Sul, Amazonas, Roraima and Bahia: ten questionnaires filled out by the

7 Some conditions are necessary for intercultural dialogue to happen: a greater symmetry in relationships, considering the interlocutors valid, possessing subjective openness to the other and his/her truth, guiding speech by a dialogical ethic that does not use the symbolic power inherent in certain social positions to impose its truths on the other, while the subjects' truths and convictions are repositioned in a way that allows the recognition and validity of knowledge built from other epistemological horizons.

districts of Dourados, Amambai, and Mundo Novo, of the Court of Justice of Mato Grosso do Sul; the districts of Tabatinga and São Gabriel da Cachoeira, of the Court of Justice of Amazonas; the districts of Boa Vista and Bonfim, of the Court of Justice of Roraima; and the districts of Santo Amaro, Cachoeira, and Eunápolis, of the Court of Justice of Bahia.

2. Documentary survey: ethnographic reading and analysis of 75 lawsuits involving children and adolescents who are victims or witnesses of violence from traditional peoples and communities;
3. Open interviews to approach the field and mobilize the subjects for the implementation of the pilot projects (dialogues with specialized technicians and magistrates: 14 interviews);
4. Study of four significant cases that emerged from the ethnographic reading of court cases;
5. Participant observation carried out during pilot project activities developed by the referred Courts of Justice (meetings, webinars, workshops, and roundtables for the exchange of experiences).

About the techniques

The following is a brief characterization of the techniques employed in the context of the ethnographic action research conducted to diagnose the observed situation:

1. Questionnaires to collect information from the Courts of Justice

The questionnaires to collect preliminary information were sent to the four Courts of Justice by the Office of the National Courthouse for Children and Youth of the CNJ (FONINJ), and were filled out by the districts participating in the pilot project implementation. By filling out this questionnaire, the Court of Justice indicated the magistrates and technicians of reference for the implementation of the pilot project with whom the consultancy should talk (open interviews).

2. Documentary survey - ethnographic reading of judicial proceedings

The Courts of Justice of Mato Grosso do Sul, Amazonas, and Roraima provided the consultant access to 75 judicial proceedings that deal with violence against children and adolescents from traditional peoples and communities. The ethnographic reading of the court cases made available constitutes the main source of data considered in the analysis. Information produced from other research techniques will be brought into the text to complement or clarify issues identified in the records.

Due to the difficulty encountered by the Courts of Justice to identify the lawsuits involving children and adolescents from traditional peoples and communities who are victims or witnesses of violence, the number of cases that make up the sample analyzed does not correspond to the totality of the cases that deal with this theme. Thus, it is not possible to gauge the magnitude of the problem of judicialization of violence against children and adolescents from traditional peoples and communities.

Given the sample of lawsuits considered for analysis and the great complexity of the information contained in the records, the methodological approach took on qualitative contours. The ethnographic reading of the data made available by the judicial proceedings reveals important dimensions about the distinct layers of meanings constituting the phenomenon of judicialization of violence itself, which are condensed by the special testimony procedure, as well as about the assistance provided to victims and witnesses of violence from traditional peoples and communities.

Among the aspects on which analytical attention is focused are: the characterization of the victims (ethnic identity, age group, gender) and of the phenomenon of violence against children and adolescents from peoples and communities (type of violence, defendants, factors that contribute to the eruption of situations of violence); the characterization of the service flows, from the disclosure of the situation of violence to the realization of the special testimony, itself, in order to ascertain whether the right to non-revictimization and the integral protection of children and adolescents from traditional peoples and communities has been effective by the rights guarantee system; issues related to the technical staff and experts - interpreters and anthropologists - who work directly in the scope of the special testimony hearings or who produce subsidies so that they are culturally and linguistically adequate to the reality of the child or adolescent. The quality of the special testimony of children and adolescent victims of violence who come from traditional peoples and communities depends on the qualified action of specialized professionals with intercultural competence.

3. Open interviews (dialogues)

The open interviews (dialogues) with magistrates and specialized technicians conducted to deepen the information from the questionnaires answered by the Courts of Justice were guided by four questions about the special testimony with traditional peoples and communities: the experience of the interlocutor; the difficulties in making the hearing with children and adolescents from traditional peoples; suggestions for qualifying the special testimony procedure; and the perception about the relations between the Judiciary and the other institutions that operate in the rights guarantee system.

As this initiative is being carried out with the intention of preparing a **Manual for the special testimony of children and adolescents belonging to traditional peoples and communities**, the anthropologist's interlocutors were not invited to participate in a research project, but rather in the process of preparing the aforementioned Manual and, to this end, to be involved in the implementation of the pilot projects carried out by the Courts of Justice.

The information that emerged from the open interviews was recorded through the device of ethnographic field diary notes produced from the meeting with the interviewers and magistrates. This form of registration was considered more appropriate, considering that the open interviews had as one of their objectives to mobilize the interlocutors to participate in the implementation of the pilot [project8].

4. Significant Case Studies

The case studies considered here emerged from the ethnographic reading of the court cases in question. Some of these cases present typical situations that contribute to the understanding of certain dimensions of the performance of the rights guarantee system in cases of violence against children and adolescents from traditional peoples and communities. Taking them as cases to be studied is a way to verify whether the right to non-revictimization and full protection are being observed, as well as to shed light on the specificities that the assistance provided to these people assumes or should assume in order to make these rights [effective9].

8 On ethnographic notes and the field diary in anthropology, see: Geertz, 1989; Clifford & Marcus, 2016; Barreto Filho, 2003; Malinowski, 1984; Strathern, 2014.

5. Participant Observation

The technique of participant observation, when employed in the context of participatory and collaborative action research, takes on particular contours, to the extent that the anthropologist not only observes, but also acts to collaborate with the implementation of the pilot projects in the scope of the Courts of Justice.

Among the activities observed that can be mentioned, from which experiences, reflections, and knowledge were produced, and that collaborated with the substrate for the analyses carried out here are: meetings between members of the CNJ's Working Group on the special testimony of traditional peoples and communities and members of the Courts of Justice to monitor the implementation process of the pilot project; meetings between members of the Courts to outline implementation strategies; permanent contact with the magistrates and specialized technicians, in order to define the best way to implement the pilot projectintercultural dialogue between members of the Courts of Justice and professionals, representatives and leaders of the traditional peoples and communities, which culminated in conversation rounds in the different Courts and, in the case of the TJMS, with the *online* course offered by the Judicial School of Mato Grosso do Sul: Intercultural Dialogues: special testimony of children and adolescents belonging to traditional peoples and communities.

3.1. Progress of the pilot projects in the scope of the Courts of Justice

The activities for implementing the pilot projects of special testimony of traditional peoples and communities in the Courts of Justice constitute the object of the second product of this consultancy, Report of the organizational activities and report of the special testimonies held by each Court during the implementation of the pilot project (NATIONAL COUNCIL OF JUSTICE, 2022b). This topic is intended to provide an update on the progress of the pilot projects within these Courts[10].

9 Case studies are presented within this report to meet the requirements of Term of Reference that informs the individual consultant's contract signed with UNDP.

The pace of implementation of the pilot project in each of the Courts of Justice is different. At the present moment, it is clear that the main result of these projects is to create the intercultural conditions necessary for the Courts of Justice to advance in the implementation of the guidelines of the **Manual for the special testimony of children and adolescents belonging to traditional peoples and communities**, which is currently being prepared.

In this sense, the actions carried out so far, being part of a consultancy that employed the action-research method to build its foundations, have assumed a formative character. The reflections that emerged from the meetings and interdisciplinary and intercultural dialogues have the potential to transform the Judiciary's own ways of knowing and doing, creating the right conditions for the emergence of a policy that attends to the specificities of traditional peoples and communities and that is aligned not only with the recommendations of the Protected Listening Law, but also with the norms that recognize and establish the rights of these differentiated ethnic, sociocultural, and linguistic groups.

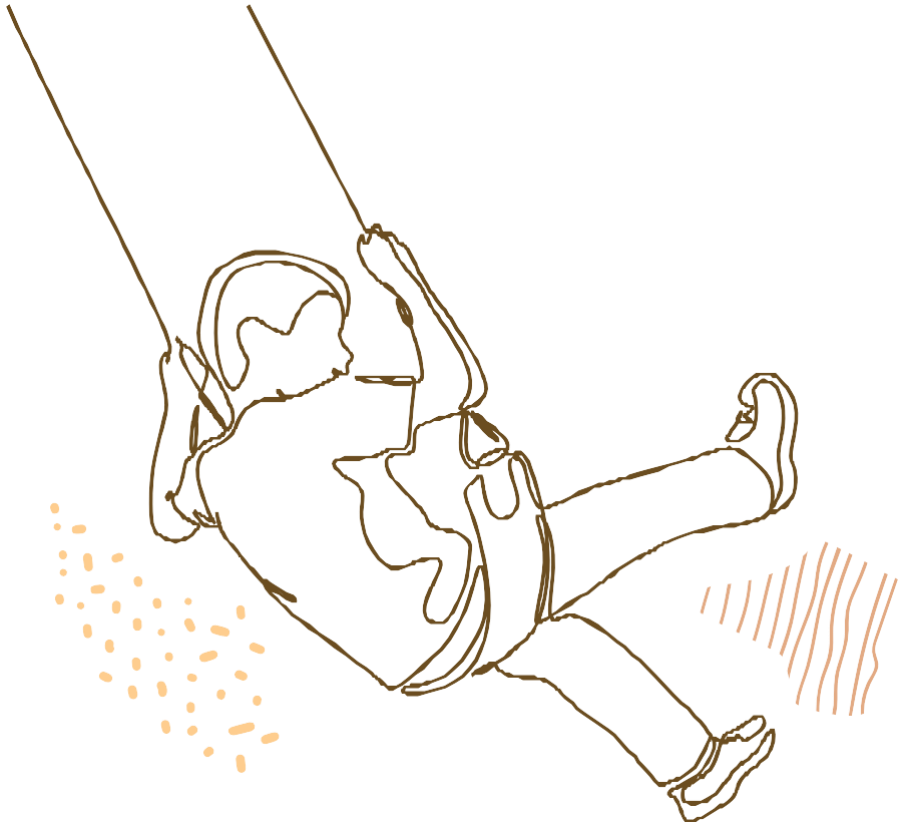
Table 1 below presents the status of the implementation process of the pilot project for the special testimony of traditional peoples and communities in the four Courts of Justice.

10 For more details about the activities planned and executed by them, we recommend consulting Product 2 of this consultancy.

Table 1 - Progress of the pilot project of special testimony of traditional peoples and communities in the Courts of Justice

Court of Justice	Activities	Period	Status
Mato Grosso do Sul	A conversation with the Dourados rights' guarantee system.	4/10/2021	Completed.
	Online course: Intercultural Dialogues - PCT DE.	27/9 a 8/11/2021	Completed.
	Special testimony in the village, TI Porto Lindo, district of Mundo Novo.	6/2021	In progress.
Amazonas	Training Course in DE using PBEF, offered by CNJ.	21/10 a 12/12/2021.	In progress.
	Cooperation term between institutions that guarantee rights formalized in Tabatinga County.	11/2021	Completed.
	Space for special testimony built in the district of São Gabriel da Cachoeira.	10/2021	Completed.
	Equipping for real-time transmission of special testimony hearings.	Requested to the TJ on 10/25/2021.	In progress.
Roraima	Rooms implemented in the districts.	-	Completed.
	Equipped for real-time transmission of the hearings.	-	Completed.
	Accredited and trained forensic interviewers (experts).	1/6/2020 (Announcement)	Completed.
	Accredited indigenous language interpreters.	9/28/2020 (Announcement)	Completed.
Bahia	Meeting with leaders of the terreiro communities.	4/11/2021	Completed.
	Rooms implemented in the districts	10/2021	In progress.
	Equipping for real-time transmission of special testimony hearings.	20/2021	In progress.
	Special testimony training course (in planning stage).	In progress.	In progress.

Source: own elaboration.



4. Characterization of violence against children and adolescents from traditional peoples and communities based on court cases

The situations that happen in the world, outside of the records, are thick and ambiguous, they have more than one meaning, and several interpretations are possible (...).) In the process a mediation is produced that flattens the initial thickness of events and depoliticizes the relations between people in the world by ignoring their basic context, their living conditions, stripping these relations of their fundamental determinations and fitting them within the limits of what is allowed or expected (or both). The facts thus suffer, in Barthes' words, 'the loss of the memory of their production' (Correa, 1983 apud Rifiotis, 2015, 263).

The ethnographic reading of the judicial proceedings made available by the Courts of Justice participating in the pilot project for the special testimony of children and adolescent victims or witnesses of violence from traditional peoples and communities constitutes the main methodological strategy adopted for the diagnosis of the observed situation. From its analysis, it is possible to assess how the right to full protection and non-revictimization instituted by Law 13,431/2017 and associated norms has been implemented in the scope of these systems through the actions of the institutions and equipment that are part of it.

Judicial proceedings constitute important ethnographic material that allows us to get closer to the operational flows and dynamics developed by the rights guarantee systems in different regions of the country and to the ways in which the institutions that make them up think and relate to traditional peoples and communities. As a knowledge-power device with which the rights assurance system operates, the judicial processes give us access to the perceptions and practices of the agents who work in the different institutions about the traditional peoples and communities they serve.

At the same time that they inform about the practices and procedures adopted by the rights guarantee system, they also provide information about the different subjects involved in the flow of services provided to victims and witnesses of violence: the profile of the victims and defendants; the *modus operandi* of the different institutional actors as well as the ideologies and values that inform their actions; the conflicts and ethical impasses encountered by the specialized professionals to act in an extremely hierarchical context, etc.

Based on the analysis, one of the facets of the complex phenomenon of violence to which these groups are subjected was found: the judicialization of violence against children and adolescents who have filed lawsuits, that is, the situations of violence that have reached the Judiciary and filed lawsuits. These cases can be thought of as residues of a phenomenon of violence experienced by communities and traditional peoples that have gained visibility before the rights assurance system.

Most of the violence perpetrated against children and adolescents, however, is invisible to the State, not being the object of its intervention. In fact, if traditional peoples and communities are still subjected to structural violence historically determined by the colonial and subjugation relations established with Western society, there is no way that their children and adolescents are not affected by it.

Knowing the hidden dimension of the phenomenon of violation of the rights of children and adolescents from indigenous peoples and communities, in its multiple determinants, is necessary so that the right to full protection, which includes the prevention of violence, can be truly realized.

4.1. About the lawsuits

The availability of the judicial proceedings by the Courts of Justice participating in the pilot project of special testimony - Mato Grosso do Sul, Amazonas and Roraima - was in response to a request by the Special Secretariat of Programs, Research and Strategic Management, of the National Council of Justice, addressed to the magistrates responsible for the Courts of Justice of the districts participating in the pilot experiment, by means of Circular Letter No. 111, sent on June 7, 2021.

The Courts of Justice have selected among the traditional peoples and communities attached to their territories some ethnic and social groups to be contemplated by their pilot projects. While the Courts of Justice of Mato Grosso do Sul (TJMS), Amazonas (TJAM), and Roraima (TJRR) focused on the situation of judicialized violence against indigenous children and adolescents, the Court of Justice of Bahia (TJBA) directed its attention to gypsy peoples, remaining quilombola communities, and terreiro communities.

The fact that the Courts of Justice have privileged certain ethnic and social segments for the implementation of the pilot project does not mean that the diversity of traditional peoples and communities that inhabit these territories ends there. It will be up to the Courts to map the different traditional peoples and communities present in their territories, in order to realize their rights to have access to judicial policies culturally adequate to their specificities. The Courts of Justice have found it difficult to identify the cases that deal with children and adolescents from traditional peoples and communities, due to the fact that there is no field in the Judiciary's information system to identify the ethnic identity and language spoken by them.

The TJBA found it difficult to identify in its databases the cases involving children and adolescents who are victims or witnesses of violence belonging to traditional peoples and communities. This difficulty was intensified by the fact that the traditional peoples and communities selected by the TJBA - gypsies, remaining quilombos, and terreiro communities - are not included as subjects of difference in the official statistics produced by the Brazilian State[11].

* * *

The Courts of Justice have made 75 court cases available for analysis. The number of court cases made available by the courts, in turn, was distinct. The TJMS provided access to 45 lawsuits. The TJAM, on the other hand, provided access to 23 judicial processes. While the TJRR made available seven lawsuits that had indigenous children or adolescents as victims. Table 2 shows the number of cases made available by the Courts of Justice, per judicial district:

Table 2 - Court Cases per Court of Justice

Court of Justice	Quantity of Procedures
Mato Grosso do Sul	45
Amazonas	23
Roraima	7
Total	75

Source: own elaboration.

All the legal cases considered for the analysis of the studied phenomenon deal with violence perpetrated against indigenous children and adolescents. The TJMS handled cases from the Guarani-Nhandeva, Guarani-Kayowá and Terena peoples. With more difficulties in identifying the ethnic belonging of the victims of violence, TJAM assisted children and adolescents from the Tikuna, Kokama, Baniwa, Tukano, Dessana, Tariano, Baré, and Piratapuia peoples. And finally, in the scope of the TJRR it was possible to identify the ethnic belonging of the victim's family in only one judicial process, in which the victim's mother declared herself Macuxi during her statement at the Police Station.

4.2. Characterization of the phenomenon of violence against indigenous children and adolescents

11 Some hypotheses are raised from this observation: either it is not possible to identify such judicial processes because there is no field in the judiciary information system that indicates the belonging of the child or adolescent to traditional peoples and communities; or the cases of violence involving children and adolescents from traditional peoples and communities have not reached the Judiciary; or we can still put forward the hypothesis that there are no situations of violence to which children and adolescents from traditional peoples and communities attached to these districts are subjected.

This chapter will consider the information made available by the judicial proceedings in order to build an overview of the phenomenon of violence against children and adolescents. For this purpose, the following aspects are highlighted: characterization of the victims (gender and age range of the victims of violence, residence, ethnic identity, and the place of this information in the records); social position of the defendant in the network of relationships (kinship, community, and inter-ethnic) of the victim; place where the situation of violence occurred; and presence of the factor of alcoholism/use of other drugs for the configuration of the situation of violence against children and adolescents.

To further elaborate this panorama, therefore, the data brought by the lawsuits in the scope of the TJs in which they are processed will be situated. In some situations it will approach the districts in order to clarify certain aspects of the phenomenon of violence that is being discussed. This will occur mainly with regard to the TJMS, both because of the larger volume of court cases made available by this Court, and because of its implication in the process of implementing the pilot project for special testimony of children and adolescents who are victims or witnesses of violence from traditional peoples and communities.

Court of Justice of Mato Grosso do Sul

The Court of Justice of Mato Grosso do Sul made 45 lawsuits available for the consultant's analysis.[12] The lawsuits are in the courts of Amambai, Mundo Novo, and Dourados and were made available according to the numbers listed below.

Table 3 - Lawsuits per judicial district, TJMS

District	Quantity of Procedures
Amambai	13
New World	15
Dourados	17
Total	45

Source: Own elaboration.

Of the 45 court cases analyzed, four involve children or adolescents who are witnesses of violence; while 41 deal with violence against children or adolescents.

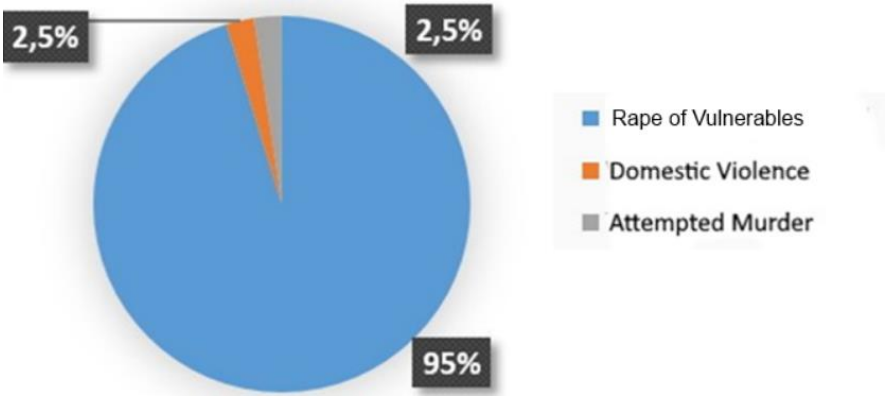
12 The judicial proceedings made available by the TJMS districts were sent to the consultant at different moments: 1) The district of Mundo Novo made access to the proceedings available on July 2, 2021; 2) The district of Amambai sent the password to access the proceedings on July 5, 2021; 3) and the district of Dourados promoted access to the proceedings on July 21, 2021.

The children and adolescents heard as witnesses through special testimony witnessed situations of violence that occurred in their villages and that were triggered when those involved were drunk. In the files, the crimes witnessed by the witnesses are classified as homicide (three cases) and feminicide (one case). These cases were heard by the 3rd Criminal Court - Jury Court in Dourados.

Children and Adolescents Victims of Violence

With regard to children and adolescents who are victims of violence, the crimes and infractions are classified in the files as rape of a vulnerable person (39 cases), domestic violence (one case), and attempted murder (one case).

Figure 1 - Typification of violence, TJMS (n=41)

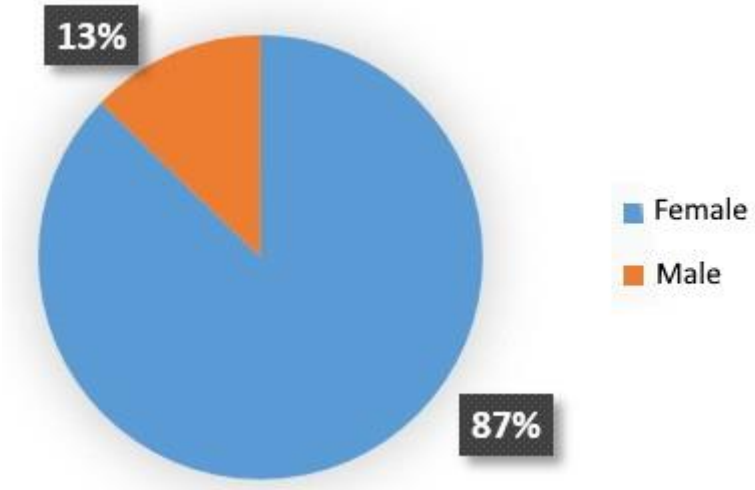


Source: Own elaboration.

While in the Amambai and Dourados districts sexual violence perpetrated against indigenous children and adolescents constitute the totality of the cases, in the district of Mundo Novo there are two cases that deal with other forms of violence: domestic violence (against a woman and her two children, ages 7 and 9, perpetrated by the alcoholic father) and attempted murder against a one-year-old baby, the son of a teenage mother who accuses her husband of trying to kill her son due to alcohol abuse.

The 41 lawsuits dealing with violence against indigenous children and adolescents in the scope of the TJMS include 48 victims[13]. Of these, 42 (87%) are female, while six (13%) are male.

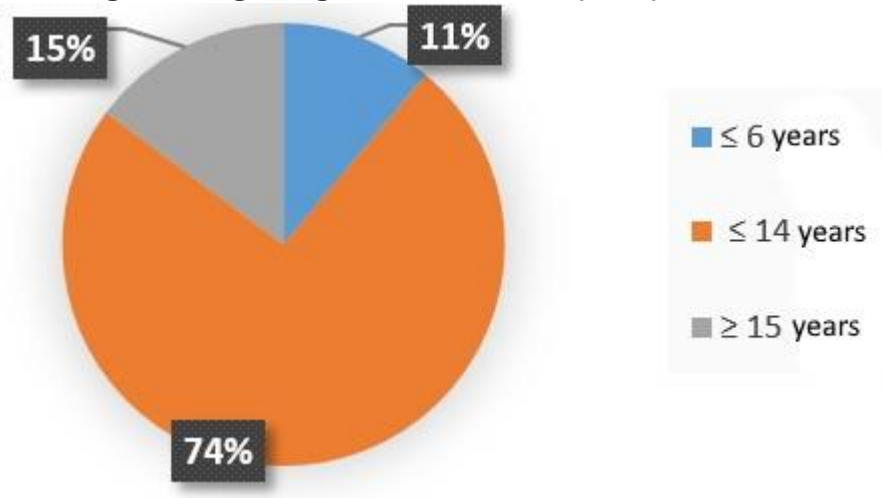
Figure 2 - Gender - victims of violence, TJMS (n=48)



Source: Own elaboration.

Regarding the age of the victims of violence, the highest concentration of cases is in the age group between 7 and 14 years old: 34 victims (71%). Victims in early childhood make up a total, in absolute numbers, of 12 children (25%), while adolescents aged 15 and over make up 4% of the total (two victims).

Figure 3 - Age range of victims, TJMS (n=48)



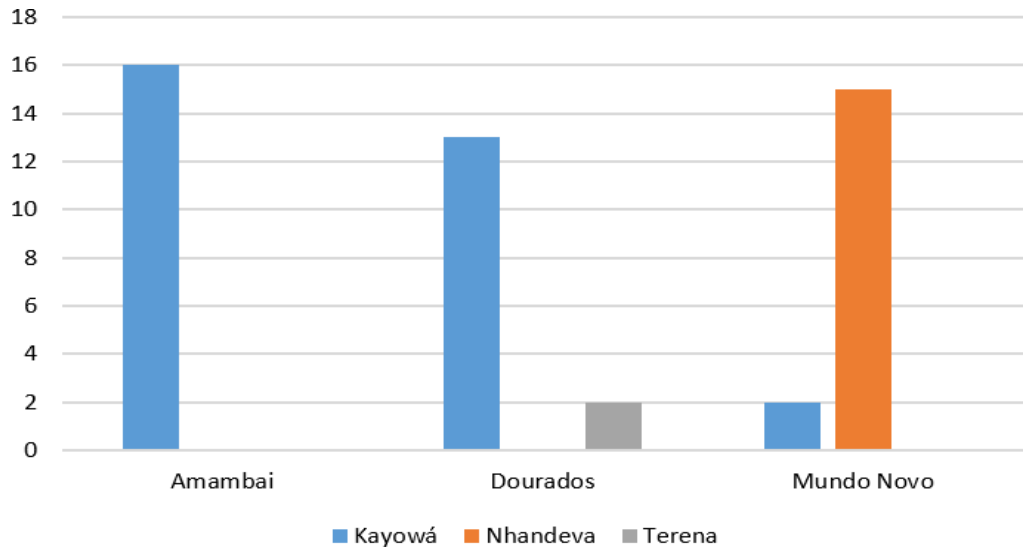
Source: Own elaboration.

13 This is because, in some cases, the judicial process involves the presence of more than one victim of violence.

The information about the ethnicity of the victims in the lawsuits in the districts of TJMS will generally be found in the identification documentation of the victims and their guardians attached to the records in the extrajudicial phase - the police investigation - during the testimonies given.

In the legal processes underway in the Amambai district, all of the victims belong to the Kayowá ethnic group (16 victims). In the district of Mundo Novo, the majority of victims belong to the Guarani-Nhandeva people: 15 victims are Nhandeva (88%) and two are Kayowá (12%). In Dourados, 13 victims belong to the Guarani-Kayowá people (87%) and two are Terena (13%). While the Guarani-Nhandeva and the Guarani-Kayowá are speakers of the Tupi-Guarani language family, the Terena language belongs to the Aruak language family.

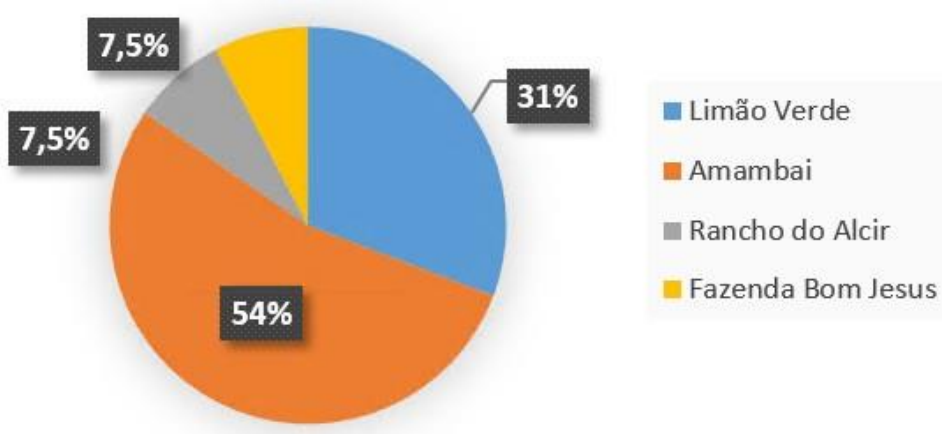
Figure 4 - Ethnic identity of victims, TJMS (n=48)



Source: own elaboration.

Regarding the place where the situations of violence occurred, the following table can be found: in the district of Mundo Novo, the situations of violence against children and adolescents occurred in the communities of the Porto Lindo Indigenous Land. In the district of Amambai, the situations of violence occurred in the Amambai Village (seven cases, 54%) and in the Limão Verde Village (four cases, 31%). A case was also registered in Rancho do Alcir and another in Fazenda Bom Jesus.

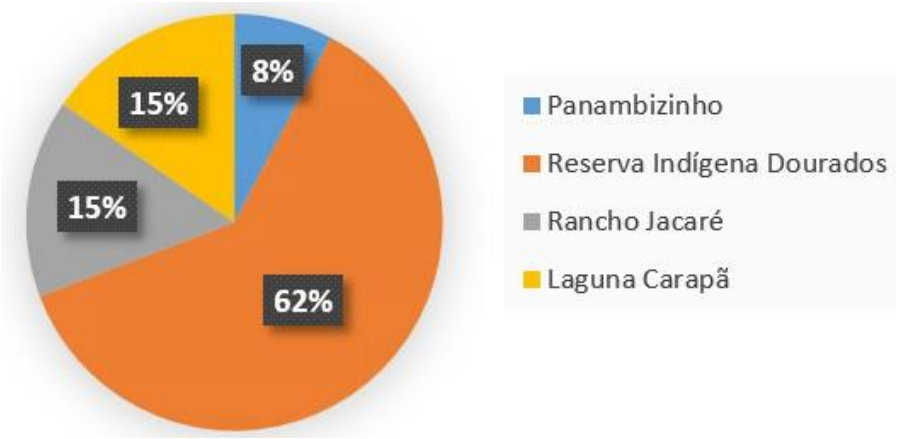
Figure 5 - Place of the facts, Amambai District, TJMS (n=13)



Source: Own elaboration.

In Dourados the situations of violence against children and adolescents mostly occurred in the villages located in the Dourados Indigenous Reserve: eight cases (62%). One case was also registered in Aldeia Panambizinho (8%) and two in Aldeia Rancho Jacaré (15%). Another two cases occurred in the municipality of Laguna Carapã, with no indication of whether the facts occurred in a village or in a city (15%).

Figure 6 - Place of the facts, Dourados district, TJMS (n=13)

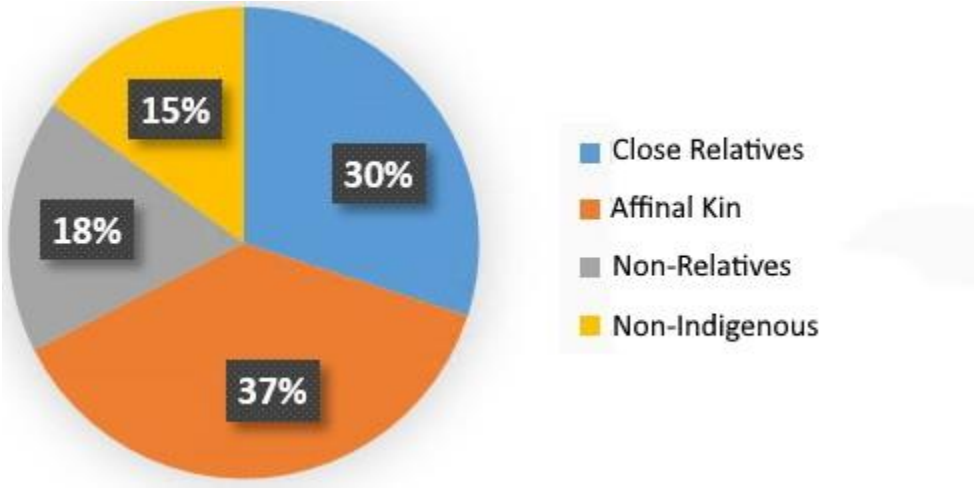


Source: Own elaboration.

Defendants' position in the victim's parentage. Alcoholism and violence.

Of the 41 lawsuits in which indigenous children and adolescents are victims of violence, 39 deal with situations of rape of the vulnerable. Of these, 67% of the accused belong to the victims' kinship network - be they blood relatives or kin.

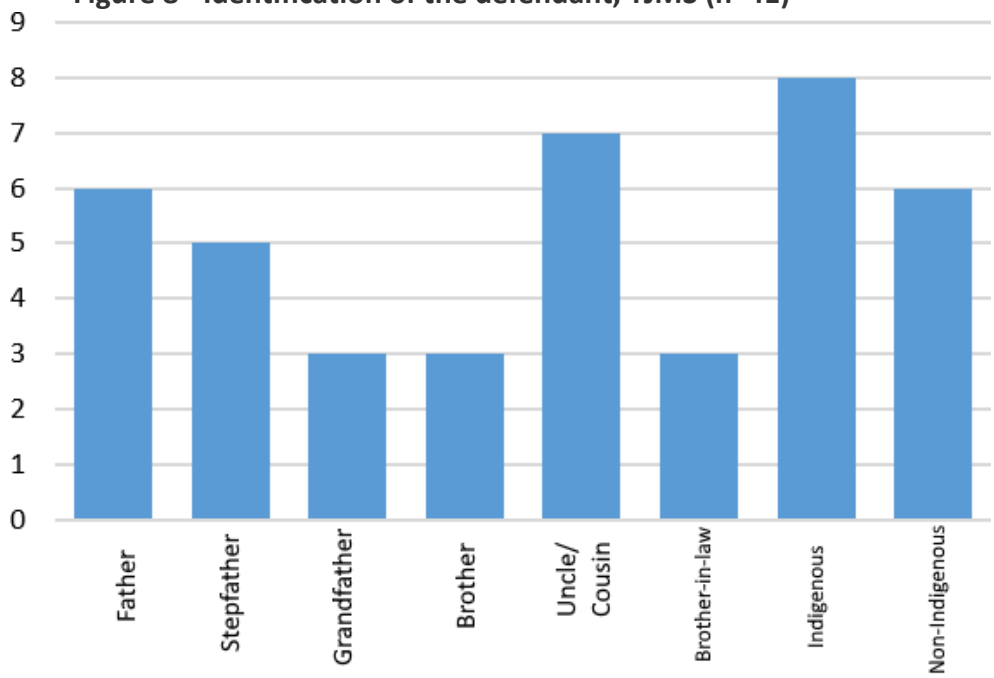
Figure 7 - Position of the defendant in the victim's kinship network, TJMS (n=41)



Source: Elaborated by the author

Regarding the social position of the defendant in the network of relationships of the children and adolescents who are victims of sexual violence, the father is accused in six lawsuits (15%) and the stepfather in five (12%), making a total of 11 cases. Other members of the consanguineous kinship are also blamed for the violence: grandfather (three cases, 7%), brother (three cases, 7%), uncles/cousins (seven cases, 17%). Brothers-in-law, related to the victims by affinity, were also named as responsible for the rape in three cases (7%). In addition, in eight cases (20%) the rape of a vulnerable person was committed by indigenous people not related to the victim and in six cases it was committed by non-indigenous people (15%).

