



Poder Judiciário

*Conselho Nacional de Justiça*

## RESOLUTION N.º 287, DATED JUNE 25, 2019.

Establishes procedures for the treatment of indigenous people who are accused, defendants, convicted, or deprived of liberty, and provides guidelines to ensure the rights of this population in the criminal sphere of the Judiciary.

**The PRESIDENT OF THE NATIONAL COUNCIL OF JUSTICE (CNJ)**, in the use of his legal and regimental attributions;

**CONSIDERING** that the National Council of Justice is responsible for the inspection and normatization of the Judiciary Branch and of the acts practiced by its bodies (Article 103-B, 4th Paragraph, I, II and III, of the [Federal Constitution](#));

**WHEREAS**, the United Nations Declaration on the Rights of Indigenous Peoples recognizes their right to maintain and strengthen their own political, legal, economic, social, and cultural institutions (Arts. 5 and 34);

**WHEREAS**, the United Nations Declaration on the Rights of Indigenous Peoples establishes that States must take effective measures to ensure the protection of the rights of indigenous peoples, including providing interpretation services and other appropriate means (Article 13.2);

**CONSIDERING** the recognition of the social organization, customs, languages, beliefs, and traditions of the indigenous populations ([Article 231 of the CF](#));

**WHEREAS**, the report of the 2016 mission of the UN Special Rapporteur on indigenous peoples in Brazil recommended that the Judiciary, Legislative, and Executive Branches of government consider, as a matter of urgency, and in collaboration with indigenous peoples, the elimination of barriers that prevent them from realizing their right to justice;





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**CONSIDERING** the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders — Bangkok Rules (Rules 54 and 55);

**CONSIDERING** the exceptionality of indigenous incarceration in the terms of the Convention No. 169 on Indigenous and Tribal Peoples (Arts. 8, 9 and 10) and the terms of the International Labor Organization — ILO (Article 10.2);

**CONSIDERING** provisions of the Indigenous Statute (Arts. 56 and 57 of [Law No. 6,001, December 19, 1973](#));

**CONSIDERING** the provision for substitution of pre-trial detention with house arrest for pregnant women or women who are mothers or responsible for children or persons with disabilities and the discipline of the regime for serving a custodial sentence ([Law No. 13,769/2018](#));

**CONSIDERING** the decision handed down by the 2nd Panel of the Supreme Court in *Habeas Corpus* No. 143,641/SP;

**CONSIDERING** the deliberation of the CNJ Plenary, in Act Procedure No. 0003880-63.2019.2.00.0000, 293rd Ordinary Session, held on June 25, 2019;

### **DECIDES:**

Article 1. To establish procedures for the treatment of indigenous people who are accused, defendants, convicted, or deprived of their liberty, and to provide guidelines to ensure the rights of this population in the criminal ambit of the Judiciary.

Article 2. The procedures of this Resolution will be applied to all people who identify themselves as indigenous, Brazilians or not, speakers of both Portuguese and native languages, regardless of where they live, in urban contexts, camps, settlements, repossession areas, regularized indigenous lands, and in different stages of land regularization.





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Article 3. The recognition of a person as being indigenous will be by means of self-declaration, which can be made at any stage of the criminal process or during the detention control hearing.

1st Paragraph Faced with evidence or information that the person brought to court is indigenous, the judge must inform them of the possibility of self-declaration, and inform them of the guarantees arising from this condition, as provided for in this Resolution.

2nd Paragraph In the case of self-declaration as indigenous, the judge must inquire about ethnicity, spoken language, and level of knowledge of the Portuguese language.

3rd Paragraph In the event of the identification of an indigenous person foreseen in this article, copies of the case records must be forwarded to the closest regional office of the National Indigenous Foundation (Funai) within 48 (forty-eight) hours.

Article 4. The identification of the person as indigenous, as well as information about their ethnicity and the language they speak, must be included in the record of all procedural acts.

1st Paragraph The courts must ensure that information about indigenous identity and ethnicity, brought at any time during the proceedings, is included in the computerized systems of the Judiciary.

2nd Paragraph This information should be included especially in the detention control hearing, in line with Article 7 of [CNJ Resolution No. 213/2015](#).

Article 5. The judge will seek to guarantee the presence of an interpreter, preferably a member of the indigenous community itself, at all stages of the proceedings in which the indigenous person appears as a party:

- I — if the spoken language is not Portuguese;
- II — if there is doubt about the mastery and understanding of the vernacular, including in relation to the meaning of procedural acts and the manifestations of the indigenous person;
- III — upon request from the defense or Funai; or
- IV — at the request of an interested person.

Article 6. Upon receiving an accusation or complaint against an indigenous person, the judge may determine, whenever possible, *ex officio* or at the request of the parties,





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that an anthropological expertise will be conducted, which will provide support for the establishment of responsibility of the accused person, and must contain, at least:

- I — the qualification, ethnicity, and spoken language 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 they belong;
- IV — the indigenous community's understanding in relation to the typical conduct imputed, as well as the judgment and punishment mechanisms adopted for its members; and
- V — other information it deems pertinent to the elucidation of the facts.

