Response of the Netherlands government to the report of the Commissioner for Human Rights

Please find below the government's response to the report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, concerning his visit to the Netherlands from 20 to 22 May 2014. The report forms part of the reporting on the human rights situation in the member states of the Council of Europe that Mr Muižnieks has published since taking office on 1 April 2012.

During his visit, Mr Muižnieks met with representatives of the Dutch government (including both politicians and senior officials) and of national and international non-governmental organisations as well as other representatives of civil society.

The government sees the report as a useful instrument for assessing Dutch human rights policy and as a spur to continue working to achieve a high standard of human rights both in, and beyond, the Netherlands.

The government is gratified by the general appreciation the Commissioner expressed regarding Dutch policy, but notes that he also expressed criticism in a number of areas.

Several of the Commissioner's recommendations will be adopted. In other areas, the Commissioner made recommendations that are already part of policy or are addressed in measures that are currently being prepared. There were also recommendations that the government is unlikely to adopt because it objects to certain aspects of their substance.

It should be noted for the record that a considerable number of the topics dealt with in the report also feature in the Dutch National Action Plan on Human Rights and the annual report of the Netherlands Institute for Human Rights. In this connection the government will provide the House of Representatives with a progress report and response at the end of 2014.

The present report is concerned with the following topics:
1: The legal and institutional framework for the protection and promotion of human rights;
2: The human rights of asylum seekers and immigrants; and

3: The human rights of children.

Below the government will discuss, in broad terms, the main recommendations set out in each section of the report.

Section 1

The government is pleased to note the Commissioner's appreciative remarks about the robust statutory and institutional infrastructure for promoting and protecting human rights in the Netherlands. With regard to the National Action Plan on Human Rights (NAPHR), the government drew its inspiration in part from the Recommendation to which the Commissioner refers, and will continue to draw on it in the further development of the NAPHR. Civil society involvement will be sought in the implementation and continued development of the NAPHR and attention will be paid to opportunities to strengthen such participation and consultation. In addition, the government will look into when and how the NAPHR's implementation can be evaluated. A progress report on the implementation of the NAPHR will be sent to the House of Representatives at the end of 2014, at the same time as the government's response to the annual report of the Netherlands Institute for Human Rights.

The Commissioner welcomes the Netherlands' ratification of a large number of human rights conventions and urges that other conventions be ratified as well. The UN Convention on the Rights of Persons with Disabilities and the Council of Europe Convention on preventing and combating violence against women and domestic violence, both of which have been signed by the Netherlands, have been submitted to the House of Representatives for approval. Ratification is expected in 2015. The Netherlands is not however considering ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, as this convention fails to take sufficient account of the distinction between migrant workers staying lawfully in the Netherlands and those for whom this is not the case. The government is currently considering ratification of the Optional Protocols to the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights, the last of which has been signed by the Netherlands. The same applies to the Oviedo Convention on Human Rights and Biomedicine, which the Netherlands has signed. The government views the Commissioner's appeal as a stimulus to expedite the process of dealing with these outstanding questions.

In addition, the Commissioner calls for the direct effect and implementation of human rights conventions via articles 93 and 94 of the Dutch Constitution to be maintained. The government has no intention or desire to amend these articles. A proposal has been made to amend article 94, but this proposal originates from the House of Representatives. If this proposal is considered by the House of Representatives in plenary session, the government will determine a position at that point. For its part, the government has no intention to amend article 94.

The Commissioner calls on the Netherlands to review its position on the status of economic, social and cultural rights. The government would like to state clearly that it does not take the view, as the Commissioner implies, that economic, social and cultural rights give only general guidance. The government recognises unequivocally that the relevant conventions and convention provisions contain obligations that are binding on the State. Whether these obligations lend themselves to enforcement by the courts in individual cases is another matter. Of crucial importance in this regard is the manner in which the obligations are formulated, which is more programmatic than in the case of civil and political rights. In contrast to the latter categories of rights, in most cases a choice will exist as to the measures employed to apply economic, social and cultural rights. The government considers it important that this choice should not be circumscribed by judicial intervention in individual cases, in view of the inevitable implications such intervention would have for the democratic legislative process. Nevertheless, the final word on this question always rests with the national courts when confronted with an applicable case.

The government recognises, as discussed by the Commissioner, that the decentralisation of governmental tasks can entail human rights issues and that the authorities should pay particular attention to them, including with regard to raising awareness and transferring expertise. These issues are addressed by the NAPHR and various consultative forums and meetings organised with local authorities and civil society organisations, such as in the framework of the annual ‘decentralisation day’ and the Local Human Rights Network.