Figure 8 - Identification of the defendant, TJMS (n=41)



Source: Own elaboration.

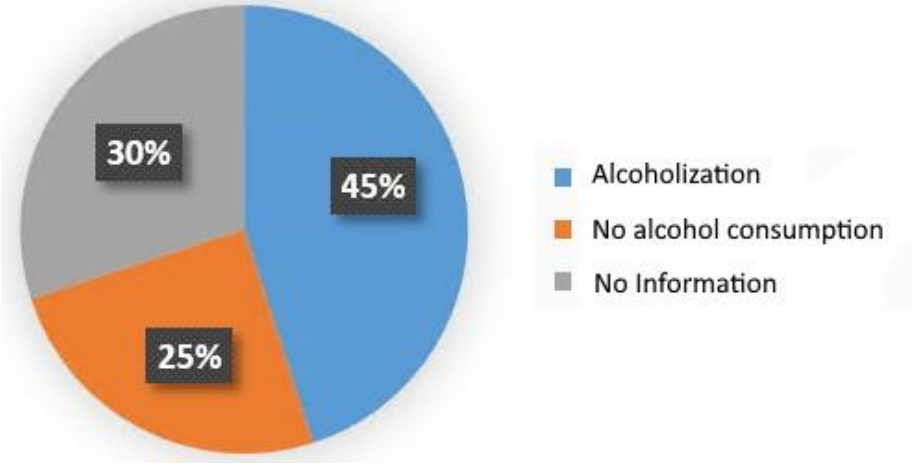
These data are important indicators of the violent situation to which indigenous families are subjected. The rapes of vulnerable people who have the father, grandfather and/or brother (12 cases, 30%) - blood relatives - as responsible assume an incestuous character that points to the dissolution of the rules prohibiting incest, to a process of destructuring the family and kinship bonds, and to the abandonment of traditional and spiritual values that constitute the way of being of the Guarani and Kayowá peoples in the Southern Cone of Mato Grosso do Sul.

The violence committed by parents and step-parents (11 cases), together with that committed by the victim's blood relatives, indicate that it has been happening within the domestic groups that cohabit and share the daily tasks of both the production of people and kinship, as well as the society itself and the cosmos of these indigenous peoples.

Generally, such situations arise in contexts in which the family group is subjected to an intense process of alcoholization, whose main effect is the dissolution of family and kinship ties due to the situations of violence generated (Ferreira, 2018).

Based on Figure 9, it can be seen that 45% of the lawsuits dealing with violence against children and adolescents mention the use of alcoholic beverages by the subjects concerned; while 25% apparently do not count on the alcoholic factor to delineate the facts.

Figure 9 - Alcoholism and sexual violence, TJMS (n=41)



Source: Own elaboration.

However, as we can see, 30% of the cases do not present information about the use of alcohol and other drugs by those involved in the violent episodes. In any case, if the phenomenon of alcoholization cannot be considered the only factor responsible for influencing the context of violence against children and adolescents, it certainly constitutes one of the determinants to be considered in the development of strategies to confront the problems of sexual violence within the indigenous communities.

As this is a public health problem (Minayo; Souza, 2003), it would be appropriate to involve the health authority responsible for providing differentiated primary care to indigenous peoples - the Special Indigenous Health District of Mato Grosso do Sul - in the development of action plans to address the phenomenon of violence against children and adolescents, with
the design of strategies for reducing the harm caused by consumption
harmful use of alcoholic beverages and other drugs.

Court of Justice of Amazonas

The TJAM made 23 lawsuits available for analysis[14], of which three are in the judicial district of Tabatinga (three cases) and 20 in the judicial district of São Gabriel da Cachoeira (20 cases), as shown in Table 4.

Table 4 - Court cases per judicial district, TJAM

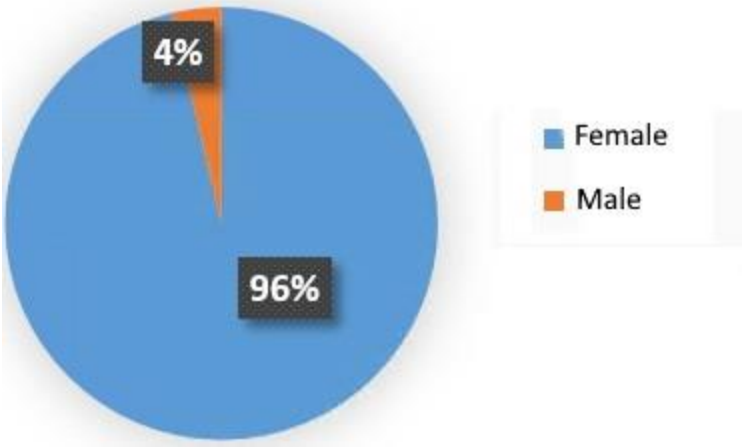
District	Processes
Tabatinga	3
São Gabriel da Cachoeira	20
Total	23

Source: Own elaboration.

Profile of victims: gender and age group

The 23 legal cases analyzed dealt with sexual violence - rape of a vulnerable person - against children or adolescents, covering a total of 27 victims.[15] Of these, 26 (96%) were female, while one (4%) was male.

Figure 10 - Gender of victims of violence, TJAM (n=23)



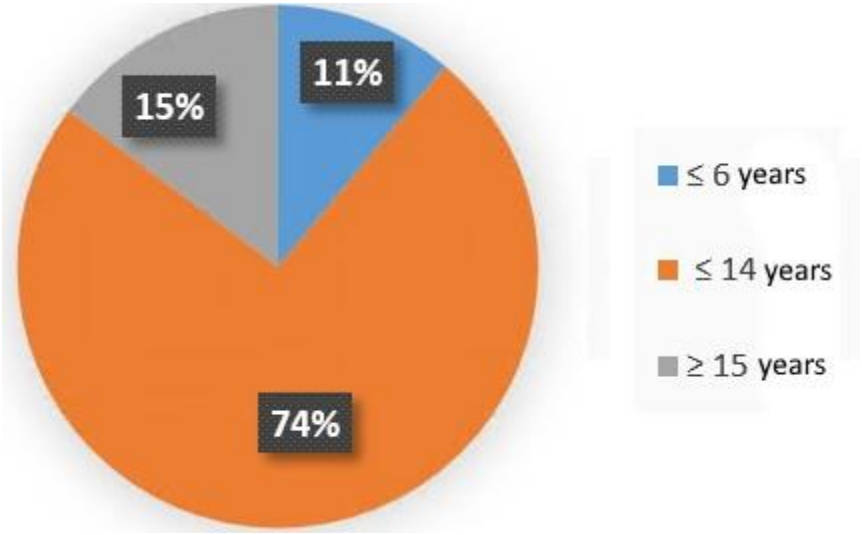
Source: own elaboration.

Regarding the age of the victims of violence, the highest concentration of cases is in the age group between 7 and 14 years old: 20 victims (74%). The total number of victims who are in early childhood in absolute numbers is three (11%), while adolescent victims aged 15 and over make up a total of 15% (four victims).

14 The judicial processes made available by the TJAM districts were sent to the consultant on August 3, 2021.

15 Here we also find cases that involve more than one child or adolescent victim of violence.

Figure 11 - Age range of victims, TJAM (n=23)



Source: own elaboration.

Residence and ethnic identity

Information about the ethnic identity of the victims in the TJAM court cases is scattered and inconsistent. Differently from what is found in Mato Grosso do Sul, where the identification documents of the victims and their guardians inform about their ethnic belonging, in Amazonas this information is not available. In two cases in Tabatinga, the birth certificates of the victims identify them as indigenous, but do not mention their ethnicity.

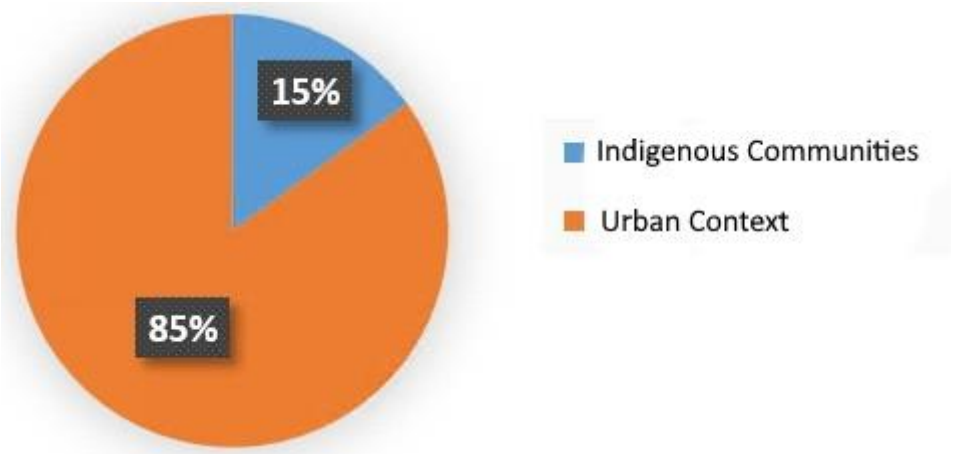
In the three court cases made available by the Tabatinga district court, it is deduced that the victims belong to the Tikuna, a people speaking an isolated language, and the Kokama, a people speaking a language belonging to the Tupi-Guarani linguistic family, due to the information regarding the villages in which they live. The situations of violence that are the subject of the lawsuits in the judicial district of Tabatinga occurred in indigenous communities: Belém do Solimões community, Kokama Sapotal community, and Kokama community.

In the district of São Gabriel da Cachoeira, based on the information dispersed in the documents presented during the police investigation phase (testimony of the victims and their families, psychosocial reports, indication of the community), it was possible to identify in eight judicial processes that the victims belong to the Baniwa, Dessana, Baré-Piratapuia, Tariano, and Tukano peoples. In 12 cases, however, there is no information regarding the ethnic belonging of the victim

and their families.

In São Gabriel da Cachoeira, the situations of violence against children and adolescents mostly happened in an urban context (17 cases, 85%); only in three situations they occurred in the context of the indigenous communities (15%): Vista Alegre Community - Coari River (Baniwa people), Ukuki cachoeira Community - Ayari River (Baniwa people), Balaio Community (Tukano people).

Figure 12 - Location of the facts, São Gabriel da Cachoeira, TJAM (n=20)



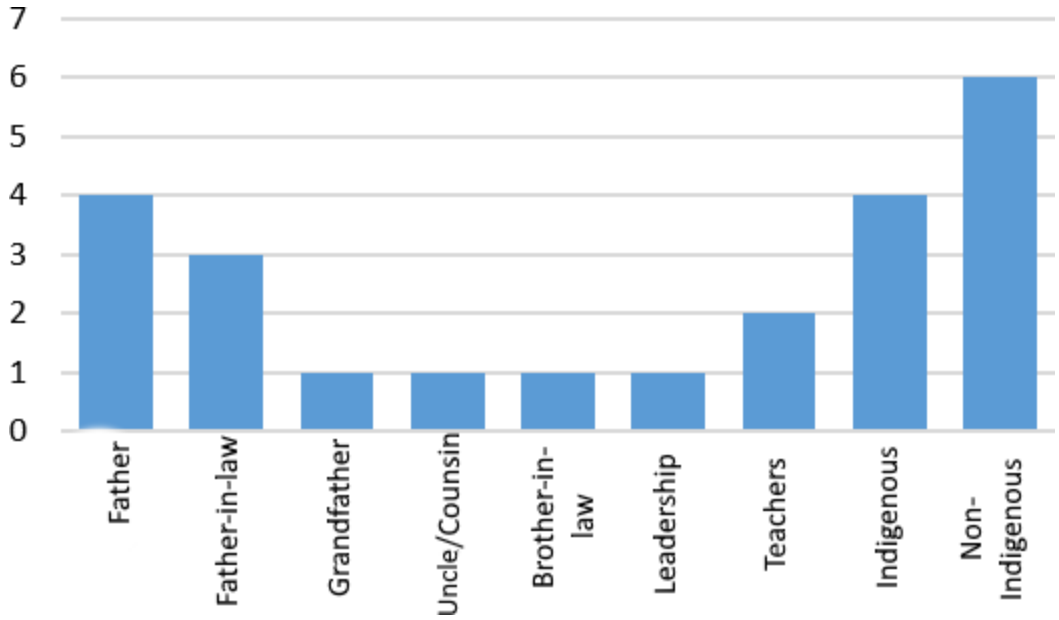
Source: own elaboration.

The enormous distances and the difficulty of displacement between the indigenous communities and the urban context, both in Tabatinga and São Gabriel da Cachoeira, constitute one of the great challenges to guarantee the access of the indigenous peoples and subjects to justice and participation in the judicial acts. We will return to this issue in the next chapter, when we will deal with the flows and services provided by the rights guarantee system to children and adolescent victims of violence from traditional peoples and communities.

Defendants' position in the victim's parentage. Alcoholism and violence.

Of the 23 lawsuits that cover situations of sexual violence against children and adolescents, in four cases the father is the accused for the crime of rape of a vulnerable child (18%) and in three cases the stepfather is the accused (13%); in two cases the accusations fall on close blood relatives, grandfather and uncle (8%), and in one case it falls on a relative by affinity (4%). In addition, one leader is also accused (4%), as well as two teachers (9%) and four other Indigenous not related to the victim's family (18%). Six cases had non-Indigenous as defendants (26%).

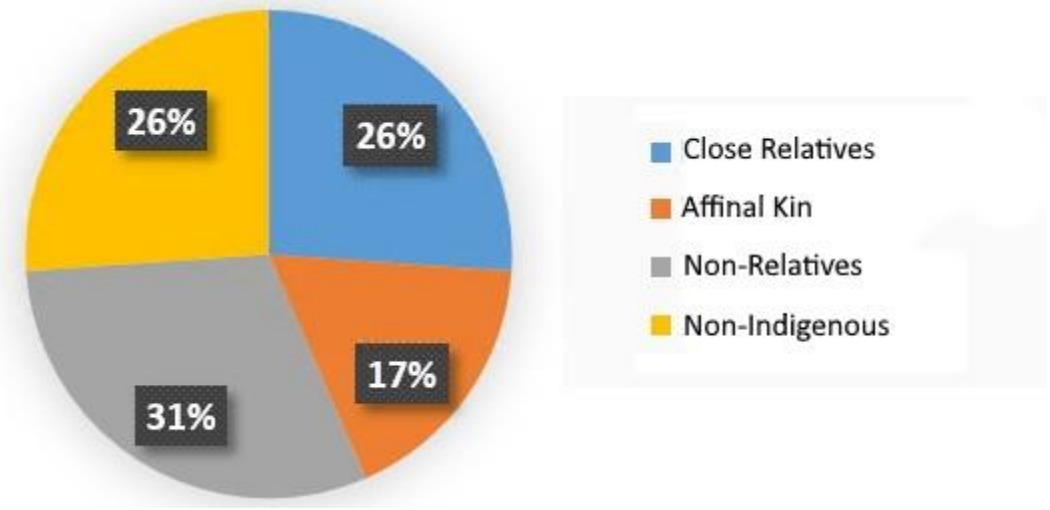
Figure 13 - Identification of the defendant, TJAM (n=23)



Source: own elaboration.

It can be seen that the profile of the accused for the crime of rape of vulnerability acquires other contours considering the analysis of the judicial processes made available by TJAM. Here non-indigenous and non-kin indigenous defendants make up the majority (57%) of those responsible for perpetrating violence against children and adolescents. However, one still finds a considerable number of consanguineous relatives (26%), including the father himself, and kin (17%) accused of sexual violence.

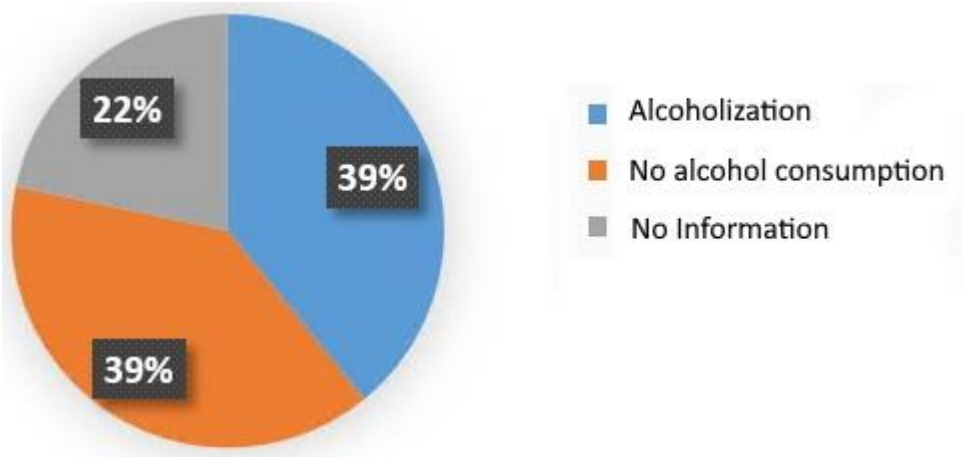
Figure 14 - Position of the defendant in the victim's kinship network, TJAM (n=23)



Source: own elaboration.

In the same way as in TJMS, the violence committed by stepfathers (three cases), together with that committed by the victim's blood relatives, indicate that it has been happening within domestic groups and within the family environment itself. Forty-three percent of those accused of sexually violating children and adolescents in the TJAM courts belong to the victims' family network - be they blood relatives or kin. Of the 23 court cases made available by TJAM, nine (39%) mention the use of alcoholic beverages by the subjects concerned in situations of sexual violence; while 39% apparently do not count on the alcoholic factor to delineate the facts. In five cases (22%) there is no mention of the consumption of alcohol and other drugs by those involved in the violent episodes.

Figure 15 - Alcoholism and sexual violence, TJAM (n=23)



Source: Own elaboration.

Court of Justice of Roraima

The Court of Justice of Roraima found it very difficult to identify lawsuits involving children and adolescents from traditional peoples and communities because its information system does not have a field for registering information on the ethnic belonging of the victims or witnesses of violence. The TJRR identified seven court cases for analysis[16]. The lawsuits analyzed here are in the Bonfim district courts, Pacaraima and Boa vista and were made available as shown in Table 5.

16 The judicial processes made available by the TJRR courts were sent to the consultant on September 30, 2021.

Table 5 - Lawsuits per judicial district, TJRR

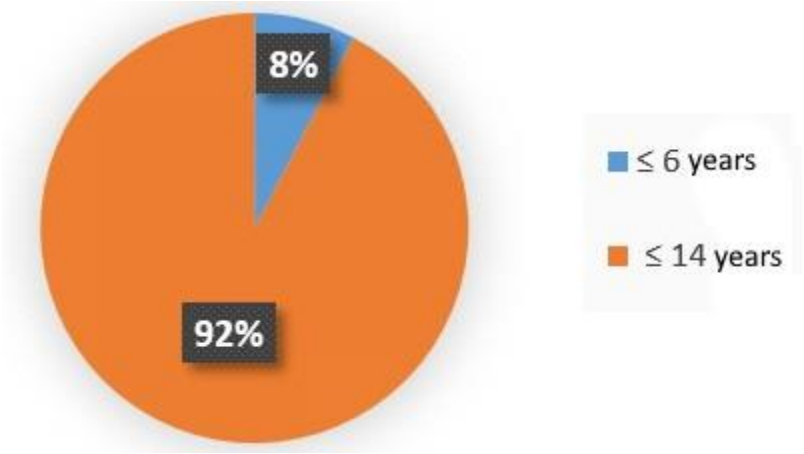
District	Quantity of Procedures
Bonfim	3
Pacaraima	3
Boa Vista	1
Total	7

Source: Own elaboration.

Profile of victims: gender and age group

The seven cases analyzed that deal with sexual violence - rape of a vulnerable person against children or adolescents - include 13 female victims: 12 of them are between 7 and 14 years old (92%), one is still in early childhood (8%).

Figure 16 - Age range of victims, TJRR (n=7)



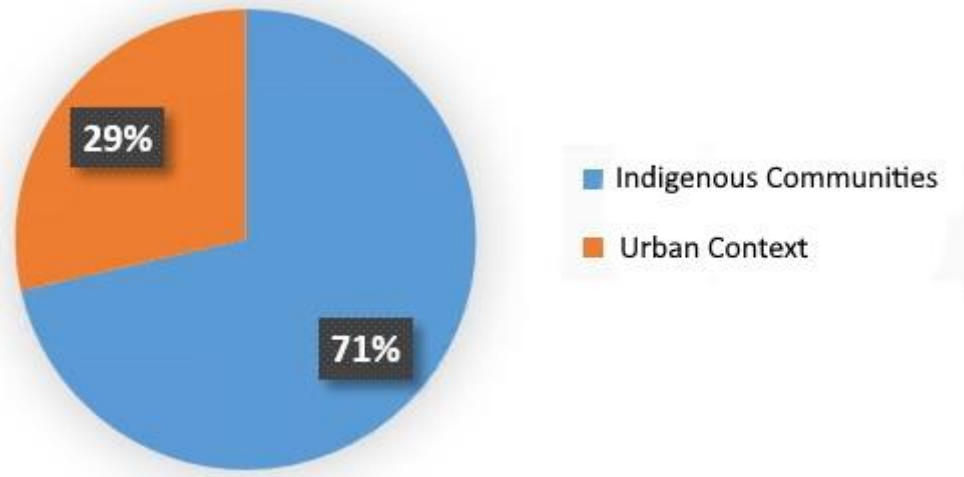
Source: own elaboration.

Residence and ethnic identity

Information about the ethnic identity of the victims in the TJRR court cases is non-existent. In six cases it was possible to identify that the victims were indigenous because of the address declared during the statements given at the police station. In one of the cases, the mother who appeals to the Tutelary Council to denounce the violence to which her daughter is being subjected declares that she belongs to the Macuxi ethnic group. In Roraima, the ethnic belonging does not appear in the identification documents of the indigenous people, neither of the victims, nor of their guardians. In five lawsuits the situations of violence occurred in indigenous communities: Airasol Indigenous Community, municipality of Normandia;

Santa Cruz Community, Raposa da Serra do Sol; Banco Community; and two processes in the Igarumã Community, in Pacaraima. Apparently, two situations occurred in an urban context.

Figure 17 - Location of the facts, TJRR (n=7)

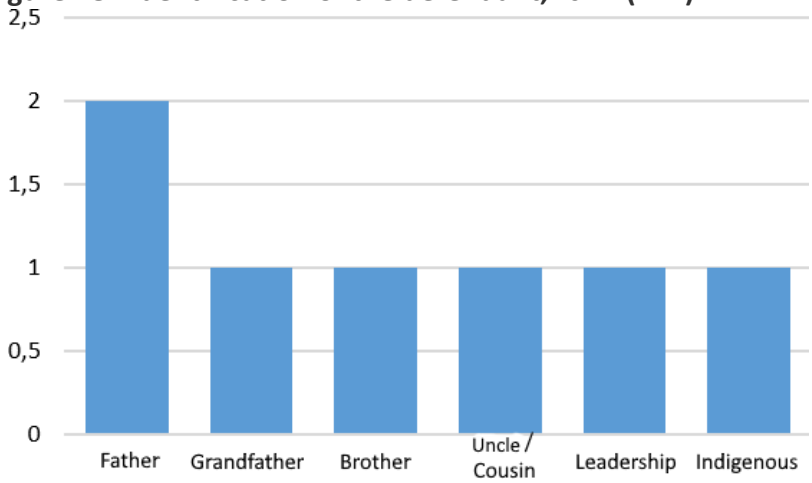


Source: Own elaboration.

Defendants' position in the victim's parentage. Alcoholism and violence.

Of the seven lawsuits that cover situations of sexual violence against children and adolescents, in two cases the father is the accused for the crime of rape of a vulnerable person; in four the accused are close blood relatives, among them one is a leader (Tuxaua) of the community; and in one case, the rape is caused by an indigenous person, but is not part of the victims' family network.

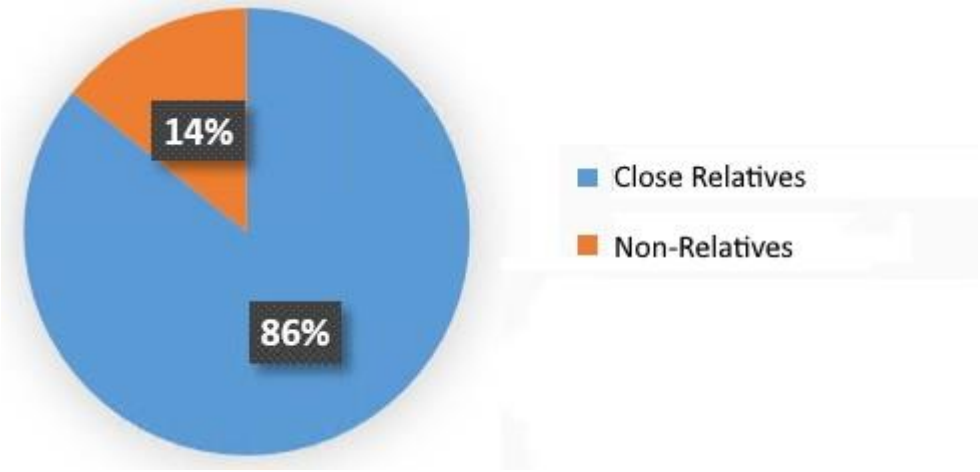
Figure 18 - Identification of the defendant, TJRR (n=7)



Source: Own elaboration.

Based on the judicial processes made available by TJRR, it can be seen that the majority of those accused of the crime of sexual violence against children and adolescents are also part of the victim's family network, with a considerable presence of blood relatives (86%), including the father himself.

Figure 19 - Position of the defendant in the victim's kinship network, TJRR (n=7)

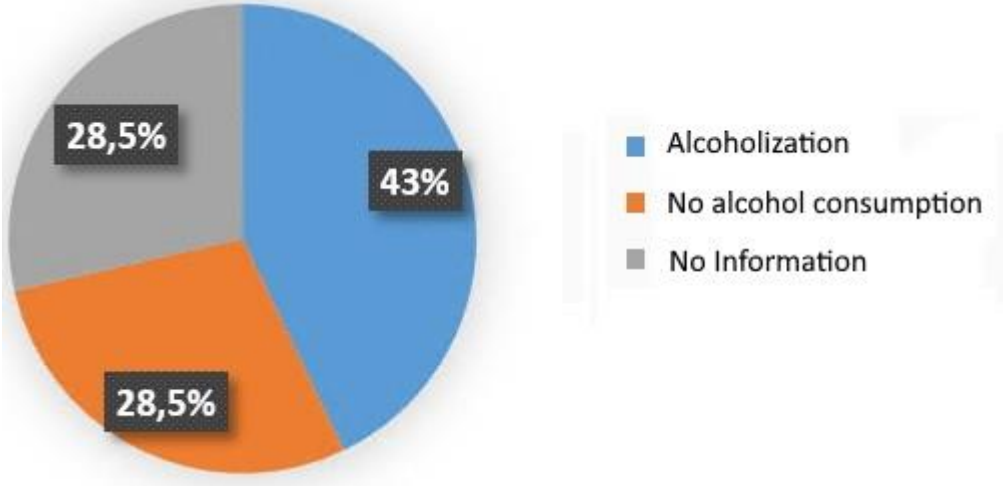


Source: Own elaboration.

In Roraima, there is also an occurrence of violence committed by blood relatives within the domestic groups and the community where the victims live.

Furthermore, according to Figure 20, in three cases (43%) the use of alcoholic beverages contributed to the situation of violence against the child or adolescent. While in two (28.5%), the alcoholization factor was not present; and in two cases (28.5%) there is no information about the presence or not of the consumption of alcohol and other drugs by those involved in the episodes of violence.

Figure 20 - Alcoholism and sexual violence, TJRR (n=7)



Source: Own elaboration.

4.3. Synthesis and results

Based on the ethnographic reading of the 75 court cases made available by the TJMS, TJAM, and TJRR, it is possible to have an overview of the phenomenon of violence against children and adolescents from traditional peoples and communities and present some results of the analysis carried out:

1) The type of violence against children and adolescents from traditional peoples and communities that has been the object of judicialization is sexual: of the 75 judicial processes analyzed, 69 deal with situations of rape of the vulnerable;

2) Most cases have occurred in the contexts of indigenous communities, delineating as a type of intra-community violence. With the exception of São Gabriel da Cachoeira, TJAM, where 85% of the cases of violence occurred in urban areas;

3) In the procedural sample made available by the three Courts of Justice - MS, AM, RR -, the majority of the victims of sexual violence are female, which also characterizes this type of violation as violence against women;

4) In all three Courts of Justice, the age group in which the largest number of victims are concentrated is between 7 and 14 years - the age group that marks the passage from childhood to puberty/adulthood among the indigenous peoples.

5) Most of the aggressors are part of the family network and the victim's close relatives , with ties through blood or affinity, which indicates that the violence has been happening mostly within the domestic group;

6) The situations of violence that configure incestuous relationships point to a process of family breakdown and crisis in the traditional values that regulate the relationships among the members of a domestic group;
7) The alcoholization process in indigenous communities, if not the only factor to determine the phenomenon of violence against children and adolescents, influences the configuration of these situations. Harm reduction intervention for alcohol and other drug abuse can collaborate to reduce the number of cases of violence against children and adolescents from traditional peoples and communities;
8) The issue of sexual violence against children and adolescents belonging to traditional peoples and communities must be the subject of broad debate with the leaders, representatives of the different social segments constituting the people (women, young people, teachers, indigenous health agents) and indigenous professionals, in order to create intercultural strategies for the integral protection of children and youth within their communities;
9) The lack of information on the identity of victims and witnesses from the gypsy, quilombola, and terreiro communities in the judicial processes compromised the access of the consulting firm to the records, preventing them from being contemplated in the present analysis. It is essential to create devices for the ethnic and social identification of these peoples, both in the different procedures that make up the extrajudicial phase of the lawsuits, through self-declaration by those involved (victims, witnesses, and defendants), and in the Judiciary's information systems, through the creation of specific fields for the insertion of data regarding the people/community, ethnicity, and language of the subjects involved in a lawsuit. There is no way to guarantee rights for these differentiated ethnic and social segments if the subjects of these rights are not recognized in their differences within the official statistics of the Brazilian State.

The findings presented in this chapter may subsidize the construction of strategies and plans to confront violence against children and adolescents from traditional peoples and communities, with a view to informing violence prevention actions-one of the dimensions of the right to full protection as presented by Law No. 13,431/2017 and associated regulations.

5. Services, flows and special testimony in the scope of the Courts of Justice of the Northern Region: Amazonas and Roraima

The system to guarantee the rights of children and adolescent victims and witnesses of violence is composed of institutions that make up the judicial system, the public security system, and the protection network (social assistance, health, education, and the Tutelary Council). When it comes to indigenous children and adolescents, this system is also integrated by the National Indigenous Foundation (FUNAI) and the Special Indigenous Health Districts/Special Indigenous Health Secretary (DSEI/SESAI), of the Ministry of Health, which is responsible for managing the primary health care services provided to indigenous peoples within their territories.

From the moment that the situation of violence against the child or the adolescent is communicated to one of the institutions that make up the system of rights assurance, a flow of care is established. This flow takes on different configurations in the multiple locations where it occurs. This is due to several factors: existence of the social equipment in the region, service coverage and capacity to absorb the demands, difficulty of access to care services, among others.

Based on the ethnographic reading of the records made available by the TJAM and TJRR, this chapter will provide information about the flows and agencying of subjects and institutions established since the situation of violence against the child or adolescent is revealed and communicated to the rights guarantee system, when the different acts and services to victims and witnesses of violence are initiated in the scope of the judicial proceedings, both in the extrajudicial phase (that of the police investigation), and in the judicial phase (which begins when the judge receives the accusation offered by the Public Prosecution Office).

To characterize the flows and agency evidenced through the analysis of the judicial processes, the following factors will be considered: 1) the flow of the communication of the violence - what is traveled until the communication of the case to the Police Station or the Tutelary Council; 2) the time that elapses between the registration of the occurrence report and the hearing of the victim by the judicial authority (special testimony hearing or not); 3) the requests for a precautionary rite of evidence; 4) the activation of the protection network institutions by the security agents and the Judiciary in the scope of judicial processes; and 5) the assistance given to the children and adolescents who are victims of violence by the system of rights guarantees and revictimization.

5.1. The flow of care for indigenous children and adolescents victims of violence

The reporting of violations against children and adolescents sent to the Tutelary Council or carried out at Police Stations takes on different configurations in the different indigenous villages and lands served by the courts of the Courts of Justice that welcomed the pilot project for the implementation of special testimony for traditional peoples and communities.

Most of the violence committed against children and adolescents, the object of the lawsuits analyzed here, is reported by family members or leaders

If you have any questions, please contact the Tutelary Council or the security system institutions - the Military Police or the Civil Police Station. Although less frequently, the reporting of rape can also be done by professionals in schools or health services. In this case, it is directed to the Tutelary Council. From that moment on, the flow of services provided by the system of rights assurance to the victims is established.

It is the services carried out by the system of rights guarantees mentioned by the judicial processes that will be considered in the analysis. The number of consultations to which the child or adolescent is submitted from the moment he/she is inserted in the flow of the rights assurance system presented here is approximate. This is because in the cases analyzed the identification of these services is made by means of the reports prepared by the institutions of the security system, the protection network, and the multidisciplinary teams of the Judiciary attached to the records, by the victims' statements, and also by the mention that documents attached to the records (letters, summonses, citations) make about the services requested or provided.

