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**CONSEJO NACIONAL DE DERECHOS HUMANOS**

# RESOLUTION NO. 8 OF AUGUST 14, 2019

Federal Official Gazette of August 23, 2019 (No. 163, Section 1, page 55)

Makes provision on preventive solutions of violation and that guarantee rights to people with mental disorders and problematic users of alcohol and other drugs

The **NATIONAL COUNCIL OF HUMAN RIGHTS** (CNDH in Portuguese), using the powers conferred by the Article 4 of Law No. 12,986, of June 2, 2014, and further to the resolution unanimously adopted at its 50th Ordinary Meeting, held on August 14 and 15, 2019:

**whereas** Law No. 10,216, of April 6, 2001, which makes provision on the protection and rights of people with mental disorders and redirects the mental health care model, took Brazil to the group of countries with a modern legislation and consistent with the guidelines of the Pan American Health Organization/World Health Organization (PAHO/WHO);

**whereas** the national policy on mental health, alcohol and other drugs was, until December 2017, in accordance with the main international conventions, such as the Protection of Persons with Mental Disorders and the Improvement of Mental Health Assistance, of 1991, and particularly the Convention on the Rights of Persons with Disabilities, of 2007, later approved in Brazil by Decree No. 6,949/09, with the same legal status as the Constitutional Amendment, and which was later regulated by the Brazilian Law on the Inclusion of Persons with Disabilities, Law No. 13,146/15;

**whereas** that the national policy of mental health, alcohol and other drugs based on deinstitutionalization and psychosocial attention represents not only a government policy, but a true State policy, consolidated in four national conferences on mental health, with broad social participation and recognition by the various instances of social control of the National Health System (SUS in Portuguese);

whereas in 2013 the World Health Assembly approved the "Global Mental Health Action Plan 2013-2020", a plan that is a commitment of all WHO member states to take specific measures to improve mental health and contribute to reach of a set of global goals to achieve better quality of life and health. The Plan of Action places special emphasis on protecting human rights, strengthening and empowering civil society, and once again centralizing and strengthening community-based care;

**whereas** the First Regional Meeting of Mental and Family Health Service Users, held in Brasilia, Distrito Federal, from October 15 to 17, 2013, promoted by the Pan American Health Organization (PAHO), approved the "Brasilia Consensus" and affirmed the development or strengthening of governmental, sectoral and cross-sector actions, with the perspective of promoting autonomy, expanding access to community and

territorial-based care and fighting stigma and prejudice associated with people with mental disorders, and the deinstitutionalization of psychiatric hospitals;

**whereas** in 11 years Brazil has reduced the beds of psychiatric hospitals by 38.7%, replacing them with community and territorial models and the creation of Psychosocial Care Centers (CAPS in Portuguese). In 2005, there were 40,942 psychiatric beds and in December 2016, the records of the National Registry of Health Establishments (CNES in Portuguese) computed only 25,097 beds and a reduction in the percentage of expenses with the hospital network from 75.24% to 28.91%. In parallel, the amount of CAPS rose from 424 in 2005 to 2,500 in 2019. The percentage of extra-hospital expenses, related to the mental health budget, increased from 24.76% to 71.09% in financial investment in replacement equipment in the same period;

**whereas** article 198 of the Brazilian Federal Constitution, in its item III, which states that the actions and services of health must observe the directive of community participation, and that the social participation, also called "community participation" in the context of health, established and regulated by Law No. 8,142/90, that creates Councils of Health and Conferences of Health in the three spheres of government, as well as collegiate of management in the services of health;

**whereas** the Health Councils are deliberative bodies that act as strategic participatory spaces for the claim, formulation, control and evaluation of public health policies implementation;

**whereas** on December 22, 2017, last Friday before Christmas, amidst the Legislative and the Judiciary recess, the Ministry of Health published the Resolution No. 32/17 and Ordinance No. 3,588/17 that formalized measures that changed the most of public policies on mental health, alcohol and other drugs of the last 30 years, without discussing with or approval by the National Health Council and other instances of social participation;

**whereas** the Law No. 13,840, of June 5, 2019, passed in the Senate, without deepening the debate, disregarding amendments of above mentioned commissions, which has just gone back decades by prescribing involuntary internments as a central strategy in the care of drug users, as other retrograde measures with prejudice to successful experiences and technical-scientific advances;

