**Draft General Comment on article 5 of the Convention on the Rights of Persons with Disabilities.**

**Comments by the Netherlands**

1. The Government of the Netherlands welcomes the initiative by the Committee on the Rights of Persons with Disabilities (the Committee) to prepare a General Comment on Equality and Non-Discrimination. In response to the Committee’s call for comments the Government of the Netherlands would like to submit the following comments on the draft text.

General

1. The Netherlands is of the opinion that the majority of the provisions of the Convention on Rights of Persons with Disabilities (the Convention) are of a programmatic nature, giving a general instruction to States Parties to take measures to ensure the rights of persons with a disability. It is up to the States Parties to decide what measures are taken, and how these are implemented. In light of this, the Netherlands has chosen to gradually implement the Convention in the existing policies at the national level that aim at the inclusion of persons with a disability. On numerous occasions throughout the draft General Comment, the Committee uses language such as ‘ensure’, or ‘should’, thereby imposing obligations on States Parties that may be stricter than foreseen by the corresponding provisions of the Convention. See for example paragraph 74 of the General Comment on article 29 of the Convention in which it is stated that State Parties *should* at a *minimum, ensure* that the *whole* electoral process is accessible for persons with disabilities, while this does not flow from article 29 of the Convention, or any other article. The Netherlands invites the Committee to ensure that the wording used throughout the General Comment is in line with that of the corresponding provision of the Convention.

Specific

1. Paragraphs 54 – 57 address article 12 of the Convention on the right to equality before the law and the issue of legal capacity. This Article 12 relates to the Dutch legislative framework regarding ‘protective trust’ (*bewindvoering*), ‘mentorship’ (*mentorschap*) and ‘full guardianship’ (*curatele*). The Netherlands deems it necessary to have the possibility of ‘full guardianship’ (*curatele*) as a last resort, as supportive decision-making cannot always sufficiently safeguard the rights and interests of the person involved. The Netherlands understands Article 12 (4) as allowing for substitute decision-making in exceptional circumstances and not prohibiting ‘full guardianship’ (*curatele*).
2. Upon ratification of the Convention, the Dutch government submitted an interpretative declaration on article 12, in which it stated that the Netherlands “interprets Article 12 as restricting substitute decision-making arrangements to cases where such measures are necessary, as a last resort and subject to safeguards”. Several declarations by other States Parties similar to the Dutch declaration on article 12 have been made. No objections have been raised to these declarations by other States Parties. The Netherlands is of the opinion that there is a general understanding among States Parties that the Convention allows for substitute decision-making where this is necessary as a last resort and subject to safeguards. The Netherlands would therefore welcome a revision of paragraph 56 that takes into account this understanding among States Parties.
3. Paragraph 64 addresses article 14 of the Convention. The Committee states in its guidelines on article 14 (as referred to in footnote 69-70 of the draft General Comment) that legislation which provides for “instances in which persons may be detained on the grounds of their actual of perceived impairment, provided there are other reasons for their detention, including that they are considered dangerous to themselves or to others”, is deemed incompatible with article 14 of the Convention. According to the Committee such legislation is discriminatory in nature and amounts to arbitrary deprivation of liberty.
4. In the Dutch legal framework, the mere presence of a handicap can never be a reason for forced/compulsory care or treatment and in all acts the so called ‘no-unless’ principle applies. Forced/compulsory care must be seen as a last resort and is subject to legal safeguards. The position of the Netherlands is that compulsory care or treatment as a last resort measure is allowed under article 14 of the Convention and in line human rights standards from the Council of Europe, including the case law of the European Court of Human Rights.
5. Upon ratification of the Convention, the Dutch government submitted an interpretative declaration on article 14, stating that the Netherlands interprets the Convention as such that it allows “for compulsory care or treatment of persons, including measures to treat mental illnesses, when circumstances render treatment of this kind necessary as a last resort, and the treatment is subject to legal safeguards.” Several declarations similar to the Dutch declaration on article 14 have been made. No objections have been raised to these declarations by other States Parties. The Netherlands is of the opinion that there is a general understanding among States Parties that the Convention allows for compulsory care or treatment of persons, including measures to treat mental illnesses, when circumstances render treatment of this kind necessary as a last resort, and the treatment is subject to legal safeguards. The Netherlands would therefore welcome a revision of paragraphs 63-64 that reflects or includes the understanding among States Parties that while the mere presence of a handicap can never be a reason for compulsory care or treatment, compulsory care or treatment of persons with disabilities– including measures to treat mental illnesses – does not violate articles 5 and 14 of the Convention when circumstances render treatment of this kind necessary as a last resort and this treatment is subject to legal safeguards.
6. Paragraph 73 addresses article 27 on work and employment and includes references to terms that are, in the opinion of the Netherlands, too strict (e.g. ‘to ensure’, should’ and ‘facilitate’) as article 27 itself contains language such as ‘promote’ and ‘taking appropriate steps’ when referring to steps to be taken by States. In line with the comment made by the Netherlands in paragraph 2 regarding the over-all language used in the draft General Comment, the Netherlands would welcome a revision of the wording of paragraph 73 that is more in line with the wording of article 27, such as : ‘to ensure gradually’, ‘where appropriate facilitate’, or ‘promote’.
7. Paragraph 76 addresses the implementation of the Convention at the national level. In subparagraph f and i reference is made to accessibility, rather than non-discrimination. The Netherlands is of the opinion that the comment under subparagraph f and the final sentence of subparagraph i are comments more suitable to be covered in a General Comment on article 9 of the Convention dealing with accessibility. This is without prejudice to the view that in general accessibility for persons with disabilities should be facilitated.