From the moment the police charge is registered at the police station, a police investigation is opened. The investigations carried out during the inquiry aim to collect elements to outline the proposal of the criminal action presented by the police authority to the Public Prosecution Office. The police investigation report is prepared in order to build the conviction of the *prosecutor* - materiality of the fact and evidence of authorship - as to the importance of filing an accusation or representation of infractional acts in court.

As previously indicated, sexual violence against children and adolescents constitutes the main object of prosecution in the judicial proceedings made available by the Courts of Justice in the Northern region. Therefore, the universal procedure in the police investigation stage is the testimony of the child or the adolescent victim of sexual violence at the police station and the performance of the corpus delicti exam of carnal conjunction performed by reference institutions for police investigation. In the extrajudicial stage, the hearing of the child does not have the value of evidence, as in the judicial process, but rather constitutes evidence that points to the authorship and materiality of the crime being investigated. In the judicial processes, there is no information about the conditions under which the hearings of indigenous children and adolescents who are victims of violence are carried out.

Both the police and the magistrate activate the institutions of the protection network - Tutelary Council, Creas, health services - to carry out psychological or psychosocial monitoring of the victims and send the respective reports to be attached to the case file. Such requests are not only aimed at protecting the victim, but also seek to instruct the judicial process underway.

In the next topic, we highlight the flow of the assistance to indigenous children and adolescents carried out in the Courts of Justice of the Northern Region - Amazonas and Roraima - that welcomed the pilot project for the implementation of the special testimony of traditional peoples and communities.

Court of Justice of Amazonas

The flow of services provided in the courts of the TJAM that are participating in the pilot project for the implementation of the special testimony of traditional peoples and communities assumes different configurations with regard to the conduct that is given from the moment the situation of violence against the child or adolescent is revealed.

These specificities occur due to the ethnic and linguistic diversity of the indigenous peoples and the different contexts in which they live - whether in villages located in indigenous lands or in urban areas -, to the geographic characteristics of the region, as well as to the very availability of services and public equipment of the rights assurance system in the Amazon region.

It is important to say that among the Courts of Justice participating in the pilot project for the implementation of the special testimony of traditional peoples and communities is the TJAM that serves isolated and recently contacted indigenous peoples. The territory covered by the district of São Gabriel da Cachoeira, for example, is inhabited by the Hupda and the Yanomami - peoples of recent contact. In this case, the judiciary must be prepared to act in a context marked by the radical alterity characteristic of the relationship established with these peoples. In this section of the report, we will discuss the flow of communication of violence against children in the context of the judicial districts of Tabatinga and São Gabriel da Cachoeira, up to the registration of the police charge at the police station of Tabatinga.

Police and the beginning of the police investigation.

District of Tabatinga

The three lawsuits in the judicial district of Tabatinga deal with situations of violence that occurred within the indigenous communities: Belém do Solimões (Tikuna people), Sapotal and Kokama (Kokama people). In these cases, the flow of communication of violence against children and adolescents to the rights assurance system started within the communities themselves. In one case, the victim was rescued by "indigenous police," who detained those responsible for the gang rape of the Tikuna teenager until they were presented to the police. The communication about the situation of violence to the Police Station was done by the professionals from the DSEI Alto Solimões.

In the other two cases that occurred in communities of the Kokama people, the situation of violence was reported by the victim's family members: in the first case, in the Sapotal community, the mother communicated the situation to the leadership and the latter triggered the Military Police, who referred the case to the Police Station; and in the other case, which occurred in the Kokama community, it was the victim's sister who called the Military Police, who registered the situation at the Police Station, as shown in Table 6.

Table 6 - Violence communication flow, Tabatinga, TJAM

Communication	Institution 1	Institution 2
DSEI ARS	Leadership (indigenous police)	Police Station
Mother	Military Police	Police Station
Sister	Military Police	Police Station

Source: Own elaboration.

As one can see, the path between the communities and the system of rights assurance in cases of violence against children or adolescents has only in one situation been through health professionals working in the community; in the other two cases, the public security system was directly called by family members of the child or adolescent victim of violence. We highlight the absence of the actions of the Tutelary Council in these situations of violence that occurred in the communities attached to the territory served by the Tabatinga district.

District of São Gabriel da Cachoeira

Within the 20 court cases made available by the São Gabriel da Cachoeira district of TJAM, most of the cases of violence against children and adolescents took place in an urban context (17 cases); only three situations of violence erupted in villages located on indigenous lands.

Of the three cases that occurred in the villages, one was reported by the indigenous health professionals to the Creas, which, in turn, triggered the Tutelary Council; the other was referred to the Tutelary Council by the victim's brother; and the third was reported to the Tutelary Council by the leadership. Unlike the judicial district of Tabatinga, the judicial district of São Gabriel da Cachoeira has a more frequent presence of the Tutelary Council in indigenous communities, as shown in Table 7.

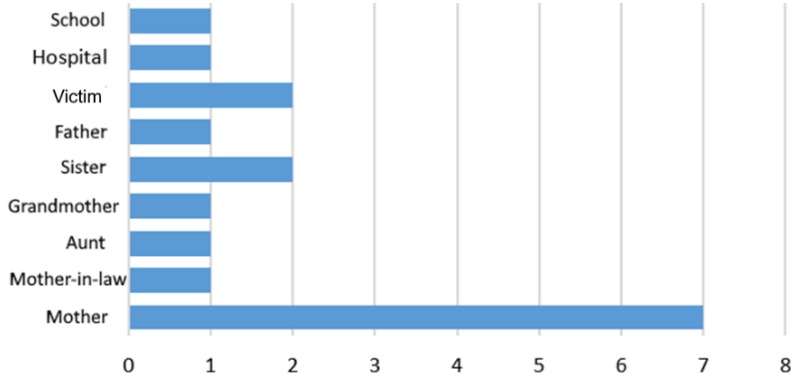
Table 7 - Communication flow of violence on Indigenous Lands, São Gabriel da Cachoeira, TJAM

Communication	Institution 1	Institution 2	Institution 3
Brother	Tutelary Council	Police Station	
DSEI ARN	Creas	Tutelary Council	Police Station
Leadership	Tutelary Council	Police Station	

Source: Own elaboration.

In cases where violence occurs in the city, the mother is the main agent for identifying violence against children and adolescents, and she is responsible for communicating the situations of violence to the Tutelary Council or the Police (military police or civil police). Other relatives, such as sisters, aunt, grandmother, father etc., or even the victim herself, also communicate these situations when they are the ones to identify the problem. It should be noted that the communication to the Tutelary Council can also be made by health institutions or by the school itself.

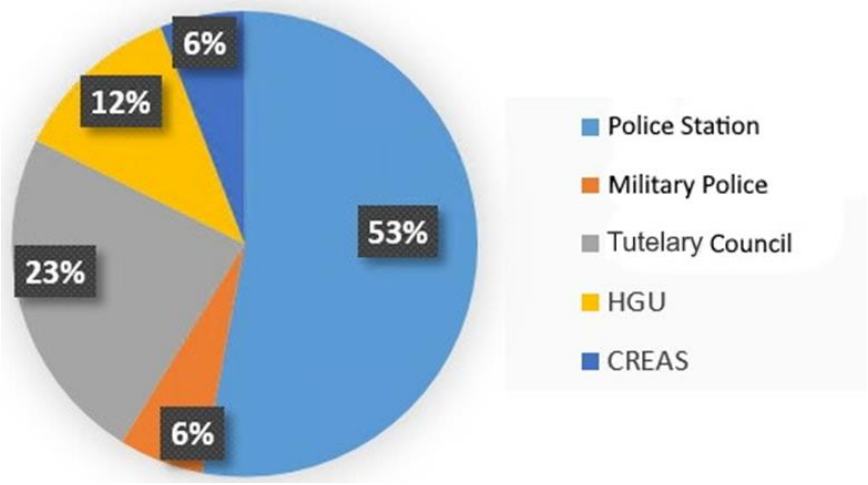
Figure 21 - Communicants of the situation of violence in urban context



Source: own elaboration.

Of the 17 lawsuits analyzed that deal with situations of violence against indigenous children and adolescents in an urban context, in nine cases the communication was made directly to the Police Station (53%); in one case the Military Police (6%) was called; in four cases the Tutelary Council was informed (23%); in two situations the victim was referred to the São Gabriel da Cachoeira Garrison Hospital (12%); and in one case the case was referred to the Creas (6%).

Figure 22 - Triggered instances, São Gabriel da Cachoeira, TJAM (n=20)



Source: own elaboration.

When the institutions of the protection network - health, social assistance, and education - are the ones that identify or are informed about the situation of violence, they call the Tutelary Council, which refers the case to the Police Station for the registration of the occurrence. Table 8 shows the communication flows of violence as they occur within the district of São Gabriel da Cachoeira.

Table 8 - Reporting violence in the urban environment, São Gabriel da Cachoeira, TJAM

Communication	Institution 1	Institution 2	Institution 3
Mother	Garrison Hospital17	Tutelary Council	Police Station
Victim	Garrison Hospital	Police Station	
Sister	Police Station		
Stepmom	Police Station		
Grandma	Tutelary Council	Police Station	
Aunt	Police Station		
Victim	Police Station		
Mother	Tutelary Council	Police Station	
Mother	Police Station		
Sister	Police Station		
Garrison Hospital	Tutelary Council	Police Station	
Mother	Police Station		
Mother	Military Police	Police Station	
School	Tutelary Council	Police Station	
Mother	Police Station		
Father	Police Station		
Mother	CREAS	Tutelary Council	Police Station

Source: Own elaboration.

The comparison between the information brought by the judicial processes made available by the courts of Tabatinga and São Gabriel da Cachoeira regarding the flow of communication of situations of violence is only possible between those that deal with facts that occurred in villages located on indigenous lands. This is due both to the number of cases involved - three cases in Tabatinga and three cases in São Gabriel da Cachoeira - and to the characteristics of the communities themselves, which are organized around the actions of traditional leaders and have access to differentiated public health and education services.

In the cases that erupted in the contexts of families located in urban areas, the communication flows take on other contours. Even in these cases, the Tutelary Council is present in the flows coming from the indigenous communities in São Gabriel da Cachoeira, which does not occur in the judicial processes in Tabatinga.

The care of indigenous children and adolescents in the courts of the TJAM

17 The Garrison Hospital of São Gabriel da Cachoeira is an organization of the Brazilian Army, Ministry of Defense, 12th Military Region.

In the judicial districts of Tabatinga and São Gabriel da Cachoeira, the first service that the child is submitted to after the police charge is registered is to give a statement to the police authority at the Police Station. Of the 23 cases made available by TJAM, the hearing of the victims was held in 22 cases.

The only case in which the victim was not heard at the Police Station was that of a child in which the police authority in São Gabriel da Cachoeira requested CREAS to do the listening, due to the fact that she was of "young age". None of the lawsuits made available by the TJAM's courts carried out the precautionary rite of anticipation of evidence.

One of the lawsuits in Tabatinga County mentions that the teenage victim of sexual violence gave a statement at the police station in the Tikuna language. To do so, it counted on the collaboration of an indigenous health agent (AIS) from the Umuriaçu community as a translator. In the other cases, the performance of an interpreter was not triggered by the civil police.

As the judicial processes in the AM deal, in their totality, with cases of sexual violence, the corpus delicti exam, carnal conjunction (ECD-CC), constitutes a universally performed procedure.

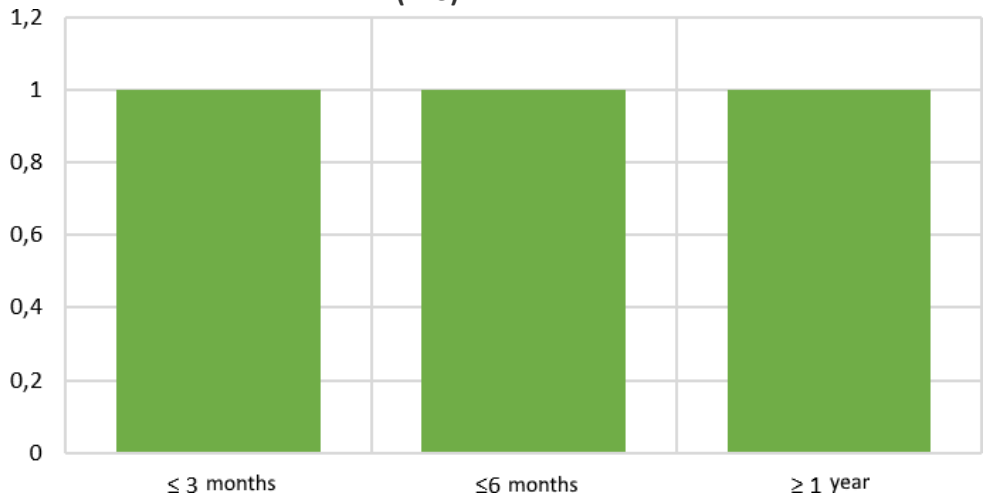
In the judicial phase, in turn, the child or adolescent is heard in the context of pre-trial hearings both in the district of Tabatinga and São Gabriel da Cachoeira, where the conditions recommended for taking the special testimony are still being implemented. From the ethnographic reading of the records, it is possible to see that the magistrate in Tabatinga adopts measures to create a safe environment for the victims to give their testimonies. However, the conditions are still precarious, which does not allow the hearing of the victims as a special testimony per se.

It is important to emphasize that neither the Tabatinga nor the São Gabriel da Cachoeira districts have specialized technicians on their staffs. In this case, for psychosocial studies to be carried out in order to instruct the judicial processes, the collaboration of the Creas that operate in the region is requested.

The articulations between the Justice system and the protection network in the judicial district of Tabatinga Regarding the participation of the protection network institutions in the judicial processes, a particular situation was found in the judicial district of Tabatinga. There is no indication in the records that the police authorities or even the judiciary request the protection services - Tutelary Council and Social Assistance - to follow up the victims and their families and send the respective assistance reports.

The structural, logistical, and regional conditions faced by the Tabatinga district make it difficult to carry out the precautionary rite of anticipation of evidence. Even so, the judicial processes available for analysis reveal that the time elapsed between the registration of the police charge and the hearing of the child is reasonable: in one of the processes this interval was 3 months; in the other it was 6 months; and the third took 17 months, as shown in Figure 23.

Figure 23 - Time between the police charge and the victim's hearing, Tabatinga, TJAM (n=3)



Source: Own elaboration.

As presented, in the context of this district, in order for the judicial acts to be carried out and to guarantee access to justice, the judiciary needs to count on the support of the other institutions that make up the system that guarantees the rights of the indigenous children and adolescents who are victims of violence: Funai, DSEI-ARS, Creas and Radio Nacional do Alto Solimões.

Therefore, the judiciary in Tabatinga has the support of Funai and the DSEI--ARS for locating and summoning victims and those responsible for them, as well as witnesses and those accused of the crimes, to appear before the court on the occasion of hearings. The bailiffs are unable to summon the subjects involved in the judicial process when they live in places that are difficult to access, due to the lack of conditions for travel to the communities.

Funai and the DSEI-ARS are also called upon by the judge to collaborate with the translations in the context of instruction and trial hearings and the hearing of children and adolescent victims of violence when they cannot express themselves well in Portuguese. To carry out the testimonies of the victims of violence, the judge asks Creas to provide specialized professionals
- psychologists or social workers - to conduct the interview with the children or adolescents.

However, due to the restricted number of personnel working in this public facility and the volume of demands it needs to meet, the Creas does not always have such professionals to attend the court on the dates scheduled for the hearings. This was the case with one of the lawsuits made available by the Tabatinga district.

At any rate, in Tabatinga, the limitations of the judiciary's actions due to the precariousness of the structural conditions are minimized through the collaboration between the institutions that make up the rights assurance system. The magistrate in charge of the district is applying in her practice the provisions of Article 3 of CNJ Resolution No. 299/2019. 299/2019, which determines that it is an "inherent activity of the judicial function, for the purpose of productivity, the participation of magistrates in the implementation of local service flows for children and adolescent victims or witnesses, observing local peculiarities".

As a matter of fact, the difficult access to the communities far from the headquarters of the municipalities of Tabatinga and São Gabriel da Cachoeira is one of the common obstacles in both districts. One of the resources used by the magistrates is to ask local radio stations to publicize the dates of the hearings to call the people involved to participate.

Thus, some issues need further reflection on the effects and consequences of collaborative measures when it comes to ensuring the privacy, confidentiality, and protection of victims of violence within the communities where they live. The method of publicizing and calling the people summoned to participate in the hearings may constitute a form of exposure of these children and adolescents in the community contexts in which they live, thus contributing to their re-victimization. Further anthropological study is needed to ascertain the effects and consequences of these communications on the lives of children and adolescents within their communities.

Another issue that also needs to be reflected upon concerns the importance of the work of interpreters and forensic interviewers in the scope of hearings in which children and adolescents are heard. A plan needs to be developed for the recognition, training and remuneration of these professionals by TJAM. The strategy of relying on the protection network to perform the functions of forensic interviewers and interpreters should be short term. In the medium and long term, it is necessary to make the work of these specialized professionals official.

The ethical impasse that health, psychology, and social assistance professionals, whose mission is to care for, support, and implement therapeutic measures for the treatment and recovery of the health and well-being of victims of violence, face when they begin to act both as instruments for locating and summoning victims, witnesses, and accused parties, and as forensic interviewers in an action that aims to produce evidence for a lawsuit, cannot be overlooked. Such accumulation of functions can confuse the communities about the objectives of the work of these professionals, whether in the field of primary care for indigenous health - the case of the network of services managed by the DSEI-ARS, or in the work of the municipality's social assistance.

The ethical issue itself will be deepened in the next chapter, when the position of the Creas of São Gabriel da Cachoeira will be presented, in response to the demand of the Judiciary for the participation of its technicians as forensic interviewers in the scope of hearings in which children and adolescent victims of violence give their testimony.

Articulations between justice and the protection network in the district of São Gabriel da Cachoeira

In the judicial district of São Gabriel da Cachoeira, the action of the institutions of the protection network in the judicial processes analyzed takes on other contours. As previously mentioned, the multidisciplinary indigenous health teams that work in the territories play a fundamental role in the identification, first aid, and referral of cases of violence that occur in the villages. The Tutelary Council also intervenes even before the police charge is registered and gives support to the victims' families, referring them to the Police Station to report situations of violence.

In eight cases in the district of São Gabriel da Cachoeira (40%), still in the extrajudicial phase of the process, the police authority requested that Creas conduct a qualified listening session or psychological monitoring of the child or adolescent victim of violence, and later forwarded to the police station the report of the service.

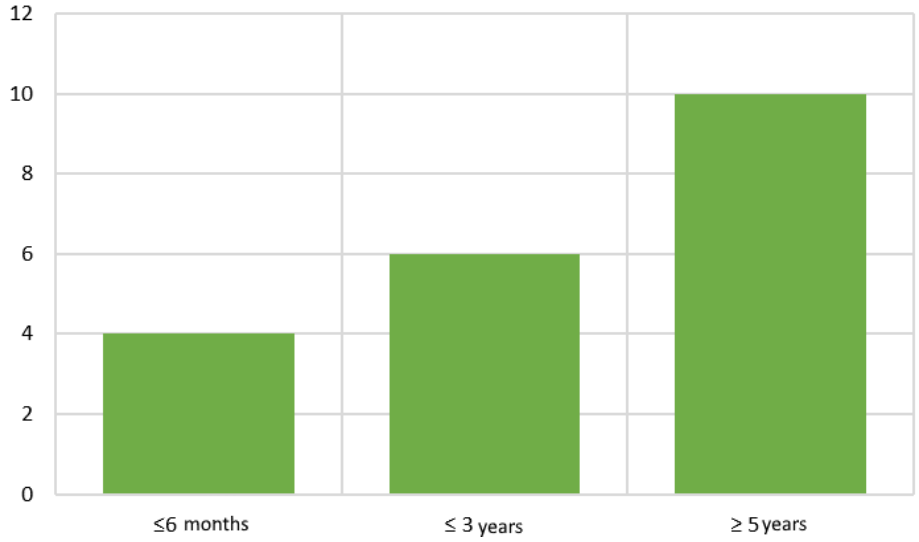
In only one case did the police authority request the Tutelary Council to attend to the victims, in view of the need to instigate protective measures for them.

In the judicial phase, only one case was found in which the judge requests Creas, at the request of the defense of the accused, to conduct a psychosocial study of the victims. In this case, Creas was not able to meet the request because it did not have qualified personnel to carry out the study. In any case, when possible, Creas forwards the attendance reports to be joined to the records, in order to instruct the judicial process in progress.

The long distances and the difficult access between the indigenous communities and the central part of the city constitute two of the greatest difficulties faced by the judiciary in carrying out legal proceedings. In many cases, the impossibility of locating and summoning the parties involved in a judicial process causes long periods to elapse between the registration of the occurrences, the instruction hearings, and the judgment of the cases of violence against indigenous children and adolescents.

In four cases, the time elapsed between the communication of the situation of violence at the Police Station and the hearing of the victim in a hearing was equal or less than six months (20%). In six cases, the period between the registration of the police charge and the hearing of the child is greater than six months and equal to or less than three years (30%); and in ten cases (50%), the time elapsed between the communication of the violence to the police and the hearing of the victim in a hearing was equal to or longer than five years.

Figure 24 - Time between police charge and victim hearing, São Gabriel da Cachoeira, TJAM (n=20)



Source: Own elaboration.

Of the nine lawsuits in which evidentiary hearings have not yet been held, the context in which victims of violence are heard in São Gabriel da Cachoeira, in one the police investigation was opened in 2010 and the evidentiary hearing took place in the year 2021 - the victim was summoned to testify 12 years after the situation of violence suffered. However, neither the accused was summoned because he was not located, nor did the victim attend the hearing.

The fact is that the longer the time that elapses between the communication of the situation of violence and the hearing of the victim, the more is lost in terms of the quality of the testimony, since it is based on the work of memory, and the more the child or the adolescent who suffered the violence is re-victimized.

* * *

During the year 2018, the magistrate responsible for the São Gabriel da Cachoeira district tried to establish a partnership with the protection network of the municipality to carry out the special testimony in this district, a possible way to overcome the shortage of qualified servers in the Judiciary. To this end, in the context of a specific lawsuit, he asked the Municipal Secretary of Social Assistance to assign specialized professionals from Creas to take the special testimony of a child victim of violence in the context of an instruction and trial hearing.

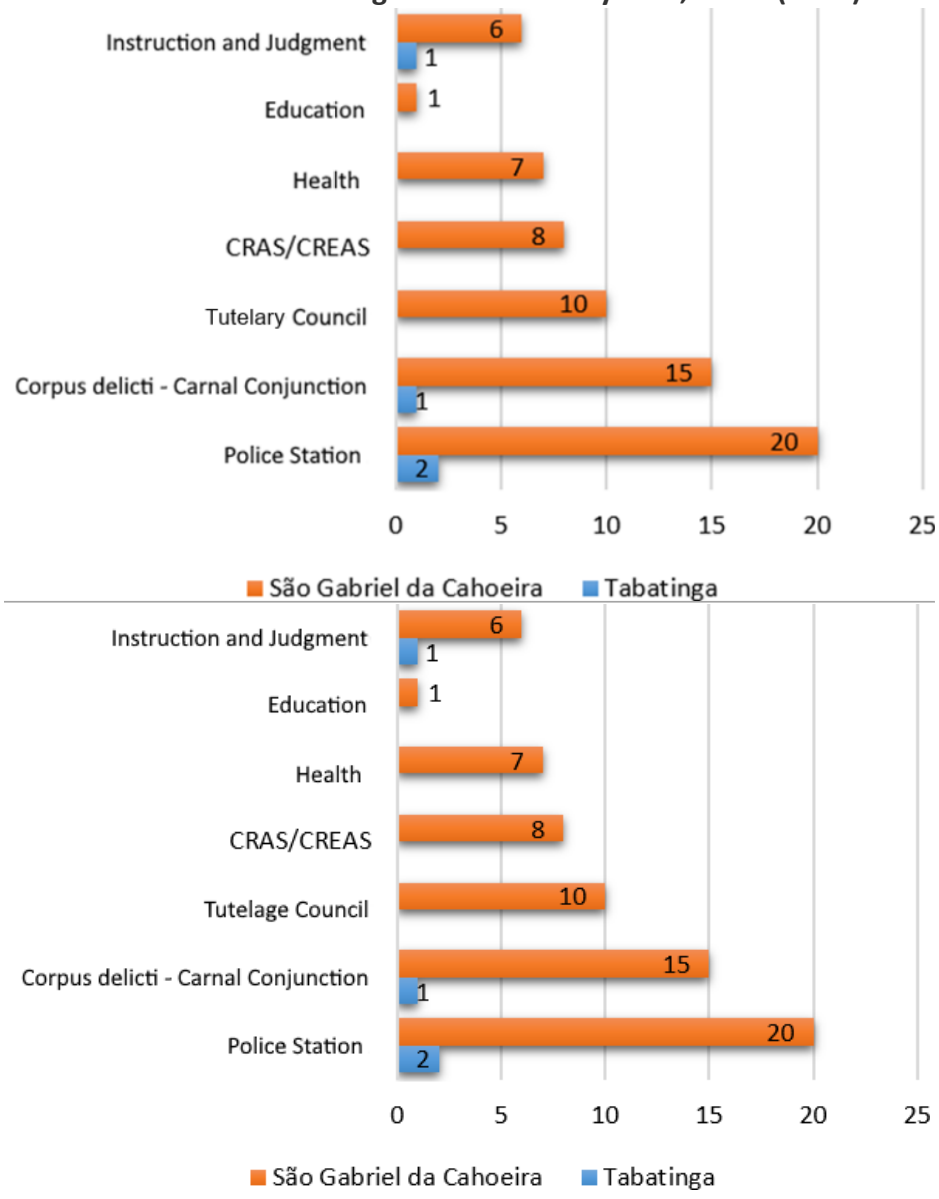
The Secretary of Social Assistance of the municipality forwarded a document, attached to the records, which is entitled "Positioning of reference teams Cras and Creas in relation to judicial guidelines for procedural operationalization of humanized listening proposed by the court of law of the district of São Gabriel da Cachoeira - AM", refusing to cede these professionals to the courts to act as forensic interviewers on the grounds that this service would not be compatible with the duties, positions, and functions that psychologists and social workers perform within the protection network. The arguments of the Creas/Cras teams will be taken up in the chapter that will deal with the forensic interviewers.

In this case, the magistrate, understanding the Creas teams' point of view, established that the child victim of violence would be heard in the presence of the judicial authority only. This is why it is so important that judges also master the technique of special testimony: to hear the child or adolescent in a way that does not re-victimize them.

As for the services provided by the rights guarantee system in São Gabriel da Cachoeira, the information available in the files indicates that the children or adolescents who are victims of violence from the indigenous peoples who live in the region have been heard sometimes at different moments of the service flow.

Figure 25 illustrates the approximate number of interviews with victims of violence in the districts of the TJAM that are part of the implementation of the pilot project of special testimony.

Figure 25 - Attendances of the Rights Guarantee System, TJAM (n=23)



Source: Own elaboration.

As can be seen in the previous figure, although the judiciary in Tabatinga counts on the partnership of indigenous institutions and the municipality's protection network to make some of its procedural acts possible, the flow in this district is limited to the services provided by the security system and the judiciary. The interventions concentrate, in the extrajudicial phase, on the victims' testimony and on the performance of the corpus delicti exam - carnal conjunction. In the judicial phase, the victim is heard during pre-trial hearings, in an adapted environment and, in some cases, with the presence of professionals from the protection network to take the testimony. Despite the minimal flow, this does not mean that the child or the adolescent will not experience situations of

revictimization, because it all depends on how the hearing is conducted. In order to evaluate more precisely, it would be necessary to deepen ethnographic studies, since the information in the records, due to the small number of court cases made available by the court (three cases), does not allow such analyses.

In the district of São Gabriel da Cachoeira, on the other hand, the institutions of the protection network that are part of the rights guarantee system are involved during the flow of the judicial process, either by the police authority or by the judicial authority. The largest concentration of interventions is in the extrajudicial phase: testimony at the police station and the performance of the corpus delicti exam - carnal conjunction; in the actions of the Tutelary Council and in the support given by the Creas in conducting psychological follow-ups.

In the judicial phase, the main service provided by the Judiciary is the hearing in the scope of instruction and trial hearings. Eventually, the court may request the Creas to carry out psychosocial studies, as this is the reference institution of the rights' guarantee system to meet the need to instruct the judicial processes.

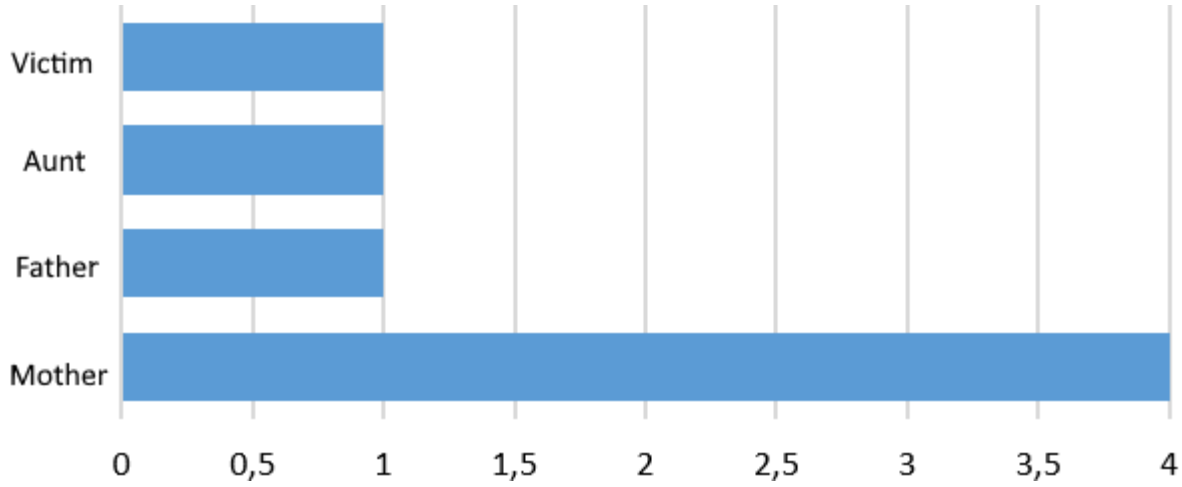
In none of the cases made available by the TJAM's courts participating in the pilot project did the child or adolescent victim of violence have legal assistance in their favor to enforce their right to full protection and to avoid the re-victimization caused in the scope of the services provided by the institutions of the rights' guarantee system.

Court of Justice of Roraima

The flow of care provided in the districts of the TJRR also presents particularities regarding the referrals and care provided to the child or adolescent from the moment the situation of violence is revealed. The seven lawsuits made available by this Court reveal the flow that the communication of violence against children and adolescents to the institutions of the rights assurance system establishes in the context of the districts of Bonfim (three cases), Pacaraima (three cases), and Boa Vista (one case).

Among the indigenous peoples served by these districts, the main agent for identifying violence and reporting the situation to the Tutelary Council or Civil Police is the mother. Other relatives of the child or the adolescent (father and aunt) or even the victim herself also resorted to the rights assurance system to report ongoing situations of violence. However, as in TJAM, even when the situation of violence occurs in the family context, the protective role played by members of the children and adolescents' families is fundamental to interrupt the cycle of violence and care for the children and adolescents victimized by these situations.

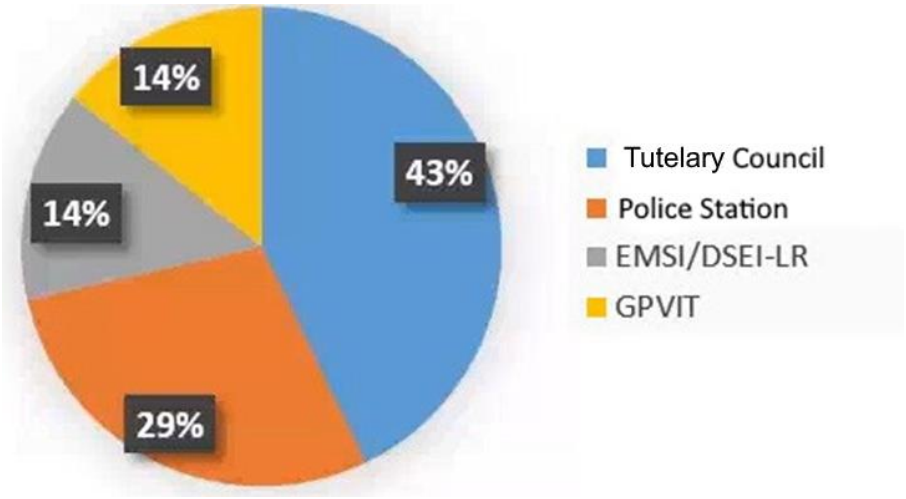
Figure 26 - Reporters of the situation of violence, TJRR (n=7)



Source: Own elaboration.

According to Figure 27, the communication of the situation of violence was made directly to the Tutelary Council in three cases (43%), to the Police Station in two cases (29%), to health professionals of the DSEI East of Roraima (EMSI/DSEI-LR) on one occasion (14%); and on another, the indigenous members of the Group for Protection and Territorial Surveillance (GPVIT) were called (14%).

Figure 27 - Triggered instances, TJRR (n=7)



Source: Own elaboration.

The Tutelary Council, when called, will either report the case directly to the Public Prosecution Office (notice of the fact) or will forward it to the Police Station for the filing of a police charge. Table 9 presents the flows of the communication of violence as revealed by the court cases made available by the TJRR.

Table 9 - Flows of violence communication, TJRR

Communication	Institution 1	Institution 2	Institution 3
Father	Police Station		
Victim	Tutelary Council	Public Prosecution Office	
Aunt	GPVIT18	Tutelary Council	Police Station
Mother	Police Station		
Mother	Indigenous Health Team	Tutelary Council	Police Station
Mother	Tutelary Council	Public Prosecution Office	Police Station
Mother	Police Station		

Source: Elaborated by the author

The care of indigenous children and adolescents who are victims of violence in the TJRR's judicial proceedings

As in the other Courts of Justice considered here, in the districts of Roraima, the first procedure that the child is submitted to after the report is registered is the deposition at the Police Station. In the seven cases made available by the TJRR, the police authority made the hearing in four cases; in one case the testimony was made via precautionary rite of anticipation of evidence; and in two situations no information was found in the records about the testimony given by the victims of violence in the extrajudicial phase of the process.