**whereas** the presidential vetoes to the Law No. 13,840/2019 (approved in the Senate without its final version accepting the contributions coming from prolonged debate and agreements in several commissions of the National Congress in the last years), that distorts the inspection agencies, the participation of the society and reduces the resources/strategies directed to the social inclusion, work and income generation;

**whereas** Recommendation No. 03, of March 14, 2019, of the National Council of Human Rights, sent to the Plenary of the National Council of Health, which recommends the Ministry of Health to suspend the implementation of all regulations incompatible with the established National Policy of Mental Health, which assisted the "New Mental Health Policy";

**whereas** Recommendation nº 05, of February 15, 2019, of the Plenary of the National Health Council, which recommends to the Ministry of Health that the manifestations of the mental health technical area to be based on the principles of the Brazilian Psychiatric Reform, on Law No. 10,216/2001 and on the deliberations of the National Health Council;

**whereas** the Public Civil Action of the Federal Public Defender's Office against the Federal Government, which requires interlocutory relief to suspend the effectiveness of CIT Resolution No. 32, of December 17, 2017; Ordinance GM / MS No. 3,588/2017; Interministerial Ordinance No. 2, of December 21, 2017; GM/MS Ordinance No. 2,663, of October 11, 2017; GM/MS Ordinance No. 1,315, of March 11, 2018; CONAD Resolution No. 1, of March 9, 2018; SAS/MS Ordinance No. 544, of May 7, 2018; GM/MS Ordinance No. 2,434, of August 15, 2018; CIT Resolution No. 35/2018, of January 25, 2018 and CIT Resolution No. 36/2018, of January 25, 2018, since they suffer from incurable defects;

**whereas** the Technical Note of the Federal Attorney's Office for Citizens' Rights No. 5/2019/PFDC/MPF, of March 22, 2019, addressed to the Ministers of Health, Justice and Public Safety and Citizenship, which aims to show the factual and legal premises that lead to the conclusion that the current mental health policy is illegal and unconstitutional, allowing patients to remain for long periods in asylums;

**whereas** the national policy on mental health, alcohol and other drugs based on the guidelines of the Psychiatric Reform, in which rights of users are guaranteed by Law No. 10,216/2001, has achieved since its promulgation the reversal of the framework of systematic institutionalization of people with mental disorders and problematic users of alcohol and other drugs. It made possible the care in freedom and mainly the social inclusion of thousands of users that until then were kept in long hospitalization in psychiatric hospitals and therapeutic communities, excluded from family and community life;

**whereas** the national mental health policy, when constituted as a State policy, guaranteed the expansion and sustainability of public policies that contemplated the full exercise of citizenship by means of financial incentives (Back Home Law and ordinances for the creation of therapeutic residential services), incentives for the generation of work and income (Social Cooperative Law) and promotion of cultural interventions, among others, deconstructing social stigmas and enabling the reorientation of care to the territory where it is possible to observe this collection being welcomed in their differences, resolves:

## CHAPTER I

## GENERAL GUIDELINES

Article 1 - This Resolution intends to guide the policies of mental health and problematic use of alcohol and other drugs throughout the national territory, being it extended to all citizens who are included in this collection. It is aimed at state agents and institutions, and includes not only the field of health, but also all the sectors involved in the construction and implementation of public policies aimed at people in psychic suffering, including the judiciary and legislative branches in demands involving proposals for collective and/or individual actions, conflict resolution involving the guarantee of rights or recognition and cessation of violations of them.

Article 2 - The mental health policy should be guided by the principles of human rights achieved and agreed upon in conventions ratified by the absolute majority of nations on the planet, and duly signed by Brazil, as the highest standard of the human civilization process, as well as by organizations affiliated to the United Nations, which guide the various public and social policies in their specific areas, such as the World Health Organization and the Pan American Health Organization.

Paragraph 1 - The mental health assistance and its services must guarantee access to care without any form of violation of human rights, abolishing cruel and degrading treatments, mistreatment, physical and chemical restraint, loss of civil rights, or that stimulate discrimination, prejudice and stigma.

Paragraph 2 - The direction of mental health policy should point to a gradual but complete replacement of all services and treatment devices based on isolation, prolonged internment and the annulment of civil rights.

Paragraph 3 - Mental health care should promote care in open spaces that stimulate and value dignity, freedom, autonomy, self-esteem and prior consent of users and their families, access to information about rights and the means of communication, and the insertion and social and community coexistence in the territories in which they live.

