



TECHNICAL NOTE ON THE

# International Mental Health Seminar

Possibilities for the Effectiveness of an  
Anti-Asylum Policy Aligned with the  
Brazilian Justice System

2023

## SUMMARY

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## 1. BRIEF HISTORY OF THE BRAZILIAN PSYCHIATRIC REFORM AND THE WORK OF THE BRAZILIAN NATIONAL COUNCIL OF JUSTICE REGARDING MENTAL HEALTH

Initially, it is essential to understand that the discussion about mental health is located in the history of the Psychiatric Reform, which is part of a broader debate within the Brazilian Sanitary Reforms. The anti-asylum movement arises from a complex social process, closely related to the Brazilian re-democratization conjuncture. In 1970, healthcare workers, people that have been through a long period of psychiatric hospitalization and relatives associations, inspired by the Italian experience in the context of their Democratic Psychiatry, mobilized themselves to make Brazil one of the main characters of those changes.

The Psychiatric Reform goes beyond the reform and replacement of healthcare services and technologies, without, however, disregarding their indispensability. In fact, it presents the urge to find another social place for the way insanity is treated in society, in a true paradigm shift, also proposing a path to deinstitutionalization and severance with practices that violate human rights assumed throughout history by asylum-like institutions (asylums and Detention Control Hospitals for Psychiatric Treatment - HCTPs).

In that sense, the Brazilian Constitution of 1988 and the Unified Health System (Sistema Único de Saúde - SUS) brought solid healthcare policies and citizenship advances. In 2001, Law No. 10.216, known as the Psychiatric Reform Law, which discusses the protection and rights of persons in mental suffering and redirects the mental healthcare model, was enacted. Subsequently, in 2009, the Brazilian Congress approved the International Convention on the Rights of Persons with Disabilities.

Regarding the adolescence context, the Statute of Child and Adolescents, Federal Law No. 8.069/1990, in its article 11, ensures the “full access to humane care proceedings aimed at the child and adolescent healthcare, through the Unified Health System, in accordance to the principle of equity in the access to services for promotion, protection and, recovery of their health”. In the same way, the Law No. 10.216/2001, added to the Ministerial Orders responsible for organizing the healthcare issues regarding persons with mental suffering, redirects children and adolescents’ mental healthcare towards a territorial and community-based model, creating specific services aimed at this age group.

Besides the acknowledged advances in this recent field, as well as some inherent gaps in the process of implementing a new mental healthcare and, most importantly, cultural model, it is necessary to discuss the setbacks resulting from the attempts to weaken the mental health policies anchored in the Psychiatric Reform.

Aware of the challenges mentioned above, especially concerning the enforcement of the Law No. 10.216/2001, the National Council of Justice (CNJ) has promoted a number of activities and guidelines on the subject of mental health in the Brazilian Justice System, aiming to improve this area.

The Seminar “Mental Health and Law: the challenges of implementing the Law No. 10.216/01 in Brazil” was organized by CNJ’s Department for Monitoring and Inspection of Prison and Juvenile Justice Systems (DMF) in 2012, and its purpose was to discuss the referred challenges faced by the Judges, Prosecutors, Public Defensors, healthcare professionals, and public administration managers on complying with the Anti-Asylum Nacional Policy in the execution of security measures of judicial patients.

<sup>1</sup> <https://www.cnj.jus.br/agendas/seminario-saude-mental-e-lei-os-desafios-da-implantacao-da-lei-10216-01-no-brasil/>

As for the normative framework, the CNJ Resolution No. 113/2010<sup>2</sup> regulates the proceedings regarding the enforcement of deprivation of liberty sentences and security measures to the extent of the Courts. In articles 14 and 17, the document indicates that the security measure must be executed under the terms of the Law No. 10.216/2001, and also that the competent judgment responsible for the execution shall pursue to implement anti-asylum policies whenever possible. In the following year, the CNJ Recommendation No. 35/2011<sup>3</sup> was published, a document which, by establishing guidelines for deinstitutionalization, as well as redirecting the mental healthcare model towards services in an open environment, also indicates the adoption of an anti-asylum policy in the enforcement of security measures.

Within the scope of the Court of Appeals and, in accordance with the CNJ Resolution No. 214/2015, the Monitoring and Supervision Groups of the Prison and the Juvenile Justice Systems (GMF) are also responsible for supervising and monitoring the security measures' compliance conditions. Besides that, another essential instruction is the CNJ Resolution No. 414/2021, which establishes guidelines for taking the corpus delicti exam in cases in which there is evidence of torture and other cruel, inhuman, or degrading procedures, following the Istanbul Protocol parameters. With the adoption of this normative act, experts presented specific questions to evaluate if the therapeutic approach regarding persons in mental suffering, deprived of their liberty or institutionalized, is in disagreement with medical protocols and human rights' norms.