In six court cases dealing with cases of sexual violence, the corpus delicti exam - carnal conjunction (ECD-CC) was performed. Only in one case was this procedure not applied, because it was an action brought by the mother to recover her daughter, who has resided with her godmother since her birth.

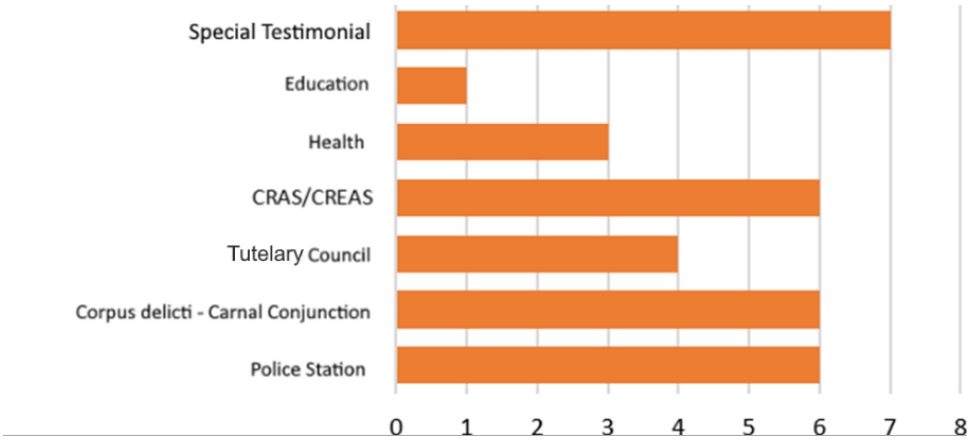
In four cases, still in the extrajudicial phase, the police authority requested the Tutelary Council and the Cras/Creas to monitor the victims and prepare psychosocial and situational reports. In the judicial phase, when the reports of the assistance from Creas and Tutelary Council are not part of the police investigation, the court can also request the monitoring and psychosocial studies by these institutions of the protection network.

The other procedure to which the child or the adolescent victim of violence is submitted in the judicial phase is the special testimony hearing. Of the seven cases analyzed here, in six the hearing of the child was held in the context of special testimony. In one case the special testimony could not be taken because the court was unable to locate her or because there was no forensic interviewer available to make the hearing on the court-appointed hearing date.

18 Territorial Protection and Surveillance Group.

Figure 28 illustrates the types and number of procedures that indigenous children and adolescents who are victims of violence are submitted to while passing through the institutions of the system of rights assurance in Roraima.

Figure 28 - Victim services, TJRR (n=7)



Source: own elaboration.

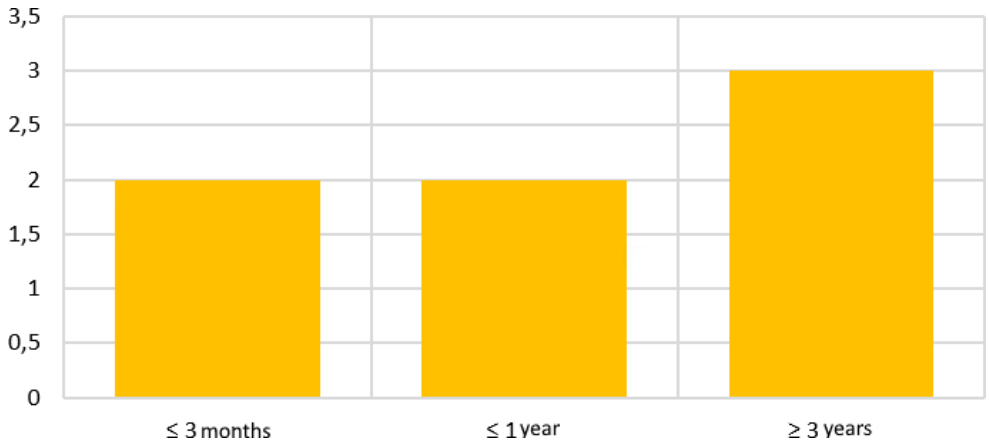
Special Testimonial

The TJRR has a special testimony-taking service in place. As can be seen, in the seven cases made available by the Court, the hearing of the indigenous children and adolescents who were victims of violence was carried out according to the principle of testimonies without damages.

The specialized professionals who conduct the forensic interview of the children and adolescents are experts accredited by the Court of Justice, who have been trained to act in the taking of special testimony. As soon as the district schedules the hearing for the children's hearing, it sends a letter to the Children and Youth Coordinator of the TJRR in which it requests a forensic interviewer to act in the designated hearing. The Coordinator then selects and informs the judge which interviewer will conduct the special testimony. In addition, the magistrate advises that if the child or adolescent is indigenous, it is necessary to appoint an interpreter to translate during the hearing. Another aspect to be considered concerns the time that elapses between the registration of the police charge or the communication to the Tutelary Council and the hearing of the child at the special testimony hearing.

In two cases the child or adolescent was heard in less than three months, since the fact was communicated to the institutions of the rights assurance system; in two cases the period elapsed was more than three months and less than a year; and finally, in three situations, the period elapsed was equal to or longer than three years - of these, in two cases the time elapsed was approximately five years.

Figure 29 - Time between the police charge and the victim's hearing, TJRR (n=7)



Source: Own elaboration.

The long periods between the reporting of violence and the hearing of the victim in three cases is due to several factors. As the Bonfim County magistrate explains in his answers to the Questionnaire to collect preliminary information for the Courts of Justice participating in the pilot project implementation:

> The special testimony in the judicial phase is duly implemented in the district of Bonfim, however the difficulties faced are based on the absence of attendance of the victims and witnesses, with their respective legal representatives, which results from the distances between the District Courthouse and the indigenous communities; the absence of transportation to the referred locations; and the expenses for the displacement faced by the parties (Response of the magistrate of the district of Bonfim to the questionnaire for the survey of preliminary information from the Courts of Justice).

5.2. The impact of the performance of the rights guarantee system on traditional forms of protection for indigenous children and adolescents: a case study

The case considered here to reflect on the possible impacts of the performance of the rights guarantee system on the traditional forms of protection for indigenous children and adolescents occurred in the district of São Gabriel da Cachoeira, TJAM. The report of violence against two teenage sisters - one 14 years old and the other 12 years old - was made to the Tutelary Council by a group of leaders of the Tukano community, of the Balaio Indigenous Land. On June 14, 2014, the leadership wrote a letter, signed by four leaders, to the Tutelary Council explaining the situation. This document attached to the case file constitutes the ethnographic material from which the reflection presented here is developed.

According to the letter from the leaders, the two teenage girls were being mistreated by their mother and stepfather and, as a result, had left their family home and were staying overnight on the street or in the community's support house. No family wanted to take them in for fear of having problems with the stepfather and the mother of the teenagers or even "getting in trouble" with the Tutelary Council itself. Given the situation of abandonment in which the girls found themselves, the leader, at the request of his wife, decided to take them into his home, since they were "having a very bad time".

Since one of the girls was running a fever, the leadership took her to be tested for malaria. The examiner advised the leadership to send the teenager home, as her mother was looking for her. He also warned the leader, "when the Tutelary Council appears here in the community I don't even want to get involved!" Only the teenager refused to return home. And so far the leadership did not know the reasons why the two had left home.

Concerned about the consequences of having taken in the adolescents, given the complications that could arise with the intervention of the Tutelary Council, the leadership weaves the following reflection:

> Now I ask myself, for myself: Did I do the right or wrong thing by taking in the two girls in difficult situations? Will I have problems with the Tutelary Council officials? Why don't those responsible for these girls look for the legal way to solve the problems? Why don't these two girls want to go back with their mother and stepfather? How is the bolsa familia card being used by the mother? Or is it in the stepfather's domain? We need the Tutelary Council officials as soon as possible in the Balaio community.

> Calling the leaders together to seek better understandings in front of the guardians of the two girls (Document attached to the lawsuit filed at the Court of Justice of the Amazonas).

The case was reported by the Tutelary Council to the Police Station on June 30, 2014. Due to the fact that the girls did not want to return home, the protective measure indicated by the Tutelary Council was to host them at the Casa Menina Feliz, located in the urban perimeter of São Gabriel da Cachoeira. During the service provided by the Tutelary Council, the adolescents told that one of them had been sexually assaulted by her stepfather.

The police investigation report was forwarded to the São Gabriel da Cachoeira District Courthouse in November 2014. On April 22, 2015, the Public Prosecution Office filed charges against the stepfather of the teenage girls. However, up to the time the files were sent to this consultant, the defendant had not been served with the contents of the complaint, as he had not been located by the bailiff.

* * *

The case described reveals how much those responsible for implementing public and judicial policies related to the protection of children and adolescents of indigenous peoples should be aware of the possible deleterious impacts of the services on their communities. If the presence of the institutions of the rights guarantee system in indigenous community contexts has, on the one hand, the mission of protecting children and adolescents; on the other hand, their intervention with authoritarian postures can generate fear in their members and, consequently, demobilize the networks and traditional practices of protection and care of children and youth.

The steps taken by the leadership of the Balaio community in the case in which the sisters were victims of mistreatment and sexual violence by their stepfather, taking them in and protecting them in their own home, show how the traditional networks for the protection of children and adolescents are still operating within the Tukano community of the Balaio indigenous land (TI) and exert a strategic protective function.

However, the leader's fear of "getting in trouble with the Tutelary Council" due to the fact that he had taken them in his house made him request the institution of the protection network to take measures to protect the adolescents and punish those responsible for the violence. After the intervention of the Tutelary Council, the adolescents were removed from their community and sent to a shelter in an institution located in the urban area of São Gabriel da Cachoeira.

At no point in the proceedings was there any suggestion of the possibility of formalizing the reception given by the leader and his family to the adolescents or even the possibility of looking for another Tukano family, in this village or in others, that could receive them and keep them in the community context of their people.

The adolescents were taken in at Lar Menina Feliz, and since the case was not pursued because the defendant was not summoned, it is not known how long the girls were taken in. In addition, they have been denied the right to live in the community. Seven years after the situation occurred, both are over 18 years old.

This situation points to one of the effects that the actions of the institutions that make up the rights guarantee system can have on the traditional ways of protecting and caring for children and youth, by disarticulating their own conflict resolution systems. The state begins to replace roles that were previously performed by victims' relatives and community networks.

Why was the leadership of the Balaio community afraid of the Tutelary Council acting in the culturally appropriate way? Because, perhaps, we are facing the fact that the performance of the rights guarantee system generates disruptive impacts on the life world of traditional peoples and communities, collaborating to destructure the traditional modes of conflict resolution of indigenous peoples.

Thus, it is necessary that the rights assurance system recognizes that traditional peoples and communities have their own ways of protecting their children and adolescents. Sometimes these modes are not understood by non-indigenous institutional actors as exercising a protective function. But the limited understanding of these agents about the knowledge and practices of local communities cannot be a reason for the rights assurance system to ignore or disqualify them.

The institutions of the rights assurance system, when called upon to act, must develop strategies of integral protection and non-revictimization of indigenous children and adolescents based on the articulation of the services provided by the institutions to the traditional indigenous systems of protection, care, and conflict resolution of the traditional peoples and communities. It is necessary that the public and legal policies encourage these people and communities to actively participate in the construction of protective strategies for children and youth, as well as to find solutions locally located to face the problems they experience in their communities.

Children and adolescents are not only the responsibility of their families. They are not the only ones, but they belong to these peoples. And they should be consulted as to the best way to forward certain cases, in order to prevent them from being removed from the community contexts responsible for building them as people belonging to traditional peoples and communities and for forging their ethnic and collective identities.

5.3. Synthesis and recommendations

Based on the ethnographic reading of the judicial proceedings made available by the TJAM and TJRR, the following recommendations are listed for the enforcement of the rights of children and adolescents from traditional peoples and communities to non-revictimization when assisted by the institutions of the rights' guarantee system and to integral protection.

Considering the specificities of the Courts of Justice in the North region, both in terms of the geographical characteristics and the great diversity of traditional peoples and communities in the region, including the presence of isolated and recently contacted indigenous peoples, and in terms of the structural conditions for the judiciary to operate in these regions, it is recommended that

1) To the TJAM to evaluate the adequacy of the methods of publicizing and calling people to participate in the hearings of instruction and trial both through local radio stations and through the collaboration of health professionals or indigenous people who work in the territories, having in mind to prioritize the privacy, secrecy, and protection of the victims of violence within the communities where they live, avoiding their revictimization;

2) Make feasible the hiring of forensic interpreters and interviewers as experts to carry out the taking of special testimony in the courts of Tabatinga and São Gabriel da Cachoeira, so that these assistants of justice are duly recognized, trained and paid for their service to Justice, becoming part of the TJAM's roster of experts;

3) To strive to establish an ethical relationship with professionals and the institutions of the rights' guarantee system that operate in the protection network, seeking to avoid that the collaboration of health, psychology, and social assistance professionals with the judiciary compromises the bonds of trust established with the communities, which are fundamental to the good performance of their activities and the achievement of health results. Care, protection and therapy are of a different nature and, in a way, ethically incompatible with the activities performed to locate, subpoena and produce evidence;

4) The situation of the Judiciary in the districts located in border regions and regions that are difficult to access, with large territorial extensions and a huge diversity of traditional peoples and communities, with the presence of isolated and recently contacted indigenous peoples, as is the case of Tabatinga and São Gabriel da Cachoeira, should be the object of in-depth studies aimed at the creation of short, medium and long-term strategies for structuring the services and the composition of interprofessional teams, in order to provide an efficient and quality service to the traditional population of the Amazon Rainforest;

5) Create a registry of indigenous interpreters within the TJAM to activate them in special testimony hearings involving children and adolescents from traditional peoples and communities socialized in their native languages. That these interpreters be trained by the Court of Justice to work in the scope of special testimony hearings and that they be properly remunerated for the services rendered. The strategy of counting on the collaboration of indigenous professionals who work in the DSEIs or Funai to do the translation in the context of the hearings must be adopted in the short term to respond immediately to the lack of available human resources. However, forensic interpretation in the context of special testimony hearings must be qualified and, to this end, effective policies are required to guarantee the performance, training, and hiring of these interpreters;

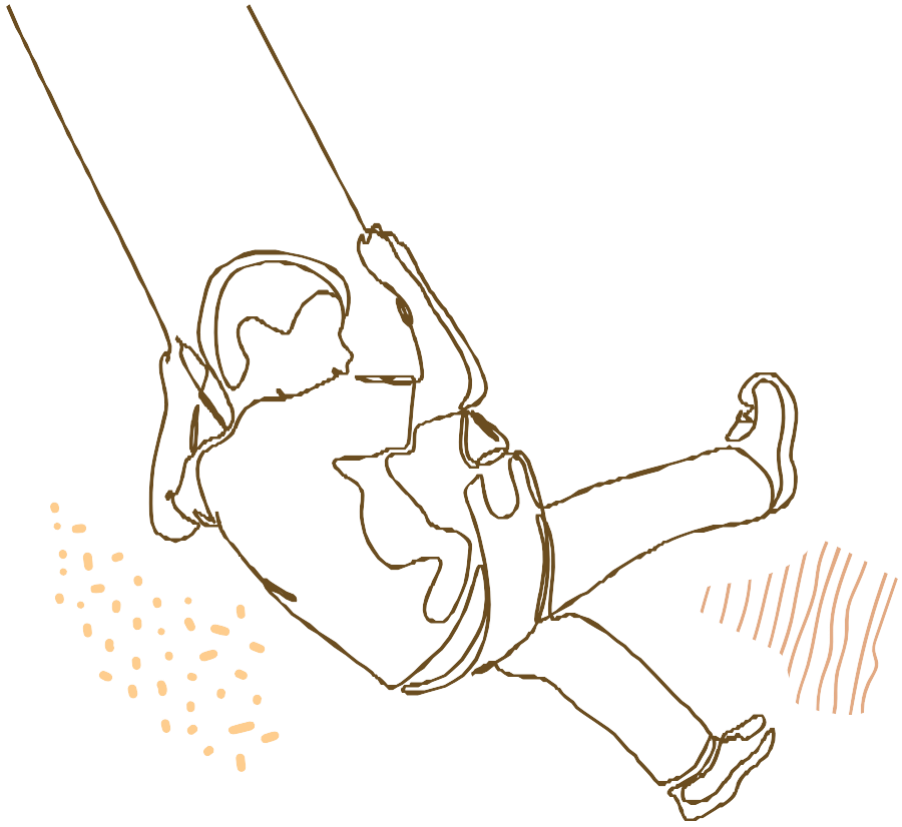
6) Deepen the debate about the performance of the system of rights assurance on isolated indigenous peoples and recent contact as to the qualification of professionals in contexts marked by relations of radical alterity;

7) Consider as a model the methodology for accreditation and hiring of forensic interviewers as experts developed by the TJRR to enable the hiring of professionals from traditional peoples and communities as forensic interviewers in the context of special testimony hearings held with children and adolescent victims or witnesses of violence from traditional peoples and communities;

8) Implement the anthropological expertise, at least, in the scope of the judicial processes in which its contribution is indispensable, as developed in chapter 9 of this report;

9) Train the agents and institutions of the rights assurance system to provide culturally adequate services to children and adolescents from traditional peoples and communities in order to avoid revictimization and ensure their right to full protection;

10) Create mechanisms to strengthen the systems of traditional peoples and communities for the protection and care of children and youth and their own forms of conflict resolution, in order to allow the planning of an intercultural flow of care provided by the security system, the protection network, and the judicial system.



6. Services, flows and special testimony at the Court of Justice of Mato Grosso do Sul

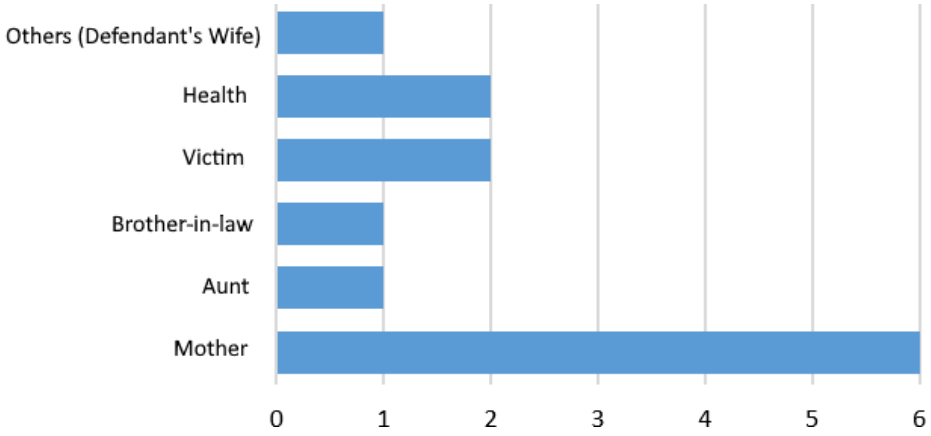
The flow of assistance provided in the districts of the Court of Justice of Mato Grosso that are participating in the pilot project for the implementation of the special testimony of indigenous people, despite having a certain regularity, takes on different configurations with regard to the conduct that is given from the moment the situation of violence against the child or adolescent is revealed.

The communication flow of the situation of violence carried out by the indigenous people to the institutions of the rights assurance system takes on distinct contours in each district where it is triggered. These specificities are due both to the way the indigenous communities organize themselves internally to deal with the cases of violence that emerge in their villages, and to the ways of appropriating and relating to these institutions. From the reading of the judicial proceedings, the communication flow of violence against children in the context of the different districts will be approached, from the registration of the police charge at the Police Station to the beginning of the police investigation.

District of Amambai

In the district of Amambai, the situations of violence occurred mostly in the Amambai Village and in the Limão Verde Village (11 cases). Of the flows that were initiated as a result of the identification of situations of violence that occurred in Amambai (13 cases), in six cases the communication was made by the mother, in one case by the aunt, in one case by the brother-in-law, in two cases by the indigenous health equipment (Health Center and Indigenous Health Center), in two cases it was the victim herself who sought help, and the other case was communicated by the wife of the defendant who was having an extramarital relationship with an adolescent under the age of 14.

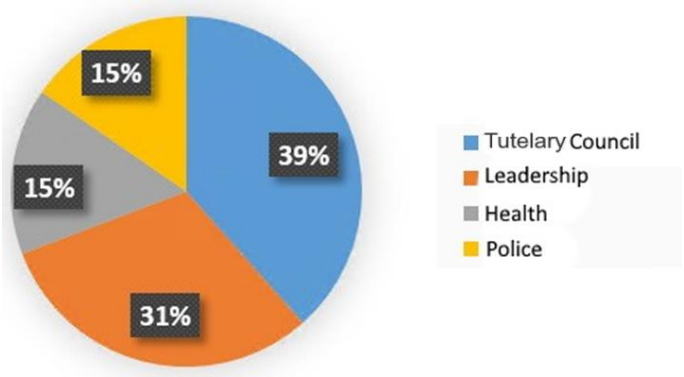
Figure 30 - Violence situation informants, Amambai, TJMS (n=13)



Source: own elaboration.

The communication of the situation of violence, in turn, was made to the Tutelary Council (five cases), the leadership (four cases), the indigenous health institutions (two cases) or directly to the Police Station (two cases). When the Tutelary Council is called, it refers the case to the Police Station for registration; when the leadership is called by the reporter, it refers the case to the Military or Civil Police.

Figure 31 - Triggered instances, Amambai, TJMS (n=13)



Source: own elaboration.

If the communicating party resorts to health facilities - EMSI/Health Post or Indigenous Health House (CASAI) - their professionals call the Tutelary Council so that it can take the necessary steps to refer the case. Table 10 shows the communication flows of violence as it occurs in the indigenous communities of Amambai.

Table 10 - Flows of communication on violence, Amambai, TJMS

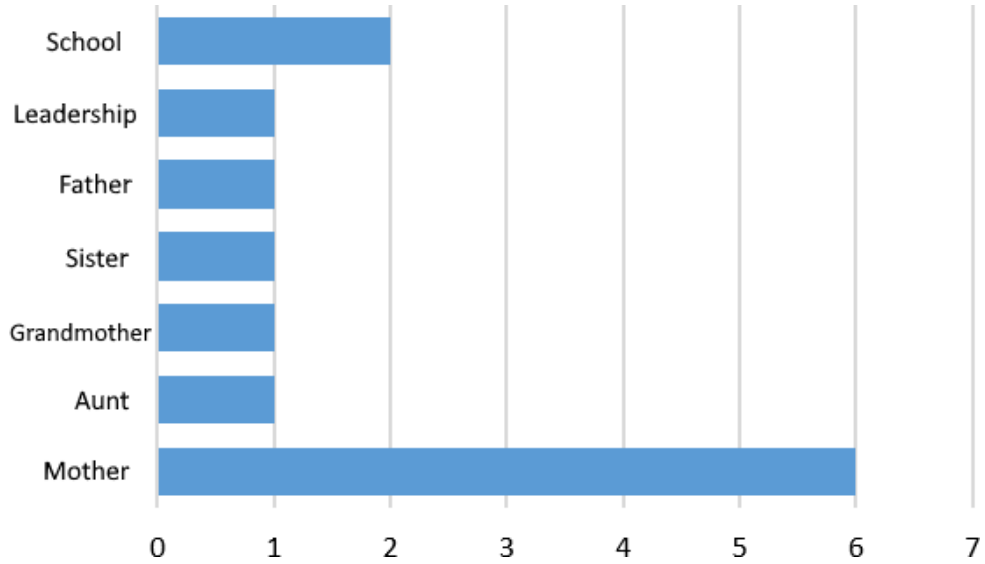
Communication	Institution 1	Institution 2	Institution 3
Mother	Tutelary Council	Police Station	
Health Center	Tutelary Council	Police Station	
Mother	Police Station		
Defendant's Wife	Tutelary Council	Police Station	
Victim	Police Station		
Aunt	Health Center	Tutelary Council	Police Station
CASAI	Tutelary Council	Police Station	
Mother	Indigenous Health House	Tutelary Council	Police Station
Brother-in-law	Tutelary Council	Police Station	
Mother	Leadership	Police Station	
Victim	Leadership	Military Police	Police Station
Mother	Leadership	Military Police	Police Station
Mother	Leadership	Military Police	Police Station

Source: Own elaboration.

District of Dourados

According to Figure 32, of the 13 cases of violence against children and adolescents[19] addressed by the judicial processes in Dourados, in ten the communication about the situation of violence was made by family members or relatives (six by the mother, one by the grandmother, one by the aunt, one by the sister, and one by the father). The school is responsible for making referrals for two cases and the leadership for one case.

Figure 32 - Reporters of the situation of violence, Dourados, TJMS (n=13)

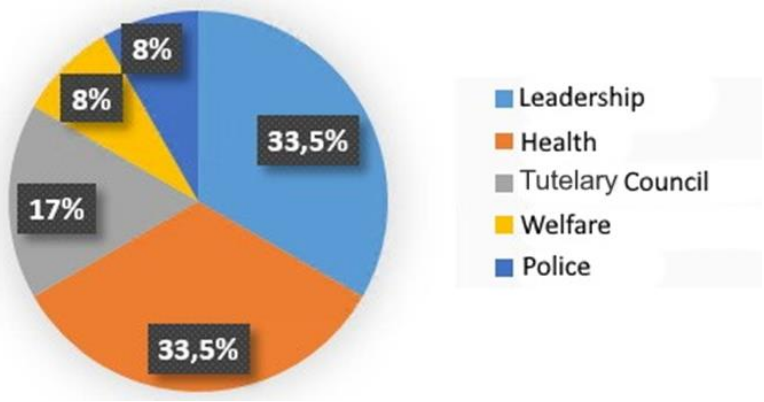


Source: own elaboration.

As shown in Figure 34, the person who communicates the situation of violence called the village leadership in four cases (33.5%); health care facilities were called in four cases (33.5%); the Tutelary Council was called in two cases (17%); social assistance in one case (8%), and police institutions in one case (8%). In one of the situations, the teacher to whom the violent situation was revealed, before reporting it to the Tutelary Council, informed the child's aunt about what was happening.

19 The district of Dourados provided access to 17 judicial processes, in four of which the children and adolescents participated as witnesses to the violence.

Figure 33 - Triggered instances, Dourados, TJMS (n=13)



Source: own elaboration.

In the cases in which the first communication was made to the social assistance or health equipment, these, after attending the victim, informed the leadership (one case), the Tutelary Council (two cases) or the police (three cases) about the situation of violence. Table 11 illustrates the path that the communication about the situation of violence took until the occurrence was registered at the Police Station.

Table 11 - Flow of violence communication, Dourados, TJMS

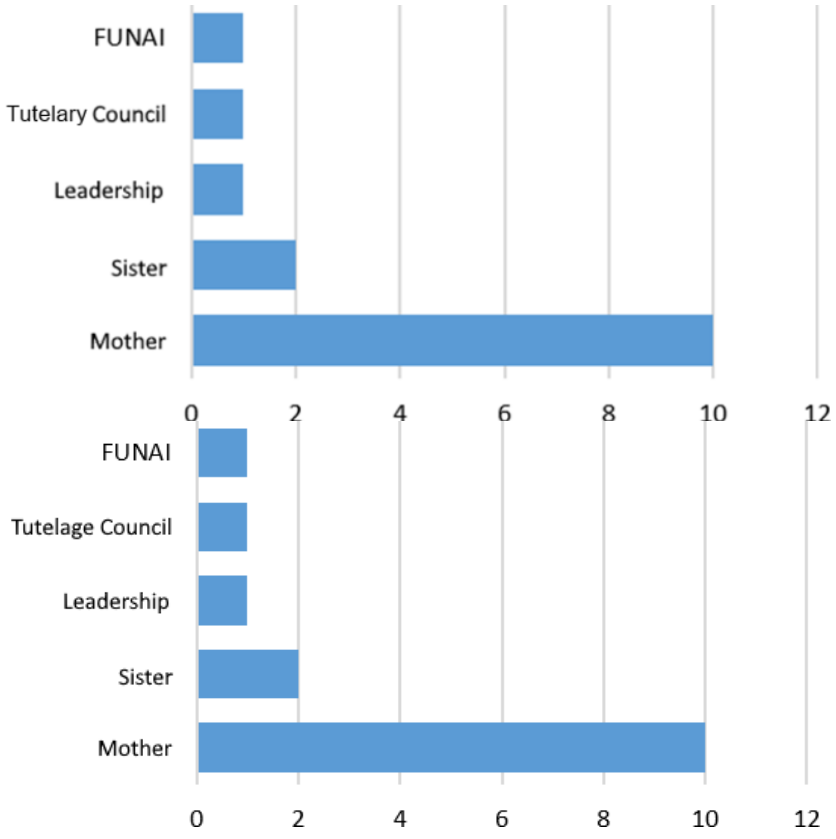
Communicant	Institution 1	Institution 2	Institution 3	Institution 4	Institution 5
Aunt	Military Police	Police Station			
Mother	Leadership	Military Police	Police Station	Tutelary Council	
Teacher	Aunt	Health Center	Tutelary Council	Mother	Police Station
Mother	Indigenous Cras	Police Station			
Grandma	Hospital	Tutelary Council	Military Police	Police Station	
Sister	Leadership	Hospital	Police Station		
Mother	Health Center	Leadership	Tutelary Council	University Hospital	Police Station
School	Tutelary Council	Creas	Justice		
Leadership	Health Center	Military Police	Police Station		
Father	Leadership	Tutelary Council	Police Station		
Mother	Mission Hospital	Police Station			
Mother	Tutelary Council	Police Station			
Mother	Leadership	Police Station			

Source: Own elaboration.

District of Mundo Novo

As shown in Figure 34, of the 15 cases in Mundo Novo, in 12 the communication about the situation of violence is made by family members or relatives (ten by mothers and two by sisters). The leadership is responsible for reporting in one case; in another, the Tutelary Council is the one that notifies the rights assurance system. Funai, on the other hand, acts in the case of a non-indigenous youth who dated and got pregnant with an adolescent under the age of 14 and who did not want to assume paternity.

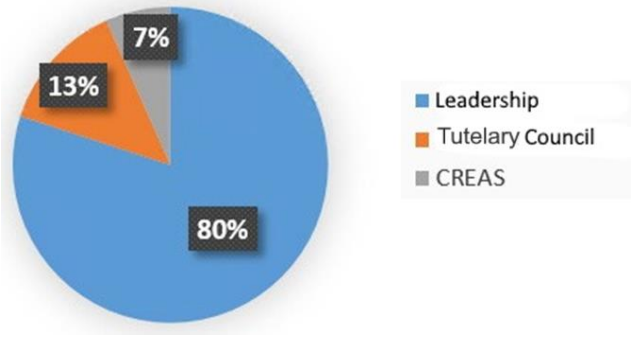
Figure 34 - Violence situation reporter, Mundo Novo, TJMS (n=15)



Source: own elaboration.

The family members who identified the violence immediately called the leadership in 12 cases (80%) and it was the leadership that called the Military Police, in the case that they arrested the aggressor in the village, or that sent the communicants to the Police Station to register the complaint. In only three cases the leadership was not triggered and the news about the situation of violence reached the Police Station or the Tutelary Council (two cases, 13%) or the Creas (7%), as shown in Figure 35.

Figure 35 - Triggered instances, Mundo Novo, TJMS (n=15)



Source: Own elaboration.

Therefore, in the communication flow of the situation of violence, the TI leadership, the Tutelary Council, the Military Police and the Police Station are involved, and, more punctually, health and social assistance professionals (one case).

Table 12 - Flow of violence communication, Mundo Novo, TJMS

Communication	Institution 1	Institution 2	Institution 3
Sister	Indigenous Health Agent	Creas	Police Station
Mother	Leadership	Tutelary Council	Police Station
FUNAI	Leadership	Tutelary Council	Police Station
Mother	Leadership	Military Police	Police Station
Mother	Leadership	Tutelary Council	Police Station
Mother	Leadership	Military Police	Police Station
Leadership	Military Police	Police Station	
Tutelary Council	Police Station		
Mother	Leadership	Military Police	Police Station
Mother	Leadership	Tutelary Council	Police Station
Mother	Leadership	Police Station	
Mother	Leadership	Police Station	
Mother	Leadership	Police Station	
Sister	Tutelary Council	Police Station	
Mother	Leadership	Military Police	Police Station

Source: Elaborated by the author

As one can see, there is a certain regularity in the flow of communication about the situation of violence against Guarani Nhandeva children and adolescents in the context of the Porto Lindo IT. According to the social worker of the district of Mundo Novo, this happens because the cacique has previously instituted articulations with the institutions of the security system and with the magistrate responsible for the district that serves this community[20].

Of the communities served by the three districts of the TJMS that are participating in the implementation of the pilot project, it is the TI of Porto Lindo that has the communication flow of the situation of violence instituted from an articulation between the local leadership and the institutions that make up the system of rights assurance. In this case, the flow that begins in the community itself assumes a configuration based on the principle of articulation between the indigenous' own modes of organization and the services provided by the institutions of the rights' guarantee system.

Special Testimonial

According to the NATIONAL COUNCIL OF JUSTICE (2022; 2022b), the testimonial procedure is implemented in the districts of the Court of Justice of Mato Grosso do Sul that participate in the pilot project that deals with the hearing of children and adolescents from traditional peoples and communities.

In the Dourados, Amambai, and Mundo Novo districts of the Court of Justice of Mato Grosso do Sul, which serve indigenous peoples of the Terena, Guarani, and Kaiowá ethnic groups, special testimony is taken by specialized professionals - psychologists and social workers - who are part of the Judiciary's staff. These professionals were trained by the Judicial School of Mato Grosso do Sul (EJUD) to apply the Brazilian Protocol for Forensic Interviews with Children and Adolescent Victims or Witnesses of Violence (Childhood *et al.*, 2020) when conducting the forensic *interview* in the context of special testimony hearings.

All three districts have experience with interpreting in the context of special testimony hearings for indigenous children and adolescents. In the court cases made available by TJMS, the Amambai and Mundo Novo districts have assigned interpreters to act in most of the special testimony hearings. In some cases, these interpreters were not indigenous, but speakers of the Guarani language employed in Paraguay. As for the Dourados district, only in one case, in which the child was a witness to the violence, was the interpreter appointed to act.