The Commissioner emphasises that human rights education should be firmly anchored in primary and secondary school education. This autumn the State Secretary for Education, Culture and Science will submit a letter to the House of Representatives announcing a comprehensive review of the curriculum of primary and secondary education. One of the

questions it will address is whether citizenship, including human rights and children's rights, should be more firmly anchored in the formal curriculum.

The Commissioner makes a number of recommendations regarding Dutch legislation on the intelligence and security services. The Intelligence and Security Services Act 2002 was evaluated in 2013 by the Dessens Committee at the request of the House of Representatives. The main conclusion of the Committee's report, which was published on 2 December 2013, was that the Act needed to be amended, particularly in response to technological advances. Amendments to the Act are currently being prepared in line with the government's response to the report, which it gave on 11 March 2014, and other changes announced in light of reports issued by the Intelligence and Security Services Review Committee (CTIVD). In addition, the Minister of the Interior and Kingdom Relations has announced that, among other measures, specific rules on metadata processing, including special safeguards, will be incorporated in the Act. The government is also examining the Dessens Committee's recommendation that non-targeted interception of communications via cable should be made possible. The government will soon inform the House of Representatives of its position on this issue, before the start of the online consultation on the legislative proposal. It has also been announced that the Intelligence and Security Services Review Committee will be given a stronger role.

Section 2

2.1 (Administrative detention of asylum seekers and immigrants)

As regards the detention of aliens whose applications for residence permits have been unsuccessful, the Commissioner calls on the government to show restraint in its use of this measure. If an alien is not, or is no longer, entitled to remain in the Netherlands, the appropriate course of action is the alien's repatriation. This should preferably be a voluntary process, in which the individual concerned is offered every possible assistance. For families with minor children, shelter is available in a family unit for the duration of the departure process. Individual aliens who make active efforts to leave the country can make use of alternative arrangements that suit him or her.

Detention is a last resort aimed at ensuring both that aliens who are not (or are no longer) entitled to stay in the Netherlands do not evade supervision, and that they do in fact leave the country. This point was emphasised in the government's letter to the House of Representatives of 13 September 2013 in which it set out its undertakings in the context of various reports and

recommendations concerning Dutch immigration policy. These general principles are laid down in the Return and Aliens Detention Bill. This Bill is undergoing the customary legislative process and various civil-society organisations have issued advisory opinions on it, helping to further shape the new legislation. Alternative forms of supervision are also laid down in the Bill: the payment of a bond, the requirement to report to the authorities, restrictive accommodation, accommodation with family or friends, or a combination of these measures. Any of these measures may be imposed by the Repatriation and Departure Service (*Dienst Terugkeer en Vertrek*; DT&V), and may or may not be accompanied by return counselling. In addition, an annual fund of €1 million is being made available for local projects concerned with repatriation.

In 2013, 15,720 aliens were registered as having departed the Netherlands. Over three-quarters departed independently and less than a quarter of those were detained prior to deportation. Contrary to what the Commissioner suggests, the Advisory Committee on Migration Affairs (*Adviescommissie Vreemdelingenzaken*; ACVZ) has found that the rate of departure among individuals in aliens detention is almost 70%. Three-quarters of those individuals are detained for a period of less than three months. The average length of detention in 2013 was 72 days.

The government disputes that the Netherlands makes 'extensive' use of aliens detention (referred to in the report as 'administrative detention'). Any order to remand an individual in custody is assessed by the courts, which take account of the actual prospect of deportation. At any time, the alien may – together with the specialist legal counsel assigned to him – ask the court to reassess the prospects for deportation. If the aliens detention is extended after a six-month period, this decision is in every case reassessed by the courts.

In accordance with both the Return Directive and the recast Reception Conditions Directive, the government exercises as much restraint as possible in imposing detention on vulnerable groups such as minor children or on vulnerable individuals. The Return and Aliens Detention Bill addresses detention as a measure of last resort. The use of this measure in the case of vulnerable groups will be elaborated further in delegated legislation.

The government already pays particular attention to vulnerable groups. An extra special-care unit is available, for example, for detainees with physical or psychiatric problems. In addition, a new family detention facility has been developed, solely for unaccompanied minor asylum seekers and families with minor children. It was opened for use on 1 October 2014.

The system of aliens detention is currently governed by the Custodial Institutions Act (*Penitentiaire beginselenwet*), but the Return and Aliens Detention Bill will give it a separate statutory basis. The differentiation of regimes laid down in the Bill is a necessary condition of the freedom and autonomy that will be granted to most individuals in aliens detention. The restrictive regime is necessary to ensure a positive climate and good living conditions in the facility. In contrast with the procedure in place upon an alien's initial arrival, the decision to place a person in the restrictive regime will always be temporary in nature and will always involve an individual assessment.

