“If he is in Brazil we need to hear him speak Portuguese”: Exploring Indigenous Peoples Lack of Access to Court Interpreters in the State of Mato Grosso do Sul

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# Table of Contents:

[**Table of Contents:**](#_heading=h.2olrf89so9zj) **[2](#_heading=h.2olrf89so9zj)**

**Abstract [3](#_heading=h.h7c04yazu8lb)**

[**Introduction:**](#_heading=h.8lm8b5ml55m2) **[4](#_heading=h.8lm8b5ml55m2)**

[**Part 1. Recognition of indigenous languages at the Federal and Municipal Levels**](#_heading=h.eviry2ioeh5d) **[7](#_heading=h.eviry2ioeh5d)**

[1.1 Bill 3074/19 Recognition of Indigenous Languages at the Municipal Level](#_heading=h.nns56tilmkiq) [7](#_heading=h.nns56tilmkiq)

[1.2 Articles 210 and 231 of the 1988 Constitution and Resolution N287](#_heading=h.mcwjc0gqtlh2) [8](#_heading=h.mcwjc0gqtlh2)

[**1.3. Brazil and Indigeneity vis a vis International Treaties:**](#_heading=h.4o11f5hcvm1v) **[11](#_heading=h.4o11f5hcvm1v)**

[1.3.1 The United Nations Declaration on the Rights of Indigenous Peoples 2007](#_heading=h.xg92ng7v3r51) [11](#_heading=h.xg92ng7v3r51)

[1.3.2 ILO Convention 169 on Indigenous and Tribal Peoples 1989](#_heading=h.pzlivpubyknq) [12](#_heading=h.pzlivpubyknq)

[**2.1 Case Study One: The Presence of Indigenous Peoples in Websites Discussing the State of Mato Grosso do Sul**](#_heading=h.qpp5w14vuhz) **14**

[**2.2 Case Study Two: The Guarani-Kaiowá of Mato Grosso do Sul**](#_heading=h.cv3eiwi5j7n) **18**

[**3.1 Case Study Three: Chief Marcus Veron and the right to speak Guarani-Kaiowá in Brazilian courts**](#_heading=h.kbf3gmuvq6mx) **21**

[**3.2 Case Study Four: Ex-Chief Paulino da Silva and the Terena language**](#_heading=h.n1wsfo4aq5vl) **24**

[**3.3 Case Study Five: Current Relationship between Judicial System and Indigenous interpreters in light of Resolution N 287**](#_heading=h.pn9joualljd8) **27**

[**4.1 Final section**](#_heading=h.7iduc8zcgbm8) **29**

[**5.1 Work Cited:**](#_heading=h.lxjswo36blhv) **29**

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# **Abstract:**

Although Brazil has an extensive body of legislation which in theory protects Indigenous linguistic rights, including access to interpreters during legal proceedings, Brazilian courts seem unwilling to allow for Indigenous languages to be spoken alongside Portuguese (the official language) within the judiciary system. Time and time again, Indigenous people navigating the judicial system have not been afforded the rights safeguarded for them by legislation. In particular, this thesis will argue through the analysis of various case studies focusing on various Indigenous tribes of the Brazilian state of Mato Grosso do Sul, that Article 12 of the ILO Convention 169, Article 231 of the Federal Constitution, and more recently Resolution N 287, have been systematically violated. By forcing Indigenous people to speak Portuguese and by denying them access to interpreters, the courts have been violating Indigenous language rights and their allowed access to interpreters which has been written into law. Finally, this thesis will also explore how by refusing to allow Indigenous languages to be spoken during legal proceedings, discriminatory and colonial ideologies aimed at devaluing Indigenous languages as legitimate have also been perpetuated. Ultimately, the delegitimization of Indigenous languages within the judicial system in Brazil has not only served to delegitimize the value of Indigenous cultures but also Indigenous claims to their ancestral territories.

**Key words**: Court Interpreters, Translation, Legislation, Mato Grosso do Sul, Guarani-Kaiowá, Terena; Kaigang, Indigeneity, Policy, Human Rights

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# **Introduction:**

# In contemporary Brazilian society negative stereotypes persist surrounding Indigenous communities. Often, Indigenous peoples are viewed as a homogeneous entity “frozen in time,” backwards and needing to be “assimilated and integrated” in order for the nation to achieve progress and modernity (Lima 2; Warren 222). These racist and colonialist attitudes are those upon which the nation has attempted to define itself as superior vis à vis its regressive and unidimensional portrayals of Indigenous peoples. Although Brazil has an extensive catalogue of legislation, which should protect Indigenous linguistic rights within the judiciary system, there seems to exist a rather large implementation gap between what is written (theory) and what is done (praxis) (Vitorelli 161). Perhaps one of the perceived ‘dangers’ in allowing Indigenous languages to be spoken alongside Portuguese in the judicial system, would be that such practices would recognize these cultures as having an equal and legitimate voice, which in turn would add weight to their claims regarding the return of their ancestral lands, many which are currently being used for agriculture or cattle farming. In this thesis I will attempt to show that although Indigenous people’s rights to interpreters within the judicial system is safeguarded by an extensive body of legislation, this right has been systematically denied due to the persistence of racist and colonial ideologies, which have aimed to delegitimize Indigenous languages and by extension Indigenous people’s claims to their ancestral territories.

# Brazil itself was established on Indigenous lands and territories hosting a diversity of Indigenous languages spoken for millennia; however, surviving Indigenous languages are not officially recognized at the federal level (Constitution of the Federative Republic of Brazil, Article.13). According to the IBGE’s (Brazilian Institute of Geography and Statistics) 2010 Census, 274 Indigenous languages are known to be spoken in Brazil by 305 diverse ethnic groups (Censo Demográfico 2010). Furthermore 17.5% of self-declared Indigenous people reported not speaking Portuguese and 53.7% of Indigenous people on Indigenous land, reported speaking their mother tongue (Censo Demográfico 2010). Yet, while Brazil is a linguistically diverse country, the Brazilian Federal Constitution recognizes only one official language at the federal level, Portuguese, thus presenting the nation as monolinguistic even though it is in fact multilinguistic (Gomes 83). This erasure of Indigenous languages and cultures manifests itself in different ways. For instance, throughout the 20th century, the Brazilian government carried out many policies whose aim was to transform Indigenous peoples into citizens of the Brazilian republic (ONU Brasil 1:07 -1:8); that is, they wanted to create a “poor citizen” out of Indigenous people (ONU Brasil 1:18 - 1:26). One of the most important aspects of this transformation was the violent occupation of Indigenous lands by the government and the agricultural industry (Vitorelli 160; ONU Brasil 1:30 -: 1:37). By taking over ancestral Indigenous lands, the government essentially dispossessed Indigenous peoples of their resources and ways of life, thus transforming them into an economically and materially impoverished citizen. These regressive and paternalistic policies were based on the assumption that Indigenous people were “relatively incapable” of taking care of themselves and as such needed the state's paternalistic “protection” or rather supervision (Política Indigenista). Unsurprisingly, these policies had as aim to invalidate Indigenous ways of knowing and cultural practices in order to assimilate them into the nation (Política Indigenista). By extension, the invalidation of Indigenous cultures, knowledge, and practices legitimized the government’s systematic takeover of Indigenous ancestral lands and the reallocation of Indigenous peoples to other territories. This forced relocation of Indigenous people was a crucial part of what allowed states such as Mato Grosso do Sul to establish themselves as Agricultural power houses in Brazil.

In this thesis, I will focus my analysis on the state of Mato Grosso do Sul as it has been one of the most violent and hostile states for Indigenous people in Brazil (Urt 877; Da Silva 204; Lima 24). In particular, I will focus on the colonial violence experienced by the Guarani-Kaiowá Indigenous people, which has ranged from their removal from their *Tekoha* (ancestral lands) during the 1910’s to 1950’s (ONU Brasil 1:38 - 2:00), to them more recently being denied interpreters during judicial processes.Given longstanding discriminatory misconceptions and stereotypes[[1]](#footnote-0) about Indigenous peoples, not to mention the persistent erasure of their history since the colonial time period; perhaps it should not be surprising to find that the Brazilian judicial system has been unwilling to acknowledge the power imbalance between Portuguese and Indigenous languages (such as the Guarani-Kaiowá language) and the urgent need to provide them with interpreters.

Indigenous people’s right to speak their own mother tongue is protected in Brazil by various pieces of legislation, such asArticle 231, Article 210, and paragraph 2 of the constitution, as well as by in international treaties signed by Brazil such as the ILO Convention 169 on Indigenous and Tribal Peoples and the United Nations Declaration on the Rights of Indigenous Peoples. More recently Resolution N 287, also highlights that Indigenous people should be allowed interpreters during court proceedings. As such, Indigenous people’s rights to an interpreter when navigating the judicial system in theory should be guaranteed. In practice however, that tends to not to be the case (Vitorelli 162). Granting Indigenous people the right to speak their languages or to be provided with interpreters while accessing justice seems to be the exception and not the rule. In this thesis, I will examine how linguistic rights, protected by this body of legislations, were denied in three different instances: first during the court case of the assassination of Guarani-Kaiowá leader Marcus Veron, second when Paulino da Silva requested to testify in his Indigenous mother tongue, Terena, at a Parliamentary Commission of Inquiry investigating violence against Indigenous people in Mato Grosso do Sul, and lastly in a Superior Justice Court decision which denied Indigenous Kaigang defendants access to interpreters.

