



**FEDERATIVE REPUBLIC OF BRAZIL**

**RESPONSE TO COMMUNICATION**

**UA BRA 1/2017**

With regard to the urgent appeal sent by the Working Group on Arbitrary Detention Special Rapporteur on the rights of persons with disabilities, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, contained in communication UA BRAS 1 2017, the Brazilian Government presents the following comments:

Brazil is committed to promoting the deinstitutionalization of people with mental disorders. A number of measures have been undertaken to reduce the number of psychiatric hospitals and to promote a health care model based on community mental health services, which also benefit mentally ill offenders.

The Law on Psychiatric Reform (Law No. 10.216 / 03) promoted a fundamental change in the treatment of people with mental health conditions or psychosocial disabilities, laying the foundation for the establishment of a network of mental health care in place of the hospital centered model. The aforementioned law redirected the mental health care model in Brazil with the purpose of humanizing the treatment of people with mental health conditions or psychosocial disabilities. The law sets norms and regulations on hospitalization and promotes the process of deinstitutionalization, to be implemented through the creation of outpatient services.

The hospitalization of persons with mental health conditions or psychosocial disabilities is indicated only when the outpatient resources are insufficient (article 4) and requires a detailed medical report (article 6). In addition, the law bans the institutionalization (retirement homes and nursing care facilities), which lack integral assistance to the needs of persons with mental health conditions or psychosocial disabilities (medical services, social assistance, psychological and occupational therapy and leisure, etc.), as well as in institutions that do not guarantee patients the rights enumerated in said law (§ 3 of Art. 3), including, among others, the right to be treated, preferably, in community mental health services.

The Going Back Home Programme (Programa de Volta para Casa, in Portuguese), established by Federal Law No. 10.708/03, provides for the regulation of psychosocial rehabilitation assistance to patients who have been in psychiatric hospitalization for long periods. The objective of the programme is to contribute effectively to the process of social integration of these people, encouraging the organization of a broad and diversified network of social assistance and care that can facilitate social interaction, ensure global well-being and stimulate the full exercise of their civil and political rights.

The Going Back Home Programme complies with the provisions contained in Law 10.216, which establishes that patients who have been hospitalized for

long periods or who are characterized by serious institutional dependence should be subject to specific and careful discharge protocol as well as to assisted psychosocial rehabilitation. In December 2014, there were over 4,300 beneficiaries of the Program, in 22 Brazilian states. In the municipalities with psychiatric hospitals in the process of closing (or already closed) there is a large contingent of people registered in PVC and living in Residential Therapeutic Services (SRTs). SRTs are therapeutic homes which should provide the necessary conditions to build autonomy to resume normal life and for social reintegration both of those users who do not need intensive care from the point of view of general health, and of those who do need specific care and may depend on daily technical and personal support on a permanent basis. As of December 2014, there were 289 SRTs accredited by the Ministry of Health.

The Annual Program for Restructuring the Hospital Assistance within the Brazilian Universal Health System (SUS, Sistema Único de Saúde, in Portuguese) was established in 2004 with the purpose of reducing the number of available vacancies in psychiatric hospitals in order to guarantee a safe transition to the psychosocial community mental health services model.

With regard to the specific situation of people with mental health conditions or psychosocial disabilities in conflict with the law, Brazilian legislation establishes guidelines for health care in the penitentiary system and guarantees rights and possibilities of treatment for psychiatric patients who comply with safety measures<sup>1</sup>, in light of the fundamental rights and guarantees established in the Federal Constitution, as well as of the rights established in the international treaties and conventions to which Brazil is party.

According to art. 97 of the Brazilian Penal Code, safety measures consist of: i) confinement in a custodial hospital and psychiatric treatment or, in the absence of such facilities, in another appropriate facility; and ii) referral to outpatient treatment, performed without hospitalization.

As for the eleven individuals mentioned in the urgent appeal, the states of Minas Gerais and Rio de Janeiro provided the following information:

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<sup>1</sup> According to the Brazilian Penal Code, a "safety measure" has the purpose of applying a criminal sanction of both preventive and therapeutic nature. In light of constitutional principles and specific legislation, safety measures are applicable, for example, to individuals who cannot be held responsible for a crime due to a mental illness or an incomplete mental development which affects the full understanding of the unlawful nature of an act. Outpatient treatment will be performed at a Hospital of Custody and Psychiatric Treatment or another place with adequate medical facilities. Patient is subject to periodical assessments. Hospitalization (in-patient therapeutics) or outpatient treatment will last as long as the patient is considered at risk or a threat. The duration of the measure depends on the extent to which the purpose of the measure is attained.