Sole paragraph. The expert report will be prepared by an anthropologist, social scientist, or other professional appointed by the court with specific knowledge in the subject matter.

Article 7. The accountability of indigenous people must consider the indigenous community's own mechanisms to which the accused person belongs, through prior consultation.

Sole paragraph. The judge may adopt or ratify conflict resolution and accountability practices in accordance with the indigenous community's own customs and norms, in accordance with Article 57 of [Law No. 6001/73](#) (Indigenous Statute).

Article 8. When imposing any precautionary measure alternative to imprisonment, the judge must adapt it to the conditions and terms that are compatible with the indigenous person's customs, place of residence, and traditions, observing Protocol I of [CNJ Resolution No. 213/2015](#).

Article 9. Exceptionally, not being the case of Article 7, when defining the penalty and the compliance regime to be imposed on the indigenous person, the judge must consider cultural, social, and economic characteristics, their statements, and anthropological expertise in order to:

- I — apply rights-restricting sentences adapted to the conditions and terms compatible with the indigenous person's customs, place of residence, and traditions;





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II — consider converting the monetary fine into community service, as provided by law; and

III — determine the performance of community service, whenever possible and after prior consultation, in an indigenous community.

Article 10. In the absence of conditions for the application of the provisions of Articles 7 and 9, the judge must apply, whenever possible and in consultation with the indigenous community, the special regime of semi-liberty foreseen in Article 56 of [Law No. 6001/1973](#) (Statute of the Indigenous), for sentences of imprisonment and detention.

Sole paragraph. In order to comply with the provisions in the *caput*, the judge may seek to articulate with the indigenous community authorities of the judicial district or section, as well as establish partnerships with Funai or other institutions, with a view to qualifying the flows and procedures.

Article 11. For the purposes of determining house arrest for an indigenous person, the territory or geographical circumscription of the indigenous community must be considered a domicile, when compatible and after prior consultation.

Article 12. In the case of concomitant application of measures alternative to prison as provided for in Article 318-B of the [Code of Criminal Procedure](#), the appropriate form of compliance must be evaluated according to cultural specificities.

Article 13. The criminal treatment of indigenous women will consider that:

I — for the purposes of the provisions of Article 318-A of the [Code of Criminal Procedure](#), house arrest imposed on indigenous women who are mothers, pregnant women, or women responsible for children or persons with disabilities, will be served in the community; and

II— the monitoring of the execution of indigenous women benefiting from regime progression, under the terms of Articles 72 and 112 of the [Penal Enforcement Law](#), will be carried out in conjunction with the community.

Article 14. In prisons where there are indigenous persons deprived of their liberty, the criminal execution court, in the exercise of its supervisory powers, must ensure





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that the indigenous person is guaranteed material, health, legal, educational, social, and religious assistance, provided in accordance with their specific cultural characteristics, taking into consideration, especially:

I — To conduct social visits:

- a) the forms of kinship recognized by the ethnic group to which the indigenous person arrested belongs;
- b) visits on different days, considering indigenous customs; and
- c) respect for the culture of visitors to the respective community.

II — For food in accordance with the food customs of the respective indigenous community:

- a) regular supply by the prison administration; and
- b) the access to food from the external environment, with their own resources, from their families, communities or indigenous institutions.

III — For health care: the national parameters of the policy for health care for indigenous peoples;

IV — For religious assistance: access by qualified representative of the respective indigenous religion, including on different days;

V — For work: respect for indigenous culture and customs; and

VI — For education and remission through reading: respect for the language of the indigenous person.

Article 15. The courts should keep a register of interpreters specialized in the languages spoken by the region's ethnic groups, as well as of expert anthropologists.

Sole paragraph. To comply with the provisions in the *caput*, the courts may promote partnerships with public and private bodies and entities that work with indigenous peoples, in order to accredit professionals who can intervene in cases involving indigenous peoples under this Resolution, preferably with the support of Funai.

Article 16. To comply with the provisions of this Resolution, the courts, in collaboration with the Schools of Magistrates, may promote courses aimed at the permanent qualification and functional updating of the magistrates and servants who work in the Criminal Courts, Special Criminal Courts, Courts for Domestic and Family Violence against





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Women, and Criminal Execution Courts, especially in the Courts and Judicial Sections with the largest indigenous populations, in collaboration with Funai, higher education institutions, or other specialized organizations.

Article 17. The Department for Monitoring and Inspection of Prison and Socio-Educational Systems of the National Council of Justice will prepare, within ninety days, a Manual to guide the courts and magistrates on the implementation of the measures provided for in this Resolution.

Article 18. This Resolution goes into effect ninety days after its publication.

Justice **DIAS TOFFOLI**

President