It is intended to avoid adopting proscribed methods, such as disproportionate or prolonged physical, mechanical, or pharmacological restraint, excessive medicalization, impediment of access to treatment or medication, compulsory isolation, accommodation in an inappropriate environment, and electroconvulsive therapy.

However, despite the recognition of the innovation of some state Programs acting in restructuring the enforcement of the Court's security measures, there are some barriers to changing the culture of the Criminal Justice System on mental health. This factor has been compromising the normative observance mentioned above and the CNPCP Resolution n° 4, published on June 30th by the National Council of Criminal and Penitentiary Policy (CNPCP). According to this Resolution, within ten years, the Executive branch, in partnership with the Judiciary branch, were supposed to have implemented and finished the substitution of the asylum model for the anti-asylum model for the enforcement of security measures through the judicial patient care program.

Thus, the viability of the anti-asylum guideline implementation requires the shutdown of the Detention Control Hospitals for Psychiatric Treatment (HCTPs) still in operation and the prohibition of new buildings or wings inside the remaining HCTPs. It is also necessary to promote an intersectional approach and the social inclusion of those judicial patients, with the support of substitute services in an open environment. Besides, it is fundamental to strengthen the mental healthcare networks in the Brazilian Unified Health System (SUS), in order to make those alternative measures viable. In addition, any eventual reform in public policies about mental health must respect the legal procedures provided for the review of health policies, and be guided by the Law No. 10.216/01, as well as the international parameters that result from the Human Rights treaties.

Considering this context of difficulties on the subject, as well as the first conviction of the Brazilian State by the Inter-American Court of Human Rights (IDH Court), in the

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2 CNJ. Resolution N° 113 de 20/04/2010: Issued the enforcement of the sentences and security measures, among other normative. Available at: <https://atos.cnj.jus.br/atos/detalhar/136>

3 CNJ. Recommendation n° 35 del 12/07/2011: Issued about the adoption of guidelines in judicial patient care and the enforcement of security measures. Available at: <https://atos.cnj.jus.br/atos/detalhar/849>

Ximenes Lopes case, CNJ reinforced its action in the mental health topic, mainly through the Monitoring and Inspection Unit on the Decisions from the Inter-American Courts of Human Rights (UMF Corte IDH/CNJ), the creation of a Work Group (GT) focused on this matter, as well as the initiatives of Fazendo Justiça Program (PNUD/CJN), which will be detailed in the next section.

## 2. FAZENDO JUSTIÇA PROGRAM ACTIONS IN THE MENTAL HEALTH FIELD

Considering that the “International Mental Health Care Seminar: Possibilities to Implement An Anti-Asylum Policy Aligned With The Brazilian Judiciary Branch” is the result of dialogues between the Work Group, instituted by the CNJ, the UMF Corte IDH/CNJ, and the Fazendo Justiça Program, it is worth mentioning the actions concerning mental health carried out by the Program and a Specialized Consultancy contracted by it, in order to specify the institutional arrangements promoting the event.

Firstly, the Fazendo Justiça Program results from a partnership between the CNJ and the United Nations Development Program (UNDP), aimed at overcoming the historical challenges that Brazilian deprivation of liberty faces. In this sense, the aforementioned program focuses on facing structural problems in the prison and Juvenile Justice systems, which reproduce human rights violations and constitute an unconstitutional state of affairs, as recognized by the Brazilian Supreme Court in the scope of the ADPF 347<sup>4</sup>.

The Program initiatives encompass, in short, the whole Criminal and Juvenile Justice cycle, from the moment of arrest until the end of the judicial sentence, including management solutions with technological support and promotion of good practices. Therefore, it prescribes a national plan with 28 actions in different stages of the Criminal and Juvenile Justice cycle, adapted to the reality of each national facility, counting on local actors' protagonism. The actions gather the best practices in different CNJ mandates and also cover technical support, supply of inputs, and institutional articulation.

Due to its extensive nature, the Program is aligned with many United Nations Sustainable Developments Goals, especially the Objective 16 - Peace, Justice, and Effective Institutions. Thus, since its institution, it has been developing activities related to the mental health topic within The Judiciary branch context, mainly regarding deprivation of liberty.

The Program is structured in 5 axes, among which we highlight Axis number 3 - Citizenship Promotion and Human Rights Guarantees for Persons Deprived of Liberty and Former Inmates from the Criminal Justice System.

Their actions aim at strengthening and qualifying of the Social Offices, the National Work and Income Generation Plan, the strengthening of social participation in the criminal justice enforcement, the National Plan for the Promotion of Sport and Leisure in the Prison System, the qualification of judicial inspections and the fight against torture in the prison system and, finally, the Judiciary Strategy to strengthen the National Policy of Health Care for Persons Deprived of Liberty in the Prison System (PNAISP) - a strategic action given by the Axis 3 - aimed at actions related to mental health of people deprived of liberty.