20 Moreover, in the cases where the leadership participates in the communication flow and the forwarding of cases, such as the case of the IT of Porto Lindo, it also exercises a "police power", carrying out the apprehension of the accused in the villages until they deliver them to the military police or take them to the police station. The situations of arrest in flagrante delicto are made possible, precisely, due to the actions of the leaders - not only in this IT, but also in the others served by the districts that are part of the pilot project of special testimony of traditional peoples and communities.

* * *

Of the 45 cases made available by TJMS, only in two situations were the victims of violence heard in the context of the instruction and trial hearings without the measures for making the special testimony being observed. In the others, we tried to guarantee conditions so that the hearing of the child could be held in a safe environment with privacy, and the testimony was taken by the court's specialized technicians.

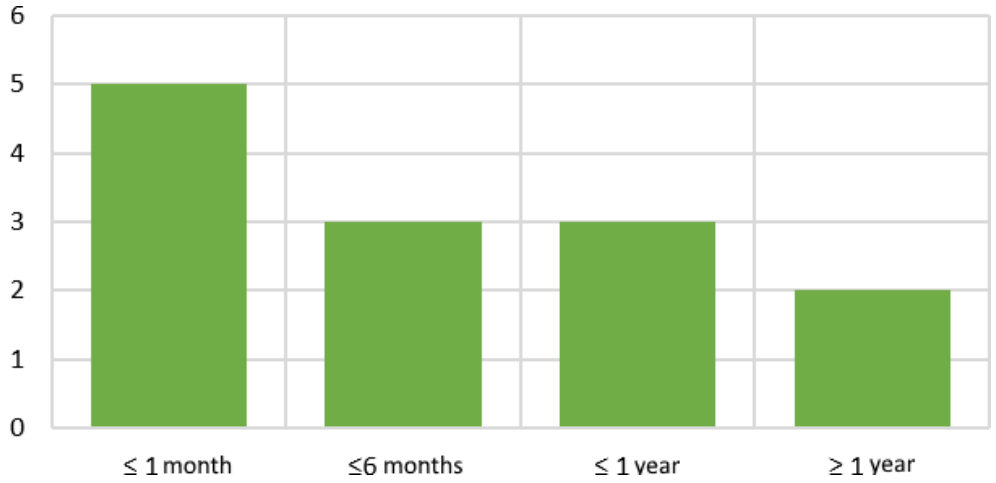
Taking the child's special statement right after the violence situation has occurred is an important measure both to guarantee the quality of the victim's or witness' narrative about the facts, as important details of the situation tend to be forgotten as time goes by; and to avoid the child or the adolescent having to relive the traumatic experience by having to talk about it again - revictimization. Thus, the period elapsed between the registration of the police charge and the hearing of the child before the judicial authority in the TJMS courts will be verified.

* * *

The Amambai district held 13 special testimony hearings, of which four were held in the precautionary rite of evidence anticipation mode. All the hearings had the appointment of interpreters to mediate the communication between the specialized technician and the child or teenager victim of violence. In only five hearings was the interpreter not indigenous, but a speaker of the Guarani language spoken in Paraguay - a country bordering the Southern Cone region of Mato Grosso do Sul.

Regarding the time elapsed between the registration of the police charge and the making of the special testimony, it can be seen that in five situations the period was equal to or less than a month (41%); in three situations it was equal to or less than six months (17%); in three situations the time elapsed was less than or equal to a year (25%); and in two cases it was only more than a year (17%).

Figure 36 - Time elapsed between the police charge and the special testimony, Amambai, TJMS (n=13)



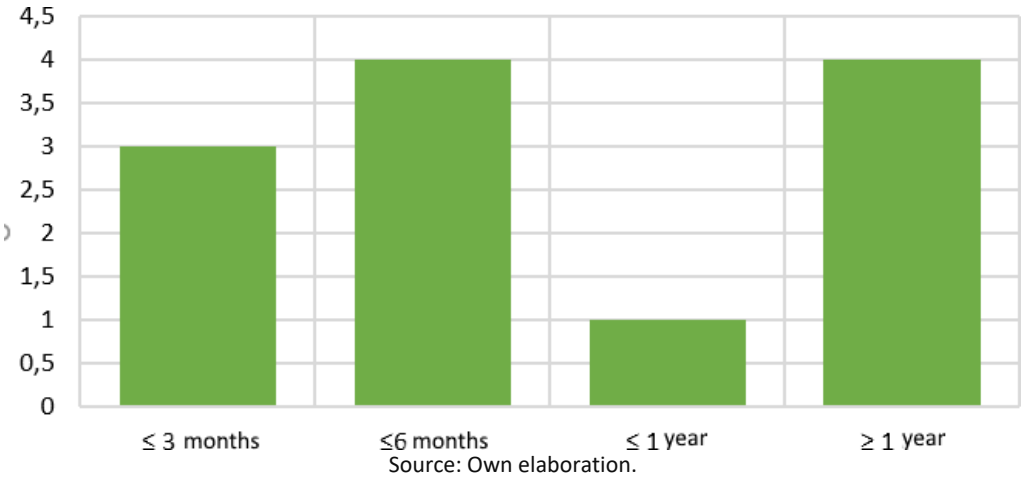
Source: Own elaboration.

The Dourados district held 12 special testimony hearings that had children or adolescents as victims of violence, of which one was held in the precautionary rite of evidence anticipation mode; and four special testimony hearings with children and adolescents who were witnesses of violent situations. Unlike the district of Amambai, Dourados has not appointed interpreters to act in the context of the hearings held in the court cases in focus here. An exception is the 3rd Court, Jury Court, where the judge appointed an interpreter to act in the hearing of a Kayowá witness.

Regarding the time elapsed between the registration of the police charge and the date of the special testimony of the victims of violence, in three situations the period was equal to or less than three months (23%); in four situations it was equal to or less than six months (31%); in one situation the time elapsed was less than or equal to one year (8%); and in four cases the period elapsed was more than one year (38%)[21].

21 Of the four cases in which more than a year elapsed between the registration of the police charge and the holding of the special testimony hearing, in three cases the period exceeded four years.

Figure 37 - Time elapsed between the police charge and the special statement Dourados, TJMS (n=13)



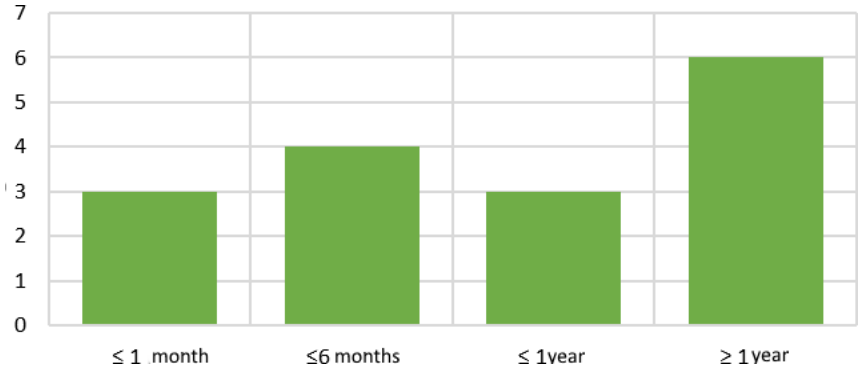
Source: Own elaboration.

The district of Mundo Novo held 16 special testimony hearings[22], of which eight were held in the precautionary rite of evidence anticipation mode. In 11 hearings the interpreter was appointed to mediate the communication between the specialized technician and the child or teenager victim of violence. However, in nine hearings the interpreter who made the special testimony in the district of Mundo Novo is not an indigenous person, but a speaker of the Guarani language spoken in Paraguay; while in two hearings it was the guardian counselor, who belongs to the Guarani people, who did the translation.

As for the time elapsed between the registration of the police charge and the date of the special testimony, one can see that in three situations the period was equal to or less than one month (19%); In four situations it was equal or less than six months (25%); in three situations the time elapsed was less than or equal to a year (19%); and in six cases the time elapsed was more than a year (37%).

22 In one of the court cases the recording of the first taking of the special testimony was compromised, so the judge assigned a new date for the victim's special testimony . The first special testimony hearing was held in a criminal interlocutory proceeding.

Figure 38 - Time elapsed between the police charge and the special statement Mundo Novo, TJMS23



Source: Own elaboration.

It can be observed that the TJMS courts have acted with agility to reduce the time elapsed between the registration of the police charge and the making of the special testimony. In 54% of the court cases involving child or adolescent victims of violence in TJMS (22 cases, out of a total of 41), the special testimony hearings were held in a period of less than six months. The district of Amambai stands out, with the largest number of cases (eight) in which the time elapsed between the recording of the occurrence and the taking of the special testimony was less than six months.

The operationalization of the precautionary rite of anticipation of evidence for the hearing of children and adolescents who are victims of violence in the special testimony mode, carried out by the Amambai and Mundo Novo districts, contributes to the delineation of this picture.

About the precautionary rite of anticipation of evidence in Amambai and Mundo Novo, the agility with which the special deposition of children and adolescents from indigenous peoples and communities is collected in the courts of Amambai and Mundo Novo is an important measure to mitigate the re-victimization process that starts when the victim has to recount the traumatic experience to which he or she was subjected and reduce
the number of services to which she will be exposed.

In these districts, the magistrates agreed with the police authorities to request the Public Prosecution Office to hear the victim through the precautionary rite of anticipation of evidence. In both cases, the informal agreement between deputies and magistrates allows the special testimony hearing to be brought forward.

23 There were 16 special testimony hearings in 15 lawsuits

The flow of the district of Mundo Novo assumes a particular characteristic due to the political articulations that the Nhandeva leadership of the Porto Lindo IT makes with authorities and managers responsible for the institutions that make up the system of rights assurance of the municipalities that it covers: Japorã and Mundo Novo. Por um lado, a liderança pactuou com as instituições de segurança pública os procedimentos de encaminhamento dos casos de violência sexual que ocorrem na sua comunidade; por outro, a articulação com o Judiciário local tem possibilitado o desenvolvimento de medidas de proteção às crianças e adolescentes vítimas de violência, tais como as famílias protetoras indígenas (NATIONAL COUNCIL OF
JUSTICE, 2022b).

The flow of assistance to children and adolescent victims of violence in the district of Mundo Novo, because it is agreed with the leaders of the Porto Lindo Indigenous Territory, takes on intercultural contours. For this reason, it constitutes a propitious field for the realization of demonstrative experiences of articulation between the traditional ways of conflict resolution of the Nhandeva and the judicial system, constituting a reference for the other districts of the TJMS and TJ in Brazil.

6.1. The services provided by the rights warranty system in the TJMS' districts

In the three districts of the TJMS, even before the police charge is registered, some institutions that have their services implemented in the indigenous territories intervene in situations of violence and attend to the victims of violence in the communities where they live[24]. However, it is from the registration of the police charge that the child or adolescent victim of violence enters the flow of services provided by the system of rights assurance. The first service that the child is submitted to after the occurrence is registered is to make a statement before the police authority at the Police Station. In the 41 cases made available by TJMS in which children and adolescents

24 We highlight the education professionals, the social assistance professionals where there are Indigenous Cras, as is the case in the municipality of Dourados, and the multidisciplinary health teams that work in the area and that, besides, in many cases, identifying the situations of violation of the rights of children and adolescents and providing the first care to the victims and referring them to specialized care services when necessary, they also refer the case to the rights guarantee system.

are victims of violence, the civil police held hearings in 32 cases. The cases in which the child did not give his or her statement (nine cases) were those in which either the child was unable to talk about the violent situation to which he or she was subjected (two cases), or the police officer requested the precautionary rite of evidence anticipation (seven cases).

In all the judicial processes that dealt with cases of sexual violence, the victims had to submit to a corpus delicti exam - carnal conjunction. The expert report produced based on this examination is part of the police investigation as important evidence of the materiality of the [crime25].

As the corpus delicti exam of carnal conjunction is a highly invasive procedure that has great potential to re-victimize the victims of sexual violence, it is necessary to adopt measures to minimize its impact on the lives of children and adolescents, such as guaranteeing the presence of an interpreter to accompany them during the procedure, so that they can at least understand the treatment they will be submitted to, and not reduce them to mere instruments of evidence production.

In the districts of TJMS, still in the extrajudicial phase, it is common for the police authority to request the Tutelary Council or the Creas to monitor the victim and her family and send the reports to the police in order to instruct the police investigation. Dourados stands out, where the Women's Police Station (DAM) offers psychological assistance to children and adolescent victims of sexual violence to validate their testimony.[26]

During the judicial phase of the process, the magistrate can also request the Tutelary Council, the Creas, or the health services to follow up on the cases and send reports - attendance, psychosocial, and psycho- logical - if these documents have not been added to the case file during the police investigation phase. In addition to these services provided by the institutions of the protection network, the court may also require, in certain cases, such as those requiring the application of protective measures, that the specialized technical teams conduct psychological or psychosocial studies.

25 There is no further information in the case file about how the indigenous victims were cared for, nor how they reacted when they underwent the examinations. There is also no information regarding the accompaniment of interpreters during the exam, which may make it difficult for you to understand why you had to undergo this type of procedure. This is an important topic to be investigated.

26 The psychologist who works at the Women's Police Station was assigned by the Dourados City Hall to work at this security system equipment.

All these activity reports, social, psychosocial, and psychological reports prepared by the institutions of the protection network or by the specialized technicians of the court are attached to the records with the purpose of instructing the judicial process in progress. Few are the cases in which the prosecutor or even the magistrate refer indigenous victims to be assisted by the protection network with the objective of receiving the necessary therapeutic care to overcome the traumatic marks left on their bodies and subjectivities by the situation of violence experienced as well as by the procedures to which they were submitted when they were assisted by the rights' guarantee system.

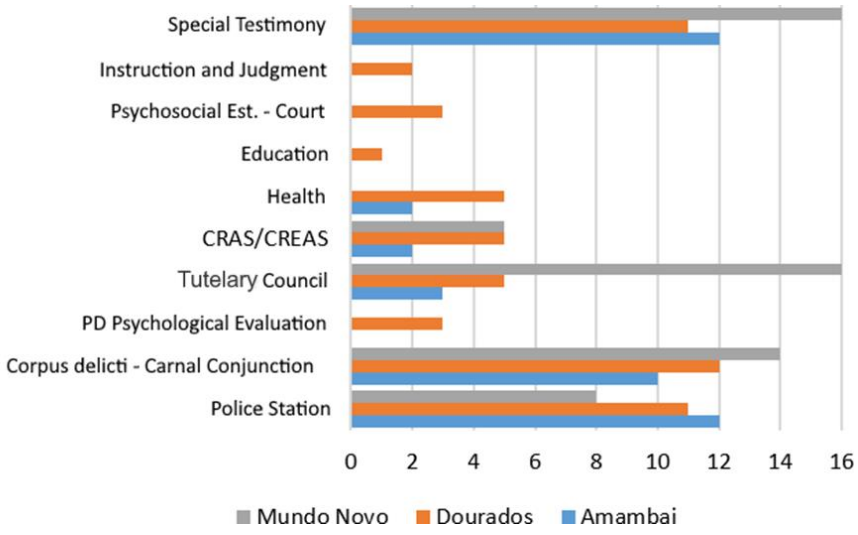
* * *

The information brought by the judicial processes indicates that the indigenous children or adolescents who are victims of violence who live in communities located in the territories covered by the judicial districts of Mundo Novo, Dourados, and Amambai have been heard about the situation of violence to which they were subjected numerous times in their trajectory between the different services provided by the institutions and equipment that make up the system of rights guarantees.

Figure 39 illustrates the approximate number of interviews with children and adolescent victims of violence in the 41 court cases in the districts of TJMS that are part of the experience of the pilot project for the special testimony of traditional peoples and communities27.

27 The number of consultations to which children and adolescents are submitted is approximate, since the identification of the cases is made through the reports of the security institutions and the protection network attached to the case files, and by the mention of the consultations carried out in the scope of the statements given by the victims and their guardians.

Figure 39 - Attendances at the Rights Guarantee System, TJMS (n=41)



Source: Own elaboration.

As can be seen, the flow in the district of Mundo Novo is the one that least exposes the child to multiple services by the equipments of the rights assurance system. Its interventions are concentrated in the testimony at the police station and in the performance of the corpus delicti examination; in the performance of the Tutelary Council; in the support of Creas; and in the performance of the special testimony.

In the district of Amambai, in turn, in the extrajudicial phase, the interventions of the system of rights guarantees are concentrated in the victim's testimony to the police authority and in the performance of the corpus delicti exam - conjunção carnal of the victims; in the performance of the Tutelary Council; in the support of Creas and health for the realization of psychosocial monitoring; and in the realization of special testimony. It was the magistrates who worked in the district of Amambai who showed the greatest concern for the well-being of the victims of sexual violence, referring them to the health care network in search of the necessary resources for their recovery.

The flow of care in the Municipality of Dourados subjects the victims of sexual violence to scrutiny, requiring them to tell and retell countless times the traumatic situation they have experienced. In the extrajudicial phase of the process, the victim of sexual violence will be submitted to the following services: she will make a statement before the police authority, will have the corpus delicti exam of carnal conjunction, will attend the psychological services at the police station

to validate their testimony, they will be assisted by the Tutelary Council, by the Cras/Creas, by the health services and can also participate in the psychosocial studies requested by the court; While in the judicial phase, the victim will be heard within the scope of psychological or psychosocial studies carried out by the judiciary technicians when requested, and in special testimony hearings. In this case, the children and adolescents arrive to participate in the special testimony hearings already re-victimized by the services of the rights assurance system.

In none of the cases in progress in the courts of the TJMS did the indigenous children or adolescents who were victims of sexual violence have legal counseling to enforce their right to full protection and to avoid revictimization caused by the services provided by the institutions of the rights' guarantee system[28].

The phenomenon of revictimization of indigenous children and adolescents who are victims of violence that occurs within the system of rights assurance in the courts of the TJMS, with greater or lesser intensity, is ongoing. Thus, it is necessary that measures be taken so that what is determined by the Protected Listening Law regarding the principles of maximum protection and early, minimal, and urgent intervention in cases of violence is observed by the institutions that make up the system of rights' guarantee in the Southern Cone of the State of Mato Grosso do Sul[29].

Perceptions of Judiciary Workers about the quality of assistance

The fact that the revictimization of indigenous children and adolescents who are victims or witnesses of violence is occurring within the institutions that make up the system of rights assurance is corroborated by the perceptions of the specialized technicians who work at the Court of Justice of Mato Grosso do Sul. According to them, during the flow of services provided by the protection network the child is often heard, which inevitably culminates in their revictimization.

28 Article 5 of Law 13.431/2017 establishes as one of the rights of children and adolescents victim or witness of violence receive qualified legal assistance.

29 Decree No. 9,603, dated December 10, 2018, which regulates Law No. 13,431, dated April 4, 2017, in subsection V of Article 2 states that "the child and adolescent must receive early, minimal and urgent intervention from the competent authorities as soon as the situation of danger is known."

According to the social worker of the Children and Youth Coordinator of TJMS, this happens because "there is no organization and coordination of the actions between the different agencies that make up the protection network. As far as the hearing of children by the police authority is concerned, the technician points out that most police stations are not equipped to record the statements, nor do they have qualified professionals to listen to the victims, in order to allow them to express themselves in their own terms. The victims' statements that inform the police inquests do not reproduce the child's speech in its entirety, nor the terms she used to describe the violent situation to which she was subjected.

The social worker from the district of Mundo Novo highlights the fact that there is no integrated and coordinated action between the judiciary and the protection network. The relationship between the institutions of the rights' guarantee system would occur in specific demands, without the planning and pacting between the institutions of the flow of services.

In any case, it is identified that the protection network that operates in the region is precarious and has deficiencies. According to one of the psychologists who works as a forensic interviewer in the taking of special testimony, it is necessary that the performance of the protection network be effective, especially in indigenous communities.

> There is no organized and coordinated action in the institutions that make up the network of the rights assurance system. The case is detected at school, the Tutelary Council is called, the Tutelary Council calls CRAS/CREAS or refers the case to the police station. In each instance the child has to answer the question: what happened? It is important to know how the child is heard in each of these instances. Revictimization is happening along the network flow even before the child arrives at the special testimony. This perpetuates the cycle of violence, abandonment, and deprivation. This path could be reduced by requesting the special testimony as a precautionary rite for anticipation of evidence, preventing the child from being questioned by the various institutional agents with whom she meets from the moment she discloses the violence (account provided by a forensic interviewer in the context of an open interview).

To this end, it is necessary to qualify the actions of the professionals who work in the rights assurance system, both in terms of the rights established by the Protected Listening Law, and in terms of the specific rights of the indigenous and traditional peoples and communities that reside in the region.

Besides this, the employees of the Judiciary are unanimous in recognizing that, because it is crossed by the prejudices that the regional society has towards indigenous people, the professionals who work in the institutions of the rights guarantee system, including the Judiciary itself, tend to reproduce in their practices these same prejudices and stereotyped visions, influencing the way they assume the services provided to indigenous children and adolescents. One of the ways in which colonial violence is perpetuated in contemporary times is through the prejudices, stigmas, and stereotypes that populate the imagination of the regional society of the Southern Cone of Mato Grosso do Sul about the indigenous peoples and that influence the way the agents of the rights guarantee system treat indigenous people and communities in the context of the services provided. While the stereotypical and prejudiced view of these people is not overcome, the re-victimization of indigenous children and adolescents will continue to occur.

6.2. Excesses and absences of the rights assurance system in Dourados: a case study

In the district of Dourados, the Women's Assistance Police Station (DAM) is a reference for the other police stations in the region in terms of listening to female children and adolescents who have suffered situations of sexual violence. In addition to hearing the children and adolescents and referring them for a corpus delicti exam of carnal conjunction, the victim will also be submitted to a psychological evaluation.

The victims, through their guardians, are summoned by the police authority to attend the psychological service. If they fail to do so, they can be forcibly taken to the sessions previously scheduled by the police station. When it comes to indigenous people, it is common for the person responsible for the child not to attend the delegate's summons, due to the difficulty of locomotion between the village and the city. In these cases, it is possible that DAM will send a police vehicle to pick up the victims in their villages to undergo treatment until it is completed.

One of the main goals of the psychological care provided by DAM is to validate the victim's testimony, based on an assessment of whether or not the victim is likely to lie. To reach the expected result, the psychologist, throughout several meetings, carries out observations, verbal interventions, interviews, and playful sessions (drawings and games).

When the psychologist considers that she has reached a good conclusion regarding the elucidation of the facts, the sessions are terminated[30].

It seems that this is a procedure agreed upon by the institutions that participate in the criminal action against those accused of violations against children and adolescents. In one of the cases, in which the child did not attend, the defense questioned the adequacy of the victim's special testimony because she had not undergone psychological evaluation.

In another case, when DAM was unable to provide this service, the prosecutor asked the court that its specialized technicians provide psychological assistance to the victim, in order to validate her testimony. The victim - a 6-year-old girl - was summoned to appear before the Psychology Department of the Dourados Courthouse to undergo psychological scrutiny by the court.

* * *

A lawsuit that serves as an example of the excess of care to which the child or adolescent victim of violence is subjected in the district of Dourados, mainly in its extrajudicial stage, is the one that deals with sexual violence against a girl from the Terena ethnic group, resident in the Dourados Indigenous Reserve. The situation occurred in a context of domestic violence and family alcoholism, in which both parents were drinking alcohol and other drugs. The violent situation was revealed at school - the child told the teacher that the father was "messing" with her. From there, the professionals from the rights assurance system that operate in the territory were called: the psychologist from the Polo Base in Dourados then began to investigate the situation, forwarding the psychosocial report to the Tutelary Council, on June 25, 2018, which already indicated that if there was a need to remove the child from the family nucleus, the members of the child's extended family could take him/her in. The Tutelary Council informed the child's mother about what happened and instructed her to register the occurrence at the police station, which was done on July 17, 2018.

30 The *psi* approaches applied to indigenous subjects and peoples create an ethical impasse: how to transpose a psychological care model built by Western society, which has the modern individual as its subject parameter, to attend to indigenous subjects in their multiplicities? In this case, the techniques and methods employed by psychologists in the care of indigenous children and adolescents by the different institutions of the rights assurance system may be questioned in their validity, to the extent that they are based on a universalizing knowledge that does not contemplate the ontological and subjective characteristics of indigenous people/body, structured from other languages/symbolic systems (Fiocruz, 2021).

From then on, the child entered the flow of assistance from the rights' guarantee system, with the police authority as its main agent: the child gave a statement at the police station, underwent a corpus delicti exam of carnal conjunction, and was summoned, through her guardian, to attend the psychological assistance at the police station. The police delegate also asked Creas to provide psychosocial assistance to the victim and to send an informative report to DAM to instruct the records.

The child was also heard, still in the extrajudicial phase of the process, by the court's social worker, who carried out a social study with the objective of knowing and analyzing the child's social and family reality, in order to indicate the need to implement protective measures, based on the identification of situations that increase the child's vulnerability and expose him/her to situations of violence. [31]

One year after the police charge was registered, the police authority once again summoned the victim's mother to the police station to attend the psychological sessions and to justify why she had not presented the minor at the previously scheduled days and times. In September 2019, the report prepared by the DAM psychologist is attached to the file (fl. 80).

The psychological report attached to the records clarifies that the service provided is configured as an anamnesis aimed at the "better understanding of the case and the emotional difficulties reported, as well as for the delineation of treatment, should this be necessary" (pages 81). This report was based on the psychologist's six meetings with the child. Each meeting lasted 50 minutes each, occurring on alternate days. In these meetings, the child was submitted to observations, verbal interventions, interviews, and play sessions (drawings and games) in order to allow him/her to "represent his/her symbolic world".

In the analysis of the results, the psychologist describes how the child again talked about the sexual violence to which she was subjected, trying to identify signs and symptoms that corroborated the child's account of the sexual abuse she suffered, reaching the following conclusion:

31 A curious fact to be noted is that the social worker also sought out Guarani spiritual leaders to discuss the case. However, the situation of rights violation involved a Terena family, which does not share the ethical, spiritual, and ontological values of the Guarani Kayowá people. On the contrary, not infrequently, the relationship between Terena and Guarani Kayowá is marked by conflicts characteristic of the relationship between distinct ethnic groups speaking different languages. This fact is expressed in the evaluation that the Guarani leaders made of the Terena family and that was mentioned in the report: "In relation to Mr. Terena's family. F. use drugs and alcohol, as well as 'not good people', since 'the whole family breaks into the houses, steals'".

> Through data analysis, it is considered that F. did not show a propensity to lie, with a level of maturity and fantasy consistent with the phase of her development (...) And based on the interviews and playful activities, indications of pain or emotional trauma were found, which characterize possible sexual abuse, as well as fear of events subsequent to her narrative. (Psychological report attached to the lawsuit filed in the Court of Justice of Mato Grosso do Sul).

* * *

As can be seen, only during the extrajudicial phase the Terena child went through several sessions - psychological, psychosocial and social - in which she was invited to tell what had happened: by the school teacher, the psychologist from the Polo-Base in Dourados, the Tutelary Council, the social worker from the Judiciary, the professional from Creas, the police station chief and, finally, by the DAM psychologist at several moments.

The fact that the child had to tell what happened several times to the professionals of the different institutions of the rights' guarantee system made her relive the situation of violence every time she was asked to say it again. Each time the child tells his story, he recalls what he has experienced - therein lies the principle that underlies the experience of revictimization.

It is important to say that none of these services have the character of a psychotherapeutic treatment aimed at caring for the victim of violence or helping her to overcome the emotional trauma created by the situation of violence itself, as well as by the fact that she has been subjected to physical and emotional scrutiny by state agencies. Trauma generated by the very passage of the child or adolescent through the invasive procedures performed by the rights assurance system, such as the corpus delicti exam of carnal conjunction. This trauma is intensified in the case of children and adolescents from traditional peoples and communities who will find themselves evaluated by actors belonging to the colonial society responsible for the stereotyping and subjugation of the ethnic and social groups to which they belong.

As these institutions of the rights assurance system were not trained to work with the specificities of indigenous peoples from an intercultural orientation and are unaware of their subjective singularities, organizing their actions based on prejudiced and stereotyped views, the risk of committing institutional violence when serving them is concrete.

Besides this, the fact that numerous institutions provide "psychological assistance" - police station, Creas, Judiciary -, even if with different objectives, can compromise the psychotherapeutic accompaniment of the victim itself.

This is because the child or the adolescent submitted to several appointments, many times forced to do so, may get confused when faced with so many approaches and end up creating resistance or refusing to adhere to a psychosocial follow-up directed to support them in their subjective restructuring and reordering of their cosmos.

* * *

The records made available by TJMS show that indigenous children and adolescents are being asked to talk about what happened to them numerous times in the context of the services offered by the rights guarantee system in the Amambai, Dourados, and Mundo Novo districts. In addition, they demonstrate that the services provided to indigenous children and adolescents do not have an intercultural orientation, nor do they express a concern for the differentiated rights of these children and adolescents.

Furthermore, through the records, it is possible to identify the lack of care that should be provided by the institutions that make up the system of guaranteeing the rights of children and adolescents who are victims or witnesses of violence from indigenous peoples.

Now, as can be seen, in the context of legal proceedings, the multidisciplinary indigenous health teams work to identify the violence and refer the cases to the system of rights guarantees, and provide the first assistance to the victim. After that, there is no further news in the records about the involvement of this team in the follow-up and care of the child or adolescent with regard to the attention being provided for his or her recovery, nor about the unique therapeutic plan drawn up by the psychosocial care network to assist him or her. Thus, it is noted that there is an absence of indigenous health care services within the flow of care provided to indigenous children and adolescents who are victims and witnesses of violence.

The children and adolescents who are victims of violence must be accompanied by psychology professionals who are part of the multidisciplinary indigenous health teams , and referred to the Psychosocial Care Centers (CAPS) in the region.

Around the singularity of the case, a singular therapeutic project must be elaborated to contribute to the subjective restructuring of the child or adolescent who has been subjected to a situation of violence, allowing the reestablishment of bonds and the reorganization of his or her cosmos in the community contexts of his or her people. These unique therapeutic projects must be built with the communities and from a dialogical relationship that promotes the articulation with the specialists, the practices, and the traditional knowledge of the indigenous peoples to which the children and adolescents belong.

> The responsibility for managing the psychosocial care of the victim by the health services, whether in primary care or in specialized care (CAPS), lies with the multidisciplinary indigenous health teams, linked to the DSEI of Mato Grosso do Sul. Including because indigenous children and adolescents have other subjective structures, forged by sociocultural contexts
> — family and kinship ties - of which they are a part. It is the indigenous health professionals who, because they work in the area, have familiarity with the constitutive singularities of the indigenous subjects and, consequently, the responsibility to provide differentiated attention to the psycho-spiritual and socio-emotional health of indigenous children and adolescents.
>
> Such a measure is important, even so that this subject does not suffer from other disorders and psychological suffering caused as a result of the situation of violence to which he or she was subjected, being a fundamental measure to prevent other problems, such as suicide, which also affects children and adolescents in the context of the villages of the Dourados Indigenous Reserve (SOUZA, 2019).
>
> As violence constitutes a public health phenomenon and the health authorities are responsible for developing efficient and effective actions that aim at least at reducing the damage caused by these practices (FIOCRUZ, 2021), it is the responsibility of the DSEI to also develop strategies to prevent violence against indigenous children and adolescents within their territories. As the data presented by the court cases show that the alcoholization factor contributes to the configuration of the phenomenon of intracommunity violence, it is necessary to develop strategies to confront the abusive use of alcohol and other drugs in order to reduce the violence to which indigenous children and adolescents are subjected when exposed to situations of intense and generalized alcoholization (FERREIRA, 2018).

6.3. Synthesis and recommendations

Law 13.431/2017 determines that children and adolescents in situations of violence will be heard through specialized listening and special testimony. In both cases the report should be strictly limited to what is necessary to fulfill its purpose. This law also ensures that children and adolescents have the right to "be protected and protected from suffering, with the right to support, planning of their participation, priority in the process, procedural promptness, suitability of care, and limitation of interventions. Furthermore, Article 14 determines the minimal intervention of professionals on [cases32].

Decree No. 9,603/2018, in its Article 2, item V, corroborates this principle by determining that children and adolescents must receive early, minimal and urgent intervention from the competent authorities as soon as the situation of danger is known. In addition, Article 15 states that

> The professionals involved in the system that guarantees the rights of children and adolescents who are victims or witnesses of violence will strive not to re-victimize the child or adolescent, and will give preference to the approach of minimal questions that are strictly necessary for the assistance.

However, the documents found in the analyzed records reveal that the child is heard regarding the situation of violence numerous times in the various consultations to which she is submitted. Therefore, it is necessary to observe whether the rights of indigenous children and adolescents to non-revictimization and to full protection have been violated by the system of rights guarantees in the courts of the Southern Cone of Mato Grosso do Sul, more specifically. There is an urgent need to put into effect the rights recommended by the Protected Listening Law for children and adolescents from traditional peoples and communities.

32 Article 14 of Law 13.431 determines that the policies implemented in the justice, public safety, social assistance, education, and health systems must adopt articulated, coordinated, and effective actions aimed at the reception and comprehensive care of victims of violence.

Some questions and results to be scored based on the information presented throughout this chapter are:

1) The communication of the situation of violence is mostly carried out by family members close to the victim, and the mother has a fundamental role in referring the case to the system of rights assurance;
2) The action of the leaders of the communities in the forwarding of situations of violence against indigenous children and adolescents is significant in thes municipalities, especially Mundo Novo, where it has a strategic place in the articulation of the community of the TI of Porto Lindo with the system of rights assurance.
3) Indigenous communities establish their own ways of referring situations of violence that occur in their territories and of triggering the system of rights assurance. The assistance flows to the victims of violence must be articulated to the community ways of acting towards these cases, in order to make effective the right to integral protection of the victims;
4) The victims of violence have been heard regarding the situation of violence within the different services provided by the institutions of the rights warranty system in the municipalities of Amambai, Dourados, and Mundo Novo, mainly during the extrajudicial phase of the process. There is evidence that the revictimization of indigenous children and adolescents who are victims of violence has happened recurrently in these districts, to a lesser or greater extent, especially in the district of Dourados, where DAM has instituted the procedure of psychological assistance to validate the victim's testimony. It is necessary that measures are taken to ensure that the Protected Listening Law is observed. There is an urgent need to train the institutions of the rights guarantee system that work with the indigenous peoples of the region.
5) It is important to create conditions to make effective the right of children and adolescents from traditional peoples and communities to have legal counseling that defends their interests and prevents them from being re-victimized when they are assisted by the institutions of the rights assurance system;
6) Because the number of services provided to victims of violence

Because the system of rights assurance in the district of Mundo Novo is small, this is the district that least exposes indigenous children and adolescents to revictimization and possible institutional violence.