Asylum seekers are detained at the border only if they enter the country without travel documents or without sufficient financial resources, or if there are grounds for detaining them based on reasons of public policy or national security. Although in practice almost all asylum seekers who report to the border authorities fail to meet the criteria for admission to the country, every case is nevertheless examined individually, with review by the court available as a safeguard.

The use of the Extended Closed Border Asylum Procedure (*Gesloten Verlengde Asielprocedure;* GVA) was changed after the entry into force on 1 January 2014 of the revised Dublin Regulation. 'Dublin claimants' (asylum seekers the IND suspects of travelling to the Netherlands via the territory of another EU member state that is party to the Dublin Convention) are not placed in the GVA. Around ten individuals are placed in the procedure every year.

As of 1 September 2014, families with minor children who are seeking asylum but do not meet the admission requirements and who apply for asylum at the external border are subject to a screening process. This screening is targeted at reasons for refusing admission, including implausibility of the family relationship, suspicions of child trafficking or people smuggling or indications of a breach of public policy. If the screening finds that there is no demonstrable reason to refuse admission to the Netherlands, the family may proceed into the open asylum procedure. If there *are* reasons, the family will be refused admission. If there are strong indications of child trafficking or people smuggling, the adult will be refused admission and detained at the border pending further investigation. The child will be placed in the care of a (temporary) guardian. If further investigation is required for any other reason, the entire family will be refused admission to the Netherlands and placed in the new family detention facility.

2.2 (Human Rights of Irregular Immigrants)

The Commissioner expresses concern about the 'legal limbo' in which some irregular migrants find themselves. He believes that if return is not possible such individuals should be granted a residence permit by the Dutch authorities. The question of whether an asylum seeker needs protection in the Netherlands is assessed thoroughly by the Immigration and Naturalisation Service (*Immigratie en Naturalisatie Dienst*; IND) and often subsequently by the courts. If it is concluded that there are no grounds for assuming that an individual would be at risk if he were to return to his country of origin, he is obliged to leave the Netherlands. The alien is responsible for leaving of his own accord. Once the asylum application has been denied, reception facilities remain available to the applicant for 28 days, so that he can make arrangements for his departure. If he fails to depart within this period, he may be granted a limited additional period of shelter so he can work further on arranging his departure. This is a reasonable guiding principle.

Efforts to assist aliens whose applications for residence permits have been unsuccessful must not stand in the way of an effective asylum and immigration policy. The Netherlands' position in this regard is in keeping with the case law of the European Court of Human Rights (ECtHR).[1] When considering whether a government should provide such support, the Court states that 'a fair balance' is needed 'between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights'. The Commissioner's view that everyone, regardless of their residence status, has a right to shelter on the basis of international conventions, fails to take account of this legitimate consideration.

The Netherlands has sought to achieve the fair balance espoused by the ECtHR by making provision in its policy for the possible vulnerability of some asylum seekers whose applications have been denied. Indeed, the Commissioner's report makes reference to this. Families with minor children whose applications have not been successful are provided with accommodation in family units until they depart or until all the children have reached the age of majority.

The Commissioner calls on the Dutch authorities 'to assess the situation as regards the practical possibility of returning [irregular immigrants] thoroughly and on an individual basis.' Such an individual assessment already takes place, but it is only possible if the individual concerned is prepared to make efforts to arrange his return. Otherwise, the government cannot

[1] ECtHR, *N. v. United Kingdom,* 27 May 2008, appl. no. 26565/05.

establish the prospects for the individual's repatriation. If, through no fault of the alien, return is not possible, he will be eligible for a no-fault residence permit.

Some aliens whose applications for residence permits have been unsuccessful refuse to return, however, preferring to reside in the country illegally rather than return to their country of origin. This phenomenon is illustrated by the protests organised by such aliens, for instance in Amsterdam, to which reference is made in the Commissioner's report. Temporary accommodation was arranged for this group in a former custodial institution – an initiative intended to enable the group to work to resolve their situation in a stable environment under the guidance of volunteers and professionals. The evaluation of this initiative showed, however, that a large number of these individuals, who have no prospect of a residence permit in the Netherlands, made no use of this opportunity and were not prepared to work on arrangements for their return.

The Commissioner also voices concern about illegal immigrants' access to medical care. He refers to the report of 3 October 2013 by the National Ombudsman on medical care for illegal immigrants. As the government stated in its letter to the House of Representatives in response to that report, every alien whose application has been unsuccessful has a right to medically necessary care. It is up to the healthcare provider to determine what care is medically necessary. In addition, the Dutch government has laid down provisions in the Healthcare Insurance Act (*Zorgverzekeringswet*) ensuring that healthcare providers can be reimbursed if a patient is uninsured or is unable to pay for treatment. Medical care provided to illegal immigrants is very often paid for by the Dutch government.