Aware of the importance of all the assistance provided by the Criminal Law and the National Policy for Persons Released From the Prison System, this Axis develops the

<sup>4</sup> In 2015, in the judgment of the Argument of Non-compliance with Fundamental Precept n° 347, the Federal Supreme Court (STF) considered the prison situation in the country an “unconstitutional state of affairs”, with “massive violation of fundamental rights” of the prison population, by the omission of the public power

promotion, enhancement, and universalization of these actions in the prison environment, in order to promote the effective return of the person imprisoned to living in freedom.

It should be noted that the Judicial Strategy for Strengthening the PNAISP has been developed in order to respond to local demands regarding the need to expand the number of municipalities that adhere to PNAISP. It was formulated with the intention of ensuring the observance of the fundamental right of universal access to health in areas where liberty is deprived.

This strategy consists of actions, products, and deliveries provided in stages at national, state, and municipal levels, which involves the CNJ, the State Court of Justice, the Juvenile Court, and the rights guarantee system. As an example, there is the forecast of mobilization and articulation for the establishment of action plans, integration of health actions, creation of indicators of health in the Unified Electronic Enforcement System (SEEU), the formulation of a health policy management index in prisons and HCTPs, among other actions.

At the state level, the Program, through its State Coordinations, has been articulating Work Groups to technically support the mental health topic, emphasizing on mental health institutions' flows and their deinstitutionalization, State Action Plans, and the implementation and strengthening of the EAP teams (Evaluation and Monitoring Service for Therapeutic Measures Applicable to People with Mental Disorders in Conflict with the Law).

This action also takes place through the organization and support of state training events aimed at magistrates, Judiciary servers, as well as other actors from the Judiciary branch and the Health, and Social Assistance Systems. For example, in 2021, the Webinars "The Law Madness: encounters and disagreements between minds knowledge and the law"<sup>5</sup> and "Criminal Law and Mental Health: Building an anti-asylum policy"<sup>6</sup> were held, respectively, in the State of Ceará and in Mato Grosso. In 2019, the "1st Paraíba Webinar - Network Care: Policy for people with mental disorders in conflict with the law"<sup>7</sup> was presented.

It should also be noted that a specialized consultancy was carried out in 2021, within the scope of the Program, which had as its primary products:

- i. Mapping of existing flows, practices, and policies already in progress in the Judiciary System regarding this theme, as well as an EAP Team survey at the state level;
- ii. Diagnosis, through an analytic report of the fluxes, practices, and policies identified in Courts of Justice concerning the treatment/forwarding of the person with a possible mental disorder and/or mental suffering;
- iii. A proposal of a guiding model addressed to the Courts aimed at caring for persons with possible mental disorders and/or mental suffering;
- iv. Creation of a methodological proposal and a practical guide addressed to the actors of the Judiciary and Executive Systems, presenting the guiding model, its principles, steps, and instruments; and
- v. A programmatic content formulation, summary and didactic material for an e-learning course on the topic addressed to the magistrates and law professionals.

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5 Available at: <https://esmec.tjce.jus.br/calendario/webinario-a-loucura-do-direito-os-encontros-e-desencontros-entre-os-saberes-da-mente-e-da-lei/>

6 Available at: [http://www.tjmt.jus.br/noticias/65899#.Yxlq0C\\_5T0p](http://www.tjmt.jus.br/noticias/65899#.Yxlq0C_5T0p)

7 Available at: <https://www.tjpb.jus.br/noticia/ultimo-dia-do-webinario-sobre-pessoas-com-transtorno-mental-trata-dos-avancos-e-desafios-na>.

Regarding the Fazendo Justiça Program's Axis 2 (Juvenile Justice), it is divided into three major work fronts:

- vi. the prisoner's entry into the Criminal Justice System;
- vii. the guarantee of rights and information system, and
- viii. the prisoner's release from the Criminal Justice System.

Such actions are supported by the main normative frameworks of Brazilian juvenile policies and, therefore, propose to materialize the established rights, especially those in the Brazilian Child and Adolescent Statute (Law No. 8.069, from July 3rd, 1990) and in the Sinase Law (Law No. 12.594, from January 18th, 2012).

It is also essential to highlight the National Policy of Health Care for Adolescents in Conflict with the Law (PNAISARI), which, in addition to the normative presented above, also supports mental health actions developed in the scope of the Axis 2 work.

Having presented the main elements of the Fazendo Justiça Program's actions, it is essential to point out, in the next section, the context regarding the Ximenes Lopes vs. Brasil case, as well as the principles and guidelines established on this case and the legislation, and the recent CNJ's work on this matter since the institution of the UMF Corte IDH/CNJ.