7) The implementation of the precautionary rite of anticipation of evidence instituted in the Amambai and Mundo Novo districts reduces the exposure of children and adolescents who are victims of violence to the innumerous services and interventions of the rights guarantee system;

8) The articulation of the leadership of the TI of Porto Lindo with the institutions of the rights' guarantee system, particularly with the security system and the local judiciary, contributes to the development of a differentiated intercultural service flow, contributing to the accomplishment of the indigenous children's and adolescents' right to non-revictimization and full protection;

9) The multidisciplinary indigenous health teams that work in the territories must be inserted in the process of assisting indigenous children and adolescents, in view of the fact that they are closer to the communities and know their reality. They are responsible for coordinating the clinical and psychosocial care of indigenous victims, and should instruct the judicial processes with information about the procedures being adopted for the care and recovery of indigenous people subjected to the trauma of violence. The individual therapeutic plans (PTS) for the victims of violence to be drawn up by the health services, an important measure to ensure the full protection of indigenous victims, can constitute another document to be attached to the records in order to instruct them.

10) The actors that make up the rights assurance system must be trained to work with the indigenous peoples, in order to adapt the services to their sociocultural specificities and to make their rights effective.

11) Fit is necessary to create mechanisms to reduce the possible traumatic effects that the corpus delicti exam of carnal conjunction can produce on the indigenous children and adolescents who are victims of violence. It is essential that the indigenous victims, besides being accompanied by their guardians, have the presence of an interpreter of their gender, who will make it possible for them to understand the procedures to which they will be submitted.

12) Encourage the participation of magistrates in the implementation of local service flows for children and adolescent victims or witnesses, observing local peculiarities, as recommended by Article 3 of CNJ Resolution No. 299. It is fundamental that these flows involve the peoples' own ways of caring for and protecting indigenous children and young people, organized based on their knowledge horizons - ontological, cosmological, social and kinship organizations, rituals, and doings -, responsible for the construction of bodies, people, and their subjectivities.

7. Forensic interviewers and the special testimony of traditional peoples and communities

The qualified performance of the forensic interviewers is a fundamental requirement for the implementation of the special testimony of children and adolescent victims or witnesses of violence from traditional peoples and communities. In order to conduct hearings of children and adolescents from these peoples, it is essential that these interviewers develop intercultural communication skills and know how to work with the presence of interpreters in hearings where victims or witnesses of violence choose to express themselves in their mother tongue.

Among the rights of children and adolescents recognized in Article 5 of Law No. 13.431/2017 are: to be assisted by a trained professional, to know the professionals participating in the special testimony procedure, and to provide statements in an adapted format or in a language other than Portuguese.

The Protected Listening Law also recommends that the specialized professionals who take special testimony should preferably be employees of the Judiciary. In cases where the courts do not have specialized interprofessional teams, they can make agreements with other institutions for the assignment of specialized professionals or hire experts to conduct the hearing of victims and witnesses.

Be it as a court employee, as an assigned technician, or as an expert, the professional who will take the special testimony will conduct a forensic interview with the child or adolescent, with the objective of producing evidence. To perform this role, the professional will be trained by the Courts of Justice to learn how to apply the communicative techniques presented by the Brazilian Forensic Interview Protocol for children and adolescents who are victims or witnesses of violence (CHILDHOOD *et al.*, 2020).

7.1. Status of forensic interviewers in the Courts of Justice

For specialized professionals to take the special statements of children and adolescents from traditional peoples and communities, it is necessary that, in addition to mastering the Brazilian Protocol for Forensic Interviews of Children and Adolescents Victims or Witnesses of Violence (Childhood et al, 2020), they acquire intercultural competence that enables them to establish a communicative process with subjects belonging to other linguistic and sociocultural universes.

Different configurations were found regarding the professionals who make the hearing of children and adolescent victims or witnesses of violence in the four Courts of Justice that participate in the implementation of the pilot project of special testimony of traditional peoples and communities

— Mato Grosso do Sul, Amazonas, Bahia and Roraima.

The current situation of the professionals who take the special testimony in the courts that are participating in this enterprise are the TJMS, which relies on specialized professionals from its staff of servers to conduct the forensic interviews; the TJAM and the TJBA, where the special testimony procedure is being implemented, intend to operate with the specialized professionals assigned by the protection network; and the TJRR, which accredits specialized professionals to act as forensic interviewers within the scope of special testimony hearings.

Table 13 - Contractual status of forensic interviewers in the Courts of Justice

Court of Justice	Forensic Interviewers		Experts
	Servants of the Judiciary	Ceded - safety net	
Mato Grosso do Sul	X		
Amazonas		X	
Bahia		X	
Roraima			X

Source: Own elaboration.

Court of Justice of Mato Grosso do Sul

In the districts of the Court of Justice of Mato Grosso do Sul - Amambai, Dourados, and Mundo Novo-, which serve the Guarani, Kayowá, and Terena peoples, the people responsible for taking special testimony are civil servants from the Judiciary who are part of the psychosocial centers in the respective districts in which they are assigned. These professionals were trained as forensic interviewers by the Judicial School of Mato Grosso do Sul (EJUD) according to the guidelines of the Brazilian Protocol for Forensic Interviews with children and adolescent victims or witnesses of violence (CHILDHOOD *et al.*, 2020).

However, such training does not address the situation where the forensic interview must be conducted with an interpreter present, which would require the use of other communication skills. Nor do these professionals have anthropology training to help them understand the specificities of children and adolescents forged in their subjectivities and identities from other sociocultural and linguistic contexts, from other symbolic regimes. The training in anthropology will contribute to qualify the performance of these professionals both in conducting the psychosocial studies requested by the court, and in performing the function of forensic interviewer of children and adolescent victims or witnesses of violence from traditional peoples and communities in the state.

Court of Justice of Amazonas

The districts of the Court of Justice of Amazonas - Tabatinga and São Gabriel da Cachoeira - serve a great ethnic diversity of indigenous peoples. The district of Tabatinga serves the Tikuna, Kokama and Kanamari peoples; while the district of São Gabriel da Cacheira serves 23 indigenous peoples, speaking 14 different languages.

The judicial districts of Tabatinga and São Gabriel da Cachoeira do not have specialized professionals on their staffs to carry out the taking of special testimony.

In Tabatinga, the professionals of the protection network assigned to the judiciary are responsible for hearing the children and teenagers who are victims of violence. As soon as the hearing for the hearing of the child or adolescent is designated, the court sends a letter to the Specialized Social Assistance Reference Center (CREAS) to request the presence of a specialized technician to make the deposition without harm to the victim or witness of violence.

However, due to the great volume of services that are demanded, the professionals from the Creas teams are not always available to meet the Judiciary's request. In these cases, the hearing of the children or adolescents who are victims of violence is conducted by the judge herself. To this end, it is advisable that magistrates are also equipped to apply the principles and techniques of forensic interviewing established by the Brazilian Forensic Interview Protocol (CHILDHOOD *et al.*, 2020).

The process of formalizing the institutional partnership provided to the Tabatinga district by the municipal protection network - Creas and Cras - by Funai and by the DSEI of Alto Solimões, through a term of cooperation signed between the parties, was signed in November 2021.[33] This term of cooperation was a way to, among other things, guarantee the presence of both specialized professionals and interpreters for the collection of special testimony.

33 In order to formalize the institutional support that has been provided to the Tabatinga district by the municipal protection network, by Funai, and by the Alto Solimões DSEI, a meeting was held on August 17, 2021 with representatives of the public institutions that operate in the region. Present were representatives of the DSEI of Alto Solimões, Funai, the Specialized Reference Center for Social Assistance (CREAS) and the Reference Center for Social Assistance (CRAS) of the Municipality of Tabatinga, the Brazilian Bar Association (OAB), and the indigenous peoples of Alto Solimões and Vale do Javari (NATIONAL COUNCIL OF JUSTICE, 2022b).

The proposal is that the specialized professionals for the taking of the special statement are made available both by the Municipality of Tabatinga, not restricted to the Cras/Creas professionals; and by the DSEI Alto Solimões itself. The judiciary would be in charge of training these professionals and interpreters to work in the scope of special testimony hearings.

The district of São Gabriel da Cachoeira also does not have specialized professionals to collect the narrative of the child or the adolescent victim or witness of violence. The attempt to resort to the protection network to compensate for the absence of specialized professionals in the Judiciary was ineffective, because the Municipal Secretariat of Social Assistance was against the participation of psychologists and social workers in the collection of special testimony, as it considered this incompatible with the ethics that govern their professional practices. In the next topic, this question will be taken up again, since it presents important elements to be considered with regard to the performance of the institutions and their attributions within the scope of the network of the rights assurance system.

Court of Justice of Bahia

The districts indicated by the Court of Justice of Bahia - Eunápolis, Santo Amaro, and Cachoeira -, which indicated the gypsy, quilombola, and terreiro communities, also do not have specialized professionals in the Judiciary staff to take the special testimony.

As in the Tabatinga district, to make up for such deficits, when necessary, the municipal protection network services are used to request the assignment of specialized professionals for specific judicial processes, or specialized professionals are hired as experts. The district of Eunápolis, for example, has worked to get a specialized professional, already working for the judiciary, transferred to the children and youth court, in order to make possible the realization of special testimony and other necessary procedures. This case is in progress at the Court of Justice of Bahia.

Court of Justice of Roraima

The Court of Justice of Roraima has adopted a distinct strategy to ensure the presence of forensic interviewers in the scope of special testimony hearings.

The specialized professionals who make the hearing of children and adolescent victims or witnesses of violence are hired as court experts. To implement the measure, the TJRR publishes an edict for the accreditation of educators, psychologists, social workers and legal professionals to form a general registry of professionals to act in the taking of[special] testimony34. The interested parties must indicate in their registration the district in which they wish to act, with the possibility of indicating more than one district.

The accreditation in the register of professionals to act in the taking of special testimony is a prerequisite for the technician to participate in the training course "Special Testimony and Listening of Children and Adolescents in the Justice System", offered by the School of the Judiciary of the State of Roraima - EJURR or by a judicial school that is part of the National System of Judicial Training. Only after going through this training will the professional be able to work as a forensic interviewer.

The TJRR's strategy of using experts as interviewers was adopted to cope with the limited number of specialized professionals that make up the Court's staff. In this case, the appointment of experts for the taking of special testimony would be a way of not overburdening the Judiciary's employees in the performance of yet another task for which they would not be paid.

The routine implemented by the TJRR for the appointment of the forensic interviewers also assumes its own contours: the magistrate responsible for appointing the special testimony hearing requests the Coordinator for Children and Youth of the TJRR to appoint a forensic interviewer for the scheduled date. The coordinator responds with information about the professional who will be attending that hearing, following the schedule of accredited interviewers. Thus, the coordinator of childhood and youth has control over all the special testimony hearings that take place in the state of Roraima.

The possibility of hiring the forensic interviewers as Experts presented by the TJRR constitute an interesting proposal for the taking of special testimony from victims or witnesses of violence from traditional peoples and communities. The appointment of specialized professionals from these ethnic and social groups would be a way to make effective the right of children and adolescents to be heard in a safe and welcoming environment that provides conditions for the interviewer, who belongs to the same people as the victim or adolescent, to establish an empathetic relationship and the necessary bond of trust to allow the flow of the deponent's free narrative about the situation of violence to which he/she was subjected or witnessed.

34 Credential Announcement No. 02/2020, Court of Justice of Roraima. Available at : http:// cpl.tjrr.jus.br/phocadownload/Edital%20002-2020-%20New.pdf

In this way, the power asymmetry that would characterize the communicative interaction between a specialized professional belonging to a "non-traditional" society and the child or adolescent from traditional peoples and communities would be minimized, thus reducing the traumatizing effects that the transit through the institutions of the rights' guarantee system can cause on the subjectivities of these people.

7.2. The perception of technical experts about the special testimony of traditional peoples and communities

For the professionals who work as forensic interviewers at the Court of Justice of Mato Grosso do Sul, there are many difficulties faced in making special testimonies with victims or witnesses of violence from traditional peoples and communities. In the dialogues that took place between the consultant and the specialized technicians, whether in the context of the open interviews, or in the workshops for the exchange of experiences, they always expressed their uneasiness in conducting an interview with indigenous children and adolescents.

The uneasiness of the specialized technicians in conducting special testimony hearings with indigenous people is associated with some factors. One of them has to do with the fact that these professionals, trained in psychology and social assistance, feel powerless in the face of the situations they are told about, without the possibility of offering effective support to the children and adolescents who are victims of violence. Because of their own training, these professionals identify that these cases require practical referrals and that just hearing them in the scope of the hearings is insufficient.

Thus, we are faced with an ethical impasse: the service provided in the context of a special testimony hearing is aimed at the production of evidence and the forensic interviewer who will hear the victim should make sure that the victim is not re-victimized in this environment, at least. The special testimony hearing does not constitute a moment of psychosocial attention to the victim or witness of violence. Even so, due to the interviewers' own training at TJMS, the need for attention is identified and they try, as best as possible, to at least refer these children and adolescents to the protection network in order to receive the necessary care.

This does not prevent the specialized technician, when performing the function of interviewer, from becoming ill and suffering psychically. As the social worker from the district of Mundo Novo says, "the interviewer also gets sick when confronted with the stories that are told. It is a heavy burden to conduct the protocol with all children, especially with indigenous children.

One way identified by the forensic interviewers from TJMS to face this feeling of uneasiness related to the taking of special testimony from indigenous children and adolescents would be, on the one hand, to invest in the training of specialized technicians to work with these peoples; and, on the other hand, to make it feasible to hire indigenous professionals to make the hearing of these children and adolescents.

* * *

For the specialized technicians, linguistic differences constitute one of the greatest difficulties in making special testimonies with victims or witnesses of violence from traditional peoples and communities, particularly indigenous peoples. Having to interview an indigenous child or adolescent based on the Brazilian Forensic Interview Protocol is a huge challenge, because how do you welcome and build a bond of trust, in 30 minutes, with a child or adolescent who belongs to another sociocultural and linguistic universe, from which their own subjectivities are shaped?

In order for the indigenous child or adolescent to have an adequate environment for free expression, it is essential to linguistically and culturally adapt the Brazilian Forensic Interview Protocol itself. According to the forensic interviewer from Mundo Novo, "the application of the Protocol without the proper cultural adaptation may incur in one more institutional violence", and the elaboration of an intercultural protocol that contains guidelines on how to work in hearings with the presence of forensic interpreters is the best way to face this limitation.

> There are many limitations to be overcome for special testimony to really be implemented in order to avoid revictimization. The way the special testimony has been carried out, even if following the script of the Brazilian Interview Protocol

> Forensic, the interviewer does not know how the testimony reverberates in the children's lives, nor if they have understood the questions asked. Even with an interpreter present, the interviewer has no control over how the child understood the question, how the interpreter did the translation, and what the child answered. Moreover, the interpreter is not trained to work in these hearings (Considerations of the forensic interviewer in an open interview).

Still on the need to adapt the Brazilian Forensic Interview Protocol, the interviewer from Mundo Novo shares the reflection that emerged during a workshop to exchange experiences among the Judiciary technicians, in the scope of the TJMS pilot project:

> As soon as the Special Testimony Law was enacted, we should have already ensured that the communities had at least an interpreter, at least a differentiated approach, and language adapted to the protocol. Because then, if you literally translate the protocol into another language, without adapting it, you don't achieve the goal. Because he simply made a reproduction of the white man's thought by translation. But when you make an adaptation without losing the core of what the special testimony is, then I believe it starts to make sense. Because when I tell the interpreter: ask her in which part of her body he touched her? What do I know about the body? How is the interpreter reproducing my question? Then the interpreter will say: oh so-and-so, the interviewer asked you which part of the body he touched? And I notice that she says it like this: the arm! It's just that until you get to where the information is that is actually of interest to the case, it's a job! If we directed the question in a proper way, we would achieve a better result. But this requires an adaptation of the protocol. This is what has to be built together with the indigenous people! (Considerations of the forensic interviewer in an open interview).

However, how to adapt the Brazilian Forensic Interview Protocol for the hearing of children and adolescents from traditional peoples and communities, if the translation cannot be reduced to the linguistic issue alone, since indigenous languages have other symbolic structures? In this case, one must resort to the device of cultural translation as well. There are some questions that, the way they are posed by the Brazilian Forensic Interview Protocol, make no sense to adults, much less to indigenous children, especially those who do not master the Portuguese language. In this case, how would a child from indigenous peoples and communities be received? Does the same approach to foster care*(rapport*) for non-Indigenous children work for Indigenous children? Issues that the adequacy of the Brazilian Forensic Interview Protocol will need to address.

One of the forensic interviewers that works at the TJMS made an evaluation after the hearing in which she took the special testimony of a 14 year old Kayowá girl. For her, free narrative as advocated by the Brazilian Forensic Interview Protocol (CHILDHOOD *et al.*, 2020) does not work with indigenous children and adolescents.

> What marks me the most? The girl was already 14 years old, with great difficulty in communicating in Portuguese. But for an indigenous person, whether child or adolescent, it is very clear that that pillar of the special testimony - the free account - does not work. It falls flat with the indigenous child and adolescent! I saw myself interrogating that girl. What happened? Where was it? How was it? No free report! (Considerations of a forensic interviewer in the context of a meeting to exchange experiences).

If the language structures and speech forms of traditional peoples and communities with their own sociolinguistic orderings are not considered, any possibility of free narrative will be silenced. The structure of the Guarani language, a reflection that will be discussed in the next chapter, is not the same as in Portuguese. This means that neither Amerindian thought nor Amerindian subjectivity are structured in the same way.

Another aspect related to the difficulties of serving indigenous children and adolescents was pointed out by the forensic interviewer from the Dourados district when she pointed out, in a psychological report, that there is no scientific evidence that validates the use of certain psychological approaches with indigenous children, due to their specificities and subjective peculiarities, shaped by their belonging to distinct ethnicities and cultures[35].

The coordinator of the Brazilian Articulation of Indigenous Psychologists calls attention to the fact that the child development model adopted by cognitive psychology, by behavioral psychology, does not apply in the same way to indigenous children (FIOCRUZ, 2021). In this case, the very idea of children's cognitive development with which the Brazilian Forensic Interview Protocol works needs to be reviewed. This revision should be carried out together with professionals, leaders, and wise people from traditional peoples and communities, based on the establishment of a broad intercultural dialogue.

* * *

The referred Psychological Report, which had the objective of evidencing the evidence of the occurrence of sexual abuse, was joined to the records in a process of verification of infraction - rape of a vulnerable person, in which the victim is a 9 year old Terena child.

Based on her own experience, the specialized technician in the Dourados district identifies that indigenous children are afraid of the interviewers and feel intimidated in special testifying situations. "The indigenous people are afraid, I - the interviewer - I represent for the child a frightening figure. Even with all the technique of the protocol it is difficult. To what extent are we concerned about the victim's right, or is this just another judicial rite to produce evidence?"

The impression of the interviewer from the Dourados district is also corroborated by the statement of the technician from Mundo Novo, who tells about the conversation he had with the chieftain of the Porto Lindo Indigenous Territory to talk about the pilot project of special testimony of traditional peoples and communities.

> This leadership said to me: "I live in the Courthouse, I am a leadership, I tremble at the bases, I get all worked up. I'll come home scrambled! Imagine our children, how will they look by the time they get to the judiciary?" I said: I understand you, sir! I, as a server, when I am called to a hearing and put in the condition of listener by the system of law operators, I get emotionally destabilized. Imagine then a child arriving at the Courthouse, no matter how hard we try to make a welcoming environment... He was explaining the need to listen to these children within the community. (Considerations of the forensic interviewer within an open interview).

The fear of the Nhandeva children at the time of the special testimony is intensified by the fact that the Courthouse is a non-Indigenous space, the one that looks at their people with a hostile gaze, impregnated with prejudice. How will a Guarani and Kayowá child establish a relationship of trust with a professional who represents the hegemonic society that subjudges its people?

As the forensic interviewer from Dourados explains, the prejudice that the regional society harbors towards indigenous people also influences the very way in which the judiciary approaches the cases that come before it.

> The judiciary's view on the indigenous issue reflects the view that Dourados society has of the Indigenous. This vision held by the judiciary promotes the de-emphasis of native peoples. Indigenous are seen as backward and not capable of involvement, as "animalized". In this case the very situations of sexual abuse tend to be seen as normal, as a characteristic of an "animalized" people. The judiciary is yet another device that subjugates indigenous people. (Considerations of a forensic interviewer in an open interview)

The forensic interviewer who works in the Amambai judicial district also corroborates the view of her colleague from the Dourados judicial district when she comments that "there is a lot of prejudice and stigma towards indigenous people, nurtured by the regional society as a whole". This causes the Guarani to remain on the defensive in front of the agents of justice, not perceiving them as their allies.

In these institutional contexts that operate with a colonial imaginary, impregnated by stereotypes and prejudices, the participation of children and adolescents in hearings, even in those of special testimony, tends to subject them - their subjectivity, their spirituality, their bodies - to the power of the "white man", power that is expressed through the summons and the need to go to the Courthouse, a place so distant from the world in which the children live in their villages. It is also expressed through the hierarchical relations that are imposed on the indigenous people in the context of hearings, a type of unique communicative event characteristic of the legal culture of the Western world, in which the actors who can speak, when they can speak, how to speak, and what are the legitimate, authorized, and standardized ways of saying what the other person must "fit in''. But when one is in the field of cultural difference, this other does not fit in, and it can happen that he is condemned without understanding the reasons that brought him there.

By imposing a language expression format, children and adolescents from indigenous peoples and communities are silenced. Power that is expressed in the interrogations of children in which they demand that the children not only speak Portuguese, but that they say it in terms determined by the non-indigenous themselves. The statement that demands "objectivity" is almost always a way of silencing the other and preventing him from expressing himself freely about what happened.

To overcome the situation in which the very act of going to the Courthouse - the power space of the non-Indigenous - constitutes a situation of revictimization for a child from traditional peoples and communities, it would be necessary that the special deposition hearing be held in the child's own territory or that the forensic interviewer belong to the child's people. After all, Law No. 13.431/17, in its Article 5, guarantees that it is the child's right to know the professionals participating in the special testimony procedure. Then there would be some possibility of welcoming the child to the point where he or she could present a free narrative of the facts.

7.3. The taking of special testimony by professionals in the protection network

As presented and discussed in the previous products of this consultancy (NATIONAL COUNCIL OF JUSTICE, 2022; 2022b), the districts of the Court of Justice of Bahia and of the Court of Justice of Amazonas, which integrate the pilot project for the implementation of the special testimony of children and adolescent victims or witnesses of violence from traditional peoples and communities, do not have specialized professionals in their staffs to compose the psychosocial centers of the Judiciary.

To overcome these deficits, the courts of both Courts of Justice, when necessary, resort to the municipal protection network to request the assignment of professionals to take the special testimony in the scope of specific lawsuits. However, these professionals are usually not trained to perform the role of forensic interviewers as recommended by the Brazilian Forensic Interview Protocol.

On the other hand, the specialized professionals that work at the Creas/Cras are not always available to meet the demands of the Judiciary. Whether due to the fact that the protection network has too few professionals to handle a large volume of services, as occurs in the district of Tabatinga, AM; or because they refuse to participate as forensic interviewers in the scope of special testimony hearings, understanding that such activity is not in line with the specific competencies of the profession or the function they perform when acting in the protection network of the rights assurance system, as the position of the Creas of the Municipality of São Gabriel da Cachoeira, AM, as presented below.

The positioning of Cras/Creas in São Gabriel da Cachoeira: a case study

On August 1, 2018, in an attempt to implement the special testimony in the County of São Gabriel da Cachoeira, the magistrate prepared the document "Judicial guidelines for procedural operationalization of the humanized listening of child and adolescent victims or witnesses of violence "[36]. Among the adaptations proposed for the special testimony, the court established that the specialized professionals from Creas - psychologists and social workers - would be the ones to collect the special testimony from the children and adolescents.

36 Document attached to the lawsuit in the district of São Gabriel da Cachoeira.

The judge then notified Creas, requesting that it present a specialized professional on the date of the designated hearing to take the victim's special testimony. On August 8, 2018, the document "Positioning of the Cras and Creas reference teams in relation to the judicial guidelines for the procedural operationalization of humanized listening proposed by the judge of law of the District of São Gabriel da Cachoeira - AM" was attached to the records (p. 207). In this document, psychology and social assistance professionals take as a starting point the structural fragility of the protection network and the system to guarantee the rights of children and adolescents in São Gabriel da Cachoeira[37] to state the need to align the services provided by the different institutions, so that there is no overlapping of services, confusion about the attributions and scope of work of each of the institutions and their professionals, and no disrespect to the specificities of each professional's work.

The document says:

> Considering the norms that govern both psychologists and social workers, we understand that it is not the competence of psychologists and social workers to make special testimonies, since the Specialized Hearing is already guaranteed and carried out by the National Social Assistance Policy within the Special Social Protection of medium complexity, through the service offered by the Specialized Reference Center for Social Assistance - CRAS, which operates in the psychosocial monitoring of cases of violation of rights, thus composing the network of comprehensive protection of children and adolescents.
>
> The performance of both professionals in the children and adolescents' rights guarantee system, as mentioned before, is guided by the logic of integral protection, therefore, it does not match the central objective of the referred law (Law no. 13.431/217), which is to constitute material evidence by listening to the testimony of victims and/or witnesses.

The São Gabriel da Cachoeira Cras/Creas reference teams were guided by the position of the Federal Councils of Psychology and Social Work contrary to the role of psychologists and social workers in the collection of special testimony, to respond to the request of the court. Among the points mentioned by the document are:

> a) consider the measure (harmless testimony) contrary to the role of professionals in the protection system;

37 Lack of a fully adequate place for attendance; lack of sufficient human resources for the effective exercise of the function; lack of material resources (pp. 207).

> b) That special testimony, in the name of protection, violates the rights of children and adolescents, who become the object of preponderant evidence in criminal proceedings, disrespecting their peculiar situation as developing people and their dignity;
>
> c) For limiting the theoretical and technical autonomy of each professional, since the practice of special testimony places psychologists and social workers as interpreters of the judge in the context of the hearing, with previously established questions and possibilities of interference, even if minimal, by the judicial authority;
>
> d) That inquisitorial work, for the search of material evidence, is not the job of psychologists and social workers;
>
> e) that there are conceptual and methodological differences between judicial inquiry and psychological listening;
>
> f) that the practice of special testimony by psychologists and social workers violates professional confidentiality.

Finally, the document expresses that Cras and Creas do not refuse to collaborate with the Judiciary, but that they will do so by meeting its requests for psychosocial studies, preparation of reports and opinions necessary for the instruction of the judicial proceedings in progress, and not by participating in the procedure of special testimony of children and adolescents. They also take the opportunity to point out that this collaboration also leads to an overload of work and an accumulation of functions, going beyond the attributions of the professionals who work in the network, without them being paid for the extra work done. They also reinforce that even these psychosocial studies should be carried out by court professionals and that it would be the duty of the judiciary to compose its own multidisciplinary teams.

Given the position of the reference teams from Cras/Creas that pointed to the conceptual and methodological incompatibility between the work of psychologists and social workers and the function of judicial inquiry, and for the issue that the work in the collection of special testimony violated the code of ethics of professionals in these areas, the substitute judge in charge of the district at the time understood that it would be important to readjust the procedure of the hearing of the child to restrict the execution of the act of instruction, mention of the special testimony, to the exclusive presence of the judicial authority.

Based on the guidance given by the court, that the victim would be heard in the exclusive presence of the judicial authority, the Public Prosecution Office requested that the hearing be recorded on media for later analysis and that the procedure be carried out in an appropriate and welcoming environment. This is yet another exemplary case in

that it is the magistrate himself, who must make the victim's hearing, needs to have a command of the Brazilian Protocol for Forensic Interviewing in order not to re-victimize the child or the adolescent during the special testimony hearing.

This whole debate took place two years after a 6-year-old girl was subjected to sexual violence. By the time access to the court cases was available, August 3, 2021, the special testimony hearing had not yet taken place due to the fact that the victim lives in an indigenous community and had not been located to receive the court summons.

The questions presented by the professionals from Cras/Creas assume great relevance when it comes to the ethical impasse that the specialized professional who works in the protection network faces when asked to make a special statement. The professionals who work, whether in social assistance or health services, have the task of protecting and caring for the people who live in the territories they cover. The bonds of trust established between these professionals and the communities they serve are built within the framework of the services they provide.

When asked to make a special statement, the professional is working towards the production of evidence, which may even incriminate someone in the community who also needs their care. If, on the one hand, this dual function can compromise the bond of trust established between the members of the community and the professional in the safety net, on the other hand, using the bond of trust that these professionals have built with the communities they serve also generates ethical problems that need to be considered.

In light of the ethical impasses that inform the alternative of turning to the protection network to provide professionals to conduct the victim's hearing and considering the need for children and adolescents from traditional peoples and communities to be heard by forensic interviewers belonging to their own people, the way in which these professionals are allowed to act for the taking of special testimony adopted by the TJRR constitutes the most appropriate way to guarantee the presence of the forensic interviewer in the special testimony hearing, creating conditions for the reception (rapport) of this victim or witness to actually happen, without compromising the important work that the professionals of the protection network perform in the community territories to ensure the full protection and differentiated services to these population segments.

7.4. Synthesis and recommendations

Conforme as presented, the quality of the special testimony of children and adolescents from traditional peoples and communities depends on the qualification of the performance of the forensic interviewers both in terms of the domiof the Brazilian Protocol for Forensic Interviews, as well as in terms of understanding the sociocultural and linguistic reality of the victims and witnesses of violence that they assist.

Based on the different ways that the Courts of Justice participating in the pilot project have found to enable the presence of forensic interviewers in the context of special testimony hearings, the following findings and recommendations can be made:

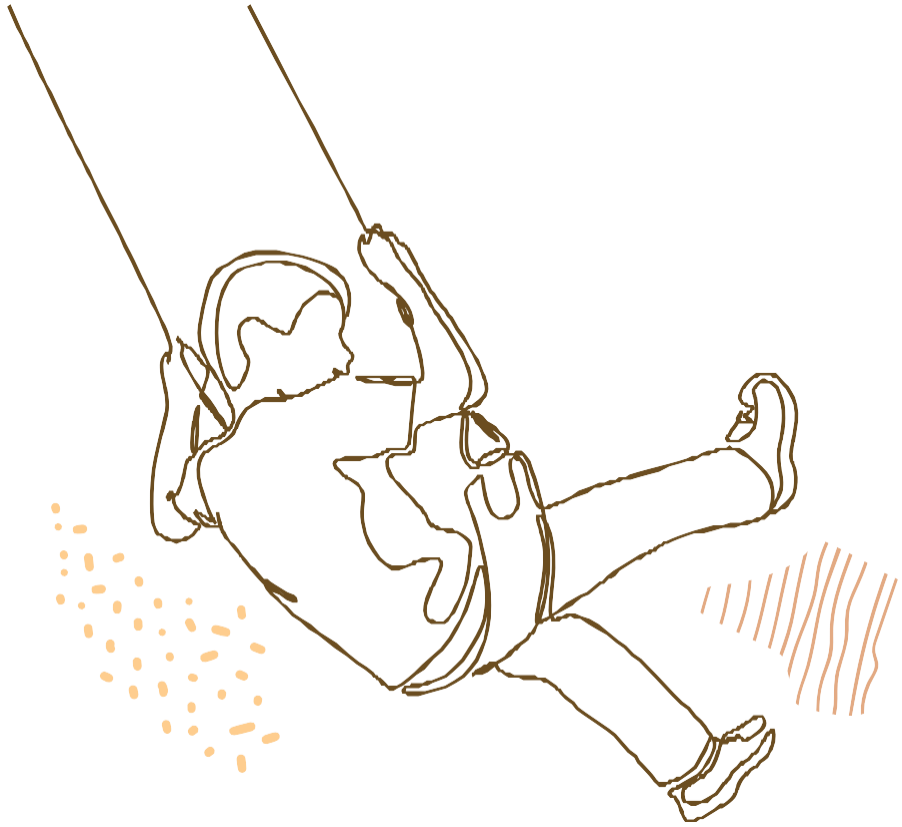
1) Elaboration of a specific course for the training of forensic interviewers for the taking of special testimony from children and adolescents from traditional peoples and communities that includes anthropological contents, that enables them to work with the presence of interpreters in the hearings, and that allows the development of intercultural communicative skills that enables the adequacy of what is established by the Brazilian Protocol of Forensic Interviewing to the socio-cultural specificities of the child. It is important that these courses have the participation of professionals from the traditional peoples and communities to guide the interviewers on the best ways to deal with the issues that are addressed during the special testimony hearings;

2) Training for magistrates in taking special testimony according to the Brazilian Protocol for Forensic Interviewing so that they can conduct the hearing of victims without revictimizing them, in cases where forensic interviewers are not present;

3) Establish a process of adaptation of the Brazilian Protocol of Forensic Interview that involves professionals and leaders of the traditional peoples and communities to create conditions in order to contemplate the ways of speech and the possibility of free narrative (free expression) to their children and adolescents;

4) Create mechanisms of care and protection for specialized professionals (judicial employees) and magistrates, in order to protect them and prevent them from getting sick (vicarious trauma) when working with issues of violence against children and adolescents;

5) Enable the hiring of professionals from traditional peoples and communities as experts to act in special deposition hearings involving victims and witnesses of violence from their people, in order to create conditions for the special deposition environment to be safe and welcoming, and for the children to express themselves in their own way, with space for free narrative about the facts.



8 The role of interpreters in special testimony

For the hearing of child victims or witnesses of violence from traditional peoples and communities to be carried out in such a way as to prevent their revictimization, in addition to the actions of qualified forensic interviewers, it is necessary to have the services of forensic interpreters in the context of special testimony hearings. It is also important that the judicial processes can count on the contribution of expert anthropologists who contribute not only to highlighting the facts, but to enforcing the rights of children and adolescents belonging to ethnically, linguistically, and culturally differentiated groups to full protection. [38]

38 Both anthropologists who act as assistants of justice in court proceedings, and interpreters who in court hearings, are classified as experts by the Criminal Procedure Code of 1941 (Almeida, Nordin, 2017, p.2).