# **Part 1. Recognition of indigenous languages at the Federal and Municipal Levels**

## **1.1 Bill 3074/19 Recognition of Indigenous Languages at the Municipal Level**

In 2019, The Human Rights and Minorities Commission of the Chamber of Deputies passed Bill 3074/19, which states that municipalities with Indigenous communities must regard the language or languages of its Indigenous communities to be co-official with Portuguese, i.e., the official language of Brazil (Júnior, 2019). In theory, this bill assures that Indigenous languages present in municipalities where Indigenous communities live, should have the same legal status as Portuguese. However, Indigenous languages do not enjoy the same legal status as Portuguese at the federal level. As stated in Article 13 of the constitution: “Portuguese is the official language of the Federative Republic of Brazil” (Constitution of the Federative Republic of Brazil). Nevertheless, this bill allows for the multilingual landscape of Brazil to be present on paper at least in some capacity, which is a step forward in recognizing Indigenous languages as legitimate ways of speaking in Brazil.

Interestingly Bill 3074/19, was included years after some municipalities had already forged the way for its implementation. Back in 2002, the municipality of São Gabriel da Cachoeira in the Amazonas state became the first municipality in Brazil to pass a law which elevated three of its twenty Indigenous languages, Tukano, Baniwa and Nheengatu, to the same status as Portuguese (Gomes 14; Abdala, 2014). Such Municipal Laws are important because once implemented, in theory they guarantee that government and public agencies, such as public schools, will provide services in all municipal co-official languages (Gomes 89; Abdala, 2014). Furthermore, by elevating these Indigenous languages to the same official status as Portuguese, in theory, the same prestige is afforded to them. Perhaps if Portuguese and Indigenous languages were granted the same prestige at the federal level, the presence of Indigenous court interpreters in the judicial system would not be as contentious.

However, although the co-officialization of languages in São Gabriel da Cachoeira had an important “symbolic” effect with regards to empowering and validating Indigenous languages and their speakers, its implementation in practice has been difficult (Gomes 83; Abdala, 2014). One of the biggest obstacles has been the ability to hire speakers of each co-official Indigenous language for every public or government agency (Abdala, 2014). Nevertheless, these Municipal Laws have helped to break Brazil’s colonial monolinguistic framework, which has placed the Portuguese language on a higher socio-political pedestal, while marginalizing minority languages (Gomes 83). As I will address later on, the judicial system often favors Portuguese being spoken instead of Indigenous languages because it is the official language of Brazil. Bill 3074/19 though created space for Indigenous languages to be seen as legitimate by the judicial system.

## **1.2 Articles 210 and 231 of the 1988 Constitution and Resolution N287**

There is a striking contrast between the Law as it is written (theory) and its enforcement (praxis). Spaces such as courts of law, as well government and public agencies tend to be unaccommodating and, in some cases, even hostile towards the use of Indigenous languages, even when there are laws or recommendations in place which aim to protect the rights of Indigenous languages (Da Silva 10; Gomes 88). A case in point is Brazil’s Constitution of 1988, which for the first time introduced protections in order to guarantee Indigenous people’s rights to their ways of life (Da Silva 44). As noted in Article 231 of the 1998 constitution: “Indigenous Peoples shall have their social organization, customs, languages, creeds, and traditions recognized, as well as their original rights to the lands they traditionally occupy, it being incumbent upon the Union[[2]](#footnote-1) to demarcate them, protect and ensure respect for all of their property” (Constitution of the Federative Republic of Brazil).Although the way the constitution regards Indigenous linguistic rights could be described as vague, Article 231 does indeed acknowledge Indigenous linguistic rights (Da Silva 117). However, it appears that even though this right to linguistic diversity is recognized by the constitution, its implementation in society seems to have lagged behind (Da Silva 119). A clue to the difficulties in recognizing Indigenous people’s rights to their languages comes in the form of Resolution N 287 which was implemented in 2019. The National Justice Council of Brazil officially interpreted this constitutional article in order to provide guidance to the judiciary system about how Article 231 should be implemented in the context of the judicial system (Brasil, CNJ).[[3]](#footnote-2)As such, Resolution N 287 is an official legal interpretation of Article 231created in order to provide “supervision and the normalization of the Judiciary'' (Brasil, CNJ). As such, all institutions and authority figures under the national judicial power in theory should abide by what is written in this resolution. Resolution N 287 is much more explicit and clearer about the rights of Indigenous peoples, including their linguistic rights when participating in the judicial process. For instance, the deliberation ofResolution N 287 took into consideration many pieces of legislation and documentations, on top of Article 231, such as the UN Declaration on the Rights of Indigenous People and ILO Convention 169 on Indigenous and Tribal Peoples (Brasil, CNJ).

Worth quoting at length is Article 5of ResolutionN 287as it helps us to better understand how institutions and organizations, which are supposed to uphold the law and respect the linguistic rights of Indigenous groups, in fact, often don’t:

Art. 5 The judicial authority will seek to guarantee the presence of an interpreter, preferably a member from the Indigenous community itself, at all stages of the process in which the Indigenous person is present:

I - if their spoken language is not Portuguese;

II - if there is any doubt as to their mastery and understanding of the vernacular language, including its relation to the meaning of procedural acts and the Indigenous person's utterances;

III - at the request of the defense party or Funai; or

IV - at the request of the interested party.[[4]](#footnote-3)

This 2019 Article makes it quite clear that in theory Indigenous people should have the right to receive interpretation services in their Indigenous language. It also seems quite clear that it is the duty of the judicial authority to search for and to secure the presence of an interpreter, which should be made available to the Indigenous person throughout the judicial process. Furthermore, it is not up to the judicial authority to decide whether or not an interpreter is necessary or should be present. For instance, even if the Indigenous person does speak Portuguese, an interpreter may be requested by the “defense party” or by “the interested party.” Thus, Article 5 of Resolution N 287 is unequivocal: an Indigenous person can at any point of the judicial process request an interpreter. Thus, it should not be up to the discretion of the judiciary power to determine if a person forms part of an Indigenous community or to determine if they speak Portuguese. This is made quite explicit in Article 3: “Recognition of the person as Indigenous will be obtained through self-declaration which can be expressed at any point in time during the criminal proceedings or at their custody hearing.”[[5]](#footnote-4) As such, Article 3 implies that someone’s Indigeneity should not or cannot be questioned by judicial authorities. If a person declares themselves as Indigenous, they have the right to an interpreter. According to Resolution N 287,further steps can also be taken to ensure that the rights of Indigenous peoples and those who speak for them (using Indigenous languages) are allowed by law. For instance, as noted in Article 6:[[6]](#footnote-5) “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 interested party, that an anthropological examination be conducted [to determine] 1- the qualification, ethnicity, and *language spoken*by the accused person” (my emphasis). These articles demonstrate that by law, the judicial system should accommodate for linguistic diversity. Although resolution N 287 clarifies Article 231of the 1988 constitution, in theory Article 231had already implied all the rights that resolution N 287safeguards. Thus, it appears that the judiciary is often unable (or unwilling) to step outside the colonial mindset resulting in a reading of Article 231, which limits Indigenous linguistic rights and favors Portuguese as the only legitimate way of expressing oneself in Brazil.

It must be worth noting that Article 231 is not the only one in the constitution which aims to protect Indigenous linguistic rights. For instance, Article 210 paragraph 2[[7]](#footnote-6) discusses the inclusion of Indigenous languages in the educational system: “Paragraph 2: Regular elementary education shall be given in the Portuguese language and Indigenous communities shall also be ensured the use of their native tongues and their own learning methods” (Constitution of the Federative Republic of Brazil). Thus, while Article 210 in theory guarantees the rights of Indigenous communities to have their languages taught in school, it can be inferred that the state recognizes at least to some extent the importance of Indigenous languages, cultures, and ways of learning/knowing. For instance, Guarani-Kaiowá children living in Indigenous land have access to bilingual education after their 5th school year, and prior to that, their education is entirely in Guarani-Kaiowá (Da Silva 196). In theory it also should signal that Indigenous people should not be assimilated into the dominant culture, but rather that they have a right to their language and should not be coerced into speaking only Portuguese. Nevertheless, it is important to note once again that what is written is not necessarily what is done: as Gomes notes, Indigenous people are often *not* schooled and educated in their ancestral languages (89). It appears that a lack of respect towards legislation aimed at protecting Indigenous languages goes beyond the judicial system.

Nevertheless, if provisions protecting indigenous people’s rights to speak their languages were already in place long before 2019, why was Resolution N 287needed in the first place? Article 231“recognizes Indigenous people through their social organization, customs and *languages*” (my emphasis). Perhaps the wording here is too vague, and thus allows for individual interpretation on a case-by-case basis. This individual interpretation however is also subject to historical and cultural biases, which have played a longstanding role against the full recognition of linguistic rights for Indigenous people. In fact, Resolution N 287came into effect in 2019 only after “strong and relentless” advocacy by FUNAI (Brazil’s National Indigenous Foundation) and other public organizations which pushed the government to provide a set of uniform regulations for judicial processes involving Indigenous people (Notícias, 2019). FUNAI insisted that Indigenous people were “invisible” in the judiciary system, causing an overrepresentation of Indigenous people in the prison system (Notícias, 2019).