### 3. THE XIMENES LOPES VS. BRAZIL AND THE UMF ACTION

Initially, it is necessary to discuss the relationship between the "International Mental Health Care Seminar: Possibilities To Implement An Anti-Asylum Policy Aligned With The Brazilian Judicial System" and the compliance with the provisions set by the Inter-American Court of Human Rights (IACHR) in the judgment of the Ximenes Lopes vs. Brasil case. The case addresses the Brazilian State's international responsibility for violating Damião Ximenes Lopes's life and physical integrity, the right to judicial guarantees, and the judicial protection of his family.

The precedent, which represents the country's first condemnation within the Scope of the Inter-American Court, holds the State responsible for not prosecuting those responsible for Damião Ximenes Lopes's death, a resident of Sobral/CE who died three days after his admission to a mental health unit, presenting signs of ill-treatment and torture. As a result, the Inter-American Court established a number of reparations.

Among the pending matters is the development of a training program for medical, psychiatry, psychology, and nursing staff and its assistants, as well as all those people linked to mental healthcare, which must be aligned with the principles that guide the relationship with people with psychosocial disabilities.<sup>8</sup>

It is noteworthy that the development of a training program is related to the guarantees of non-repetition, built within an integral reparation logic, which needs to be thought in terms of international and normative standards for persons with mental disorders, in mental suffering or with any other psychosocial disability, towards a human rights perspective.

In this context, the Inter-American Court of Human Rights invited the National Council of Justice (CNJ), through the UMF Corte IDH/CNJ, to attend, as an independent source of

<sup>8</sup> IDH Court. Ximenes Lopes Vs. Brazil Case. A sentence, from July 4th, 2006. Serie C No. 149. Available at: [https://www.corteidh.or.cr/docs/casos/articulos/Seriec\\_149\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/Seriec_149_esp.pdf). Accessed in: July 25th, 2022, Resolution number 8

information, the public supervision hearing for the Ximenes Lopes sentence, performed on April 23rd, 2021.

The UMF emerged from the CNJ Resolution No. 364 on 12/01/2021 and has, among other assignments, the function of monitoring and supervising the measures adopted by the Public System to comply with the sentences, provisional measures, and advisory opinions issued by the Inter-American Court involving the Brazilian State. The Unit also proposes observations to the Public System about administrative, legislative, and judicial measures necessary to enforce the decisions and deliberations from the Inter-American Court of Human Rights involving the Brazilian State.

Thus, as a part of the UMF's performance in the public hearing regarding the Ximenes Lopes Case, an executive summary was published, in order to present the state of compliance regarding the IACHR's sentence imposed upon the Brazilian State.<sup>9</sup>

The document displays ways of implementing the sentence in its integral content. It especially highlights the main subject of the public hearing: the State's duty to promote the qualification of professionals who deal with the mental health subject, in accordance with the international standards about the referred matter, as a guarantee of non-repetition.

As a way of monitoring the compliance measures and, at the same time, making propositions and observations to the Public System, the UMF Corte IDH created and coordinated the Mental Health Work Group within the CNJ's Scope. The Work Group's assignments are listed below, in accordance with the CNJ Decree No. 142, from May 18th, 2021:

#### Art. 1 Create a Work Group to:

1) propose complementary online training courses, podcasts, and an annual calendar of initial and continued training events on international human rights parameters regarding the treatment of people with psychosocial disabilities aimed at Justice System professionals who deal with mental healthcare;

2) prepare referrals propositions and other necessary measures to prevent torture and any form of cruel, inhuman, and degrading treatment in the context of hospitalization for psychiatric reasons, including legal patients submitted to security measures in the hospitalization modality; and

3) suggest measures to ensure the strengthening of the Unified Health System (SUS), allowing adequate healthcare and replacing hospitalization for people with psychosocial disabilities, observing the Law No. 10.216/2001, interpreted in the light of the American Convention on Human Rights and the International Convention on the Rights of Persons with Disabilities.

#### Art. 2 The Tasks of the Working Group are:

1) carry out studies, organize online events and promote debates on the subject and on the governing legislation, including the participation

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<sup>9</sup> National Council of Justice (CNJ). Case Ximenes Lopes v Brazil: Inter-American Court of Human Rights: supervision of sentencing. Coordinators Luis Geraldo Sant'ana Lanfredi, Isabel Penido de Campos Machado and Valter Shuenquener de Araújo. Brasília: CNJ, 2021. Available at: <https://www.cnj.jus.br/wp-content/uploads/2021/07/Sumário-Executivo-Caso-Ximenes-Lopes-vs-Brasil-21.06.30.pdf>



of specialists and technicians that make it possible to obtain qualified clearances on the topic.

2) evaluate guidelines and measures to overcome difficulties related to the promotion of the mental health of psychiatrically hospitalized persons and those who are complying with security measures and their families.

3) propose normative, institutional, and organizational arrangements to implementing international commitments arising from international human rights treaties; and

4) approve a schedule of activities to comply with the previous items.

In this context, the CNJ argues that the duty to promote the qualification of professionals who deals with the mental health subject, as a guarantee of non-repetition, includes the full cooperation of actors in the Justice System who deal with this issue. Therefore, the training initiatives for these agents must be aligned with the mental health international parameters, from a human rights perspective.