Paragraph 4 - In eventual situations that impede the full decision of the user, or that involve severe crisis or risk for themselves or others, the treatments without previous consent must be carried out with all the legal safeguards provided for in law, international conventions and international organizations of human rights recommendations.

Article 3 - The policy of mental health and drugs shall guarantee and value the full participation of users and family members in all decisions that involve their treatment; the dynamics of services and of assistance and national policy, considering that this policy is already part of the very structure of SUS, by its social control devices (health councils and national conferences on health and mental health).

Article 4 - The perspective of the human rights demands that the assistance in the field of the mental health and drugs is fully integrated inter-sectorial with other social politics.

Sole Paragraph - The treatment of psychic suffering and/or the problematic use of drugs must be entirely associated to the process of conquering citizenship and its basic requirements, that is, to be public and free, universal, integral and full accessible to social rights, such as the right to health, education, social assistance, welfare, housing, work and income, food security, mobility and public transport, and access to social, cultural, sports and tourism opportunities, leisure and digital inclusion.

Article 5 – In order to guarantee the principle of broad respect for human rights and the conquest of full citizenship, the mental health and drug policy must necessarily take into account and respect the economic, regional/local social, cultural, ethnic, generational and family characteristics; gender, sexual orientation, gender identity, demographic and epidemiological characteristics of the diverse groups and population sectors, without any forms of inequality of opportunity, access filters, prejudice and discrimination, adapting the approaches and forms of welcoming and treating the particularities of each of these social groups.

Article 6 - All institutions, agencies and main social and political actors involved in the reorientation of mental health care must promote profound changes in theories, approaches and ethical norms, practices and professional training in order to break with the structural logic of previous models (nursing home-like, excluding and objectifying the subject), as well as with the legal statutes and legal practices that still sustain them.

Paragraph 1 - The changes must particularly affect the devices of pathologization, medicalization and normalization of existential, subjective, identity differences and the multiple ways of being in the world and living health.

Paragraph 2 - The changes must be aimed at promoting transformations in the diffuse culture in society, in social relations and in institutions that still sustain intolerance, segregation and stigma in relation to people in psychic suffering and/or drug users.

## CHAPTER II

## PROTAGONISM AND EQUITY OF CARE TO THE PROFILE OF USERS AND FAMILY MEMBERS

Article 7 - The construction of public policies must incorporate the participatory contribution of users and their families, considering that the guiding logic of the Brazilian Psychiatric Reform is based on the precepts of psychosocial care and the SUS, in which protagonism of users is a structuring presupposition.

Sole Paragraph - Popular participation and social control should be guided by the protagonism of users and their families about their treatment, their own lives and in the support to the construction of their choices guaranteed in the constitutional assumption of free choice and right of locomotion.

Article 8 - The discriminatory policies of any organization shall be abolished. Be it based on racial prejudice, gender identity, sexual orientation and existential or socioeconomic condition that lead to forced treatment, sanitation measures such as the removal of babies from women in street situations and other situations of vulnerability, mistreatment and persecution.

Article 9 - The original and traditional populations must be protagonists of politics of mental health that respect their cultural characteristics, being the socio-demographic and epidemiological data understood from their histories and practices.

Sole Paragraph - Respect for beliefs and ways of life is a fundamental presupposition in the preservation of the physical and mental well-being of original and traditional populations.

Article 10 - Violence in its various aspects and specific characteristics/implications for different social groups should be understood as a multifactorial issue with necessarily complex and differentiated responses.

Sole Paragraph - The initiatives based on the medicalization and pathologization of its consequences shall be deconstructed through the qualification/training of professionals, public debates and educational campaigns with the whole society.

## CHAPTER III

## CRISIS AND ARRANGEMENTS FOR ADMISSION AND RECEPTION

Article 11 The perception of the crisis associated with mental disorders and/or problematic drug use, as well as the evaluation of the possibility of reception or hospitalization, shall not be restricted to psychopathological alterations and to the natural process of 'disease'.

Sole Paragraph - The crisis, expressed by the new social model of disability in the Brazilian Law of Inclusion (Law No. 13,146/2015), must be contextualized with the social support network of the user, his vulnerability, and with the links already built with the network of mental health services, health and social assistance.

Article 12 - The psychiatric internment must be considered an exception resource, as described in Law No. 10,216/2001, in its article 4: "The internment, in any of its modalities, will only be indicated when the extra hospital resources are insufficient".