# **1.3. Brazil and Indigeneity vis à vis International Treaties**

## **1.3.1 The United Nations Declaration on the Rights of Indigenous Peoples 2007**

It is important to also consider the recommendations presented in the United Nations Declaration on the Rights of Indigenous Peoples, since Brazil was one of the countries that adopted this declaration in 2007 when it was brought forward by the General Assembly (UN General Assembly). For our purposes Articles 13.2 and 34of the United Nations Declaration on the Rights of Indigenous Peoples, are particularly relevant to contextualize the rights of Indigenous people to speak their mother tongue in court and during the judicial processes with the assistance of an interpreter.

**Article 13. 2.** States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

**Article 34** Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

As such, even if an Indigenous person speaks Portuguese and partakes in social practices of the dominant culture, this does not negate their right to speak their Indigenous languages freely and without pressure of assimilation given thatArticle 34states that they have the right to “[maintain] their distinctive traditions, procedures, practices.” It could be argued that speaking one’s native language constitutes part of the “...distinctive customs, spirituality, traditions, procedures, practices…” presented in this declaration and as such it suggests Indigenous languages should be allowed in judicial spaces such as the courtroom. Article 13.2of the declaration states that during “legal proceedings” the State needs to ensure that Indigenous people are able to understand and be understood. While on the one hand the Brazilian legislation and constitution have taken “effective measures” to safeguard the linguistic rights of Indigenous peoples through Article 231 and Article 210 of the 1988 Federal Constitution, and more recently through Bill 3074/19 and Resolution N 287; the need for this recent legislation seems to point out that the implementation of Indigenous linguistic rights was not being followed by the judicial powers. Furthermore, it must be pointed out that the United Nations Declaration on the Rights of Indigenous Peoples is a document that does not carry any formal legal obligations, but more so moral; in this respect, we might view it as a set of recommendations (or ideals) with regards to the treatment of Indigenous peoples that Brazil has signed on. Indeed, the Supreme Court of Brazil ruled that the UN Declaration should be considered as “non-binding” (Vitorelli 162) However, the fact that the National Justice Council considered this UN Declaration in its deliberation of Resolution N 287, in particular, Article 13.2,[[8]](#footnote-7) indicates that this document has become more than just a piece of recommendation that the Judicial System can choose to ignore arbitrarily.

## **1.3.2 ILO Convention 169 on Indigenous and Tribal Peoples 1989**

Before signing on to the United Nations Declaration on the Rights of Indigenous Peoples, Brazil had already signed on to the terms of the ILO Convention 169 on Indigenous and Tribal Peoples in 2002 (International Labour Organization). Article 12 of the convention states very clearly that interpretation services should be provided to Indigenous people noting that “measures shall be taken to ensure that members of these groups [i.e., Indigenous groups] can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.” As we will see later on, what constitutes a “necessity” for interpreters for Indigenous people, seems to be a contentious point and more often than not, courts deem interpreters unnecessary and require Indigenous people to speak Portuguese.

In any case, Brazil signed on to this treaty, and it was included in the judicial process through Decree N° 5.051in 2004 (Vitorelli 106). As such, the terms of the ILO Convention 169 represent Brazil’s official body of law and should be respected as such by the judicial system (Vitorelli 106). Theoretically this would mean that the provision to provide Indigenous people interpreters (meaning interpretation or translation services) was already in place in 2002 long before Resolution N287; which begs the question, if legislation had already existed for decades what was causing the gap in its institutional implementation? Why were more Articles, Decrees and Resolutions created to address the subject? Resolution N 287described in detail what should already have been inferred from Article 231 of the 1988 constitution, as well as the international treaties that Brazil had signed on to. Thus, the failure to recognize Indigenous language rights appears to derive from more longstanding issues related to the legacy of colonialism, ethnic based discrimination, and violence that Indigenous peoples have long been subjected to.

A case in point comes from an excerpt published eight years ago by the Legislative Assembly of the State of Mato Grosso do Sul, which shows that the rights of Indigenous people were not being respected by the judicial system (Projeto Garante, 2013). In 2013, the chairperson for the Commission for Labor, Citizenship and Human Rights, deputy Laerte Tetila (Labour Party), proposed a bill which would guarantee any Indigenous person the presence of an interpreter from their own ethnic group during any judicial process. Tetila argued that although this right was already something addressed in Brazil’s constitution, there was ample evidence from research undertaken by the Center for Indigenous Work and the Dom Bosco Catholic University[[9]](#footnote-8) that noted that the right to interpreters for Indigenous people was being systematically overlooked (Projeto Garante, 2013). Deputy Laerte Tetila’s introduction of this bill shows that, at least in Mato Grosso do Sul, there must have been a *systemic* problem regarding how courts dealt with Indigenous people participating in the judicial system. Once again, new legislation had to be introduced in order to ensure rights (that were already protected by a robust body of legislation) were protected. This bill was proposed years before Resolution 289, however it is important to keep in mind that Article 12of the ILO Convention 169 already safeguarded Indigenous people’s rights to interpreters. Furthermore, the Federal Constitution of 1988 asserted: “Indigenous people are recognized for their social organization, customs, languages…” (Constitution of the Federative Republic of Brazil, Article 231). As such the right for Indigenous people to use their languages was already protected by the 1988 Federal Constitution and the explicit right to interpreters was protected by the ILO Convention 169. This shows that the right to have access to an interpreter should already have been respected, given that without access to an interpreter, the court would have been infringing upon Indigenous people’s rights to speak their own languages and thus would have been forcing them to assimilate to the dominant culture. Furthermore, the introduction of this bill implies that courts were not taking effective steps to ensure that Indigenous people were being understood during legal proceedings, which goes against both Article 12 of the ILO Convention and Article 13.2 of the UN Declaration on the Rights of Indigenous peoples.

Interestingly, the proposal for the interpreter bill in Mato Grosso do Sul came at least seven years after Brazil had promised to uphold the ideals outlined in thearticles of the United Nations Declaration on the Rights of Indigenous Peoples. Article 8.1, in particular, explicitly prohibits the “forced assimilation” of Indigenous peoples into the dominant culture: “Indigenous peoples and individuals have the right not to be subjected to *forced assimilation* (my emphasis) or to destruction of their culture” (UN General Assembly).Forcing an Indigenous person to speak Portuguese, even if they can speak the language (with different degrees of competency), still constitutes forced assimilation. This is especially so in light of longstanding colonialism, discrimination, and violence that Indigenous peoples have long suffered (and continue to suffer) in Brazil. The unwillingness to uphold the rights of Indigenous peoples to speak their languages in the courtroom thus cannot be separated from larger more systemic issues of racism in Brazil.

# **2.1 Case Study One: The Presence of Indigenous Peoples in Websites Discussing the State of Mato Grosso do Sul and the Erasure of Indigenous history**

Mato Grosso do Sul is a state located in central-west Brazil and shares western borders with the countries of Bolivia and Paraguay. It represents the Brazilian state with the second largest number of Indigenous peoples with a total of about 73,295 individuals (Tavares, 2016). Mato Grosso also has a long history of forcibly displacing and relocating Indigenous communities from their ancestral lands to Indigenous reservations, which are often smaller in size and have limited access to infrastructure that non-Indigenous people in this state enjoy (Urt 875). Furthermore, land dispossession has resulted in a disruption to Indigenous cultures and ways of being including Indigenous practices of self-governance (*ibid*, p. 876). Indigenous groups in Mato Grosso do Sul, namely the Guarani-Kaiowá, suffer extensively from discrimination-based violence (*ibid*, p. 876). This violence is exacerbated by land conflict with farmers, who do not want to lose their land to the demarcation process[[10]](#footnote-9) (*ibid*, p. 877). This has resulted in land repossession movements, where the Guarani-Kaiowá camp by their ancestral lands, in efforts to reclaim them and has often led to violence (and death) for Guarani-Kaiowá leaders (*ibid*, p. 877). Interestingly, this land dispossession and subjugation of Indigenous peoples,[[11]](#footnote-10) is precisely what has allowed the agricultural industry In Mato Grosso do Sul to flourish (*ibid*, p.875). One could argue that Mato Grosso do Sul thrived and still thrives from the systematic oppression of Indigenous peoples inhabiting the state.

