

**Netherlands Institute for Human Rights
Written submissions**

to the Office of the High Commissioner for Human Rights in relation to the call for inputs with regard to Human Rights Council resolution 49/12 (A/HRC/RES/49/12) on the rights of persons with disabilities.

Introduction

The Office of the High Commissioner for Human Rights (OHCHR) disseminated a call for inputs with regard to Human Rights Council resolution 49/12 (A/HRC/RES/49/12) on the rights of persons with disabilities. The resolution requests the OHCHR “to prepare its next annual thematic study on the rights of persons with disabilities on support systems to ensure community inclusion of persons with disabilities, including as a means of building forward better after the COVID-19 pandemic. The Netherlands Institute for Human Rights (Institute) is happy to provide information in relation to the Netherlands. Unfortunately the Institute may not be able to answer every question.

Questions

1(a). *Does your country have laws, policies, plans, strategies or programmes at any level of government relating to individualized support for persons with disabilities? In particular initiatives related to:*

- i. *Mobility: Support for personal mobility and access to affordable and available quality mobility assistance (e.g., mobility aids, assistive technologies and products (prostheses, orthotics, wheelchairs), animal assistance, point-to-point and paratransit transport, among others);*

The Institute's 2021 annual CRPD report focused on access to aids and assistance for personal mobility. In the Netherlands the provision of mobility aids is organized per area of life. These areas are the (own) living environment, education and work. Different laws and regimes are applicable, often with different (separate) implementing authorities.¹ This situation has led to fragmentation, resulting in multiple (administrative) obstacles for persons with disabilities. For example, when persons with disabilities reach a different phase in life (for instance, from education to work), they often have to return their mobility aid and re-apply for a new one. Moreover, they need to prove anew that they actually need it, with no guarantee the mobility aid will be provided to them (again). Persons moving from one municipality to another cannot always take their mobility aids with them, because they do not own them. In such situations, persons with disabilities also need to re-apply, with no guarantee that they will receive the same (type of) mobility aid again. Furthermore, persons with disabilities report that the application process is rather bureaucratic. Often it is unclear to them where they need to apply.²

In relation to the quality of mobility aids the Institute found that overall many people may seem to be quite satisfied with their mobility aid. However, persons with disabilities also indicate that their individual needs are not always adequately taken into account, for example because the supply of different mobility aids offered by the provider is limited and based on a general standard. Persons with disabilities also report obstacles in relation to repairs of their mobility aids, for instance because they cannot have direct contact with the repairer because this is (by contract) taken care of by the provider of the mobility aid.³

¹ Laws applicable are amongst others: the Social Support Act 2015, the Health Insurance Act, the Long-term Care Act, the Disablement Assistance Act for Handicapped Young Persons.

² Netherlands Institute for Human Rights, *Access to aids in the right to personal mobility. Annual report on the implementation of the CRPD in the Netherlands 2021*, December 2021, p. 43-44 (available at <https://publicaties.mensenrechten.nl/publicatie/767965ac-562e-4c4c-b81b-4f7f3b63c3ba>).

³ Netherlands Institute for Human Rights, *Annual report 2021*, p. 32.

- ii. *Assistance with daily living activities: Support to assist persons with disabilities in a one-to-one human relationship to perform daily life activities like getting up, bathing, dressing, grooming, going out, cooking, cleaning, guiding, shopping, or doing laundry (e.g., full or part time professional personal assistance, third person support allowance, informal personal assistance, household cleaner, among others);*

The Social Support Act 2015 (Wet maatschappelijke ondersteuning 2015) requires municipalities to provide social support to persons with disabilities. Prerequisite is that the support cannot be provided by the social network of the person applying for the support.⁴ The Social Support Act 2015 aims *inter alia* to stimulate informal care from, for example, family members or acquaintances. Support provided by public authorities ought to be additional to informal care. Forms of support provided by public (municipal) authorities are individual guidance in daily life and household cleaning. The Social Support Act 2015 also allows for persons to apply to the municipality for a so-called ‘personal budget’. With this budget an applicant may (directly) arrange and pay for care and support (aid).⁵ The Institute has received signals that personal budgets received are not always sufficient.⁶ By the way, if someone needs medical care, this is provided by the health insurance provider.⁷

- iii. *Housing and accommodation: Support in relation to housing and living arrangements in the community, including home modifications (e.g., housing information and assistance, home support, supported living services, financial support for housing, among others);*

At present there is a general shortage of housing in the Netherlands.⁸ This makes it even more difficult for persons with disabilities to find appropriate and affordable housing. Research indicates not enough attention is paid, mainly at the national level, to the realization of inclusive housing and living arrangements that stimulate participation of persons with disabilities in society. Furthermore, there are several obstacles for persons with disabilities to move to a new house, for example because they are not eligible for another house because they already live in accessible housing. Another concern is that municipalities often lack knowledge on different housing needs of persons with different disabilities.⁹

The Social Support Act 2015 mentioned above requires municipalities to provide aids, such as home modifications and home support, needed by persons with a disability in order to live at home independently and to improve their personal mobility around their homes.¹⁰ A report on recent data gathered by the Institute shows that many persons with disabilities receive the requested support and adjustments to live independently. However, when it comes to persons with a severe physical disability this percentage is significantly lower. Especially for this group it is important that they receive support as soon as possible,

⁴ Article 1.2.1 (a) Social Support Act 2015.