Paragraph 1 - The psychiatric internment must be considered a therapeutic resource with strong iatrogenic potential, that induces to the recurrence (readmissions), with worse prognosis in the long term for the cases of mental disorders, disproportionate increase for the cost of the system and the assistance, beyond promotion of stigma, isolation and fragility of the social relations.

Paragraph 2 - Problems associated with the use of alcohol and other drugs should not be considered by themselves as an indicative of hospitalization, without evaluating their clinical context, available resources and social links.

Article 13 - Among the resources created within the scope of the mental health policy, they should constitute the reference devices for attention to people in crisis:

I - Psychosocial Care Centers with reception beds (CAPS III, in Portuguese), aimed at users in severe psychic suffering and/or problematic use of drugs, in the user's own territory and preserving their community bonds and the relationship with their clinical reference team;

II - Mental Health Beds in General Hospital;

III - Reception Units, an open device that allows the reception of drug users in vulnerable situations and linked to the psychosocial care network, allowing stay for more than 30 days and less than 180 days.

Sole Paragraph - Mental health care should be included in the care system of the Emergency Network (SAMU, Emergency Room Units - UPA, Emergency Room/PS, General Hospitals –HG, in Portuguese), with teams oriented according to the guidelines of psychosocial care and human rights, avoiding interventions with violence and unnecessary hospitalizations, always in permanent articulation with the territorial services of reference, taking into account the unique therapeutic project of the user.

Article 14 - In cases that require medical clinic support, such as those involving alcohol and other drugs, hospitalization should be performed in beds of general hospitals, Sole Paragraph. The proportion of beds in each unit should not exceed 15% of the total hospital beds up to a maximum of 30 beds, enabling

individualized care and unique therapeutic projects. These hospitalizations should be of short duration, not producing institutionalization and preserving the follow-up bond with the reference team of the various types of CAPS.

Article 15 - In all cases of hospitalization, the production of a detailed medical report should be obligatory, not being sufficient the mere indication of a generic measure of hospitalization. This requirement is established in Law No. 10,216/2001, in its article 6 for all types of hospitalizations.

Article 16 - Law No. 10,216/2001, article 6, in its sole paragraph, characterizes three types of psychiatric hospitalizations:

I - Voluntary internment: that which is given with the consent of the user, keeping the right to ask for discharge at the moment he wishes it;

II - Involuntary hospitalization: that which is given without the user's consent and at the request of a third party;

III - compulsory internment: the one determined by Justice.

Sole Paragraph - The new principles established by the Brazilian Law of Inclusion (Law No. 13,146/2015), such as the veto on deprivation of liberty (article 14) and supported decision making, require new protocols of safeguards of rights and communication devices with the outside world and with the representatives indicated by the users, to guarantee the rights of discharge and review of decisions of the medical authority, in cases of voluntary and involuntary hospitalization.

Article 17 - In Law No. 10,216/2001, involuntary hospitalization constitutes a responsibility of the medical professional, but the Brazilian Law of Inclusion points to an evaluation by a multiprofessional team.

Sole Paragraph - Given the seriousness and exceptionality of involuntary internment, an obligatory mechanism for the safeguard of rights is the communication to the Public Prosecutor's Office within 72 hours of its occurrence. The same should also be done in case the voluntary internment becomes involuntary along the course of the internment. The same communication procedure shall be carried out when discharge is executed.

Article 18 - The involuntary internment must be clearly distinguished from the compulsory internment, authorized by judge, based on the exposition in Law No. 10,216/2001, and must be considered together with the article 319, VII of the Code of Criminal Procedure (CPP) and the article 99 of the Law of Criminal Execution (LEP).

Sole Paragraph - The condition of compulsory internment must be applied only in the condition of the existence of a crime and consequent impossibility observed after the processing of a separate process.

Article 19 - The provisional internment, foreseen in the LEP, ART 319, VII, used eventually as justification for internment of users of alcohol and other drugs or person with mental disorders, can only have legal sustainability in case of existence of crime practiced with violence or with serious threat. Except for this condition, it is clear the illegality of the provisional and compulsory internment for cases in which the justification is restricted to the diagnostic/clinical condition of the individual in the absence of crime as characterized above.

Sole Paragraph - Decree-Law No. 891/1938, which provided for compulsory internment of users of alcohol and drugs, was not received by the Federal Constitution of the Republic of 1988 and could not be considered in force when Law No. 10,216/01 was promulgated. Therefore, it should not be an instrument of legal basis for such procedure nowadays.