Interestingly, a quick google search[[12]](#footnote-11) of Mato Grosso do Sul seems to downplay the presence (past and present) of its Indigenous inhabitants. For example, the Encyclopedia Britannica web page, one of the top results I received for a search on ‘Mato Grosso do Sul history,’ speaks to the early colonial history of the region with an emphasis on the European search for gold and mining and then proceeds to document the rise of cattle production and the establishment of railroads both which helped to contribute to economic growth of the state. However, this entry does not discuss how the forced removal of Indigenous people from these lands gave space for this economic growth (Urt 875; FIAN fact sheet, 2013). In fact, this site states “the area now known as Mato Grosso do Sul was scarcely settled before the mid-1900s. Initial settlement was mainly by pioneering gold seekers…” (Encyclopaedia Britannica). This statement could be problematic given that it erases the long and rich pre-Columbian history of Indigenous peoples in Mato Grosso do Sul. Reading this narrative might also imply that Mato Grosso do Sul was a barren land, without people (and hence no real history) before the arrival of Europeans. Such narratives unfortunately may help to delegitimize Indigenous claims to their history, languages and lands. In turn, the Official Brazilian Tourism Website’s page *Brazil Visit and Love Us*, when describing the region seems to focus primarily (and perhaps not surprisingly) on ecotourism and the biodiversity of the region. The entry on this state notes “The State capital, Campo Grande, is marked by diverse customs and cuisine, and reflects cultural *traces left by*(my emphasis) the Indians, migrants from Brazil and other countries such the Syrian-Lebanese, Japanese, Bolivian and Paraguayan…” raises interesting questions. Leaving the poor English description aside, not only is its antiquated terminology on First Nations peoples problematic, i.e., “Indians,” it also mentions that they “left traces” in the area thus implying that they (Indigenous peoples) are no longer there. Although it is perhaps not the directive of an official government’s tourism website to provide a complete historical picture of the region (especially if these would paint the country in a bad light); such descriptions suggest that Indigenous peoples (as “Indians”) are relics of the past (ancestors) and thus are no longer present in the state of Mato Grosso do Sul.

The English *Wikipedia* entry for Mato Grosso do Sul does mention Indigenous peoples in its “History Section” as the “first people” who inhabited Mato Grosso do Sul and also has a link to a page on the Guarani-Kaiowá tribe. The webpage also mentions Indigenous people in the demographics section but there is nothing about the violent history of land dispossession or about the pre-Columbian history of the region. The Guarani-Kaiowá Wikipedia page though does explain that they were forcibly removed from their territories in order to give space to the agricultural industry, and that these conflicts still negatively affect their way of life. However, this page also contains problematic statements such as “their lifestyles consist of living happily on their own land, growing small crops to support their livelihood” (Guarani-Kaiowá). Such claims paint a very incomplete (and dangerous) picture of the region since the Guarani-Kaiowá face higher than average rates of child mortality and systemic discrimination-based violence (Urt 877). Furthermore, wording such as “they *consider* (my emphasis)this land as their ancestral land” (Guarani-Kaiowá), allows for debate on whether the Guarani-Kaiowá have legitimate claims to their land. All this said, given that Wikipedia entry is created through crowdsourcing i.e., the entry can be edited and updated by the public, it nonetheless can provide us with a snapshot of attitudes regarding Indigenous peoples of the region, even if these may be flawed and transitional. Interestingly, the Portuguese *Wikipedia* entry about Mato Grosso does not mention Indigenous people at all in its history section. It’s almost as if the history of the region had only begun when Europeans and others arrived in the mid 1800’s. Although the webpage mentions Indigenous cultural products such as the “tereré” beverage, it does not mention Indigenous peoples as a historical and dynamic community. Indigenous people are only explicitly mentioned in the Portuguese Wikipedia entry on the demographics section, and they are introduced by the phrase “The state is *still* (my emphasis) the second Brazilian state with largest Amerindian populations”[[13]](#footnote-12) (Mato Grosso). This phrase is of note because of the word “still” and what it could potentially imply. One could read this “still” in the context of the genocide and forced assimilation of Indigenous peoples in the region (past and present) and thus it might imply a sense of surprise that such a large Indigenous population *still* survives and exists in the region. Another reading could imply the “still” functions as a type of disappointment, in the sense that despite all efforts to modernize the region, the Indigenous and by implication, “backwards” peoples are *still* here. While the entry does mention “conquistadors” and “colonialism,” it does not link these to the genocide of Indigenous peoples nor does it mention their continued oppression in the present day. There are however links to the “amerindians” and “Guarani” Wikipedia pages. That said, it must be pointed again that Wikipedia pages are not academically refereed pieces of work (although they may make reference academic sources) but are the product of crowdsourcing, i.e., they can be written by anyone, expert on the field or not. However, it is interesting to see what kind of history (and what kind of stories) are being told about Indigenous peoples.

The takeaway message from this brief excursion into various webpages is to note that there seems to be a nonchalant way of speaking about colonialism (as something potentially good or as a relic of the past), and of Indigenous peoples as either an impediment to the nation’s progress (if they are even mentioned) and/or a sense of disbelief/amazement that they are *still* here. These articles show that Indigenous histories tend to be white-washed or ignored. A simple google search of the history of Mato Grosso do Sul might only reveal a partial history of the state which will usually begin with colonialism and a narrative the silences its violent history towards Indigenous peoples and the systematic dispossession of their ancestral territories (which still continues today). For example, the Guarani-Kaiowá had their territory significantly downsized and disrupted by the government and the agricultural industry (Urt 875; ONU Brasil 1:38 - 2:00; CPISP; FIAN, 2013). This dispossession of their ancestral lands had devastating socio-political effects for the Guarani-Kaiowá who had “strong ties to their *Tekohá*, the land of their ancestors” (ONU Brasil 1:38 - 2:00; FIAN, 2013; Urt 875). Thus, these websites, by mentioning the region’s agricultural prowess and its excellent cattle farming, without mentioning the means used to achieve these, is tantamount to silencing Indigenous histories. Even though the English Wikipedia entry about Mato Grosso do Sul has a link to a page which, to some extent contextualizes the violent history of colonization, this history should not only be apparent when the discussion is explicitly centered on an Indigenous group. This history should be incorporated into the official history of the state itself.

This silencing of Indigenous histories and the violent legacy of colonization leaves the terrain quite open to the creation of certain biases against Indigenous peoples. For instance, in 2014judgeMarco Antônio Canavarros dos Santos ruled to imprison an Indigenous man suspected of drunk driving and of possession of firearm ammunition (Maia, 2013). However, there was widespread protest to his ruling by the Xavante community who wanted the Indigenous man to be tried according to their local customs and laws (Maia, 2013) as is their right according to the 1988 Federal Constitution.[[14]](#footnote-13) The Ministry of Public affairs was favourable to the Indigenous plight and yet this judge resisted going so far as to state that :"The crimes at issue threaten public order, circumstances which, *in the case of Indigenous people, have become customary*...”(emphasis mine) (Maia, 2013). Furthermore, Judge Marcos dos Santos also offered the following statement to the media: “[He classified as ] 'terrorist' the actions promoted by the Xavantes in recent times and emphasized that the city's population is exhausted with the acts committed by them” (Maia, 2013). These statements indicate a clear bias against Indigenous peoples and suggest the presence of systemic racism and intolerance towards them, especially in a state where rampant violence against Indigenous peoples has often gone unpunished (Da Silva, 204; Urt 876). In fact, when the case of Veron (which I will discuss further ahead) appeared before the courts in 2008, a white person (of European descendant) had never before been successfully convicted for violence towards an Indigenous person in the state of Mato Grosso do Sul (Da Silva 204). As such, there appears to be serious inconsistencies when dealing with Indigenous people, and there appear to be practices informed by racist stereotypes and institutionalized discrimination. This sort of selective history telling and biases towards Indigenous peoples has consequences for the judicial process, where the full history of colonization does not seem to be taken into account when ruling on whether or not Indigenous people should be provided with interpreters and translation services.

The denial of linguistic rights for Indigenous people in court and the justice system has severe consequences and might in part account for their over-representation in prison. In 2010, the Brazilian Institute of Geography and Statistics (IBGE) published a national census noting that there were 817, 963 Indigenous peoples in Brazil (with a total population of 190,750,799). As such, Brazil’s Ingenious population represented 0.004% of the population. Therefore, even if we accept the official number given that 0.08% of Indigenous people are currently part of the carceral population, these numbers certainly point to their over-representation in the carceral system and thus for the need to systematically respect and uphold the rights of Indigenous peoples in court. Mato Grosso do Sul in particular has “the highest rate of Indigenous incarceration in Brazil'' (Urt 877). Racism and institutionalized discrimination combined with colonialism and monolinguistic ideologies (Gomes 16) could account for Brazilian courts’ resistance to allow Indigenous languages to be present alongside Portuguese in the Judicial System.