In order to move forward in this report regarding the expertise that has been agencyed in the judicial proceedings made available by the Courts of Justice participating in the pilot project for the special testimony of traditional peoples and communities, it will be necessary to approach the way the interpreters have been acting in the scope of the special testimony hearings.

8.1. The role of interpreters in the context of special testimony hearings for traditional peoples and communities

So, what is language for? If it is not even made to signify things expressly, I mean that this is not its first destination; and if it is even less for communication. And it's quite simple, it's plain and it's capital: make the subject. That is enough and that is enough (Jacques Lacan, A Brief Address to Psychiatrists, 1967).

Among the rights of children and adolescents recognized in Article 5 of the Law No. 13.431/2017 is to provide statements in adapted format or in a language other than Portuguese. Article 19 of CNJ Resolution No. 299/2019 also recognizes the right of children and adolescents to have an interpreter present during special testimony. In fact, procedural acts and court decisions can only be fully understood by traditional peoples and communities who speak their original languages through the action of a forensic interpreter. The Courts of Justice of Mato Grosso do Sul, Amazonas and Roraima are resorting to the work of interpreters in special testimony hearings in which the victim or witness does not speak or express himself poorly in Portuguese. The Court of Justice of Bahia, in turn, has no experience with the work of interpreters due to the fact that the traditional peoples and communities attached to the territory it serves are Portuguese speakers.

What follows is a look at how the presence of interpreters has been trigggered in the judicial processes of the Courts of Justice participating in this enterprise.

Court of Justice of Mato Grosso do Sul

The Court of Justice of Mato Grosso do Sul has a registry of indigenous interpreters to act in court hearings in which those involved (defendants, victims, or witnesses) do not speak or express themselves poorly in Portuguese. The people who act as interpreters, however, do not have

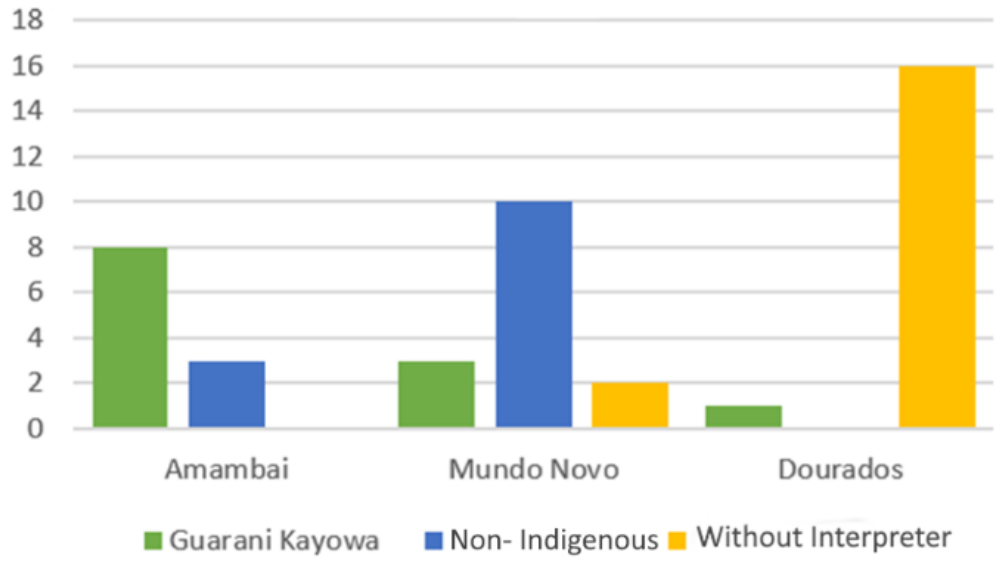
professional training neither for the performance of linguistic interpretation nor for acting within the scope of judicial acts instituted by the Judiciary.

Of the 45 court cases made available by TJMS for analysis by the consultancy, 29 were interpreted. All the special testimony hearings in the Amambai district (13 in total) were attended by interpreters: eight of them were translated by a Kayowá interpreter, and five were translated by non-Indigenous speakers of the Paraguayan Guarani language.

The sixteen special testimony hearings held in the context of the 15 court cases made available by the district of Mundo Novo also relied on the interpreter for the special testimony hearings. Three hearings had the appointment of an interpreter from the Guarani people - the guardianship councilor from the Japorã municipality - while in 12 hearings the translation was done by a non-indigenous Guarani speaker from Paraguay.

Finally, of the 17 lawsuits in the Dourados district, only one special testimony hearing had a Kayowá interpreter to make the hearing of a child witness of violence.

Figure 40 - Interpreters at TJMS (n=45)



Source: own elaboration.

<u>The role of interpreters in the courts of the Northern region: Amazonas and Roraima</u>

The judicial proceedings made available by TJAM show that the Tabatinga district triggers the presence of interpreters for cases it considers pertinent. To this end, the court relies on the collaboration of the National Indigenous Foundation to assist with translation in the context of pre-trial hearings and to conduct the hearing of indigenous children and adolescents who are victims of violence.

As far as the district of São Gabriel da Cachoeira is concerned, which recently had not yet implemented the special testimony procedure, in none of the cases did the court call for the interpreter to assist in the hearing of the indigenous victims during the instruction and trial hearings. It is known that some people in the upper Rio Negro region express themselves only in Portuguese, as is the case of the Baré. In this case, the presence of interpreters would not be necessary. But the hearing of children and adolescents belonging to the Baniwa, Tukano, Yanomami, Hup'da peoples, among others, requires the presence of interpreters to guarantee conditions for free expression.

However, even though the district of Tabatinga counts on the collaboration of Funai or DSEI ARS employees to help with translation during the hearings, there is no system in TJAM for accreditation/registration, training, appointment and remuneration of court interpreters. Currently, it has been reported that the TJAM's Internal Procedures Office has sent an official letter to Funai requesting indications of indigenous people to compose a list of interpreters to be sent to the Courts of Amazonas.[39] This is a fundamental measure yet to be developed by the Court, considering the importance of forensic interpretation in a state such as Amazonas, which is home to a great sociocultural and linguistic diversity of traditional peoples and communities.

***

The Court of Justice of Roraima, for its part, is publishing a public notice of accreditation for the formation of a general registry of professionals who work with simultaneous translation of depositions to meet its needs. Among the specifications of the experts required to perform interpretation during hearings are the services of simultaneous translation of statements from various indigenous languages into Portuguese and vice versa. This same notice defines the amount per hour worked to be paid for the services rendered by the interpreter. The call for accreditation of indigenous language translators started to be made from the year 2018. However, it is worth mentioning that there are no indications in the public notice regarding the need for this translator to be indigenous.

39 Available at:https://www.tjam.jus.br/index.php/cgj-publicacoes/cgj-noticias/4382-corregedoria-de-justica-determina-a-adocao-procedimentos-para-assegurar-ampla-defesa-a-indigenas-acusados-condenados-ou-privados-de-liberdade

In addition, the districts of Bonfim and Boa Vista, when answering the questionnaire to gather preliminary information to support the implementation of the pilot project for the special testimony of traditional peoples and communities, affirmed that these translators are trained to act in the testimonies of children and adolescent victims or witnesses of violence, in cases where the children do not speak Portuguese.

Among the seven cases analyzed by the consulting firm, in only one did the judge appoint an interpreter for the special testimony hearing. However, it was not possible to identify in the records either the people to whom the child belonged or the language he spoke.

8.2. Interpretation in the context of special testimony hearings with indigenous people

The interpreters who work in the special testimony hearings of children and adolescents from traditional peoples and communities - indigenous peoples in the Courts of Justice participating in the pilot project do not have professional training to perform this function. The TJRR reports that it trains those who will do the translations in the special testimony hearings, and the TJMS recognizes the need for the people acting as interpreters to be trained. In general, the people who work in these hearings are bilingual and not trained to do either linguistic or forensic interpretation[40]. The fact is that the professional training of interpreters to act in special testimony hearings with indigenous children and adolescents is yet to be developed.

Almeida & Nordin (2017) highlight the importance of qualifying interpreters to act in different procedural acts instituted by the judiciary. On the other hand, they also identify the need for magistrates, legal operators and forensic interviewers who participate in pre-trial hearings to know how to work with the forensic interpreter. In the case of the special testimony hearing, it is essential that forensic interviewers develop this communicative skill and learn to work with the interpreter, as stated in the previous chapter.

40 There is a difference between interpretation and translation: while the former constitutes the transfer from one oral language (source language) to another oral language (target language), translation is the transfer from one written language to another written language (Almeida and Nordin, 2017, 9).

The interpretation modality used in the context of special deposition hearings is close to consecutive interpretation[41], since the interpreter has to ask the forensic interviewer questions in the language of the victim or witness (target language) and, subsequently, interpret the deponent's answer into Portuguese, transmitting it to the interviewer and also to the judge and other legal operators that follow the hearing of the child or adolescent in real time through the videoconference system.

Consecutive interpretation requires the employment of short-term memory for the message to be transmitted between the subjects involved in the audience communicative process. "It therefore calls for the speeches to be interpreted not to exceed two minutes or contain more than fifty words, failing which the interpreter will not be able to grasp and faithfully reproduce what has just been said" (ALMEIDA and NORDIN, 2017, 12-13).

* * *

In the three Courts of Justice that serve traditional peoples and communities that maintain their native languages, the understanding was found that an interpreter must be appointed when the victim or witness does not speak or express himself well in Portuguese.

It is important to say that the presence of qualified forensic interpreters who belong to the same people as the victims or witnesses of violence in the scope of special testimony hearings is fundamental to guarantee the conditions for the free expression of the child or adolescent, even when he/she is bilingual and understands relatively Portuguese. This is because communication between the subjects involved in situations of violence in the villages occurs in the indigenous language

— main language spoken in community contexts.

41 " **Consecutive interpretation** is where the interpreter takes notes while listening to the speech and then, when the speaker pauses, interprets into the target language. It uses the cognitive ability of short-term memory and, precisely for this reason, requires that the speeches to be interpreted do not exceed two minutes or contain more than fifty words, otherwise the interpreter will not be able to grasp and faithfully reproduce what has just been said (...) In criminal hearings, it is widely used, appearing already in the preliminary interview of the foreign defendant with his defender, passing through the preliminary explanations of the judge at the beginning of the hearing and reappearing at the close, for discussion with the defender on possible appeal. It is during questioning of the accused, however, that consecutive interpretation takes on absolute importance: the interpreter gradually translates into the foreign language the questions posed by the judge, the prosecutor and the defense regarding the merits of the accusation and, with the defendant's answers - also interpreted consecutively - the accused's version of the facts is drawn, with the admission or denial of guilt" (Almeida and Nordin, 2017, pp. 12-13).

The aggressor will express himself/herself in the indigenous language with the child or adolescent who is being violently challenged.

Requiring children to express themselves in Portuguese in special testimony hearings is to transfer the responsibility for translating the situation of violence experienced to the very victim or witness of the violence. In this process, besides the judiciary missing important details that would characterize the facts, it also contributes to silence the victim or witness of the violence by requiring her to talk about what happened in the terms that the judiciary recognizes as valid.

* * *

The context of the special testimony hearing that requires the work of the forensic interpreter is highly complex, as it requires different levels of translation to be triggered. Even in a hearing in which all participants share Portuguese, the forensic interviewer is responsible for interpreting the questions asked by the judge and other legal operators into the terms of the child or adolescent victim of violence. When these children belong to traditional peoples or communities that speak other languages and interpretation is necessary for communication to take place, the situation becomes more complex.

How will the interviewer do this translation if he/she does not have knowledge about the linguistic and sociocultural context in which the child lives, in order to be able to adapt the language to the child's terms? In this case, the interpreter not only performs the linguistic interpretation of the questions presented by the forensic interviewer and the operators of the law, he or she must also adapt the questions to the sociolinguistic reality of the child: to do this, he necessarily needs to belong to the same people as the child or adolescent. In these situations, the forensic interviewer will have to construct his or her questions in a way that facilitates the interpreter's translation into the children's and adolescents' terms. If the interpreter needs to be trained to work in special testimony hearings, the forensic interviewers need to learn how to work with the interpreter.

The forensic interviewers who work in the TJMS and in the TJRR are qualified to apply the Brazilian Forensic Interview Protocol in special testimony hearings, but they were not trained to attend to the uniqueness of indigenous children and adolescents, nor to conduct the interview inrense with the help of an interpreter. As presented in the last product (FERREIRA, 2021b), that of a Guarani-Kayowá adolescent, it is common for interviewers to address the interpreter using indirect speech (in the third person singular), rather than addressing the victim or witness of violence directly using direct speech (in the first person singular).

> This practice (...) makes it extremely difficult for the interpreter at a hearing, who is forced, before translating the questions into the foreign language, to mentally convert the indirect speech into the direct form, consuming even more concentration and mental energy (...).) Very long periods, confusing constructions, long "introductions" of questions, abrupt interruptions and inquiries that do not end with a question mark are just some of the challenges facing the interpreters in a hearing. (...) they have to understand what is said in legal Portuguese and immediately translate it into the foreign language in a way that is clear and understandable to the defendant (Almeida and Nordin, 2017, 5-6).

According to Almeida and Nordin (2017), the correct technique is for the forensic interviewer to address the victim or witness of violence directly, "as if he understands the speech." The interpreter translates the message into the indigenous language and, upon hearing the reply, translates it into Portuguese, also in the first person singular, "as if he were merely amplifying the voice" of the child or adolescent. In these contexts, the use of long sentences and confusing "introductions", "questions" that lack interrogative intonation, and speeches that combine multiple questions in one statement can complicate the work of forensic interpreters. It is appropriate to use short, simple, direct sentences so that they can be readily interpreted consecutively.

The forensic interviewer will have to learn to work with this interpreter, who will have to transpose the interviewer's statements into the language of the child or adolescent in an appropriate manner, both from a linguistic and cultural point of view, considering the singularities of the age group/class to which he/she belongs in the sociocultural context of which he/she is a part. It is also important that the forensic interviewer has some familiarity with the structure of the language of the children and adolescents being assisted by special testimony. Understanding how notions of time and space are structured within indigenous languages can facilitate the interpreter's work and the interviewer's understanding of what the victim or witness of violence is communicating.

Even so, some questions arise, among them: how to employ consecutive interpretation in the case of free narratives of children and adolescents from traditional peoples and communities?

8.3. Guarani Kayowá considerations on interpretation in judicial contexts

The reflections of the Guarani Kayowá presented in this topic emerged in a conversation circle for the exchange of experiences between the specialized technicians from the Judiciary and the professionals and indigenous leaders held on July 23, 2021, in the scope of the TJMS pilot project42. The professionals and Guarani leaders who express themselves here are involved in the participative process of elaboration of the **Manual of Special Testimony of children and adolescents belonging to traditional peoples and communities**.

Activists and leaders of the Kayowá of Aty Guaçu (General Assembly of the Guarani and Kayowá people) who have experience as interpreters of the Guarani language in different contexts - health, education, justice - in which linguistic and cultural translation is imposed as a condition for dialogue, shared reflections on the importance of interpretation for the effectiveness of justice in the processes involving their peoples. For them, the linguistic difference constitutes one of the biggest obstacles to building mutual understanding between the Guarani people and the Brazilian Judiciary[43].

For Guarani leaders, communicative contexts that require the Guarani person to make a statement in Portuguese in which they have to give explanations about situations that happened in the past or even the present are extremely complicated. In these situations the person will find it difficult to talk about the facts that have occurred.

> Because it is a translation of an event that occurred in a situation that involves many versions. Today it is also about the terms used in time. Language, like culture, updates itself: expressions and slang are created. So, adding all this up, for those who are going to understand what happened, it is very difficult (Guarani Kayowá leadership of Aty Guaçu at the workshop of exchange of experiences with interviewers from the Court of Justice of Mato Grosso do Sul).

42 To access the memory of this meeting, see NATIONAL COUNCIL OF JUSTICE, 2022b.

43 In the communities of the Guarani and Kayowá people of Mato Grosso do Sul we find different situations in relation to the use of the original language: part of the Guarani and Kayowá speak only in their language; some also express themselves in Portuguese, but have a restricted command of the language; others are already bilingual and transition well between Guarani and Portuguese. Finally, there are also those who no longer speak Guaraní, expressing themselves solely in Portuguese. However, most Guarani and Kayowá communities in the southern cone of Mato Grosso do Sul maintain their mother tongue and express themselves in this language in community contexts.

The complexity of translation from Guarani to Portuguese, and vice-versa, is also due to the fact that the structure of the Guarani language is not the same as that of the Portuguese language. Therefore, neither indigenous thought nor indigenous subjectivities are structured in the same way. The social worker and activist Kayowá explains:

> that in the Guaraní language the past is the neutral time, which comprises everything that is not future. As a result, the unmarked Guarani verb form does not express the present moment of the speaker's speech. It is the past that extends to the present moment. Time in Guarani is divided into future and non-future. In Guaraní there is no distinction between past and present, that is, everything that is not future would be a non-future, and the present fits in there as well. This constitutes a philosophical dimension present in the very structuring of Guaraní thought that makes it difficult to classify what is present, what is past, and what is future. A single sentence can refer to different temporalities in which the action was performed. For example. *Xe-a-gwata* (xe = me; gwata = verb to walk) can be translated as: I walk. I walked. I walked. I have been walking. Look at how many translations for just one sentence. These are the adverbs that indicate the time in which the action occurred (Alves, 2021).

The Guarani anthropologist mentions how throughout history governmental bodies (indigenist, health, social welfare, judiciary etc.) have not bothered to understand or learn the Guarani language. "It is already the system of the state: it is the indigenous person who has to make an effort to understand Portuguese, and not the other way around. That is the problem! The right thing would be for non-Indigenous themselves to understand the Guarani. In this case, demanding that the indigenous person express himself in Portuguese constitutes institutional violence exercised by the government agencies responsible for the implementation and execution of public and judicial policies.

> You have to make an effort to speak the language that you don't speak. This is violence too (...) More or less the same way it happens in Mato Grosso do Sul and in Brazil: the indigenous person is forced to testify in his second language, Portuguese. He is the one who has to make the effort to explain what happened. This is not a simple task, not a simple thing. He will have to think in his own language, in the indigenous thought, and then try to translate it into Portuguese. Sometimes there is no way to translate the Guarani term into Portuguese. There are no words, he can't pick up a verb, for example. When there is no translation in Portuguese, you have to invent, that is, try to approximate what happened to some verb. It is hard to choose which term translates well to that event. (...)

> The indigenous people themselves sometimes change the terms. I as an indigenous person understand that this is not what he wants to say, but in Portuguese it came out differently. And even more so when they involve these legal terms that the law often uses (?) This, of course, can cause injustice. It can cause injustice on both sides: both the accused and the victim. The moment the event is mistranslated, even more injustice is generated. That is why this part of the translation work has to be taken very seriously in the courts and in the various bodies involved, to ensure that justice is done. (...) Because if there is an inadequate translation and you cannot understand, you end up judging based on superficial translations and often mistaken (Guarani Kayowá leadership of Aty Guaçu in the workshop of exchange of experiences with interviewers from the Court of Justice of Mato Grosso do Sul).

Another point highlighted by the Guarani intellectual refers to the fact that the language of the Guarani and Kayowá is distinct from the language spoken in Paraguay. As exposed in the previous topic, in some special testimony hearings of traditional peoples and communities in the Amambai and Mundo Novo districts, the appointed interpreter was a speaker of the Guarani spoken in Paraguay and did not belong to the same people as the victim.

> Among the Guarani there are also differentiations. There are different terms and meanings in the dialects. There are different intonations. Sometimes the court calls in a translator who speaks the Paraguayan Guarani language. He tries to translate a term and, sometimes, that is not what the indigenous person is saying (Guarani Kayowá leadership of Aty Guaçu at the workshop of exchange of experiences with interviewers from the Court of Justice of Mato Grosso do Sul).

The leader also points out that the historical subjugation to which the Guarani of the Southern Cone were subjected has left deep marks in the indigenous subjectivities, exerting influence on the way people behave towards non-Indigenous, defined as a "very dominated behavior".

> For example, in testimonies that I participated in (...) I noticed that many indigenous people, for not understanding the questions, end up confirming: yes! Then the answer is yes. Oh, you did that? Yes'. So this is a very typical characteristic when it comes to testimony, especially in court hearings. There is a lot of this: pressure for the indigenous person to confirm what the person would like to hear. 'What happened? Did he hit you? Did he do that? Did it hurt you?' So it forces the indigenous person to confirm, sometimes, something that didn't exactly happen that way. I have heard a lot about this kind of event in all the villages. Talking to the indigenous people, they say: 'I couldn't express myself because I don't know, I don't dominate, so I said yes, I answered yes.

> I ask him: 'Why didn't you speak in Guarani anyway?' - 'Well, but if I speak in Guarani he won't understand! Speak in Guarani and the one who is taking your statement should turn around to understand' (Guarani Kayowá leadership of Aty Guaçu at the workshop to exchange experiences with interviewers from the Court of Justice of Mato Grosso do Sul).

In this case, it is necessary to consider that entering the spaces of the Judiciary, where a power relationship is previously instituted not only by the hierarchical configuration of this field, but also by the interethnic relations historically instituted between the national society and the indigenous people, will cause the behavior of the Guarani person to change.

About the specificities of interpretation in the field of justice, the Guarani Kayowá teacher makes the following reflection:

> The entire justice system of the state, the system that is put there, is based on punishment. Someone has to suffer; punish people. The indigenous people have also historically picked up this characteristic: someone made a mistake, they have to be punished, they have to suffer, it has to hurt, it has to hurt the body, it has to hurt the physical. This was stronger in the past, because of the influence of the Indigenous Protection Service and then FUNAI: people went through torture in terms of punishment. These words - subpoena, testify - do not exist in Guarani. Because intimacy is a force that will draw you in. Testimony is you say things forcibly or something targeted - I understand it that way. Everything in the Kayowá Guarani is free; the speeches are free; it is a freedom. There is no force, no weight that will direct this process of speech. So, these are things that already start there: what would it be to make this statement? How to translate this whole process into Guarani terms? (Guarani Kayowá leadership of Aty Guaçu in the workshop of exchange of experiences with interviewers from the Court of Justice of Mato Grosso do Sul)

The difficulties that an adult Guarani faces in the situation where he needs to make a statement in a non-indigenous space - be it in the police environment or in the Judiciary - are intensified when it comes to statements made by children or adolescents. This is because the speech of children and young people in the family context is also organized by specific sociolinguistic rules that determine the subjects, the times, and the ways things should be said. About the rite of special testimony with Guarani and Kayowá children and adolescents, a Guarani leader from the Aty Guaçu pondered:

> Usually the deposition takes place in a closed room. There are only two or three people in the room at most. One is a speaker of one language and one is a speaker of another language. Each one has a different life, has a different trajectory. One is from the Guarani Kayowá ethnic group that comes from such a different society, and your interlocutor, the one who will receive the testimony, comes from another society. Even the way of dressing is different there. And the indigenous person in the middle to give testimony (Guarani Kayowá leader from Aty Guaçu at the workshop for exchanging experiences with interviewers from the Court of Justice of Mato Grosso do Sul).

In this case, the Kayowá activist, reflecting on the applicability of the Brazilian Forensic Interview Protocol for hearings involving the participation of indigenous children and adolescents, asks: how will the interviewer become aware of the context in which the child or adolescent lives only at the time of the special testimony hearing? Even more so when that child speaks another language?

The guidelines brought by the Brazilian Forensic Interview Protocol on how to conduct the conversation with the Guarani and Kayowá child or adolescent in different moments -*rapport*, transition from one stage to the next, stimulus to free narrative, "tapering" phase - need to be reviewed. This revision should be carried out based on the dialogue with the traditional peoples and communities, both with their professionals, leaders, and wise men.

According to the social worker, translating the questions asked by the forensic interviewer into Guarani and Kayowá terms is a challenge.

> All the characteristics of the Guarani language are important when you are going to make the hearing of an indigenous child or adolescent in the special testimony . Because, differently from what one might think, the translation from the Portuguese language to Guarani is often a single word. A sentence from Portuguese can be translated into Guarani by only a word or two. If you translate word for word, the sentence makes no sense, or gets a double meaning, or even gets confused (...) So when you have semi-structured questions and you follow them to the letter, you leave the child feeling withdrawn. To put her at ease you need to create an environment for her to speak in any way she wants. Of course, each community has its own reality, but the possibility of adapting the forensic interview in the special testimony to each situation is necessary and important (Alves, 2021).

Therefore, for the Brazilian Protocol for Forensic Interviews with Child and Adolescent Victims or Witnesses of Violence (CHILDHOOD *et al.*, 2020) to fulfill its purpose in the context of special testimony hearings, it needs to be adapted to the speech modes and linguistic and subjective frameworks of traditional peoples and communities.

It is essential that the process of adapting this protocol involves the professionals, intellectuals, and leaders of these collectives. As the Courts of Justice serve a diversity of traditional peoples and communities, each one should develop its own intercultural protocol aimed at contemplating the specificities of the peoples they serve. The consultation with these peoples about the applicability of this protocol would then occur in two stages: first, during its own elaboration, from the implementation of an intercultural and participatory process; second, by presenting the result to the communities so that they can validate the document with the guidelines for listening
of their children and adolescents.

8.4. Synthesis and recommendations

The role of interpreters belonging to traditional peoples and communities in the context of special testimony hearings is fundamental to the rights of children and adolescents who are victims or witnesses of violence not to be re-victimized and to full protection.

The languages spoken by traditional peoples and communities are structured differently from the Portuguese language, contributing to configure other ways of structuring thought and instituting other forms of subjective constitution. Each people has its own ways of talking about the events that occurred and that find in the linguistic system the possibility to say it and to situate it in time and space. Hence the need to adapt the Brazilian protocol for forensic interviews with children and adolescent victims or witnesses of violence to the sociolinguistic and cultural realities of each of the traditional peoples and communities served by the Judiciary.

Establishing a participatory process that involves indigenous professionals, leaders and indigenous scholars in the adaptation of the Brazilian Forensic Interview Protocol is an opportunity for the Courts of Justice to get closer to the indigenous sociocultural universes, through the lens of protection and not punishment. In addition, knowing the sociocultural realities of traditional peoples and communities, historically instituted by the colonial process, and at the same time understanding the phenomena in which we intervene, based on the judgment of the cases that reach the the Judiciary and the resulting referral measures, will contribute to qualify the performance of the Brazilian Judiciary regarding the enforcement of the rights of indigenous children and adolescents by the rights guarantee system.

The actions of the Judiciary can contribute to mitigate the situation of violence to which traditional peoples and communities are subjected, especially violence against children and adolescents, or it can further intensify this violence by reproducing in its practice the prejudices, stigmas, and stereotypes that the national society nurtures towards these ethnic groups. His role as an articulator of the presence of the interpreter in the services provided by the rights guarantee system is fundamental to prevent the revictimization of children and adolescents from continuing to happen.

Here are some of the recommendations presented in order to qualify the interpreters' performance in special testimony hearings:

1) Formar forensic interpreters to act in the Judiciary's different procedural acts involving people belonging to traditional peoples and communities who speak other languages, particularly in the scope of special testimony hearings;

2) Ensure that the interpreters who participate in special testimony hearings belong to the same people as the interviewed child or adolescent victim or witness;

3) Guarantee the presence of interpreters to act in special testimony hearings even when children or adolescents are bilingual;

4) Enable the interpreter to welcome children and adolescents from traditional peoples and communities in the context of special testimony hearings, helping them to feel safe to speak freely about the facts that have happened or that have been witnessed;

5) Adequate the Brazilian Protocol for Forensic Interviewing with Child and Adolescent Victims or Witnesses of Violence (CHILDHOOD *et al.*, 2020) to the sociolinguistic reality of each of the traditional peoples and communities served by the Judiciary;

6) To count on the participation of professionals, intellectuals, leaders and wise men from traditional peoples and communities in the adaptation of the Brazilian Protocol for forensic interviews with children and adolescents who are victims or witnesses of violence (Childhood et al, 2020).

9. Anthropological expertise within the scope of judicial proceedings

Resolution No. 287, of June 25, 2019, of the National Council of Justice provides that in its Article 6 that the judicial authority may designate anthropological expertise when receiving an accusation or complaint against an indigenous person, with a view to producing subsidies to assess the responsibility of the accused person. Among other things, the anthropological report must indicate whether the conduct charged is considered by the indigenous community to which the accused belongs to be liable. In this case the anthropological expertise constitutes a strategy to instruct the judicial process about the specifics of the indigenous defendant's conduct.

In the context of the Protected Listening Law, anthropological expertise acquires a new objective: to contribute to the implementation of the right of children and adolescents from traditional peoples and communities to full protection and non-revictimization, observing the ethnic, sociocultural and linguistic specificities and singularities

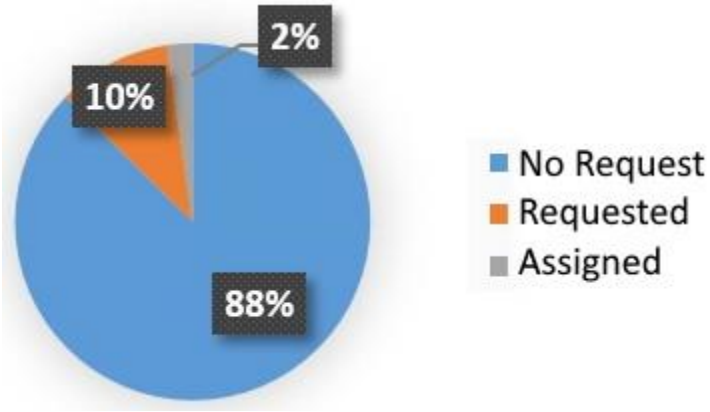
of the subjects and collectives to which they belong.

In any case, children and adolescents who are victims or witnesses of violence are also heard in the scope of criminal processes, which, as shown above, mostly have indigenous defendants. In this case, the expert anthropologist will play a double role: in addition to assisting in clarifying the facts and assessing the accountability of the accused/defendants, he or she will also answer questions about traditional forms of conflict resolution and protection for their children and adolescents. This demonstrates the close relationship between the Resolution No. 287/2019 and Resolution No. 299/2019, both of the CNJ.

> The purpose of anthropological expertise is to support, through the production of specialized knowledge, the formation of conviction of those responsible for ensuring compliance with the law, in this case, in the judicial sphere. The importance of this work lies in its ability to reveal, through ethnography, the foundations necessary for the consolidation of collective social, cultural, and ethnic rights. It is to make this difference that anthropological research becomes present (Amorim, 2012).

Of the 75 lawsuits made available by the Courts of Justice of Mato Grosso do Sul, Amazonas and Roraima[44], only nine had requested anthropological expertise (10%), and only two of these appointed anthropologists to carry it out (2%).

Figure 41 - Anthropological expertise in court cases (n=75)



Source: Own elaboration.

44 The Court of Justice of Bahia did not provide access to court cases because it was unable to identify those involving child or adolescent victims or witnesses of violence from traditional peoples and communities.

Although the ethnographic reading of the records carried out by the consultant identified paradigmatic cases in which there would be a need for anthropological expertise, in the documents made available by the TJAM and the TJRR there are no requests, nor were anthropological studies designated.

The issue of anthropological expertise arose as a demand presented by the Public Defender's Office in the lawsuits made available by the TJMS, aiming at the elaboration of subsidies to outline the defendant's defense strategy. In no case did legal practitioners identify the potential of this study to shed light on the best decisions regarding the protection of victims and witnesses of violence. This perspective is yet to be developed in the field of the judiciary.

9.1. The anthropological expertise in TJMS

The districts of the TJMS find it difficult to operationalize anthropological examinations in order to inform the judicial proceedings involving children and adolescent victims of violence. Among the questions asked by magistrates and specialized technicians about the applicability of anthropological studies, the following can be pointed out:

1) Doubts about the importance and applicability of anthropological expertise as to its contribution to the elucidation of the facts considered in the scope of judicial processes, as well as about the situations in which the performance of this study is necessary. Hence the demand for the establishment of guiding criteria that will help judges decide in which situations anthropological expertise is indispensable;

2) The administrative difficulties in making it operational in the judicial proceedings. Among these are: the way the professionals are hired; the derisory amounts for the remuneration of the anthropology experts and the delay in passing them on to the experts; the lack of a budget of the Courts of Justice themselves to hire such professionals.

3) The nature of anthropological studies that require, in some cases, longer periods to be carried out may compromise the progress of the judicial process, especially in cases where preventive detention has been decreed and the defendant is incarcerated awaiting the pre-trial hearing and, consequently, the issuing of the sentence;

4) The quality of the anthropological reports that, in some cases, despite their theoretical depth, do not contribute to the clarification of the cases, nor do they subsidize the judge in the construction of his conviction and the issuing of the sentence.

5) Limited number of anthropological professionals with training and experience in judicial expertise and who can perform the task as assistants to the judiciary. In cases where university civil servants are the ones appointed, the periods for delivering the report tend to be longer, due to the fact that these professionals accumulate the activities of forensics with their academic tasks.

Such factors contribute to influence the reality at the TJMS: of the 45 lawsuits analyzed that had indigenous defendants, only in two cases was the anthropological expertise designated, while in seven cases the defense request was denied by the court. In this case 43 lawsuits in TJMS that had indigenous people as defendants were not instructed by the anthropological report. The lawsuits in which the anthropological expertise was assigned are in progress in the judicial district of Mundo Novo and in the judicial district of Amambai. The expert opinion assigned by the district court of Mundo Novo has already been concluded and the anthropological report joined to the records. The anthropological expertise in Amambai, designated in the process in which I had the opportunity to attend the special testimony of a Guarani Kayowá adolescent (NATIONAL COUNCIL OF JUSTICE, 2022b), had not been initiated, as the appointed anthropologist had not yet manifested on the court's appointment.

The anthropological expertise assigned by the district court of Mundo Novo, according to the Anthropological Report attached to the records had the objective of

> answer whether the defendant is actually indigenous and, if so, to what extent is the involvement with the village of origin and with regional and national society. To what extent, as an indigenous person, would he or she be aware of the illegality of his or her own actions, if the accused presents or had any indication of deviation of conduct in the indigenous community or of dangerousness, the detailed history of the facts and, if the notion and awareness of the illegality of his or her own actions is confirmed, whether alternative forms of punishment would be appropriate, in the case of belonging to a specific ethnic group, as already established in the national and international legal system for such cases (Urquiza, 2021, 5).