Article 20 - The set of legislation and assistance to people with problems resulting from the use of alcohol and other drugs, and particularly the recent Law No. 13,840, of June 5, 2019, which deals with "the National System of Public Policies on Drugs" and which defines "the conditions of attention to drug users or

dependents", in its provisions for involuntary hospitalizations and shelter in so-called therapeutic communities, must observe the following legal provisions in force:

I - All are equal before the law, without distinction of any nature, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, in the following terms (Article 5, CF/88) and no one shall be obliged to do or not do anything except by virtue of the law (Article 5, II, CF/88).

II - The guarantee of human rights, fundamental freedoms and inclusion for people with disabilities, in accordance with Decree No. 6,949/2009, considered a constitutional amendment, later regulated by Law No. 13,146/015, highlighting the items:

IIa) Recognizing the importance, for people with disabilities, of their individual autonomy and independence, including the freedom to make their own choices (Preamble, n);

IIb) That people with disability shall not be illegally or arbitrarily deprived of their freedom and that all deprivation of freedom is in accordance with the law, and that the existence of disability does not justify deprivation of freedom (Article 14, b).

IIc) No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 15, a).

IId) Persons with disabilities shall have access to a variety of support services at home or in residential institutions or to other community support services, including the services of personal attendants that are necessary as support for persons with disabilities to live and be included in the community and to prevent them from becoming isolated or segregated from the community (Article 19, b).

III - The Psychiatric Reform, Law No. 10,216/2001, in which they must be highlighted:

IIIa) The veto to the internment in institutions with nursing home characteristics (Art. 4º, § 3º),

IIIb) They are rights of the person with mental disorder:

I – to have access to the best treatment in the health system, in accordance with their needs;

II - to be treated with humanity and respect and in the exclusive interest of benefiting their health, seeking to achieve their recovery through insertion in the family, work and community;

III - to be protected against any form of abuse and exploitation;

IV – to have guarantee of confidentiality in the information provided;

V – to have the right to medical presence, at any time, to clarify the need or not of their involuntary hospitalization;

VI – to have free access to the available means of communication;

VII - to receive the greatest number of information regarding their illness and treatment;

VIII - to be treated in a therapeutic environment by the least invasive means possible;

IX - to be treated, preferably, in community mental health services (Article 2).

IIIc) The treatment in internment regimen will be structured so as to offer integral assistance to the person with mental disorders, including medical, social, psychological, occupational, leisure, and other services (Article 4, paragraph 2).

Article 21 - The internments in therapeutic communities, by means of involuntary internments and in closed institutions, for long periods, and guided in the abstinence as only goal should not occur according to current legislation that guides the priority for care in community services.

Paragraph 1 - The joint resolution of several UN agencies (United Nations Educational, Scientific and Cultural Organization - UNESCO, United Nations International Emergency Fund for Children - UNICEF, United Nations on Drugs and Crime - UNODC, World Health Organization - WHO, among others), entitled "*Declaración Conjunta Centros de Detención y Rehabilitación Obligatorios Relacionados con las Drogas*", of March 2012, calls on member countries to close detention and rehabilitation centers based on compulsory internment, and favors care in community services of voluntary adherence that respect human rights.

Paragraph 2 - The report of the National Inspection in Therapeutic Communities - 2017 (CFP; MNPCT, MPFDC, 2018) highlights that in all establishments visited, practices were identified that constitute a violation of human rights, thus violating the legal principles defined by the national law that provides for the protection and rights of people with mental disorders and redirects the mental health care model (Law No. 10,216/2001).

Paragraph 3 - The Law No. 13,840/2019 in section IV, article 23 that disposes about "the treatment of the user or dependent of drugs" reproduces the orientations of Law No. 10,216/01 when prioritizing the internment as exceptionality in case where all the modalities when the extra-hospital resources show insufficient. It should be given in health units or general hospitals that have multidisciplinary teams and by means of a medical report. It states that the treatment should take place in a health care network prioritizing the outpatient service.

Article 22 - The condition of the Hospitals of Custody and Psychiatric Treatment known as Judicial Asylums reflects a total failure of an integral care aimed at the reinsertion of the hospitalized person. The latest 2015 report by the Federal Council of Psychology (CFP in Portuguese), together with the Brazilian Bar Association (OAB in Portuguese) and the National Association of Public Prosecutors in Defense of Health (AMPASA in Portuguese), indicated that the judicial asylum combines the worst of segregation with the worst of stigma.