# **2.2 Case Study Two: The Guarani-Kaiowá of Mato Grosso do Sul**

As noted above, Mato Grosso do Sul has a long history of conflicts between farmers and Indigenous peoples. The Guarani-Kaiowá in particular have suffered extensive forms of colonial violence since the European colonization of the region (Urt 877). As noted before, the Guarani-Kaiowá were systematically and forcefully relocated from their ancestral lands to designated Indigenous reserves to give space to agriculture and cattle farming (Urt 876; ONU Brasil 1:30 - 1:37).One of these reservations called Dourados, houses 16,000 people[[15]](#footnote-14) in just only the limited space of 3,000 hectares (UNO Brasil 2:01 -2:11)! Dourados is considered the “largest Indigenous confinement area in the world” (ONU Brasil 2:12- 2:16). By contrast, one of the Guarani-Kaiowá’s ancestral lands, *Tekera*, is about 9,700 hectares, however today they only officially own 100 hectares of that land (Ministério Da Justiça, 2010). The poor living conditions of Dourados coupled with the violence that results in having so many people confined in a small space (with little or no access to basic resources or education), has resulted in many Indigenous groups participating in land reoccupation movements where the Guarani-Kaiowá camp near or on farmlands where their *Tekoha*  (ancestral lands) were,in attempts to pressure FUNAI[[16]](#footnote-15) to start the process of demarcation[[17]](#footnote-16) of those lands (UNO Brasil 3:26). These land reoccupation movements, among other efforts, have brought some Guarani-Kaiowá in closer contact with the judicial system given that many leaders of these movements have been arrested and even murdered (UNO Brasil 5:12 -5:34; Da Silva 216; Urt 877 ). Even though demarcating lands traditionally used and inhabited by Indigenous peoples was written in the 1988 constitution Article 231,[[18]](#footnote-17) there is an “institutional gap” because many demarcation processes are hampered “by federal bureaucracies” (Urt 976). In Mato Grosso do Sul alone, 59 demarcation processes have been stalled at the initiation phase (*ibid,* p. 976). Land dispossession has had serious harmful impacts for the Guarani-Kaiowá community; on top of poor living conditions and lack of recourse, the Guarani-Kaiowá have a considerably higher infant mortality rate than the national average, as well as one of the worst suicide rates due to a lack of prospects for their future (Urt 877; Vitorelli 171; UNO Brasil 4:28- 4:33).

Although the status of the Guarani-Kaiowá land rights remains uncertain, their connection to their mother tongue, Guarani, has remained rather strong (Da Silva 196). The Guarani language has been present throughout various parts of South America, including Brazil, for thousands of years (Da Silva 195). Indeed, although Brazil only has Portuguese as its official language, Indigenous peoples spoke Guarani in Brazil long before the arrival of the Portuguese (Urt 865; Massini-Cagliar 7). Today three variants are still spoken in Brazil: 26,500 speakers of Guarani-Kaiowá, 5,400 speakers of Guarani-Nhandeva, and 5,300 speakers of Guarani-Mbyá (IBGE, 2010). Guarani-Kaiowá is the variant by the Indigenous people in Mato Grosso do Sul (Da Silva 196). The first language spoken by a Guarani-Kaiowá child will most likely be Guarani through intergenerational transmission from parents, grandparents and the community at large (Da Silva 196). The Portuguese language is usually only introduced in the context of school and formalized education (Da Silva 196). Bilingual education in demarcated Indigenous land as stated by legislation in Brazil, including the 1988 Federal Constitution Article 210, allows Guarani-Kaiowá children to learn how to read and write in Guarani-Kaiowá, and then by the fifth grade they are introduced and taught Portuguese alongside Guarani-Kaiowá (Lima 18; Da Silva 196). As Lima pointed out in his anthropological report for the Marcus Veron Judicial case, bilingual Guarani-Kaiowá individuals tend to speak Portuguese at a second language level in “the context of colonialism,” and as such they “are not part of a homogeneous speech community” (2). To further highlight this colonial context, Guarani-Kaiowá children who grow outside demarcated land have to attend non-bilingual schools and thus instruction is entirely in Portuguese with no mention of their own mother tongue or cultural context, which can lead to various negative experiences for these children (Da Silva 196). Guarani children who have to attend non-Indigenous urban or rural schools often experience discrimination and racism from other non-Indigenous students and staff (Lima 2). The ideologies of colonialism are clear in the perceptions of the Guarani-Kaiowá children who, ironically enough, are seen as “children of the land usurpers”; on the other hand, the children of European descendants “perceive themselves to be or are perceived as “the legitimate owners of titled land or employees of legitimate owners” (Lima 19). Therefore, even though the Guarani-Kaiowá may have access to the Portuguese language, Portuguese continues to be a symbolic language of colonial power which serves “other” Indigenous peoples in negative and derogatory ways. As such, Portuguese is not a language freely adopted by the Guarani-Kaiowá, but rather it is a language imposed upon them by the context of colonization. Portuguese is needed as a tool to interact with non-Indigenous people, which is an important part of the colonial context.

Although the Guarani-Kaiowá have resisted linguistic assimilation by the monoglossic Brazilian state, the perception of a hierarchical linguistic relationship between Portuguese and Guarani-Kaiowá remains real, due to the disparate and inequitable economic, social, and political power relation between its speakers (Gomes 23). Portuguese and Indigenous languages such as Guarani-Kaiowá exist in a diglossia model where Portuguese holds a high status as a dominant language and Guarani-Kaiowá as a lower status or marginalized and hence less prestigious language (Gomes 23; Da Silva 196). Diglossias arise when two or more languages are used in different linguistic domains, for different purposes, and the languages have different perceived socio-political levels of prestige (Gomes 24; Da Silva 196). Furthermore, it is not uncommon for Indigenous peoples to internalize these prejudices and feel negatively towards their own languages (Tavares 375; Brasil 117). For instance, Guarani-Kaiowá children have reported that non-Indigenous students and teachers alike “didn’t like when they spoke [Guarani]” and that “it was as if they were inferior” (Gomes 375). It has also been reported that young people who have studied outside Indigenous reservations or land have come back harboring contempt and prejudice towards their own Indigenous mother tongue (Gomes 375). This delegitimizing of the language of a minority group (in this case the Guarani-Kaiowá) is a tool often used by the dominant linguistic group to further subjugate and assimilate the minority group (Brasil 117). There is an argument to be made that by delegitimizing the Guarani-Kaiowá language, the dominant group (European descendants) is also delegitimizing the Guarani-Kaiowá as a sovereign community, and as such they are delegitimizing their claims to their ancestral land, which makes space for the Guarani-Kaiowá to be seen as “land usurpers.” That said, Guarani-Kaiowá is also being used as an act of resistance to the colonial state and has thus also become a symbol of resistance to assimilation. Historically, since colonial times Brazil has attempted to assimilate Indigenous speakers into the Portuguese (monoglossia), going so far as to forbidding other languages being spoken (Massini-CaGliari 8). It could be argued that there has also been resistance from the nation in fully recognizing Indigenous languages, which has created a gap between legislation (theory) and how or if it is applied on the ground (praxis). Perhaps, this is why some judges (and the judicial system at large) have been reluctant to provide interpreters to Indigenous participants during trials.

# **3.1 Case Study Three: Chief Marcus Veron and the right to speak Guarani-Kaiowá in Brazilian courts**

The Judicial case of Marcus Veron showcases the sort of colonial violence the Guarani-Kaiowá have faced from agricultural farmers as well as from the state in their struggles to reclaim their ancestral lands or *Tehoka* in Mato Grosso do Sul. It also highlights how the linguistic rights of Indigenous people are disrespected in Brazilians courts, and how the colonial and historical contexts of Indigenous people are often forgotten and ignored. Furthermore, this case seems to suggest that colonial, racist, and discriminatory ideologies seem to inform judicial decisions about allowing Indigenous languages to be present alongside Portuguese in the courts.

In January 2003, eighty Guarani-Kaiowá were occupying farmland in the Juti municipality, which had been Guarani-Kaiowá ancestral territory but had not yet been officially demarcated (Da Silva 203). The Guarani-Kaiowá sought to restore their rights to their *tehoka* (ancestral lands) (203). As such, they occupied and set camp on highway margins and on pieces of farmland near their *tehoka*; the farmland in question, *Fazenda Brasília do Sul*, belonged to soy and cattle farmer Jacinto Honorio (Da Silva 203; Fazendeiro Alega, 2003). Chief Marcus Veron, an Indigenous activist and leader led this repossession movement on Honorio’s properties. Honorio was accused of hiring a group of 34 armed men who violently attacked the Guarani-Kaiowá group (Da Silva 203). This brutal attack resulted in the death of Chief Marcus Veron who at the time was 73 years old (Da Silva 204; Vitorelli 167; Dacoregio 51). These aggressions towards the Guarani-Kaiowá were of an extremely violent nature and as such, it is important to contextualize the sensitive nature of this case. To begin, we are speaking of a community that has been systematically marginalized and which was brutally attacked by armed men during an attempt to recover land that was traditionally theirs. This case also marked the first time that a person of European descent, accused of violence against an Indigenous individual, was successfully taken to court in the state of Mato Grosso do Sul (Da Silva 204). It was also the third time in Brazilian history that a case was transferred to another state (in this case to the state of Sao Paulo) due to distrust that the jurisdiction of the jury court of Mato Grosso do Sul would conduct a fair trial (Da Silva 204). Indeed, the defendant Jacinto Honorio was an influential man with considerable economic power in the state of Mato Grosso, which, coupled with discrimination present there (as clearly seen above) cast serious doubts as to the ability of the jury there to be impartial (Da Silva 204).