In the Amambai district, the Public Defender's Office requested the expertise The anthropological study was granted by the judge due to the communicative difficulty that the victim presented during the special testimony hearing, held on July 9, 2020.[45] For this study, an anthropologist who works as a professor at the State University of Mato Grosso do Sul was appointed. In this case, anthropological expertise is not only important to determine the defendant's accountability, but also to understand the victim's situation and the factors that led her to go to court.

9.2. The influence of integrationist ideology in the rejection of anthropological expertise

The argument supporting the rejection of the anthropological expertise in the seven lawsuits in the TJMS in which it was requested is based on the provisions of Article 4 of the Indigenous Statute, which determines the stage that the Indigenous are at with respect to their process of integration into national society[46]. In the lawsuits in which there was a request for anthropological expertise, prosecutors and magistrates understood that it was unnecessary due to the fact that they identified the defendant as an indigenous person "integrated into civilized society and customs "[47].

It is a recurrent decision by magistrates not to order an anthropological evaluation in some judicial processes, under the allegation that, given the circumstances in which the crime was committed and the fact that the defendant is an integrated indigenous person, there is no "indication that the elucidation of the facts depends on the sociocultural analysis of the Indigenous Community in which he or she resides[48].

45 The communicative difficulties and intercultural misunderstandings that occurred during the special testimony of the Guarani-Kayowá girl were addressed in the previous product of this consultancy (NATIONAL COUNCIL OF JUSTICE, 2022b).

46 The Indigenous Statute (Law no. 6.001, of 1973) establishes in its Article 4 that the Indigenous are considered **I** - Isolated - When they live in unknown groups or of which little and vague information is available through occasional contacts with elements of the national communion; **II** - On the road to integration - When, in intermittent or permanent contact with strange groups, they preserve less or most of the conditions of their native life, but accept some practices and ways of existence common to the other sectors of the national communion, of which they are becoming necessary for each sector of the national communion. **III** - Integrated - When incorporated into the national communion and recognized in the full exercise of their civil rights, even though they retain uses, customs, and traditions characteristic of their culture.

47 Court proceedings in the district of Mundo Novo, Court of Justice of Mato Grosso do Sul.

48 Court case in Amambai District, Court of Justice of Mato Grosso do Sul.

The distinctive trait that would mark his integration into civilized society is evidenced, in the evaluation of judges and prosecutors, when the defendant understands the questions asked of him and answers in Portuguese to the questions asked during the police investigation. The impressions that emerge from the acts and diligence carried out in the extrajudicial phase will tend to direct the approach that the judiciary will take to cases involving indigenous defendants and accused in the different stages of judicial proceedings.

* * *

It is known that the integrationist project that the Brazilian State established with the Indigenous was in force until the advent of the Federal Constitution of 1988. In spite of the fact that the Magna Carta did not embrace Article 4 of the Indigenous Statute of 1973, when it promoted the transition from the guardianship regime to a paradigm of recognition of indigenous rights to cultural difference, the ideology of guardianship in its integrationist bias (PACHECO DE OLIVEIRA, 1988), however, still remains in force in the imagination of the agents that act in the scope of the system of guaranteeing rights in the Southern Cone region of Mato Grosso do Sul.

With regard to the effects of the tutelary regime on the Guarani societies, the anthropological report prepared by Urquiza (2021) mentions how, in the first half of the 20th century, the actions of the indigenous body were guided by the integrationist perspective:

> In effect the Indigenous Protection Service (...) guided its indigenist action based on the assumption that the condition of the Indigenous in general and of the Guarani, in particular, as an ethnically differentiated population, would be transitory. It was believed, therefore, that the indigenous people would gradually accommodate themselves to the regional economy and, as they would gradually incorporate the cultural practices predominant in national society, they would eventually abandon completely the symbols of distinctiveness typical of their culture. They would thus be assimilated completely into national society, that is, they would cease to be Indigenous and become non-Indigenous, which did not really happen. In the assimilationist perspective adopted at that time, it did not make sense to demarcate areas larger than 3,600 hectares or to respect the social organization and forms of spatial distribution of the Guarani villages. The objective was different and made explicit the mentality of the time: to integrate the Indigenous into the white man's world. This same assimilationist perspective was present in the spirit of the Brazilian indigenous legislation until before the promulgation of the current Federal Constitution, which occurred in 1988 (Anthropological report attached to a lawsuit in the Court of Justice of Mato Grosso do Sul).

Denying indigenous people the right to anthropological expertise based on the argument that they are "integrated to civilization" constitutes a way of invisibilizing and failing to recognize their constitutive cultural difference, the basis on which constitutionally guaranteed differentiated rights are built. This is because the integrationist colonial device employed by the tutelary regime until the 1988 Federal Constitution was employed precisely with the intention of annihilating cultural differences, producing their non-existence, as original peoples of these territories, and integrating indigenous people stripped of their cultures into "civilization", as subordinate national workers.

In fact, there is no way to guarantee that the rights of children and adolescents belonging to these peoples and communities are guaranteed, without the rights of these collectives not being enforced.

9.3. Anthropological expertise in a criminal action against women: a case study

On October 6, 2020, the Public Prosecution Office of Mato Grosso do Sul denounced O.M. for having assaulted his companion, N.S.T (his cohabitant), who, at the time was 13 years old, causing her light bodily harm, offending the victim's bodily integrity. The incident is said to have occurred on the night of October 2, around 8 pm, at the house where he lived with the young woman, located in the Limão Verde Village, Municipality of Amambai[49].

Besides denouncing the offense to the moral integrity of the girl, the fact that O.M. was married to her was described as "carnal conjunction and practice of other libidinous acts with a minor under 14 (fourteen) years old for several times", and, therefore, object of a complaint by the State PPublic Prosecution Office[50]. The complaint filed by the prosecution, both with respect to the assault and the maintenance of the sexual relationship, emphasizes that O.M. was aware of "the illegality and reprobability of his conduct.

O.M. was arrested, charged with felonious bodily harm (domestic violence), and taken to the Amambai Police Station on the same day. The occurrence No. 1.082/2020 of the PD/Amambai mentions that
O.M. was born on May 6, 1999 and that his level of education is literate.

49 Court case from the Court of Justice of Mato Grosso do Sul.

The accusation was based on Articles 129, § 9º, and 217-A, c.c. Article 61, II, "f" and "j", all of the Penal Code, Law Decree No. 2.848, of December 7, 1940, with the provisions of Law No. 11.340/06.

The police delegate converted the arrest in flagrante into preventive detention and opened a police investigation. Therefore, at the time of the Public Prosecution Office's accusation, O.M. was already in prison in Amambai/MS, where he remained until the special testimony hearing held on July 9, 2021.

In the Statement of Arrest, the police officers who apprehended the young man and who testify as the first and second witnesses in the case informed that it was the captain of the Limão Verde Village who called the military police after arresting O.M. for assaulting his wife. The narrative about the facts presented to the policemen was made by the leadership itself, who said that the young woman had told them that her husband had beaten him. According to the captain, O.M. was intoxicated and could not say anything about what had occurred.

When questioned at the police station, O.M. answered that he doesn't use drugs, but "drinks a lot of booze"; he studied until the 3rd grade and can read and write. He also said that he has been arrested before for fighting and works carpenting a farm owned by an individual he knows only as Zeca, about whom he does not know the name, qualifications or location. In addition, he stated that he does not have a lawyer and that he wants to be defended by the Public Defender's Office, but that at the time of the interrogation he waived his presence. He also said that he had been living with N. for about three months, and that this was customary in his community. O.M. further claimed that he didn't hit the young woman, but that he couldn't remember much because he was drunk. It was up to the Tutelary Council to return the minor to her guardians.

Only when the bailiff went to the village Limão Verde to notify the victim about the procedural decision regarding O.M.'s arrest, did the guardian inform him that she had been handed over to her grandmother in the village Takuapery, in Coronel Sapucaia.

The public defender's office, when assuming the defense of O.M., requested the court to appoint an interpreter to act in all procedural acts and to conduct an anthropological study, in accordance with Resolution No. 287/2019 of the CNJ. In response to the defense presented by the Public Defender's Office, the State Public Prosecution Office requested the denial of the request for an anthropological report on the grounds that it was unnecessary:

> It is also worth mentioning that the mere fact that an indigenous person lives in the village is not an objective condition that makes the anthropological study mandatory. Given the use of generic and abstract criteria, without association with the particularities of the concrete case, there is no basis for request

> of anthropological study, especially considering the public and notorious scenario observed in this district, that many Indigenous are perfectly integrated into civilized customs, including malice and vices. In this case there is no lack of understanding by the defendant of what is right or wrong, or ignorance of the penal type, since, considering the context in which the police authorities became aware of the acts committed by the defendant, it is clear that the defendant has full knowledge that the acts committed against his ex-partner are reprehensible. Also, as was evident during the police investigation, the defendant demonstrated full knowledge of what he was being accused of, and spoke about the facts in Portuguese, demonstrating that he was totally in touch with the reality of the culture outside the indigenous community (Court Case of the Court of Justice of Mato Grosso do Sul).

The magistrate, in response to the defense's request, appointed the interpreter to act in the case and dismissed the request for anthropological expertise, considering the defendant an "integrated indigenous person", a decision aligned with the understanding of the public prosecutor.

Throughout the process, the judiciary found it difficult to locate the victim, due to the fact that she had been handed over by the Tutelary Council to the care of her grandmother, in Takuapery village, where she lived with her grandmother even before she went to live with O.M. in Limão Verde Village, in Amambai. This information was added to the case file three months after the facts had occurred, by means of a report from the Tutelary Council. In that same report, it is stated that the grandmother informed the Tutelary Council that her granddaughter was well, but remarried.

The special testimony hearing held by writ of summons in Coronel Sapucaia took place on July 9, 2021, the same day that the pre-trial hearing was held. Due to the communication difficulties presented by the victim in the context of this hearing (the indigenous adolescent did not understand the questions asked by the forensic interviewer and translated by the Paraguayan interpreter), the judge decided to grant the anthropological expertise requested by the public defender's office, appointing a professor from the State University of Mato Grosso do Sul to conduct it and determining that she answer the questions established by Article 6 of the CNJ Resolution No. 287/201951[51]. The communicative difficulties and intercultural misunderstandings that occurred during the hearing of the young Kayowá woman were addressed in the previous product of this consultancy (NATIONAL COUNCIL OF JUSTICE, 2022b).

51 Article 6. Upon receiving an accusation or complaint against an indigenous person, the judicial authority may determine, whenever possible, ex officio or at the request of the parties, that an anthropological examination be conducted: I - the qualification, ethnicity and language spoken by the accused person; II - the personal, cultural, social and economic circumstances of the accused person; III - the uses, customs and traditions of the indigenous community to which he/she is linked; IV - the understanding of the indigenous community in relation to the typical conduct imputed, as well as the proper mechanisms of judgment and punishment adopted for its members; and V - other information that it deems pertinent for the elucidation of the facts.

Given the communicative confusions that occurred in the interview of the teenage victim of violence and the fact that no more situations were identified that offered risk to the victim, O.M. was also granted provisional release.

9.4. Some considerations about anthropological expertise in judicial contexts

As can be seen throughout the narrative, the accusation presented by the Public Prosecution Office to the court extrapolated the very reasons that led the leadership of the Limão Verde Village to call the Military Police: to intervene about the situation in which a young woman was being assaulted by her drunken husband. The young man was not only charged for assaulting his wife while drunk, but also for rape of a minor, since his partner was under the age of 14. To make this decision, the Public Prosecution Office did not consult the community, nor did it identify the need to subsidize it with an anthropological study that would clarify whether the marriage between the accused and the young woman constituted a possible alliance for this people or whether there was actually a situation of sexual violence against a vulnerable person in progress.

The Public Prosecution Office's argument rests on the fact that the defendant does not lack understanding of what is right or wrong. However, in the context of the Kayowá communities, being married to a girl under 14 is not necessarily seen as something 'wrong', since this is a customary practice that can be carried out. So much so that the document from the Tutelary Council that explains that the young girl was living with her grandmother in Takuapery Village also states that she was remarried.

In addition , indigenous peoples operate with their own notions of what is right and wrong, good and evil, and have their own ways of dealing with the distinct conducts that are considered harmful. In the same way, there are different conceptions and understandings of what crime is and how to punish/correct/punish the person who committed it. In the view of the Guarani Kayowá one of the most serious crimes a person can commit is witchcraft. This conduct, in the eyes of Western society, takes on other connotations, for example.

The same situation of violence can be interpreted in different ways by the operators of law and by the subjects involved in the event, as well as by communities and relatives. One of the objectives of anthropological forensics is to uncover the different versions of the facts and situations of violence that occur in communities. Anthropological expertise is important to make explicit the sociocultural context where the facts occurred, and also to "reveal the hidden speeches, the wronged ones, the unknown or ignored lines and cries by the operators of justice. Thus, the mission of anthropological expertise is to help justice to be fair" (Guarani Kayowá leadership of Aty Guaçu in the workshop of exchange of experiences with interviewers from the Court of Justice of Mato Grosso do Sul).

Therefore, the question that seeks to ascertain the awareness of the accused/defendant about the illegality of his act could be answered with another question: illegality from whose point of view?[52] The notion of licit or illicit - as that which opposes the law, that which is illegal - is not valid in the reality of traditional peoples and communities. The Guarani and Kayowá peoples are not familiar with "white" laws, nor with the rituals performed by the judiciary to "speak the law" - summonses, hearings, sentences.

In this case, for this question to be understood by the indigenous subjects, it is necessary to translate not only linguistically, but also culturally: it is necessary to put in Guarani terms what would be an illicit conduct. To this end, it is fundamental that these indigenous people are informed about "white" legislation, about what and which conducts are considered criminal by non-indigenous people, and how non-indigenous people punish those they deem to be committing crimes. Without the knowledge of traditional peoples and communities about the dynamics and operations of Brazilian justice, judicial acts will tend to silence indigenous peoples and subjects. If an indigenous people is not heard and understood on its own terms, its children and adolescents hardly ever will be.

About the questions presented to the anthropology expert

In any case, in a context crossed by the integrationist ideology as is the case of justice in Mato Grosso do Sul, the questions presented to the anthropologist expert by the parties involved in a lawsuit tend to be also marked by this ideological bias.

52 One of the questions presented by the Public Prosecution Office to be answered by the anthropology expert: "On the date of the crime, was the defendant capable of understanding the illicit character of his conduct, taking into consideration the customs and culture of the indigenous community in which he is inserted?"

In this case, faced with the fact that the questions presented are impregnated by the integrationist ideology in which a question already carries the answer, the anthropologist is often faced with an ethical dilemma: between the imperative to answer the questions presented by the parties and the ethical, epistemological, and conceptual impossibility of answering these questions.

One of these questions concerns precisely the question posed by Article 6 of CNJ Resolution No. 287/2019, referring to the qualification, ethnicity and language spoken by the accused person. When answering this question in the anthropological report attached to the judicial process of the district of Mundo Novo[53], the anthropologist sought to "answer whether the defendant is really indigenous and, if so, to what extent is the involvement with the village of origin and with regional and national society. To what extent, being indigenous, would he or would he not be aware of the illegality of his own actions" (Urquiza, 2021, 5).

In fact, this is a question that cannot be answered by the anthropologist. This is because, on the one hand, traditional peoples and communities have the right to self-declaration, as recognized by Convention 169/1989 of the International Labor Organization. On the other hand, because, as Viveiros de Castro (2005) would say regarding the demands made to anthropologists by the State, even during the military dictatorship, to discriminate who was Indigenous and who was not, with the aim of emancipating the State's tutelage, the Indigenous who were made non-Indigenous were those "Indigenous people who no longer bore the stigmas of indigenousness deemed necessary for the recognition of their special regime of citizenship. The question posed to the anthropologists - who is an Indigenous - was questioned, refused, displaced and subverted, because it was understood not as a question, but as a response from the state:

> Precisely, how to respond to the answer that the State took as unquestionable in its question, viz: that 'Indigenous' was an attribute determinable by inspection and mentionable by ostension, a substance endowed with characteristic properties, something that could be said to be what it is and who meets the requirements for such quidity - how to answer that answer? For if this is to be believed, it would only be a matter of calling in the experts and asking them to indicate who was and who was not Indigenous. But the experts refused to respond to such an answer. At least initially. At that time, the question of who was Indigenous, (...) was the submergence of the ethnic groups, of those collectives that were following, by force of circumstances, a historical trajectory of estrangement from their indigenous references, and of whom, with this pretext, the government wanted

53 Court case from the Court of Justice of Mato Grosso do Sul.

> get rid of them: 'These people are no longer Indigenous (or they are integrated Indigenous), we wash our hands of them. It's none of our business. Free their land for the market; let them trade their labor power in the market. Our objective, political and theoretical, as anthropologists, was to establish definitively (...) that the Indigenous is not a matter of feather headdress, urucum and bow and arrow, something apparent and evident in this stereotypical sense, but rather a matter of state of mind. A way of being and not a way of appearing. (...) Our struggle, therefore, was conceptual: our problem was to make sure that the 'still' of the common sense judgment 'these people are still Indigenous' (or 'not anymore') did not mean a transitory state or a stage to be overcome. The idea is that the Indigenous had not 'yet' been defeated, nor would they ever be. They would never end up being Indigenous, 'even though' Or just why. In short, the idea was that 'Indigenous' could not be seen as a stage in the upward march to the enviable 'white' or 'civilized' state (Viveiros de Castro, 2005, 12).

It is known that until the promulgation of the Federal Constitution of 1988, when the right of indigenous peoples to maintain their social organizations, customs, languages and traditions, as well as the lands they traditionally occupy, was recognized, the official indigenist policy attributed to the indigenous peoples the status of relatively incapable, foreseeing their integration to the national communion in a progressive and harmonic way. Guardianship was the colonial device employed to protect indigenous peoples until they, stripped of their native cultures, could be emancipated and assimilated into society as national workers.

> Indigenous groups in Brazil, especially those in earlier contact with the neo-Brazilian population, were induced to speak new languages, first the general language, derived from Tupi and propagated by the Jesuits, later Portuguese (...). The interference in traditional cultures also affected religion, marriage customs, political organization, technology, and eating habits, all of which were already affected by the depletion of hunting and fishing territories (Carneiro da Cunha, 2009; 251).

By overcoming guardianship and recognizing indigenous peoples as subjects of rights and full citizens of the State, the Federal Constitution of 1988 laid the foundations for the recognition of cultural difference. The transition from a paradigm centered on the integrationist project of the Brazilian State to a paradigm of public policies for social inclusion was promoted.

The enactment in 1989 of the International Labor Organization's Convention 169 - Indigenous and Tribal Peoples Convention, ratified by Brazil in 2002 - was also an important milestone in overcoming the integrationist perspective conveyed by the tutelary regime that had been imposed on indigenous peoples in Brazil until 1988.

The recognition of the right of indigenous and tribal peoples to self-identification as a criterion for defining groups (1989, pp. 21) makes the question to anthropologists about who is or is not an Indigenous obsolete.

From then on it is no longer up to the agents of the State, nor to anthropologists, to say who is indigenous or who is not, or even in what phase of integration such an indigenous person is in. This evolutionist approach, which predicted the submergence of the indigenous collectives - among them the Guarani and Kayowá - has been overcome, also because it constituted a way for the colonial power to produce these peoples and communities as non-existent.

In addition, ILO Convention No. 169 seeks to ensure that indigenous peoples are consulted and participate in development actions that impact their lives, recognizing their rights to decide on their "own development priorities insofar as they affect their lives, beliefs, institutions, spiritual values and the very land they occupy or use" (Article 7 of ILO Convention 169/1989).

For the rights of traditional peoples and communities to cultural difference, to self-declaration, and to consultation to be effective within the system of rights guarantees, it is necessary to overcome the idea that the indigenous person is a transitory subject to be integrated into civilization as a national worker. Indigenous peoples are citizenship subjects and, due to their sociocultural and historical specificities and vulnerabilities instituted throughout the historical process, they must be contemplated by differentiated social inclusion public policies.

The elucidative potential of anthropological expertise in different cultural contexts

Based on the anthropological report attached to the lawsuit in the Court of Justice of Mato Grosso do Sul, one can conclude that the most appropriate thing would be for the anthropological expertise to be carried out even before the complaint is filed in court, due to the complexity inherent in situations of violence that involve indigenous kin inside the villages. The anthropological expertise should be the basis on which the complaint filed by the Public Prosecution Office's is supported, which would allow the *prosecutor* to even propose alternative sentences for cases in which these measures are appropriate. To this end, the prosecutors need to be trained in indigenous legislation.

It is necessary to consider that indigenous people also resort to justice as a way of resolving their internal conflicts. As one Aty Guaçu leader explains: "many complaints that come from the communities are political strategies of internal disputes. There is a whole conjuncture. It is necessary to understand this, because it is a Reserve condition."

Many times the police authority or even the judiciary may be triggered by the indigenous people to attend to their own interests in the scope of political or affective conflicts that occur within the communities. In these cases, indigenous people "indigenize" (Albert, 2002) public power by putting it at the service of their own interests, shaped by the sociocultural contexts in which they live. However, these indigenous people do not always have the dimension of the consequences of their actions and their implications, even for their own lives, as is the case of a young woman who, after having denounced the father of her child, lamented that he had been arrested and could not help her with the upkeep and care of the child[54].

The judiciary should also use anthropological expertise to inform the court about the consequences that a judicial decision (sentence) may have on the communities and traditional peoples, particularly on the family group, the relatives and the community network of which the people involved in a lawsuit form part. It is necessary to prevent such decisions from having deleterious effects on indigenous communities, contributing even more to deepen the phenomenon of violence experienced by these collectives. Sometimes, the incarceration of an indigenous defendant may destabilize the kinship and community network of which he is a part.

Anthropological expertise can contribute to clarify the consequences that the decisions of the Judiciary may have on the socio-community organization and traditional institutions existing in the indigenous communities, in order to avoid that these decisions contribute to destructuring and disorganizing the principles that govern the traditional peoples and communities. Sometimes a sentence that falls on an individual, depending on who he is and what role he plays within the community, can have devastating effects. It is fundamental that these situations are avoided, hence the importance of alternative sentences built from the negotiation with the community itself and with the social representatives that represent the heterogeneity of its segments - women, young people, teachers, health agents, shamans, etc.

54 The situation presented by the anthropological report attached to the Judicial Proceedings of the Court of Justice of Mato Grosso do Sul.

Therefore, when passing sentences in the case of indigenous defendants, the magistrate needs to consider, among other things, the impacts and consequences that the judicial decision taken will have on the lifeworld of their communities. Excellent anthropological expertise can assist you in constructing an anthropologically oriented sentence.

9.5. The indispensability of anthropological expertise in legal proceedings

In light of the right to full protection of children and adolescents, anthropological expertise constitutes an important procedure to be observed in all cases involving defendants and victims belonging to traditional peoples and communities. However, due to the numerous factors that contribute to hindering its operationalization within the scope of judicial processes, it is convenient to establish some typical situations in which the anthropological study becomes indispensable.

From the ethnographic reading of the judicial processes, some situations were identified in which anthropological expertise was necessary. The situations that emerged from the analysis of the lawsuits do not exhaust the possibilities of conflicts and violence that, when judicialized, would be properly conducted if they were instructed by anthropological studies. Other situations may emerge and it is important that magistrates are able to identify and decide which judicial processes require the appointment of anthropology experts.

Therefore, the purpose here is not to construct an argument that authorizes the rejection of anthropological expertise when the situation does not correspond to the items indicated, nor is it to exhaust all situations in which anthropological expertise is indispensable, but rather to contribute to the Judiciary in identifying some situations in which one cannot fail to designate the expertise to clarify the facts, to offer subsidies to the complaint filed by the Public Prosecution Office's and to the sentence issued by the judiciary, and to present culturally adequate strategies to enforce the right of children and adolescents to full protection and non-revictimization.

It is also important to emphasize that anthropological expertise does not replace consultation with the communities and their leaders and representatives of the various social segments that make up the communities and traditional peoples (women, young people, indigenous teachers, indigenous health agents, etc.). Even forensics can assist the court as to how this consultation can best be performed.

Based on the analysis of the judicial processes, a set of situations was listed that would interest the court in the performance of anthropological expertise:

1) When the accused is an elder, sage, spiritual leader, healer or shaman, because at the same time that his figure can be ambiguous in community contexts, the traditional role played by him is fundamental for the integral protection of children and adolescents. Depending on the sentence handed down, the impact on the social organization of the community could be devastating:

For example, a lawsuit in the judicial district of Dourados, TJMS, that has a nhandesy (Guarani Kayowá spiritual leadership) as one of the accused;

2) When the situation involves accusation of witchcraft:

For example, a court case from the district of São Gabriel da Cachoeira, TJAM, in which the defendant is accused of using witchcraft to seduce a teenage girl;

3) When the situation involves affective-sexual conflicts (jealousy, betrayal, deception, etc.) with children under 14:

For example, a case from Amambai, TJMS, in which the defendant is accused by his wife of having an extramarital affair with an adolescent under the age of 14;

4) When it involves marriage with minors under 14: criminalization of traditional practices.

For example, a case from the district of Amambai, TJMS, in which the defendant is accused of statutory rape for being married to a girl under 14.

5) When the situation involves political conflicts and disputes between relatives. For example, a case from the district of Mundo Novo, TJMS, in which the grandfather is accused of rape of a vulnerable child in the midst of a property dispute within his relatives;

6) Whenever the object of the complaint does not come from members of the community itself;

For example, from the district of Amambai, TJMS, in which the defendant was denounced by the community for having assaulted his wife while drunk and ended up being denounced by the Public Prosecution Office for statutory rape because he was married to a girl under 14.

7) Whenever there is a dispute over custody or when it is necessary to remove the child from his or her family, community, or people:

For example, from the district of Dourados, TJMS, where the accusation of rape of a vulnerable girl was made in the context of a dispute between the parents over the custody of the teenager;

8) Whenever there is a need to remove the child or adolescent from their family and/or community context and shelter them in non-indigenous institutions or give them up for adoption:

For example, a case in the district of Dourados, TJMS, in which the victim was removed from her family due to a situation of mistreatment and sexual violence, was picked up by protective families, and was registered in the national adoption system, without the leaders and representatives of the Guarani and Kayowá people being consulted. Since children and adolescents from traditional peoples and communities belong not only to their families, but also to their communities and their people, they need to be consulted when it comes to removing these subjects from community life.

8) Whenever there are people belonging to isolated and recently contacted indigenous peoples (PIIRC);

9) Whenever the parties to the lawsuit, defendant, victims and witnesses, are monolingual or not fluent in Portuguese.

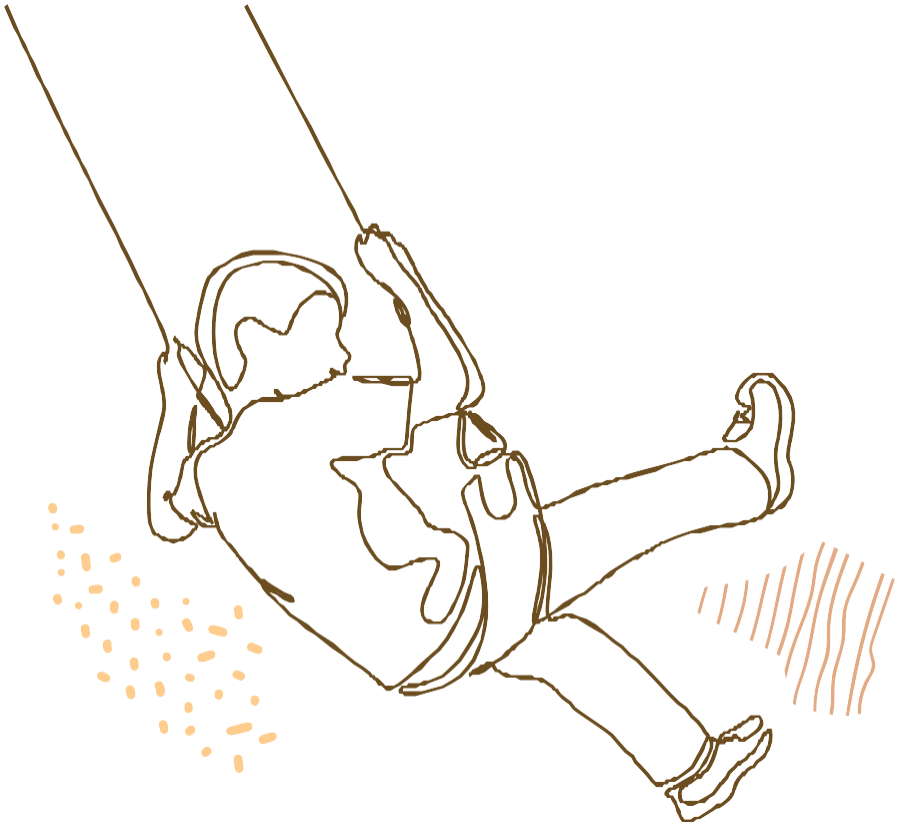
This list must be improved and incremented based on discussions with leaders, representatives of different social segments (women, young people, indigenous health agents, teachers, audiovisual producers, etc.), professionals from traditional peoples and communities. It is they who must indicate which situations require the activation of anthropological expertise.

9.6. Synthesis and Recommendations

Given the above, the following recommendations are made:

1) Create a registry with accredited anthropologists, able to act as experts in the scope of judicial processes that deal with violence against children and adolescent victims or witnesses of violence from traditional peoples and communities;

2) Evaluate the possibility of inserting anthropologist professionals within the multidisciplinary teams of the Judiciary;
3) Establish cooperation agreements with universities, public and private, to conduct research and studies of interest to the justice system, such as mapping of traditional peoples and communities attached to the territories of the Courts of Justice; identification of the best forms of consultation and involvement of these collectives for the construction of intercultural flows and culturally adequates own special testimony procedure; understanding of the phenomena of violence to which traditional peoples and communities are subjected, etc.



10. Final Considerations

The colonial violence exercised throughout history against traditional peoples and communities nowadays takes on a structural character, both because their rights to difference are still not recognized or enforced, and because they have come to occupy a subordinate place in the context of an extremely unequal society such as the Brazilian one. The stereotypes and stigmas still present in the imaginary of the national society and that guide the asymmetric power relations that the agents of the State establish with these collectives constitute one of the ways of perpetuating the historical violence responsible for producing their non-existence as differentiated subjects of citizenship.

The fact that the information systems of the justice institutions do not contain data about the ethnic identities of the people involved in the lawsuits, which has made it impossible for the Court of Justice of Bahia to access, is one of the facts that show how the non-existence of these collectives is still being produced today.

One of the forms of manifestation of structural violence is that suffered by children and adolescents who experience in their bodies and subjectivities the effects of the condition of subalternity to which the peoples and communities to which they belong have been relegated. Therefore, we are faced with the unavoidable question: how can we implement the right to not re-victimize children and adolescents belonging to peoples and communities that have historically been victims of a disruptive and devastating process responsible for destructuring their ways of being, living, being and doing?

Throughout this report, the dimension of violence committed against children and adolescents from traditional peoples and communities was highlighted: those that reach the justice system - the judicialized violence (RIFIOTIS, 2015, pp. 265). It is known, however, that the phenomenon of violence among these groups is extremely complex, for being determined by multiple factors, and that the cases considered here constitute only a part of the violence suffered by children and young people in the community contexts of traditional peoples and communities. If the judicialization process gives visibility to part of this violence, most cases of violation of children and adolescents' rights remain invisible. In order to transform these realities of violence, police intervention and the judicialization of individual cases are not enough. It is necessary to intervene on the social determinants that converge to configure the phenomenon of violence experienced by traditional peoples and communities in the contemporary world. Here we come across a structural difficulty to be faced by the Brazilian Judiciary in dealing with traditional peoples and communities: the judicial processes approach individualized cases in order to judge and hold responsible individuals identified as the authors of the violations, without considering the social determinants that influence the configuration of the phenomenon of violence against children and adolescents in the community contexts of traditional peoples and communities.

In most of the judicial processes analyzed, the sociocultural context instituted by the colonial and integrationist project of the Brazilian State, responsible for producing violence both in its collective dimension and in individual cases, is disregarded. Nor is the extremely precarious situation in which traditional peoples and communities live today considered: food insecurity, territorial conflicts, depleted natural environments, lack of access to drinking water and decent housing, difficulty in accessing public policies for education, health, social assistance, etc., in addition to intense alcoholization processes and high suicide rates.

The unique cases that reach the Judiciary to be judged are, therefore, effects of a historical process of structural and institutional violence committed against these peoples. As stated by the Guarani and Kaiowá leaders, for example, intra-community violence points to a profound crisis of the values that nurture family and kin relationships in community contexts. In this case, in order to overcome this type of violence and ensure the integral protection of their children and adolescents, it is essential to promote actions aimed at recovering and strengthening the traditional values that guide family and kinship organization and that are the foundation of traditional knowledge and practices used to protect indigenous children and youth.

Only judging and punishing individuals in isolation will not be enough to transform the reality of indigenous communities with regard to the violence to which children and adolescents are subjected. In this case, it is important to also consider the historical and social determinants that contribute to shape such situations and how the judiciary can contribute to the realization of the rights of traditional peoples and communities beyond the incarceration of individuals who are judged for breaking the "white man's law" - a law that most of them do not know. With the analyses carried out from the ethnographic reading of the judicial proceedings, we intend to contribute to investigate how the differentiated rights of children and adolescents belonging to these culturally differentiated groups to full protection and non-revictimization are being enforced by the rights guarantee systems in the territories of the
districts and Courts of Justice that participated in this venture.

It is concluded that the justice system, when acting in accordance with what is established in Article 3 of CNJ Resolution No. 299/2019[55], plays a key role in creating intercultural flows of differentiated care for children and adolescents, guided by the principle of articulation between the judiciary and traditional ways of protecting children and youth and resolving conflicts, in order to create conditions conducive to the realization of the right to non-revictimization and full protection.

55 Art. 3 State and federal courts shall recognize as an activity inherent to the judicial function, for productivity purposes, the participation of magistrates in the implementation of local flows of care for children and adolescent victims or witnesses, observing local peculiarities (Resolution no. 299, of November 5, 2019).

The justice system can also contribute with the agency of public institutions responsible for intervening on the social determinants that influence the configuration of the phenomenon of violence faced by traditional peoples and communities in their territories.

The Courts of Justice will have the task of mapping the different traditional peoples and communities attached to their territories and establishing intercultural dialogues that allow the joint construction of strategies to confront violence against children and adolescents from these groups.

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