⁵ Article 2.3.6 Social Support Act 2015.

⁶ Netherlands Institute for Human Rights, *Annual report 2021*, p. 33.

⁷ Article 10 Health Insurance Act.

⁸ Netherlands Institute for Human Rights, *Written submission for the 41st session of the Universal Periodic Review Working Group concerning the human rights situation in the Netherlands*, March 2022 (available at <https://publicaties.mensenrechten.nl/publicatie/373ad6b5-e665-4dac-aa9a-186c72d36e43>).

⁹ Netherlands Institute for Human Rights, *Additional report to the Committee on the Rights of Persons with Disabilities on the adoption of the list of issues for the initial report of the Netherlands*, February 2022 (available at: <https://publicaties.mensenrechten.nl/publicatie/4f6ea811-df96-4d74-9d83-089e41e5559c>).

¹⁰ Article 1.2.1 (a) Social Support Act 2015.

because otherwise they cannot live their daily life in the best way they can.¹¹ An additional challenge in this regard is that the procedures to apply for support services are said to be rather bureaucratic, as these are reported to take a lot of time and do not always result in the support which is needed by applicants.¹² When it comes to access to community services and facilities, data indicate that persons with disabilities do not use these services as often as persons without a disability. This is especially the case for persons with a severe physical disability and persons with an intellectual disability. Therefore, over the years, not so much progress seems to have been made in this regard.¹³

- iv. *Disability-related extra costs: Financial support to pay services and goods, including personalized budgets and direct payments (e.g., cash transfers beyond income replacement, additional funds to cover support services, among others).*

In the Netherlands a broad range of financial support measures has been set up to ensure the costs of (mobility) aids are not too high for persons with disabilities. Even so, persons with disabilities are often required to pay a personal contribution. Some persons with disabilities use multiple (mobility) aids, leading to an increase in their medical expenses. The Institute has received notifications that in some instances this hinders persons with disabilities to participate in society. For example, people have to decide to refrain from taking part in social activities due to their high medical expenses. The Institute is concerned about these notifications. These notifications may indeed raise questions with regard to the CRPD. In any case, the Institute has recommended the government to investigate what (additional) measures can be taken.¹⁴

- v. *What are the government institutions, departments and ministries in charge of budgeting, financing and implementing the above?*

The government ministry responsible for social support for persons with disabilities is the Ministry of Health, Welfare and Sport.

In 2015, social support services in the Netherlands were decentralised and transferred to municipalities. Municipalities are required to carry out the Social Support Act 2015. In implementing this act, municipalities have broad discretionary powers, intended to take into account the local (budgetary) situation. Each municipality is responsible for financing the support services from its own budget. Municipalities may adopt their own policies on, for example, the availability of community services. For instance, municipalities may make different arrangements with parties that deliver equipment, such as mobility devices, and other services that support independent living. Subsequently, differences among municipalities exist. While a request for a specific individual support service may be granted by one municipality, another may decide differently.¹⁵

¹¹ Netherlands Institute for Human Rights, *Insight in Inclusion III*, February 2022 (available at: <https://publicaties.mensenrechten.nl/publicatie/48a73d44-f079-450c-9487-e100984d0b3a>). This data is derived from persons with a physical disability and persons with a chronic illness.

¹² Netherlands Institute for Social Research, *Accessible? Not by a long shot. Experiences of people living in the Netherlands with physical disabilities as a mirror of society*, June 2021, p. 58-61.

¹³ Netherlands Institute for Human Rights, *Insight in Inclusion III*, forthcoming. This data is derived from persons with a physical disability, persons with a chronic illness and persons with a mental disability.

¹⁴ Netherlands Institute for Human Rights, *Annual report 2021*, p. 34.

