

A Note on article 25 (health)

submitted to

The Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities

by

***Paul Hunt, United Nations Special Rapporteur on the right of everyone
to the enjoyment of the highest attainable standard of physical and
mental health***

Introduction

1. I warmly congratulate the Ad Hoc Committee on the progress it has made towards finalising a text on the human rights of persons with disabilities.
2. While I have followed the development of the Committee's work with great interest, unfortunately limited resources have made it very difficult for me to make specific substantive contributions to its deliberations. I hope, however, that some of my reports to the General Assembly and Commission on Human Rights have assisted the Committee's task, such as the report on mental disability that I submitted to the Commission on Human Rights last year.¹
3. As the Committee considers article 25 on health, this Note makes a few brief remarks on that provision. If the Committee would welcome any additional comments, either on article 25, or other draft provisions, or particular issues such as informed consent, I am at the Committee's disposal.
4. **Part I** of this short Note provides a few introductory remarks about the work I have already undertaken on disability, especially in relation to psychiatric and intellectual disability.
5. **Part II** makes some brief remarks about a selection of issues arising from article 25. I am not commenting on all of the important issues arising from article 25 – only a selection of them. Moreover, the remarks on the selected issues are very brief. The **Conclusion** makes two general remarks about article 25.
6. In this Note, I use 'the right to health' or 'the right to the highest attainable standard of health' as a convenient short hand for the longer formulation ie 'the right to the enjoyment of the highest attainable standard of physical and mental health'.

¹ E/CN.4/2005/51, Report of the Special Rapporteur on the right to the highest attainable standard of health to the Commission on Human Rights at its 61st Session.

Part I

7. Within the context of my work as United Nations Special Rapporteur, I have given particular focus to the right of health of persons with psychiatric and intellectual disabilities.
8. During country missions undertaken to Peru and Romania in 2004, I met with government officials and civil society organisations working on the right to health of persons with psychiatric and intellectual disabilities. I also had the opportunity to visit psychiatric institutions in both countries.²
9. My annual report to the Commission on Human Rights in 2005 focuses on mental disability. The report, which draws on international human rights treaties and specialised international instruments, seeks to clarify the right to health as it relates to persons with mental disabilities. The report outlines a common analytical framework for the right to health which 'unpacks' this fundamental human right in terms of freedoms, entitlements, non-discrimination and equality, participation, international assistance and cooperation, monitoring and accountability, and so on. This framework was first developed in General Comment 14 of the Committee on Economic, Social and Cultural Rights.³ In my report, I elaborate and apply the framework in the context of the right to health of persons with mental disabilities.

Part II

10. Affordable: article 25(a). I welcome the reference to 'affordable'. As the Chairman's commentary remarks, this resonates with the approach taken by the UN Committee on Economic, Social and Cultural Rights. Moreover, this approach is increasingly followed in the right to health literature. For my part, I use the concept of 'affordability' in all my relevant reports.
11. Access to personal health records. Article 22 addresses the issue of privacy of medical and health records. Indeed, privacy is very important from the human rights perspective. However, an individual's access to his or her own health records is also very important from the human rights perspective. In practice, such access is sometimes obstructed or denied. Apart from reflecting and respecting an individual's autonomy, access to personal health records is also instrumental in enhancing accountability. How can a duty-bearer be held to account if the rights-holder has incomplete access to his or her relevant personal health information? Accordingly, I respectfully suggest that consideration is given to including an individual's access to his or her personal health records in article 25 (or elsewhere in the text).
12. Training of health professionals: article 25(d). Human rights education for health professionals is an essential starting point for empowering health professions to respect and promote human rights in health care contexts.

² E/CN.4/2005/51/Add.2, Report of the Special Rapporteur, Paul Hunt, Addendum: Mission to Peru; and E/CN.4/2005/51/Add.3, Report of the Special Rapporteur, Paul Hunt, Addendum: Mission to Romania.

³ Committee on Economic, Social and Cultural Rights (CESCR), General Comment 14 on the right to health, adopted 11 August 2000 (E/C.12/2000/4).

However, as Special Rapporteur, I have learnt that human rights are often not integrated into professional education and training programmes for health professionals. I therefore very much welcome the focus of article 25(e) on the responsibility of States to raise awareness of human rights among health professionals through training and promulgating ethical standards, with a particular focus on the rights and needs of people with disabilities.

13. I refer the Committee to my report of 2005 to the General Assembly, which includes a short chapter on human rights education for health professionals.⁴
14. Sexual and reproductive health services: article 25(a). In 2003, the UN Commission on Human Rights confirmed: "sexual and reproductive health are integral elements of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health".⁵ The Commission reaffirmed this position in 2004.⁶ In this way, the Commission reflected the internationally understood meaning of the right to health, as enshrined in the International Bill of Rights, as well as other international instruments.
15. Moreover, it is also widely recognised that achieving the health-related Millennium Development Goals, such as those on maternal health and HIV/AIDS, will not be possible without widespread and equitable access to sexual and reproductive health services.
16. Unfortunately, notwithstanding international human rights law and the Millennium Development Goals, the record shows that persons with disabilities are often denied sexual and reproductive health services. Such policies and practices are discriminatory, in breach of the right to health, and lead to avoidable suffering. Further, they treat persons with disabilities as though they do not possess some of the attributes of being human: a sexual and reproductive capacity.
17. Because of the history of neglect surrounding this important issue, I respectfully suggest that there is a strong case for removing the brackets around the words "including sexual and reproductive health services" in article 25(a), as well as around the word "sexuality" in article 8(2)(a)(ii).

Conclusion

18. In conclusion I would like to raise two general points about article 25.
19. First, the chapeau rightly includes the formulation of the right to health that is referred to in the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and other key international instruments ie "the right to the enjoyment of the highest attainable standard of physical and mental health". It is widely accepted that this formulation includes access to health care services, as well as access to

⁴ A/60/348, Report of the Special Rapporteur on the right to the highest attainable standard of health to the General Assembly.

⁵ Commission on Human Rights Resolution 2003/28.

⁶ Commission on Human Rights Resolution 2004/27.

those services relating to the underlying determinants of health, such as adequate sanitation and safe drinking water. Indeed, the detailed provisions of ICESCR and CRC explicitly include both health care services and the underlying determinants of health. For example, article 24(2)(b) of CRC refers to "the provision of necessary medical assistance and health care", while article 24(2)(c) refers to "clean drinking water".

20. While the chapeau of article 25 uses the wide inclusive formulation of the right to health, thereafter all references in article 25 would appear to be to health care services, rather than the underlying determinants of health, with the exception of the last words of article 25(a) "population-based public health programmes".
21. In these circumstances, I respectfully suggest that further consideration is given to ensuring that article 25 is clearly understood to cover, not only health care services, but also the underlying determinants of health that constitute such a vital part of the right to the highest attainable standard of health.
22. Second, while researching my report of 2005 on mental disabilities I gained the firm impression that persons with intellectual disabilities remain among the most neglected – the most 'invisible' – members of our communities. Their neglect is reflected in society at large, among the health professions, and in the human rights community.
23. I see the important work of the Committee as providing a unique opportunity to address this historic, systemic neglect of all those with disabilities, not least those with intellectual disabilities.

Paul Hunt, 24 January 2006