Thus, the Court's determination concerning this training caused the discussion on the mental health topic, at first limited to the Ximenes Lopes vs. Brasil Case, to extend itself into the scope of the whole juridic-penal cycle, that is, from the custody hearing to the execution of the measures. As a result, it was decided to create a judicial policy on the subject of mental health.

Also in the context of the Juvenile Justice measures, especially those implemented in a closed regime, this discussion is essential, mainly because the deprivation or restriction of liberty is a factor that causes psychological suffering, in addition to often triggering mental crises among juveniles with mental disorders. In this context, self-extermination attempts are a recurring situation, besides the symptoms related to mental health such as anxiety, psychomotor agitation, affective dullness, insomnia, and intense anguish, among other behaviors that require adequate treatment, in accordance with current regulations.

In other words, due to the State's duty to qualify professionals who work with mental health according to international parameters, the Work Group defined guidelines to standardize the approach to this matter, which ended up bringing to light the CNJ Resolution No. 487/2023<sup>10</sup>, which institutes an Anti-Asylum Policy in the Judiciary System, establishing procedures and guidelines to implement the International Convention for the Rights of Persons with Disabilities and the Law No. 10.216/2001 in the scope of the criminal code procedure and security measures. This proposition was presented and approved by the National Council of Justice (CNJ), having been published in february of 2023. Besides, the Work Group also proposed training courses within the scope of the Judiciary System, and the holding of this International Seminar on Mental Health.

#### 4. BRAZILIAN PSYQUYATRIC REFORM PRINCIPLES AND GUIDELINES

The proposition of a judiciary policy regarding mental health takes place at a time when the conquered advances in more than twenty years of the publication of Law No. 10.216/2001 are opposed to the actual scenario of accentuated weakening of the National

<sup>10</sup> National Council of Justice (CNJ). Resolution n° 487, February 15th, 2023. Brasília, DF: CNJ, 2023. Available at: <https://atos.cnj.jus.br/atos/detalhar/4960>.

Mental Health Policy and the significant rise of demands for healthcare in this field, as a result of the COVID-19 pandemic. This post-isolation context and the worsening of the population's economic conditions intensify the need for institutional responses that assimilate this reality engendered by racism and other oppressions, and move forward in overcoming the challenges caused by decades of asylum structures.

As announced by the fundamental principles of the Brazilian Psychiatric Reform, the structuring of a capillary Psychosocial Healthcare Network (RAPS), with services founded on territorial and communal bases, enable healthcare practices, close to the social, familiar, and human care, as well as its territory equipment, without segregation. Investment and an organizational structure that continues redirecting the mental healthcare model are required to make these conditions achievable. In the meantime, these services - RAPS, Healthcare Network (RAS), and Unified System of Social Assistance (SUAS) - are responsible for the whole healthcare of persons with mental distress and conflict with the Law and, therefore, qualify the adoption of non-asylum measures.

Therefore, the financing of territorial services of the National Healthcare Policy directly impacts the Justice System's procedures, so that its reduction weakens not only the possibilities of preventing hospitalization, but also their decisions which point towards healthcare, based on the mental health monitoring in the territory.

On the other hand, public funding for Therapeutic Communities and psychiatric hospitals is increasing, given the consideration of the former in the National Policy on Drugs (PNAD), in 2019, and the incorporation of the latter, in 2017, into the RAPS without guaranteeing the engagement of instances of participatory social control, which shows the priority now given to hospitalization. Facing such a scenario, this Council makes efforts to promote parameters of care and attention in the mental health field, as well as transparency and routine inspections by public agencies and civil society in order to adapt the care of people with mental suffering.

In 2022, many legal instruments that provided funding for the deinstitutionalization programs were revoked with the publication of the Decree GM/MS No. 596, from March 2022, as well as the release, days after, of the Public Call Notice No. 03/2022 - Process No. 71000.011057/2022-04 - from the Ministry of Citizenship. This publication was interpreted by specialists, professionals, and healthcare users and their families as an incentive to the return of the asylum model against national laws, international treaties, and the World Health Organization Guidelines (WHO). Another relevant point is the lack of expansion of the referred EAPs, which also blocks the deinstitutionalization procedures and possible dialogue between the Criminal Justice Systems, Healthcare, and Social Assistance Systems.

Therefore, the "International Mental Health Care Seminar: Possibilities To Implement An Anti-Asylum Policy Aligned With The Brazilian Justice System" fits into this conjuncture that demands the construction of a national judiciary policy on the mental health issue and reflections on the setbacks seen in the last years. From this perspective, its goal is to provide subsidies to the target audience so that they can discuss the theme based on the principles and guidelines provided in International Law, the governing legislation, and the CNJ regulations.