It notes the precarious conditions in these institutions and the constant violations of rights, which are not restricted to health, but also to the right to access legal assistance. In this sense, there must be a complete restructuring of the system, which must be considered:

I - The bearer of mental disorders in conflict with the law and considered to be inimitable has as a presupposition the need for treatment in health devices and in case of restriction of freedom, must guarantee the preservation of fundamental rights to any citizen besides offering a care based on the logic of psychosocial attention and oriented to the social reinsertion of these individuals;

II - The joint intervention with the teams of the Psychosocial Care Network should be guaranteed, which should take place regularly and continuously, as provided for in the national plan for prison care, regardless of the type of institution restricting freedom where the individual is.

III - The compulsory internment, today only typified with sight to the measure of security, is an evident violation to the Law No. 10,216/2001 considering the hospitals of custody and psychiatric treatment, since this law vetoes explicitly the internment of people in institutions of similar characteristics in its article 4, paragraph 3 and in article 9, that foresees to take into account "the conditions of security of the establishment, as for the safeguard of the patient, the other internees and employees;" as well as the Brazilian Law of Inclusion in its articles 14, 15 and 19.

Sole Paragraph - Immediate actions are needed to build a policy of care for those with mental disorders in conflict with the law that is appropriate to the logic of psychosocial care, that is, that does not require spaces for sheltering and violation of rights - a model currently represented by hospitals of custody and psychiatric treatment.

Article 23 - The authorities of the Brazilian Judiciary and Legislative branches should pay attention to the recommendations made by the UN Committee on the Rights of Persons with Disabilities, in its 14th session, from August 17 to September 4, 2015, which produced a report in which, initially, congratulates the Brazilian State for the fact that the Convention has "constitutional normative equivalence". It points out the following concerns to be observed by the Brazilian State:

I - Reports of the arbitrary deprivation of liberty and involuntary treatment of persons with disabilities based on disability, including situations in which it is assumed that persons with disabilities are dangerous for themselves or for others, based on a discriminatory diagnosis (28).

II - It recommends the State Party to take measures, including the repeal of the relevant legal provisions, to abolish the practice of involuntary internment or hospitalization and forced medical treatment and to prohibit, in particular, psychiatric treatment, based on disability, and to provide alternatives of community-based treatment.

III - Concern that persons with disability who are not considered responsible for the practice of a crime based on disability may be subject to security measures, including detention for an indefinite period.

Article 24 - The security measure applied to those with mental disorders or in problematic use of drugs in conflict with the law and considered to be unsafe, are treatment measures and not punishment measures. In this way, these users start to be governed by Law No. 10,216/2001, being the internment in sheltering institutions prohibited.

Sole Paragraph - The conditions of hospitals of custody and psychiatric treatment ("Inspection to the asylum seekers" CFP, 2015) and the orientation of priority of care in community services presupposed in Law No. 10,216/2001, makes fundamental the reorientation of the current determinations for its adequacy to the legislation on the subject and thus consider initiatives of care in freedom for the clientele with mental disorders and/or problematic users of alcohol and other drugs such as the Program of Integral Attention to the Mental Offender/PAILI (in Portuguese) (winner of the Innovare award in 2009) and create new protocols for this serious situation of violation of rights in the country.

Article 25 - The compulsory hospitalization of drug users without committing a crime is a total anomaly and in opposition to the Brazilian legal system. It is not, therefore, the Judiciary's responsibility to determine the internment when it has as its sole and exclusive purpose the treatment.

## CHAPTER IV

## MONITORING AND ENFORCEMENT OF MENTAL HEALTH AND DRUG PROGRAMS AND SERVICES

Article 26 The inspection, monitoring and intervention of the public sphere in policies, programs and services for people with mental disorders and/or problematic use of drugs are principles always present in the UN conventions, duly signed by the Brazilian State, as well as in the national legislation resulting from them. These principles must be respected and properly implemented. Among these norms, stand out:

I - The 1991 UN Charter (Principles for the Protection of Persons with Mental Disorders and for the Improvement of Mental Health Care): Monitoring and Intervention Mechanisms: States must ensure that adequate mechanisms are in place to promote the acceptance of these Principles, the inspection of mental health facilities, for the consideration, investigation and Resolution of complaints, and to establish appropriate disciplinary or judicial procedures for cases of professional misconduct or violation of the rights of a user (Principle 22).