### ***State of Minas Gerais***

According to information issued by the Secretary of State for Health of Minas Gerais, Brazilian citizens [REDACTED] [REDACTED] [REDACTED] and [REDACTED] are being accompanied by a specific program called Program of Integral Attention to the Judiciary Patient (PAI-PJ), which serves as an advisory body to judges in cases of persons deprived of liberty who are subjected to safety measures.

After an assessment by specialists, if the person is no longer considered at risk of reoffending, he or she is admitted in an out-patient treatment program carried out by the mental health network of the Unified Health System (SUS). [REDACTED] [REDACTED] was accompanied by this program until mid-2016.

The five aforementioned individuals are in the Hospital of Treatment and Custody of the Prison Administration System because they unfortunately have lost their family bonds. Although they have complied with the safety measures and are no longer considered at risk of reoffending, these individuals have nowhere to go. The Public Mental Health Network has been able to take in several of these cases and send them to therapeutic residences, but it has not been able to meet all the demand so far. Therefore, the State Mental Health Coordination of Minas Gerais has been working with the Under Secretariat for Humanization of Health, a division of the Secretariat of Administration of the Prison System, in order to overcome this challenge.

### ***State of Rio de Janeiro***

According to a medical report dated September 15, 2016, [REDACTED] [REDACTED] remains hospitalized (in-patient treatment) at the Hamilton Agostinho Penal Hospital due to low back pain and difficulty in walking due to paresis. The technical staff of Henrique Roxo Hospital of Custody and Psychiatric Treatment informed that a therapeutic program for the patient is being formulated and that a psychosocial care center (Fernando Diniz) is evaluating his admission.

[REDACTED] remains hospitalized (in-patient treatment) at Henrique Roxo Hospital. A request to apply the maximum limit of a safety measure and to issue a release warrant is under evaluation by the Rio de Janeiro Criminal Court. Specialists are analyzing whether his release would represent a risk to himself or society.

[REDACTED] is not deprived of liberty, but a decision on a safety measure is still pending at the Court of Criminal Executions of Rio de Janeiro. The Public Prosecutor's Office requested more information from the Municipal

Health Department of the city of Niterói on the outpatient treatment that has been applied.

[REDACTED] is not deprived of liberty, but a decision on a safety measure is still pending in the Court of Criminal Executions of Rio de Janeiro. The Public Prosecutor's Office and the Public Defender have requested information about the patient's place of residence and current state of health. The criminal procedure has not yet been deemed extinguished.

[REDACTED] is not deprived of liberty and the procedure of execution of the safety measure has been deemed extinguished by the Court of Criminal Executions.

[REDACTED] is not deprived of liberty and the execution of the safety measure has been deemed extinguished by the Court of Criminal Executions.

The Secretariat of Penitentiary Administration of the State of Rio de Janeiro, approved Resolution No. 653/17, which authorizes and regulates the entry of health professionals from the psychosocial care network in prisons and hospitals (in-patient therapeutic measures), in order to promote access to mental health.

The specific objectives of the measure are: a) to promote the access of individuals deprived of liberty to the health care network, aiming at integral care; b) guarantee autonomy for health professionals to conduct integral care of persons deprived of their liberty; c) to qualify and humanize health care in the prison system through joint actions on health and justice; d) promote inter-sectoral exchange between human rights, affirmative and social policies, as well as criminal justice.

#### **THE OBJECTIVE RESPONSIBILITY OF THE STATE**

Pursuant to clause LXXV of article 5 of the Brazilian Federal Constitution, "the State shall indemnify the convicted person for a judicial error, as well as for being imprisoned beyond the time fixed in the sentence". Therefore, Brazilian legislation guarantees citizens the right to be indemnified by the State, when it has unjustly curtailed its right to freedom and dignity due to acts of public agents.

Moreover, in the light of Article 37, paragraph 6, of the Constitution, legal entities governed by public law and those of private law that provide public services will be liable for damages caused by their agents. Because civil responsibility in such cases is considered "objective", it is not necessary to prove guilt when violation comes from state action (prove of guilt will only be required in cases of state omission).