Despite the trial being moved across states lines, that did stop prejudice and discrimination against Indigenous people to continue to plague the trial. Indeed, the case of Marcus Veron has become symbolic of the court's intolerance towards Indigenous languages (Dacoregio 10). For instance, at the beginning of the trial the federal judge revoked the authorization of the use of interpreters in court for the Guarani-Kaiowá witnesses at the request of the defense counsel (Da Silva 205; Vitorell 167). This was rather a shocking turn of events as interpreters had already been authorized previous to the trial date (Da Silva 204). The federal judge argued that the witness had already been heard giving testimony in Portuguese and as such the Guarani-Kaiowá who express themselves in Portuguese should testify in the national language (Dacoregio 52). The implication being that if the Guarani-Kaiowá had already been heard speaking the national language they should give their official testimony in it. However, that does not take into consideration the colonial context in which Guarani-Kaiowá speak Portuguese or the fact that Portuguese is spoken at the capacity of a second language (Lima 2). In fact, many Guarani-Kaiowá speak Portuguese with “differences in vocabulary, phonology, structure, semantic” which may result in misunderstanding between speakers of Portuguese used in Brazil, Portugal, or Angola (Lima 13). Moreover, it must be recognized that Indigenous peoples and the non-Indigenous Brazilian population have distinctively different “epistemologies'' (i.e., ways of being and transmitting knowledge), and thus this difference in ways of communicating could result in creating misunderstandings between Indigenous people and local authorities (Jane 3592; Lima 3).

As seen previously, the ILO Convention 169Article 12 requires the judicial system to ensure that Indigenous people can be effectively understood during legal proceedings. According to the contents of the anthropological report submitted by Lima, this ruling would violate the terms of the ILO Convention. In addition, the violent and colonial nature of Veron’s case should have acted as further incentive for the judicial system to respect and acknowledge Indigenous linguistic rights, however it did not. Indeed, even when presented with Lima’s anthropological report about the Guarani-Kaiowá’s linguistic realities, the Federal Judge still denied the presence of interpreters (Da Silva 209).The decisions of the Federal Judge to deny Guarani-Kaiowá interpreters at the defense counsel’s request, suggest a negative bias which at best favored the defense and at worst silenced and marginalized the Indigenous victims; not only regarding the crime at hand, but also as an example of the ongoing cultural and physical genocide experienced by Indigenous peoples. Furthermore, the defense argued that the interpreter participating in the process was “suspect”[[19]](#footnote-18) (Aras 2010; Dacoregio 52). In other words, the interpreters were accused by the defense counsel of being partial in favor of the Guarani-Kaiowá. Even more problematic, and which further suggests the Federal Judge’s bias against the linguistic rights of the Guarani-Kaiowá, is the fact that the defense counsel introduced the document against the interpreter in violation of Article 479 of the Penal Code Procedure; nonetheless the Federal Judge accepted it (Aras, 2010; Da Silva 206). Article 479 of the Penal Code Procedure reads as follows: “During the trial, the reading of a document or the exhibition of an object that has not been included in the case record at least three (3) working days in advance will not be permitted, all while notifying the other party (Código Processo Penal).[[20]](#footnote-19) The document the defense provided did not comply with Article 479of the penal code as it was provided that same day (and hence not 3 days in advance as required). It is troubling that the Federal Judge accepted documentation that went against Articles of the Penal code. It seems that the reluctance to allow Indigenous languages in the Judicial system alongside Portuguese is stronger than following the law. The hostility towards the linguistic rights of the Guarani-Kaiowá was made even more apparent when documents submitted by the prosecution (which actually complied with Article 479),were not permitted to be shown in court (Aras, 2010). According to Aras these documents were meant to aid the jury by providing background information about the Guarani-Kaiowá (Aras, 2010). These discrepancies in how the Federal Judge treated documents by the defense council and the prosecutors suggests a negative bias against the Guarani-Kaiowá.

According to Vitorelli, the ruling against allowing for interpreters in this judicial process, was based on a previous Supreme Court case where it was decided that if an Indigenous individual could speak Portuguese and participated actively in aspects of the dominant culture, then there was no need for allowing court interpreters (167). However, the fact that the supporting documents were denied, which could have contextualized the socio-cultural and socio-political realities of the Guarani-Kaiowá, implies that this bias goes beyond a question of linguistic rights. The problem seems to stem from colonial ideologies about Indigenous languages vis à vis Portuguese which is seen as the only legitimate Brazilian language. Furthermore, the case of Marcus Veron is intrinsically linked to land reoccupation movements, and as seen before, Indigenous peoples tend to be discriminatorily seen as “encroachers of the land.” Could the danger be in that legitimizing the use of Indigenous languages in the judiciary system might also be seen as legitimizing Indigenous claims to their ancestral lands?

Interestingly, the judicial power also judged itself to be knowledgeable enough in matters of linguistics to assert with confidence which witnesses could or could not speak Portuguese to a sufficient level to be understood in court (Da Silva 249). As such, it seems inappropriate that individuals with limited knowledge of linguistics and language acquisition were allowed to make decisions about other people’s linguistic proficiency (Vitorelli 169; Da Silva 249). Moreover, by rejecting the lived experience of the Indigenous witnesses who felt they could not or did not want to express themselves in Portuguese, this court acted in alignment with harmful 20th-century assimilationist policies targeted at undermining Indigenous autonomy and ways of being. Once again, the state deemed itself more knowledgeable about the Indigenous context and hence infringed on Indigenous linguistic rights and autonomy. Consequently, forcing Indigenous witnesses to speak Portuguese whilst giving testimony about a crime experienced (which targeted them for their Indigeneity) could be seen as an example of forced assimilation. In order for justice to be made, the judicial system expected Guarani-Kaiowá to conform to the lingua franca of the settler Nation.

# **3.2 Case Study Four: Ex-Chief Paulino da Silva and the Terena language**

As argued previously, the systematic denial of allowing Indigenous peoples to speak their mother tongues within the judicial system, seems to stem from more than just disagreements about the interpretation of legislation, and whether an Indigenous person who speaks Portuguese has the right to interpreters. Indeed, there appears to be a perverse aversion to place Indigenous languages on equal footing with Portuguese, stemming perhaps from a feeling of colonial superiority which has been ingrained in the nation’s psyche. As stated by Gomes, Portuguese has a perceived prestigious linguistic status since it is the majority language and the official language of Brazil (25). By contrast, Indigenous languages are non-official in the eyes of the Federal State (Gomes 25). Even though per Bill 3074/19, municipalities home to Indigenous communities must recognize the languages spoken by those communities, Portuguese remains the only official language of Brazil. The case of ex-chief Paulino da Silva addressed here will highlight how this asymmetrical power dynamic has informed people’s opinions about the legitimacy of Indigenous languages.

In response to the number of violent cases against Indigenous peoples that have gone unpunished and ignored, the Legislative Assembly of Mato Grosso do Sul set up a Parliamentary Commission of Inquiry to specifically investigate these cases (Da Silva 215). The commission heard from many Indigenous leaders and witnesses including ex-Chief Paulino da Silva of the Indigenous land of Pillad Rebuá (Terena territory) (*ibid,* p. 216). Ex-Chief Paulino da Silva was an Indigenous leader heading a land reoccupation movement much like Marcus Veron, and he wished to speak to the violence and attacks that his people were suffering while attempting to re-occupy their ancestral lands (*ibid,* p. 216). Before testifying, Paulino da Silva officially requested that Maria Lourdes de Sá, a teacher of Terena ethnicity, be his interpreter during his testimony (*ibid,* p. 216). The reason for Paulino da Silva’s request was that speaking Terena “would be a way of expressing himself and to better understand the questions posed by the parliamentarians” (*ibid,* p. 217). Three out of five members of the commission opposed allowing for the testimony to be spoken in Terena on the grounds that Paulino da Silva could also speak Portuguese (*ibid,* p. 217). However, they went further than simply denying the interpreter and accused Paulino da Silva and his interpreter of lying under oath because they had video evidence of Paulino da Silva speaking Portuguese during past interviews (*ibid,* p. 217). The vice-president of the committee, deputy Maria Caseiro, found Paulino’s request to speak in Terena “disrespectful” and offensive (*ibid,* p. 218). Her reaction is worth quoting at length:

It is calling us clowns to have to go through our entire CPI with testimony in Terena! I don't understand Terena! Do you, Representative Paulo Correa? Correa? Do you understand, Representative Rinaldo? ...] **If he is in Brazil, we need to hear him in Portuguese**![...]I have respect for any language and especially indigenous culture, but I cannot accept but I cannot accept that we are called clowns, because it was very clear that he not only speaks Portuguese, but defends his people in our language. (Da Silva 218)

The clear indignation of deputy Caseiro at Paulino da Silva’s request is very telling and needs to be unpacked, because at its heart lies one of the central issues regarding why the courts and judicial system often shut down requests for interpreters. Her statement of “if he is in Brazil, we need to hear him in Portuguese,” does not only express nationalist sentiments but also at its core colonialist ideals. Colonialist is an appropriate term to use here because the deputy claimed to have respect for “any language and especially indigenous culture” and yet expressed indignation at the request that an Indigenous language be used. Her utterance of “If he is in Brazil, we need to hear him in [i.e., speak ] Portuguese” highlights once more how Indigenous languages are not considered a legitimate way of speaking in Brazil regardless of whatever claims of equity are evoked. The commission denied Paulino’s request for an interpreter and he was not allowed to testify against the systematic violence carried out against his people (*ibid,* p. 218). As such, this case reveals that it was more important to safeguard the position of Portuguese as more legitimate (and by association to reaffirm Brazil as a colonial nation) rather than aim to work towards equity and reconciliation with Indigenous groups. Adding insult to injury, Paulino and his interpreter were also accused of providing false testimony (*ibid,* p. 218). In other words, by requesting to speak his ancestral Indigenous language, Paulino and his interpreter were criminalized by the state because even though he spoke Portuguese, he wished to speak his Indigenous language. The commission interpreted his request as him acting in “bad faith” and lying about his knowledge of Portuguese (*ibid,* p. 217). But one wonders, why was it even a crime for Paulino to request an interpreter even though he spoke Portuguese?