In that sense, the event is aligned with the precepts formulated at the Convention on the Rights of Persons with Disabilities, by which the Brazilian State is committed to promoting the full exercise of all human rights and fundamental freedom for persons with disabilities, without any type of discrimination; as well as undertaking to adopt all the necessary measures to change regulations, culture, and existing practices that constitute discrimination against persons with disabilities, in addition to ensuring public authorities and institutions act in accordance with the Convention.

Furthermore, the Seminar also follows the aforementioned Law No. 10.216/2001, which discusses the protection and rights of people with disabilities and redirects the care model to the mental health model; as well as the Law No. 13.146/2015, known as the Brazilian Law for the Inclusion of Persons with Disabilities (LBI or Statute for Persons with Disabilities), which ensures and promotes, under conditions of equality, the exercise of fundamental rights and liberties by people with disabilities, aiming at their social inclusion and citizenship, among other national and international normative acts.

In short, the event aspires to follow the guidelines and principles that regulate the treatment of people with mental disorders or psychosocial disabilities, who present the need for mental health care at any stage of the criminal cycle, from an integral perspective.

Besides, the Seminar focuses on the need to guarantee the attention to mental health, in accordance with these guidelines and normative acts throughout the whole Juvenile Justice cycle, considering the particularities of this stage of life, the risk factors and suffering imposed by deprivation or restriction of freedom, the occurrence of behaviors that indicate mental suffering in a Juvenile Justice facility or eventual symptoms of mental conditions in adolescents.

In addition, this discussion also reaches individuals suffering from or with a mental disorder associated with the abusive use of alcohol and other drugs, who should be voluntarily referred to the services of the SUS networks. In this scenario, the respect for the dignity and autonomy of the person who needs mental healthcare is considered a guideline and a principle, without having this circumstance causing any reduction of their rights. In addition, it is essential to ensure due legal process, full defense, self-contradictory and equal access to justice.

It should be noted, as it has been detailed so far, that, as a result of the discussions promoted within the Work Group and the Ximenes Lopes case, this Seminar focuses, above all, on the implementation of security measures for the adult public. However, considering the principle of legality, which forbids more severe treatment for adolescents, and the articulations between the Doing Justice Program axes, it is crucial to touch on some aspects regarding the juvenile mental health care for adolescents, especially those in conflict with the law.

It is crucial to point out the differences to be considered in the juvenile policies and the particularities of the Juvenile Justice System, a discussion which may be explored more thoroughly in the future. Aware of such peculiarities, it is understood that the only way to effectively implement an anti-asylum policy in the judiciary scope is when the actions are thought of in an integrated way, embracing people in their diverse stages of development.

In addition, it is fundamental to consider people's diversity, disavowing every form of discrimination and stigmatization, with special attention to the intersectional aspects of aggravation and its impacts on the black population, LGBTQIA+, women, mothers, fathers, children and adolescents' caregivers, elderly people, convalescent people, migrants, homeless, indigenous peoples and other traditional populations, as well as people with disabilities.

In this sense, the exclusive attention to health benefits is reaffirmed in order to promote psychosocial support and rehabilitation through social inclusion, based on the reconstructions of family and community bonds and references, valuing and strengthening the person's skills and access to social protection, income, work, and health care.

Thus, the event emphasizes the respect for the integral right to healthcare, considering the person's community and family integration; and the territoriality of the services, favoring care in a therapeutic environment, in non-asylum health establishments, using the least invasive means possible. Besides, it is crucial to forbid any form of torture, mistreatment,

and cruel or degrading treatment, sometimes common in the mental health field, which are expected to be firmly fought by those who act on behalf of the Brazilian State.

It should also be noted that, based on the *Ximenes Lopes v. Brazil* case, the Inter-American Court established that all the health treatment directed at people with mental disabilities must seek the well-being of the patient and respect for their dignity as human beings, which translates into the duty of adopting the respect for people's privacy and autonomy as a guiding principle of psychiatric treatment. On that occasion, it was also restated that the right to personal integrity cannot be suspended under any circumstances, given the binding nature of the prohibition of torture, cruel, inhuman, or degrading treatment or punishment.

From this perspective, disproportionate or prolonged physical, mechanical, or pharmacological restraints, excessive medicalization, hampering access to treatment or medication, compulsory isolation, inappropriate accommodations, electroconvulsive therapy, and any form of violation of medical protocols and human rights regulations are prohibited.

In addition to the articulation between the right to health and the social protection policies, it is reinforced that the prescription of hospitalization must be based exclusively on clinical reasons, favoring the multidisciplinary evaluation of each case, prohibiting the hospitalization in an asylum-like institution, such as Custody and Psychiatric Treatment Hospitals (HCTPs) and similar establishments, such as psychiatric hospitals.

