Position statement on the current draft of a comprehensive and integral international convention on promotion and protection of the rights and dignity of persons with disabilities

Submitted by the World Health Organization (WHO)

WHO would like to commend the efforts of the Ad Hoc Committee and the Working Group of the Ad Hoc Committee in preparing the current draft of a comprehensive and integral international convention on promotion and protection of the rights and dignity of persons with disabilities (A/AC.265/2004/WG/1). In welcoming the draft prepared on the basis of the principle of non-discrimination, WHO extends its support in addressing health and rehabilitation of persons with disabilities as a human rights issue. WHO also believes that a rights-based approach to health policy affirms the principle of autonomy and participatory decision-making in addressing health and rehabilitation needs of persons with disabilities.

WHO's statement relates to the following articles in the current draft:

- Article 3: Definitions;
- Article 4: General obligations;
- Article 5: Promotion of positive attitudes to persons with disabilities;
- Article 6: Statistics and data collection;
- Article 7: Equality and non-discrimination;
- Article 9: Equal recognition as a person before the law;
- Article 10: Liberty and security of the person;
- Article 11: Freedom from torture or cruel, inhuman or degrading treatment or punishment;
- Article 16: Children with disabilities;
- Article 21: Personal mobility; and
- Article 21: Right to health and rehabilitation.

Article 3 Definitions

Accessibility

WHO stresses the importance of health facilities including rehabilitation, goods, and services being accessible to everyone without discrimination, within the jurisdiction of the State party (WHO,2002). In this context, WHO would like to stress the importance of including the overlapping dimensions of non-discrimination [(1)], physical accessibility [(2)], economic accessibility [(3)] and information accessibility [(4)] based on the General Comment on the right to health adopted by the Committee on Economic, Social and Cultural Rights, which monitors the International Covenant on Economic, Social and Cultural Rights.

Disability

WHO is committed to continuing efforts to ensure that persons with disabilities are empowered by disability classification and assessment tools, and not discriminated against. All WHO Member States have endorsed the International Classification of Functioning, Disability and Health (ICF) (WHO,2001) at the Fifty-Fourth World Health Assembly as the framework for defining and measuring disability. Therefore, WHO stresses the importance of using disability "as an umbrella term for impairments, activity limitations, and participation restrictions" (p.3) (WHO, 2001). In this regard, WHO would like to highlight the importance that a person's functioning and disability be conceived as a "dynamic interaction" between "health conditions and contextual factors". [(5)]

Article 4 General obligations

WHO supports the need to mainstream disability issues in development and would suggest the inclusion of health along with economic and social development in Article 4(c). WHO would like to highlight the issue of progressive realization of right to health in the draft convention. The principle of progressive realization of this right imposes an obligation on Member States to move as expeditiously and effectively as possible towards that goal (WHO, 2002).

[1] *Health facilities, goods and services must be accessible to all, in law and in fact, without discrimination on any of the prohibited grounds.*
[2] *Health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable groups such as persons with disabilities including children, women, and the elderly.*
[3] *Health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided are affordable for all.*
[4] *Accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.*
[5] *Health conditions include diseases, disorders, injuries and traumas while contextual factors include both environmental factors as well as personal factors (WHO,2001).*

Article 5 Promotion of positive attitudes to persons with disabilities

Recognizing the importance of combating stereotypes and prejudices about persons with disabilities, WHO is committed to provide technical assistance and expertise in promoting positive attitudes towards persons with disabilities. In particular, WHO is committed to working towards a paradigm shift so that health and rehabilitation professionals work in partnership with persons with disabilities rather than simply prescribing treatment to them.

Article 6 Statistics and data collection

WHO recognizes that human rights principles and norms are relevant to selecting data collected to determine the type and extent of health problems affecting a specific population (WHO, 2002). In this context, WHO fully supports disaggregating data by age, sex and disability as well as treating health data with anonymity and confidentiality. Furthermore, in the process of data collection WHO would like to highlight the need to include provisions that promote and protect the right to education and the right to seek, receive and impart information concerning health issues (WHO, 2002).

