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Abstract

Despite the international and domestic legal commitments, the human rights of individuals in psychiatric care are being neglected and breached, particularly in private institutions. The landmark case of *Ximenes-Lopes v. Brazil* (2006) established the legal obligation of states to regulate and oversee mental health facilities, but persistent violations again announced themselves in the Aurora Borealis scandal in the Netherlands (2022). In addition to a discussion of the failures of state oversight, this article addresses the role of the UN Convention on the Rights of Persons with Disabilities (CRPD) and the major imperatives for stricter enforcement mechanisms. Without real actions directed to altering status quo, human rights violations in mental health will remain a significant humanitarian concern.

A Call to Action: States Should Handle Mental Health with Care

A Systematic Crisis in Psychiatric Care

Governments worldwide have committed to the protection of individuals who are suffering from mental health illness, a fundamental aspect of human rights. Yet, both historically and still to this day, individuals in psychiatric care face abuse, neglect and inhuman treatment.¹ These cases reveal troubling gaps in oversight, particularly in privately run psychiatric institutions.

The *Ximenes-Lopes v. Brazil* (2006) case to the Aurora Borealis scandal in the Netherlands (2022) illustrate this troubling pattern: in spite of existing legal protections, egregious human

¹ Naiara G Gortázar, 'Barbacena: The Brazilian "city of Madmen" That Claimed 60,000 Lives' (EL PAÍS English, 8 September 2021) <https://english.elpais.com/usa/2021-09-08/barbacena-brazils-city-of-madmen-that-claimed-60000-lives.html> accessed 19 March 2025

rights violations persist in these institutions. How could it still be the case that after decades of human rights jurisprudence and international treaties, individuals in psychiatric care face neglect and inhumane treatment within private psychiatric institutions and beyond.

The Ximenes Lopes Case: A Legal Landmark

In 2006, the Inter-American Court of Human Rights (IACtHR) issued a groundbreaking judgement in the Ximenes-Lopes case, holding Brazil accountable for failing to regulate private psychiatric institutions. This case involved the death of Damião Ximenes-Lopes, who met his demise just three days after being admitted to a private psychiatric facility. He was hospitalised in “*Casa de Reposo*” in Guararapes, Brazil. During his stay, Ximenes-Lopes was subjected to inhumane conditions, neglect, and ill-treatment, leading to his death only three days after admission. The IACtHR [found that Brazil failed to ensure adequate oversight](#) of private healthcare facilities, its lack of regulation and supervision allowed inhumane conditions and neglect to persist, contributing to Ximenes-Lopes’ death.²

Crucially, the court affirmed that states have positive obligations to take care, regulate, and supervise the institutions, both public and private, that provide healthcare services.

[A more recent case](#) has reinforced the need for systemic reforms in psychiatric institutions and underscored the importance of accountability for human rights violations by institutions.³ Moreover, the Court stressed the significance of state accountability and the need for mechanisms to prevent future human rights violations.

Soon, not long after the decision, the [UN Convention on the Rights of Persons with Disabilities](#) (CRPD)⁴ was nearly universally adopted. The principles enshrined in it are for instance, protection of dignity, autonomy, and the rights of persons with disabilities (including mental health conditions). States Parties, including the Netherlands, have pledged to ensure these rights through regulation and oversight. Yet, the real-world implementation continues to fall short.

² *Ximenes-Lopes v. Brazil* (2006) Ser C No 149 (IACtHR)

³ *Hernández v Argentina* (2019) Ser C No 359 (IACtHR)

⁴ Convention on the Rights of Persons with Disabilities (adopted 12 December 2006 UNGA A/RES61/106)

Lessons (not) learned

The Netherlands ratified the CRPD in 2016 and subsequently introduced the Compulsory Mental Health Care Act (CMHCA). The intention was to [align domestic mental health legislation with international standards](#).⁵ Yet, the *Aurora Borealis* case, where patients in a private psychiatric institution suffered severe neglect, exposes a troubling gap between these commitments and the realities of the vulnerable individuals in question.

Just as the IACtHR underscored Brazil's failure to oversee private healthcare facilities in the Ximenes-Lopes case, the *Aurora Borealis* case demonstrates that states continue to struggle with enforcing standards in outsourced care. This failure is not unique to the Netherlands, it reflects a [global pattern of neglecting the rights of individuals](#) with mental health conditions.⁶

This failure to meet the commitments and to protect the most vulnerable is not unique to the Netherlands. Across jurisdictions, mental health systems and [institutions remain underfunded](#),⁷ and [stigma against mental illness](#) continues to thrive, and reports of [abuse, neglect, and human rights violations](#) in psychiatric facilities are alarmingly common. The COVID-19 pandemic has only intensified these issues, further [exposing and exacerbating mental health crises](#), with exposing the fragility of mental health systems worldwide.⁸

Looking ahead:

The lesson is clear: Legal reform alone is insufficient. States cannot outsource responsibility to public services and avoid responsibility, when human-rights are violated in private facilities. The judgement of Ximenes-Lopes remains deeply relevant: the right to health

⁵ Nikita V Alexandrov and Natalie Schuck, 'Coercive Interventions under the New Dutch Mental Health Law: Towards a CRPD-Compliant Law?' (2021) 76 International Journal of Law and Psychiatry 101685

⁶ Magnus Mfofo-M'Carthy and StephanieHuls, 'Human Rights Violations and Mental Illness' (2014) 4 Sage Open

⁷ World Health Organization, 'Who Report Highlights Global Shortfall in Investment in Mental Health' (*World Health Organization*) <<https://www.who.int/news/item/08-10-2021-who-report-highlights-global-shortfall-in-investment-in-mental-health>> accessed 1 April 2025

⁸ World Health Organization, 'Mental Health and Covid-19: Early Evidence of the Pandemic's Impact: Scientific Brief, 2 March 2022' (*World Health Organization*) <https://www.who.int/publications/i/item/WHO-2019-nCoV-Sci_Brief-Mental_health-2022.1> accessed 1 April 2025

is not a policy aspiration but a legally enforceable right. Consequently, the governments must commit to comprehensive reforms that combine adequate funding, rigorous oversight and accountability mechanisms, and a conscious alignment with human rights principles.

This principle remains highly relevant in today's era of [widespread outsourcing of public services](#):⁹ States cannot evade accountability by delegating responsibilities to private actors.

Moving forward, the lessons of *Ximenes-Lopes* remind us that states bear both a legal and moral obligation to protect their most vulnerable citizens.

Only then can we move closer to a world where dignity, humane treatment, and the right to health is reality for all.

⁹ Benjamin Goodair and Aaron Reeves, 'The Effect of Health-Care Privatisation on the Quality of Care' (2024) 9 The Lancet Public Health

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