Thus, it is necessary to observe the State's secularity and the respect for religious freedom combined with the right to healthcare, which results in the impossibility of compulsory referral to establishments that are not part of the RAPS or condition/link the treatment to religious conversion or to activities of a religious nature (or unrelated to scientific practices). In fact, as it was mentioned before, it is crucial to emphasize the respect for the territoriality of services and treatment in the social environment in which the person lives, always aiming at maintaining family and community ties.

Finally, it is essential to emphasize the need for permanent interinstitutional articulation of the Judiciary branch with the networks of health care and social assistance at all stages of the criminal procedure, through the elaboration of a Unique Therapeutic Project (PTS) and favoring the use of restorative justice approaches for the most favorable outcome of cases involving mental health issues, since it is a way of guaranteeing access to fundamental rights and reversing social vulnerabilities.

After presenting an overview of the principles and guidelines on the subject, the next topic places the Judiciary branch in this dialogue and demonstrates the need to build a judicial policy at a national level on the subject.

## **5. THE PROTAGONISM OF THE JUDICIARY IN MENTAL HEALTH ISSUES**

Considering that the adequate treatment of persons with mental distress or any form of psychosocial disability in conflict with the law imposes an intersectoral action, it is crucial to discuss the work developed by the Teams of the Evaluation and Monitoring Service on Therapeutic Measures Applicable to Persons with Mental Disorders in Conflict with the Law and, consequently, the need for its strengthening.

EAPs Teams are those that follow up on the treatment during all steps of the criminal process with the goal of supporting actions and services to assist people in conflict with the law with mental distress in Health Care Networks (RAS) and facilitating their access to the Psychosocial Care Network (RAPS), where extra-hospital therapeutic measures are applied, following the Law No. 10,216/2001.

The EAPs are part of the hall of strategies and services in the scope of the National Health Care for Persons Deprived of Liberty in the Prison System (PNAISP) of the Unified Health System (SUS), and are intended to carry out the link between this System, the Unified Social Assistance System (SUAS) and the Criminal Justice System.

Furthermore, the EAP consists of a strategy to enhance the follow-up and psychosocial rehabilitation of people in mental suffering and/or with mental disorders in conflict with the Law, often focusing on the police investigation to the fulfillment of a sentence or security measure. In this sense, the EAPs also play an essential role in supporting magistrates in custody hearings.

In general, the EAPs play a relevant role in strengthening the RAPS and enforcing the effectiveness of the existing legislation within the mental health subject in the Judiciary System. In this sense, it is vital to construct a judiciary policy in mental health to enhance this topic and defend its existence.

In this scenario, and considering the importance of the Judiciary's protagonism in this matter, the following actions of this National Council of Justice are worthy of mention: an official letter was sent, on July 8th, 2020, to the Ministry of Health, requesting additional information on the publication of Ordinance GM/MS No. 1.325/2020, which established the extinction of EAPs; as well as a note was issued, in a dispatch to the competent Ministry<sup>11</sup>, containing a contrary position to the referred decision.

Both actions were carried out by CNJ, through the DMF. The official letter requested further explanations to the Executive Secretary of the Ministry of Health about the extinction of the service and the existence of actions and strategies capable of replacing it, especially in those locations that had already enabled the EAPs. In the referred document, it was highlighted that the people in conflict with the law with mental disorders would live in worse living conditions with the extinction of this service.

In turn, in accordance with the note sent by this organ, decisions like these should be broadly discussed throughout the whole society, mainly with the people, institutions, and public systems that are intertwined in interventions related to Mental Health and the Criminal Justice Policy. The content of this communication, enunciated by a popular and well-recognized newspaper - Jornal Globo - pointed that the lack of

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<sup>11</sup> Documents available at administrative act number SEI 05083/2020

dialogue can bring setbacks in qualified answers in the mental health and criminal areas<sup>12</sup>.

Besides, this change would affect not only the person in conflict with the law with a mental disorder, but also the Judiciary branch, the Public Safety System and The Penitentiary Administration. In this perspective, the treatment in a closed regime would be privileged to the detriment of outpatient treatments, in freedom and in a intersectoral perspective, prevailing the incarceration logic.

In short, the CNJ, through the DMF, declared its concern with the EAP's revoke and manifested its critiques regarding the adoption of these measures. There was also the intense mobilization of several institutional actors and civil society against the EAP's extinction. In that sense, a technical note was issued by the National College of General Public Defender's Office (CONDEGE) and signed by the Public Defender's Office and civil society entities.

Subsequently, the Order that extinguished said service was revoked by Order No. 1.754, from July 15th, 2020, so that the EAPs were maintained, without, however, receiving any form of financial funding from the State for their expansion. This scenario remained the same, even after new negotiations of the Work Group about the EAPs enactment by the National Council of Human Rights (CNDH), considering the CNDH Resolution No. 33, from September 17th, 2020, and even with the consequent Work Group's mobilization regarding the theme in the Commission on Human and Minority Rights of the Chamber of Deputies.