WHO recognizes that in many low-income and middle-income countries there is a shortage of data on the health and rehabilitation needs of persons with disabilities. Such data would not only highlight the needs of persons with disabilities, but would ensure equity in allocation of available resources in addressing their needs. In this context, WHO is committed to provide technical assistance and expertise within its mandate and looks forward to contribute towards issues related to statistics and data collection within the framework of International Classification of Functioning, Disability and Health (WHA54.21) for national and international use.

Article 7 Equality and non-discrimination

Discrimination can manifest itself in inadequately targeted health programmes and restricted access to health services. Hence, the article on equality and non-discrimination needs to ensure that persons with disabilities do not receive different treatment from their peers without disabilities. In this context, WHO recognizes the importance of the provision on reasonable accommodation and would like to reiterate that in discussing appropriate services the principle of reasonable accommodation for persons with disabilities should serve as a guiding principle.

Article 9 Equal recognition as a person before the law

WHO recognizes the importance of a person with disability being affirmed equal recognition as a person before the law. WHO supports the provisions made in this article and would like to emphasize that all people should be assumed to have capacity unless there is evidence to the contrary established by appropriate legal due process (WHO, 2003).

Article 10 Liberty and security of the person

WHO recognizes that free and informed consent should form the basis for meeting the health and rehabilitation needs of persons with disabilities. The issue of informed consent relates to voluntary as well as involuntary treatment in hospitals including rehabilitation settings and involuntary treatment in community settings. In this context, WHO believes that "consent cannot be lawful if it is accompanied by a threat or an implied threat of compulsion or if appropriate alternatives to the proposed treatment are not offered for consideration" (p.24) (WHO, 2003).

Article 11 Freedom from torture or cruel, inhuman or degrading treatment or punishment

WHO recognizes the importance of this article and affirms that no one shall be subjected without his free consent to medical or scientific experimentation (WHO, 2003). In this context, WHO would like to highlight the importance of obtaining consent from all individuals with disabilities who have the capacity to consent to voluntary treatment in hospital as well as community settings.

WHO would also like to highlight that involuntary admission should be permitted only if both the following criteria are met: (a) there is evidence of mental disorder of specified severity as defined by internationally accepted standards; and (b) there is a likelihood of self-harm or harm to others and/or of deterioration in the individual's condition if treatment is not given (WHO, 2003). All individuals admitted involuntarily should have a specific right to appeal against their involuntary hospitalization both to the managers of the institution concerned and to a review board or tribunal (WHO, 2003).

WHO would like to reiterate that all persons should be assumed to have capacity unless there is evidence to the contrary established by appropriate legal due process. [(1)] Furthermore, WHO believes that consideration should be given to options for advanced directives and or the authorization of an independent board when an individual is unable to consent (United Nations, 1991). A review board shall periodically review the cases of individuals admitted involuntary at reasonable intervals as specified by domestic law (United Nations, 1991).WHO believes that the lack of such provisions may likely to result in no research being conducted that would enhance the quality of life of persons with disabilities and may have implications on long term care of persons with disabilities in need of chronic care.

Article 16 Children with disabilities

WHO requests that residential facilities be age-appropriate as well as separate from facilities for adults and that due attention should be given to the needs of orphaned children with disabilities. Furthermore, WHO extends an offer of technical support towards developing strategies for early identification of disabilities.

Article 20 Personal mobility

Recognizing the importance of personal mobility in accessing health and rehabilitation services, WHO would like to recommend that physical accessibility be given equal importance in health and rehabilitation settings, means of transportation and roads leading to health and rehabilitation facilities. In this context, WHO is committed to providing technical assistance and expertise within its mandate and looks forward to contributing towards issues related to mobility aids, devices and assistive technologies.

Article 21 Right to health and rehabilitation

The fundamental right to the highest attainable standard of health for all is reflected in the Constitution of WHO (1946) and reiterated in the Declaration of the Alma Ata (1978). Furthermore, the most authoritative interpretation of the right to health is outlined in Article 12 of the International Covenant on Economic, Social and Cultural Rights.