Like with Veron’s case, this commission chose to ignore the larger issues of the legacy of colonial violence that had been imposed on Indigenous peoples and linguistic assimilation policies which had prohibited the Terera from speaking their ancestral languages; consequently, they once again found themselves perpetuating this same colonial legacy. Paulino’s right to speak Terena should have aligned with Article 231 of the constitution which, as previously seen, states that “Indigenous Peoples shall have their social organization, customs, languages, creeds and traditions recognized” (Constitution of the Federative Republic of Brazil). At no point did Paulino state that he did not speak Portuguese. He simply stated that an interpreter would allow him to better understand the questions being asked, and furthermore, he claimed that the Terena language would allow him to better and more freely “express” himself. If indeed the Federal Constitution recognizes Indigenous languages and traditions, wouldn’t that also include the right to express themselves in their own language in federal spaces?

Unlike the linguistic context of the Guarani-Kaiowá Indigenous community, the Terena Indigenous community does not have widespread use of their ancestral language (Da Silva 212). Only 28% of the Terena speak their mother tongue in contrast to 61% of the Guarani-Kaiowá who speak their Indigenous language (Censo Demográfico, 2010). Moreover, there are approximately 28,845 Terena individuals living in the state of Mato Grosso do Sul, and many of them live outside Indigenous lands (Censo Demográfico, 2010) which most likely increases their exposure to and need to speak Portuguese. Throughout the 19th century their territories were systemically invaded and occupied by farmers for agricultural development which resulted in the Terena people having no other choice than to speak Portuguese in order to survive (Da Silva 210). In this context, Portuguese, the language of the oppressor, had to be learned as it became a tool for the Terena to protect themselves against colonial violence (*ibid,* p. 211). The Terena were also subjected to forced assimilation in schools where their teachers (who were non-Indigenous) and Indigenous students were forbidden from speaking Indigenous languages (*ibid,* p. 211). Due to these factors, many Terena individuals do not speak Terena and instead speak Portuguese as a first language today (*ibid,* p. 212). That said, it is important to point out that there are still Terena villages where Terena is the mother tongue for most speakers (*ibid,* p. 212). While the sociolinguistic context of the Terena is complicated, it must be highlighted that the Terena were forcibly removed from their ancestral territories and were forbidden from speaking their mother tongue (*ibid,* p. 214). This creates a context where speaking Terena thus becomes important symbolically as a way to affirm the language as legitimate and on equal footing with Portuguese. Therefore, in this case when ex-chief of the Terena, Paulino da Silva, requested an interpreter (so that he could speak freely in Terena), it wasn’t an issue of his failure to understand Portuguese; his symbolic aim was to try to “revendicate” his people’s “ancestral right to speak their own language” (*ibid,* p. 214). The claim by deputy Maria Caseiro that “if he is in Brazil, we need to hear him in Portuguese” erases the fact that the Terena language was spoken in the state of Mato Grosso do Sul long before the arrival of Portuguese. As such, the ideologies of this claim are incredibly colonial and assimilationist. Deputy Maria Caseiro was distressed with the idea that an Indigenous language be spoken in the place of Portuguese, given that she accused Paulino da Silva of making “clowns” out of her and the commission. Such actions explicitly portray Portuguese as the only legitimate language of Brazil and reinforce the marginalization and inferiority of Indigenous languages. As such, it paints the picture that if an Indigenous person does not speak Portuguese, it is a necessary annoyance to have interpreters. If they speak Portuguese, it is a criminal act to request to speak an Indigenous language. By violating Indigenous linguistic rights, and by refusing to hear Paulino da Silva’s testimony, this commission became complicit in the colonial violence experienced by Indigenous people.

# **3.3 Case Study Five: Current Relationship between the Judicial System and Indigenous interpreters considering Resolution N 287**

This section will attempt to establish that denial of Indigenous interpreters in the judicial system stems from colonial roots, and *not* because there is a lack of legislation addressing the linguistic rights of Indigenous people. It will also examine a case outside the State of Mato Grosso do Sul in order to demonstrate that discrimination and disregard towards Indigenous linguistic rights is not exclusive to the state of Mato Grosso do Sul.

The Kaigang Indigenous community is made up of 37,270 individuals, of which 59% speak their ancestral language (Censo Demográfico ,2010). The Kaigang have access to 32 Indigenous reserves, however, as was the case with Guarani-Kaiowá and Terena people, these reserves represent only a fraction of the size of their original ancestral lands (Kaingang, 2014). The Kaigang involved in this case were from lands located in the state of Rio Grande do Sul (Kaingang, 2014). In 2014, nineteen members of the Kaigang Indigenous group were accused of the murder of two farmers during a clash over land rights in the Faxinalzinho municipality in the state of Rio Grande do Sul. The defense’s request for interpreters reached the Superior Court of Justice of Brazil after two Federal Courts denied their request for interpreters (Santana, 2019). The Superior Court of Justice in 2019 unanimously voted against providing interpreters and translators to the Kaigang individuals being accused. Even though they took into consideration Resolution N 289,they denied the Kaigang defenders their right to interpreters (Santana, 2019). The justices involved in the decision did so because “the content of the records shows that the Kaigang are fluent in the Portuguese language” (Santana, 2019). Resolution N 289seemed to have been aimed at closing the institutional gap between what was written on paper (theory) and what the judicial system enacted (praxis). The case of Marcus Veron and Paulino Da Silva took place before Resolution N 289was enacted in 2019. One could still argue that refusal to allow Indigenous interpreters was due to differing interpretations of the law. However, as we saw in the beginning of this thesis, Resolution N 289 asserts that Indigenous people have the right to interpreters under the following conditions:

I - if their spoken language is not Portuguese;

II - if there is any doubt as to their mastery and understanding of the vernacular language, including its relation to the meaning of procedural acts and the Indigenous person's utterances;

III - at the request of the defense party or Funai; or

IV - at the request of the interested party.

As such if any “interested party” requests interpreters, the Indigenous participants should be given interpreters. Nevertheless, Brazilian courts seem set on denying these linguistic rights to Indigenous people. The defense council of the Kaigang argued that the right for an interpreter is outlined by several legislations such as the “1988 Federal Constitution, by the ILO Convention 169 and now by the National Council of Justice (CNJ) with Resolution N 287” (Santana, 2019). According to Resolution N287, an “interested party,” which the defense counsel should consist of, may request interpreters and as such, their request for interpreters should have been honored. Nevertheless, even with the extensive body of legislation which meticulously outlines the linguistic rights of Indigenous people, the Superior Court of Justice disagreed that these rights pertain to Indigenous individuals who are able to speak Portuguese.

As a monolinguistic nation, in Brazil, the Portuguese language occupies a place of privilege and maintains an asymmetric power relationship with Indigenous languages (Gomes 25; Da Silva 198). This sociolinguistic reality seems to manifest itself in Brazilian courts where Judicial Powers resist to allow Indigenous languages to be spoken alongside Portuguese. Allowing these languages to be spoken alongside Portuguese has the potential to thwart the asymmetrical power relationship between Portuguese and Indigenous languages. Furthermore, in all the cases seen in this thesis, the issue that brought Indigenous people in contact with the Judicial System was related to land; i.e., they dealt with various and distinct Indigenous communities’ struggles to reclaim their ancestral territories. As we saw above, much of Mato Grosso do Sul’s economic success was built upon systematically dispossessing Indigenous peoples of their ancestral territories. Furthermore, according to Warren, Indigenous sovereignty over their lands often interferes with the nation’s projects of modernization (222). As such, if Indigenous languages are legitimized in court, this could result in the legitimization of Indigenous claims to their lands. If their ancestral languages are given the same status as Portuguese, then deputy Maria Caseiro’s claim of “if he is in Brazil, we need to hear him in [i.e., speak] Portuguese” completely breaks down as do the claims of legitimacy from farmers who have built their entire agricultural and cattle business upon Indigenous lands.

# **4.1 Conclusion**

To conclude, it appears that no matter how much legislation is introduced or reformed, there is continuous resistance by the judicial system with regards to allowing Indigenous peoples to use their ancestral languages in the court of law. Although Bill 3074/19,compels municipalities to regard Indigenous languages spoken in their territory as co-official with Portuguese, Brazil continues to be presented as a monolinguistic nation per the Federal Constitution Article 13. Furthermore, this idealized monolinguistic nation is further reinforced by court decisions to bar Indigenous languages from being spoken during legal proceedings. Despite Article 231of the Federal Constitution stating that “Indians shall have their social organization, customs, languages, creeds and traditions recognized,” Indigenous languages are not recognized in the judiciary system as legitimate ways of expressing oneself. Even though the ILO Convention 169 was integrated into Brazil’s body of law through a presidential decree, it is often ignored by a judiciary system that does not take appropriate or necessary steps to ensure that Indigenous people “can understand and be understood in legal proceedings” (Article 12). Although the United Nations Declaration on the Rights of Indigenous people was declared as legally “non-binding” by the Brazilian Supreme Court; Brazil did sign onto it and the National Justice Council considered the document in its deliberation of Resolution N 287.As such, it could be argued that the judiciary system should consider the declaration in its ruling, but alas it does not. Finally, even though Resolution N 287explicitly protects the rights of Indigenous peoples to interpreters, the courts nonetheless, insist on denying interpreters to Indigenous peoples who are perceived as being able to speak Portuguese.