Despite the need to strengthen the service, the maintenance of the EAPs statutory provisions shows a remarkable victory considering the Country's anti-asylum and deinstitutionalization movement. Also, it points to the challenge of facing these issues, which require, in addition to intersectoral actions, follow-ups, and medical intervention. Thus, considering this public policy as a tool whose target audience specifically deals with persons in psychological distress or mental suffering in conflict with the law, it is crucial to understand the relevance of these actions in guaranteeing mental health care and other rights.

Based on actions like these and the ones proposed by the Fazendo Justiça Program, as well as the other initiatives mentioned above, the International Seminar invites its target audience to reflect on the role of the Judiciary branch in the Mental health and Criminal Justice Policy theme. In addition, despite the event's primary focus on the treatment of adults, it also points to discussions regarding juvenile mental health in the Juvenile Justice System, bearing in mind the need to ensure their healthcare, according to the Law No. 10.216. In this sense, some panel discussions were designed in an attempt to contribute to the strengthening of the anti-asylum perspective focused on juveniles, taking into consideration the legal specificities of the Juvenile Justice

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<sup>12</sup> Available at: <https://oglobo.globo.com/politica/cnj-extincao-de-servico-presos-com-transtornos-mentais-decidida-por-general-da-saude-impacta-judiciario-24462383>

System that differ from criminal legislation and different institutional methodologies.

Once the considerations on the protagonism of the Judiciary have been made, the following two topics present the International Seminar on Mental Health and inform its schedule, respectively.

## **6. THE PRESENTATION OF THE “INTERNATIONAL SEMINAR ON MENTAL HEALTH: POSSIBILITIES FOR THE EFFECTIVENESS OF AN ANTI-ASYLUM POLICY ALIGNED WITH THE BRAZILIAN JUSTICE SYSTEM**

The International Mental Health Care Seminar, under the title “Possibilities for Implementing an Anti-Asylum Policy at the Interface with the Justice System,” is aimed at the following target audience: Courts of Justice in the Country, magistrates and members of multidisciplinary teams of the Criminal Enforcement Courts (VEP) and other actors and sectors of the Judiciary branch; as well as Public Prosecutor’s Offices, Public Defenders, legal practitioners in general; SUS professionals, connecting teams, and EAPs, that is, evaluation and follow-up teams for therapeutic measures applicable to people with mental disorders in conflict with the law.

It is also aimed at medical teams in penitentiary facilities, Social Office professionals, and members of other care services/networks for released persons, civil society organizations, students, and education professionals, among others.

Also, the event’s schedule will discuss the juvenile mental health topic and its articulation with the Juvenile Justice, reaching out the actors of the Juvenile Justice System from its initial services, as well as professionals from health networks, assistance, and other integral protection services and the juvenile rights guarantee system.

The event aims to mobilize actors to qualify for the Anti-Asylum Policy in Brazil, stimulating the debate on the application of security measures based on a paradigm of protection of fundamental rights and integral care articulated with the SUS and the social protection network. It also intends to discuss elements of the implementation of Juvenile Justice measures based on the guiding principles of psychiatric reform, considering its particularities.

From this perspective, this Seminar values the training and operationalization of the work, especially of magistrates in the observance of the right to health and other human rights of people deprived of liberty, as well as the strengthening of a multidisciplinary policy of care for people with mental disorders or psychosocial disabilities in conflict with the law, focusing on care in freedom. To this end, the program is proposed with the support of active methodologies, such as debates and roundtables, with the signature of a Protocol of Actions at the end.

The holding of the event is justified insofar as difficulty in accessing health policies by the prison population is not only inconsistent with the universality of the SUS, but also with the broad proposal that goes beyond the treatment of diseases and infections to also include physical, mental, and social well-being.

Furthermore, the International Mental Health Care Seminar subscribes to implementing an anti-asylum policy, since although there is a robust legal framework on the subject – which even harmonizes with the Convention on the Rights of Persons with Disabilities –, the implementation of these parameters still needs to advance, given the current situation of people with mental disorders or any form of psychosocial disability in Brazil. This situation is even more aggravated when two intense vulnerabilities are combined: the deprivation of liberty in the context of an unconstitutional state of affairs and mental suffering. It is also necessary to consider the particular aspects about the care of adolescents who commit legal infractions and are in compliance with sentences/measures in Juvenile Justice, given the challenges presented in this area, some of which are even described in opposition to the prison logic.

In recap, the International Mental Health Care Seminar is particularly important to foster the debate regarding the mental health agenda from the point of view of applying the pertinent normative framework and for the inflow of making such guidelines applicable and effective in daily activities. In this sense, the Brazilian legislation establishes, as a basis for the security measure enforcement, the following elements of the Psychiatric Reform: deinstitutionalization; the refusal of the therapeutic nature of hospitalization, as a rule; and the redirection of the mental health care model into substitute services in an open environment.

#### 7. Access the event schedule