¹⁵ Netherlands Institute for Human Rights, *Submission to the Committee on the Rights of Persons with Disabilities concerning the initial report of the Netherlands*, December 2018 (available at: <https://publicaties.mensenrechten.nl/publicatie/08835554-39ba-4fcc-b1b8-bad4acaf34db>); CRPD Alliance, *Shadowreport on the implementation of the Convention on the Rights of Persons with*

- vi. *How are persons with disabilities and their representative organizations involved in the design and monitoring of the above (1(a))?*

In 2020 the Institute published its annual report on the implementation of the Convention in the Netherlands. The report dealt with the general obligation laid down in Article 4(3) CRPD. In general, the Institute has found that while the government is open to facilitate the participation of persons with disabilities, measures are necessary to guarantee that participation is more structurally embedded. Furthermore, the Institute found that the Ministry of Health, Welfare and Sport, in its role as focal point in the sense of Article 33(1) CRPD, should encourage and facilitate other ministries in ensuring that they, too, fulfil the obligation resting on them to closely consult and actively involve persons with disabilities and their (representative) organisations. Therefore, the Institute has called upon the government to set out structures and procedures applicable throughout the central government in order to guarantee the participation of persons with disabilities in all phases of law- and policymaking.¹⁶ The (then acting) State Secretary has stated in reply that the government deems a nationwide, binding procedure (enacted by law) to be unnecessary. He would rather focus on exchanging information and knowledge about ways in which close consultation can be organised. Even though the Institute agrees that a specific law (Act of Parliament) on participation may not be necessary, it holds the opinion that a nationwide procedure may very well be an *organisational* (rather than necessarily a legal) *framework*; for example, a network of CRPD liaison officers within every government department.¹⁷

In relation to the provision of (mobility) aids, the government has enacted different action-plans to improve the situation for persons with disabilities that need (mobility) aids. Persons with disabilities and their representative organisations were involved in this process, in line with art. 4(3) CRPD.¹⁸

- vii. *Does your country have a strategy to develop legislation, policies and programmes to enable the development of support systems as described in 1(a) above which includes targets, indicators and an accountability mechanism? Please provide references to the documentation.*

The Ministry of Health, Welfare and Sport, the focal point within the Dutch government for matters relating to the implementation of the Convention (cf. Article 33(1) CRPD), developed the first CRPD implementation plan called ‘Unlimited participation’, which ran from 2018 until 31 December 2021. It was a coordination mechanism within the government to facilitate related action in different sectors and at different levels. The implementation plan ‘Unlimited participation’ has indeed served as a basis for a series of steps towards the realisation of the Convention in the Netherlands in a number of areas.¹⁹ The provision of

Disabilities, December 2019, updated February 2022 (available at <https://iederin.nl/schaduwrapport-uitvoering-vn-verdrag-naar-geneve/>) .

¹⁶ Netherlands Institute for Human Rights, *Participation of persons with a disability in law- and policymaking processes. Annual report on the implementation of the CRPD in the Netherlands 2020*, December 2020, p. 52 (available at:

<https://publicaties.mensenrechten.nl/publicatie/1bab7360-2467-478c-8815-304ea46353bd>)

¹⁷ Netherlands Institute for Human Rights, *Input for the debate on disability policies/residential care/ Law on long-term care*, 16 November 2021. The Institute has developed a *Toolkit* with tips on how to organize close consultation and active involvement of persons with disabilities in law- and policymaking (<https://mensenrechten.nl/nl/participatie-op-centraal-niveau-rijk-en-landelijke-uitvoeringsinstanties>)

¹⁸ Netherlands Institute for Human Rights, *Annual report 2021*, p. 35.

¹⁹ Netherlands Institute for Human Rights, *Additional report to the Committee on the Rights of Persons with Disabilities*, February 2022.

social support and care was one of the areas the implementation plan focussed on.²⁰ In relation to the gathering of data and indicators the Institute stimulates the government to continue the monitoring of the implementation of the Convention by gathering data and setting indicators.

In relation to the provision of (mobility) aids, the government has enacted different action-plans to improve the situation for persons with disabilities that need (mobility) aids.²¹ The Institute has found that persons with disabilities encounter multiple (administrative) obstacles and are not always satisfied with the quality of the aid provided.²² The Institute welcomes the different action-plans enacted by the government. However, according to the Institute still more ought to be done. For example, the Institute holds the view that the government should prevent as much as possible that persons with disabilities repeatedly have to demonstrate and prove that they are in need of a mobility aid. Also, the Institute has called upon the government to investigate whether the establishment of one centralized service desk where persons with disabilities can apply for mobility aids could alleviate the burden of bureaucracy. In relation to the plans to improve the quality of the aids and services provided the Institutes notices that, most of the measures taken are non-binding, in other words, there is no legal obligation. Therefore, the Institute deems it of crucial importance that the effectiveness of these measures is closely monitored by the government. If future results show no improvement in the situation, additional measures should be taken.²³

²⁰ Ministry of Health Welfare and Sport, *Unlimited Participation. Implementation of the UN Convention for the rights of persons with disabilities*, 2018 (available at: <https://www.rijksoverheid.nl/onderwerpen/rechten-van-mensen-met-een-handicap/documenten/rapporten/2018/06/01/programma-vn-verdrag-onbeperkt-meedoen>)

²¹ <https://vng.nl/artikelen/vng-project-verbeteragenda-hulpmiddelen>.

²² Netherlands Institute for Human Rights, *Annual report 2021*, p. 43-47

²³ Netherlands Institute for Human Rights, *Annual report 2021*, p. 44-45.