Although some Indigenous people may in fact speak Portuguese, requests for interpreters should still be honored for different reasons. First, as Lima explains, the ways in which Indigenous people speak Portuguese does not align with how the speech remains within a population, which could result in serious miscommunications (2). Second, the differences in “epistemologies” between Indigenous and non-Indigenous populations could also result in inadequate communication, which may further blur the meaning of testimonies (Jane 3592). Lastly, even though an Indigenous person may speak Portuguese, they should have the right not to do so given Brazil’s historic and oppressive policies of assimilation which forced Indigenous people to speak Portuguese instead if their mother tongue. Forcing an Indigenous person to speak Portuguese during legal proceedings may very well constitute assimilationist practices.

Consequently, even though Indigenous languages have been spoken in Brazil for millennia and long before Brazil became a Republic, they are simply not seen as a legitimate (or equal) way of expressing oneself, a position exclusively reserved to Portuguese. This is clearly reflected in deputy Caseiro’s comments regarding how Indigenous people should express themselves: “If he is in Brazil, we need to hear him in [i.e., speak] Portuguese” (Da Silva 281). Caserio’s colonial claim erased the fact that Indigenous languages have been spoken in Brazil way before Portuguese was introduced. It also delegitimizes the use of Indigenous languages and pre-Columbian Indigenous histories. The erasure of Indigenous history appears to be systematic as reflected by the brief excursion into a variety of popular webpages related to the state of Mato Grosso do Sul (educational, tourism, crowd-sourced,). Many of these pages simply do not tell the history and reality of the Indigenous peoples of the state of Mato Grosso do Sul, or they seem to gloss over the fact the reason behind the state’s agricultural success was because Indigenous lands were appropriated by farmers and the government. Furthermore, during the case of Veron, we saw how a judge sided with the non-Indigenous defense and deemed the interpreter to be biased (or suspect) and hence not usable, even though the documents alleging this were received in an ineligible way and thus should not have even been considered. Finally, with the case of the Kaigang defendants, we saw that despite Resolution N 287being in place, along with the vast body of legislature that supposedly protects Indigenous linguistic rights, the Superior Justice Court *still* decided not to accord the Kaigang defenders with interpreters. Ultimately, this systematic refusal of the courts to allow Indigenous languages to be spoken alongside Portuguese, stems from an imagined sense of superiority from Portuguese being the nation’s only official language. Furthermore, Brazil has profited greatly from the occupation of Indigenous ancestral territories (Urt 874; Warren 222). Legitimizing Indigenous languages during legal proceedings, would also legitimize Indigenous peoples and their cultures and by extension their claims to their ancestral lands. The process of recognizing Indigenous languages during legal proceedings entails much more than linguistic rights. It is a step towards acknowledging the systematic dispossession of Indigenous lands since the colonial time period from which the nation has benefited.

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1. Indigenous people have been seen as epitomizing “anti-modernity” and backwardness (Warren 222), as well as being “land usurpers” (Lima 4). [↑](#footnote-ref-0)
2. The Union is the Federative Republic of Brazil which constitutes the states, municipalities, and the Federal District as per the constitution Article 1.The Federative Republic of Brazil, formed by the indissoluble union of the states and municipalities and of the Federal District, is a legal democratic state (Constitution of the Federative Republic of Brazil ). [↑](#footnote-ref-1)
3. It is part of the mandate of the National Justice Council to provide such interpretations of the law as per Article 103-B, § 4º, I, II e III, of the Federal Constitution: “WHEREAS the National Council of Justice is responsible for the inspection and normalization of the Judicial Power and of the acts practiced by its bodies” (DJe/CNJ nº 131/2019, de 2/7/2019, p. 2-3.) [↑](#footnote-ref-2)
4. (Translation by the author) Original Text: Art. 5º A autoridade judicial buscará garantir a presença de intérprete, preferencialmente membro da própria comunidade indígena, em todas as etapas do processo em que a pessoa indígena figure como parte:

   I - se a língua falada não for a portuguesa;

   II - se houver dúvida sobre o domínio e entendimento do vernáculo, inclusive em relação ao significado dos atos processuais e às manifestações da pessoa indígena;

   III - mediante solicitação da defesa ou da Funai; ou

   IV - a pedido de pessoa interessada. [↑](#footnote-ref-3)
5. (Translation by the author) Original Text: Art 3º. O reconhecimento da pessoa como indígena se dará por meio da autodeclaração, que poderá ser manifestada em qualquer fase do processo criminal ou na audiência de custódia. [↑](#footnote-ref-4)
6. (Translation by the author) Art. 6º Ao receber denúncia ou queixa em desfavor de pessoa indígena, a autoridade judicial poderá determinar, sempre que possível, de ofício ou a requerimento das partes, a realização de perícia antropológica, que fornecerá subsídios para o estabelecimento da responsabilidade da pessoa acusada, e deverá conter, no mínimo:

   I - a qualificação, a etnia e a língua falada pela pessoa acusada; [↑](#footnote-ref-5)
7. (Translation by the author) § 2º O ensino fundamental regular será ministrado em língua portuguesa, assegurando às comunidades indígenas também a utilização de suas línguas maternas e processos próprios de aprendizagem. [↑](#footnote-ref-6)
8. CONSIDERANDO que a Declaração das Nações Unidas sobre os Direitos dos Povos Indígenas estabelece que os Estados devem adotar medidas eficazes para garantir a proteção dos direitos dos povos indígenas, inclusive proporcionando serviços de interpretação e outros meios adequados (art. 13.2) Translation by author: “WHEREAS, the United Nations Declaration on the Rights of Indigenous Peoples states that States should take effective measures to ensure the protection of the rights of indigenous peoples, including providing interpretation services and other appropriate means (art. 13.2)” (Brasil, 2019). [↑](#footnote-ref-7)
9. (Translation by the author) - Centro de Trabalho Indigenista e pela UCDB (Universidade Católica Dom Bosco). [↑](#footnote-ref-8)
10. Once a piece of land is demarcated as Indigenous, the previous owner no longer has any legal claim to it (Urt 877) [↑](#footnote-ref-9)
11. Indigenous people were often used as the labour force to provide infrastructure and work in these farms (Urt 876). [↑](#footnote-ref-10)
12. It must be noted that the sources discussed in this part of the thesis were the top search results that I received for “Mato Grosso do Sul history” and so different results might appear for different individuals based on different search histories etc. Based on what I found, I decided to compare the Portuguese Wikipedia page after reading the Wikipedia English entry. [↑](#footnote-ref-11)
13. (English Translation provided by the author). Original text from Portuguese Wikipedia webpage about Mato Grosso do Sul: “O estado é, ainda, o segundo do Brasil em número de habitantes ameríndios.” [↑](#footnote-ref-12)
14. For instance: (English translation by author) Resolution 287: Art. 7 The accountability of indigenous people must consider the indigenous community's own mechanisms to which the accused person belongs, through prior consultation (Brasil, 2019).

    Original text: Art. 7º A responsabilização de pessoas indígenas deverá considerar os mecanismos próprios da comunidade indígena a que pertence a pessoa acusada, mediante consulta prévia (Brasil, 2019). [↑](#footnote-ref-13)
15. Not all of these 16,000 people are Guarani-Kaiowá as in Dourados there is a mixture of Indigenous cultures and ethnicities (UNO Brasil). [↑](#footnote-ref-14)
16. FUNAI is the official Indigenist organ of the Brazilian State. Furthermore, FUNAI is responsible not only for demarcating Indigenous land but also “governing” them (Urt 876). [↑](#footnote-ref-15)
17. (Translation done by the author):“The demarcation process, regulated by Decree nº 1775/96, is the administrative means for identifying and signaling the limits of the territory traditionally occupied by indigenous peoples” (Entenda o processo). Original Text: “O processo de demarcação, regulamentado pelo Decreto nº 1775/96, é o meio administrativo para identificar e sinalizar os limites do território tradicionalmente ocupado pelos povos indígenas” (Entenda o processo). [↑](#footnote-ref-16)
18. Article 231. Indians shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their property. Paragraph 1. Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those indispensable to the preservation of the environmental resources necessary for their well-being and for their physical and cultural reproduction, according to their uses, customs and traditions. Paragraph 2.The lands traditionally occupied by Indians are intended for their permanent possession and they shall have the exclusive usufruct of the riches. [↑](#footnote-ref-17)
19. English Translation by the author - Portugue word: *suspeição*, a judicial term meaning that there is reason to suspect a lack of impartiality (Dicio). [↑](#footnote-ref-18)
20. (English translation done by the author) Original text: Art. 479. “Durante o julgamento não será permitida a leitura de documento ou a exibição de objeto que não tiver sido juntado aos autos com a antecedência mínima de 3 (três) dias úteis, dando-se ciência à outra parte” (Código Processo Penal). [↑](#footnote-ref-19)