A rights-based approach to health entails recognizing the individual characteristics of the population groups concerned (WHO, 2002). Within this context, the right to health and rehabilitation has been addressed by the following World Health Assembly resolutions: (WHA29.68, WHA38.18,WHA42.28, and WHA45.10) . These emphasize the importance of rehabilitation and urge Member States to develop their rehabilitation services as an integral part of the national health system. Furthermore, the Alma-Ata Conference and Declaration on Primary Health Care (PHC) provided a new vision for providing promotive, preventive, curative and rehabilitative services for the main health problems in the community.

The Declaration of Alma-Ata states that people have the right and duty to participate individually and collectively in planning and implementing their health care. This concept led to development of the Community-Based Rehabilitation (CBR) as a strategy for community development. The recent international consultation to review CBR affirmed CBR as a strategy towards poverty reduction, as it is widely acknowledged that poor people are disproportionately disabled and disabled people are disproportionately poor.

Furthermore, the consultation asserted that CBR embodies the core concepts of human rights: life, liberty, and equality. Hence, WHO would like to suggest the inclusion of provisions that promote CBR as a strategy in addressing the right to health and rehabilitation (WHO, 2003a). WHO also suggests the inclusion of provisions related to healthy ageing of adults with intellectual disabilities (WHO, 2003b). WHO believes that rehabilitation includes all measures aimed at reducing the impact of a health condition on an individual, enabling him or her to achieve independence and social integration in order to enhance their quality of life. Within this context, the International Classification of Functioning, Disability and Health (ICF) endorsed by all WHO Member States at the Fifty-fourth World Health Assembly provides a framework for developing disability policy.

WHO affirms its support in preventing the imposition of unwanted medical and related interventions on persons with disabilities. However, WHO would like to highlight the need for appropriate legal safeguards to avoid the risk of people with disabilities being unable to be treated involuntarily because they have a disability (WHO,2003).

While WHO fully supports the need for the convention to address economic independence of persons with disabilities within the context of right to work, WHO would like to suggest that the article on health and rehabilitation refer to "medical rehabilitation" (i.e., physical, occupational, speech, language and communication).

Continued Support towards the Convention

WHO takes this opportunity to highlight its work on the monitoring of the United Nations Standard Rules related to health and rehabilitation of individuals with disabilities. Also, WHO wishes to underscore its continued commitment to this process of drafting a new convention and hopes that the Ad Hoc Committee will call on WHO's technical expertise in health and rehabilitation related issues during the formulation of the convention.

References

1. World Health Organization (2002). 25 Questions & Answers on Health and Human Rights: Geneva, World Health Organization.
2. Resolution WHA54.21.International classification of functioning, disability and health. *In: Fifty-fourth World Health Assembly, Geneva, 14-22 May 2001*.
3. World Health Organization (2001). International Classification of Functioning, Disability and Health: Geneva, World Health Organization.
4. World Health Organization (2003). Mental Health Legislation & Human Rights: Geneva, World Health Organization.
5. United Nations (1991). *Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (Resolution 46/119).* New York: United Nations General Assembly.
6. Resolution WHA29.68. Disability prevention and disability. *In: Twenty-ninth World Health Assembly, Geneva, 3-21 May 1976.*
7. Resolution WHA38.18. Prevention of disability and rehabilitation of the disabled. *In: Thirty-eighth World Health Assembly, Geneva, 6-20 May 1985.*
8. ResolutionWHA42.28. Disability prevention and rehabilitation. *In: Forty-second World Health Assembly, Geneva, 8-19 May 1989.*
9. Resolution WHA45.10. Disability prevention and rehabilitation. *In: Forty-fifth World Health Assembly, Geneva, 4-14 May 1992.*
10. World Health Organization (2003a). Report of International Consultation to Review Community-Based Rehabilitation: Geneva, World Health Organization.
11. World Health Organization (2003b). Healthy Ageing: Adults with Intellectual Disabilities-Ageing and Social Policy: Geneva, World Health Organization.