II - Law No. 13,146/2015 - Brazilian Inclusion Law/LBI (in Portuguese): It is everyone's duty to communicate to the competent authority any form of threat or violation to the rights of a person with

disability. Sole Paragraph. If, in the exercise of their functions, the judges and the courts have knowledge of facts that characterize the violations provided for in this Law, they must send documents to the Public Prosecution Service for the appropriate measures (Article 7). It is the duty of the State, society and the family to ensure that persons with disabilities, with priority, have their rights related to life, health, sexuality, paternity and maternity, food, housing, education, professionalization, work, social security, habilitation and rehabilitation, transportation, accessibility, culture and sports, to tourism, leisure, information, communication, scientific and technological advances, dignity, respect, freedom, family and community life, among others arising from the Federal Constitution, the Convention on the Rights of Persons with Disabilities and its Optional Protocol and the laws and other rules that ensure their personal, social and economic well-being (Article 8).

In addition to these initial articles, the LBI presents detailed transitional provisions (Title III, Art. 97 - and following) for the various instances of the Brazilian State to act to defend specific rights in each sector of Brazilian public policies.

Article 27 - All spheres committed to the monitoring and inspection of mental health services and drugs must overcome the precariousness, fragmentation and disarticulation of the existing processes and inspection bodies, such as those involving Health Surveillance, Firefighters, the Public Prosecutor's Office, professional councils and associations, Legislative inquiry committees, among others.

Paragraph 1 - The inspection processes must be unfolded without exception in corrective and punitive measures to those responsible for the irregularities and in this way overcome the frequent inefficiency of these actions that generate impunity and perpetuation of rights violations.

Paragraph 2 - The inspection processes should be more constant and detailed in the services of the sheltering type, which practice the restriction of freedom and of contact / communication with the outside world, which often establish invasive treatments that result in different degrees of annulment of privacy and subjectivity, and in violations of rights.

Sole Paragraph - Strict and permanent attention should be paid to services installed in places that are far from urban centers and difficult to access (due to entrance and visitation restrictions and/or distance), such as therapeutic communities (CFP, MNPCT, MPFDC, 2018) and psychiatric hospitals. The context of isolation from the world and social visibility, transform into the main potential whistleblowers users and their families, who end up having their voices silenced through the disqualification of their speeches and/or direct coercion. Thus, it is up to the various instances responsible for enforcement an additional effort to implement constant processes of monitoring, dissemination and awareness of basic rights that should be respected in these types of services.

Article 28 - The open and community services of mental health and drugs should also be subject to regular inspection. Based on the principles of Psychiatric Reform and Human Rights. It is important to recognize that these modalities of services tend to be more permeable to the processes of participation in decisions, the filing of claims and proposals for improvement. The inspection and control by the community itself, by the users and their families, and by the various social control devices existing in the structure of the Unified Health System itself (management councils, district, municipal, and national health councils, and their national conferences), should be encouraged and facilitated by managers and operators of the judiciary, ensuring the generation of regular monitoring devices.

Article 29 - The eventual current context of scraping and disinvestment in the mental health network cannot justify measures that generate loss of rights. Thus, it is up to the public instances of monitoring to create constant mechanisms of permeability, listening and articulation with the workers, users/family members, their associations / social movements, and with these already existing social control devices, in order to receive all the complaints that were not properly corrected by these internal instances of health and mental health programs.

Article 30 - The policies and programs of mental health and drugs, together with all the public instances of inspection of the various modalities of these services, must guarantee, from the initial moment of normative recognition, authorization for operation and particularly to receive public funds from government agencies,

the existence of clear and systematic protocols of inspection built and audited by civil society, with priority to the participation of users and relatives.

Sole Paragraph - These protocols should seek to ensure transparency and all care so that the attention of populations in situations of vulnerability promotes de facto care and promotion of their health, citizenship, social inclusion and, fundamentally, guarantee respect for their human rights. Among the references for the development of such processes are instruments such as Quality Rights (2012), of the World Health Organization, standardized and duly adapted to countries such as Brazil.

Article 31 - This Resolution enters into force on the date of its publication.

**LEONARDO PENAFIEL PINHO**

Presidente

Conselho Nacional dos Direitos Humanos

Documento assinado eletronicamente por **Leonardo Penafiel Pinho**, **Presidente**, em 11/12/2019, às 18:37, conforme o § 1º do art. 6º e art. 10 do Decreto nº 8.539/2015.

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