In response to the passages concerning the amnesty scheme for long-stay minor asylum seekers (referred to in the report as the 'Children's Pardon'), it should be noted that setting boundaries inevitably means that some people will fall outside them. Moving those boundaries would not change this fact. The question is whether the boundaries that have been set are reasonable. The government believes that with the introduction of the amnesty scheme for long-stay minor asylum seekers, these boundaries are indeed reasonable. The scheme arose out of the government's October 2012 coalition agreement, 'Building Bridges', which announced new arrangements for minor asylum seekers who have been in the Netherlands for a long period. This agreement has been elaborated and laid down in clear and objective criteria. The condition that an asylum seeker must not have sought to evade the supervision of the national authorities

is included in the coalition agreement. It is not the aim of the scheme to provide residence permits to aliens who have evaded the supervision of the national authorities, opting instead to reside in the country illegally. Imposing the condition involving the 'supervision of the national authorities' is thus a conscious choice, since municipalities cannot be seen as supervisory bodies in the context of immigration policy. Aliens supervision is not a municipal task, after all. The bodies listed in the ministerial order setting out the amnesty scheme – the IND, the DT&V, the Central Agency for the Reception of Asylum Seekers, the aliens police and *Stichting Nidos* (a foundation promoting the protection of minor refugees) – are specifically geared to the task of aliens supervision. This is their primary activity. It should be noted in this connection that schools and sports clubs are not an extension of the government. In the Netherlands, schools are not expected to report illegal immigrant minors to the national authorities. This could present a barrier to their education, while in the Netherlands we consider the right to education to be especially important. Children in the Netherlands may attend school until the age of 18, even if they are residing in the country illegally.

The Commissioner states that it is almost impossible for children to meet the condition of not having evaded central government supervision if they were not accommodated in reception centres. The government disagrees. An alien who does not stay in one of the national authorities' reception centres can nevertheless remain on those authorities' radar. He may be dealing with the IND in the context of an immigration procedure, or working with the DT&V to prepare for his departure. If an alien has contacted the DT&V to prepare for his return, the national authorities will be aware of him and will in many cases have offered him shelter.

Finally, the government would respond to the passage concerning article 3 of the United Nations Convention on the Rights of the Child (UNCRC). It does not follow from this provision that the interest of the child is the only interest involved. Rather, article 3 implies that the child's interest must be weighed against other interests. States Parties must make specific provision for such an assessment in their policy and legislation. The amnesty scheme takes account of the particular interests of children. In fact, in its definitive version this is a permanent scheme aimed primarily at the child. Other factors play a role too, however, and these are reflected in the scheme's conditions. The government sees no conflict here with the UNCRC, and would further emphasise that the primary responsibility for children rests with their parents. In a number of cases the lengthy duration of a child's stay in the Netherlands could be blamed on procedures that in the past took a long time. But in respect of those families who during the assessment

period were not on the national authorities' radar, it is clear that the family's unlawful residence in this period was the choice of the parents. They did not wish to work on arrangements for their departure, even though it was clear they had no prospect of obtaining a residence permit. The transitional scheme nevertheless provided a solution for a considerable number of young people. The definitive scheme puts a policy in place to ensure that the responsibility of both the government and the parents can be objectively assessed.

As the government has indicated in the House of Representatives, the conditions of the amnesty scheme will not be amended. It is applied generously, in any case. In recent months, the cases denied on the grounds of the criterion involving the supervision of the national authorities have been assessed in further detail, for example to identify any cases of exceptional unfairness. These assessments took account of information provided by the mayors of the municipalities concerned. On 24 September 2014 the government wrote to the House of Representatives informing it about the outcome of this process.

It will not be clear how many children and their family members will ultimately be granted a residence permit under this scheme until the conclusion of cases currently under judicial review or appeal. In the event that the impression of an 'upper limit' has been created, the government would emphasise that of course no such limit exists.

2.3 (Stateless persons and Persons with Unknown Nationality)
In response to the Commissioner's concerns about legislation and practice in the area of the statelessness of migrants and failed asylum seekers, the government can report that on 10 September 2014 it informed the House of Representatives that the Netherlands is to introduce a statelessness 'determination procedure'. This measure will address recommendations made by UNHCR, the Netherlands Institute for Human Rights and the Advisory Committee on Migration Affairs (ACVZ).

Illegal immigrants may be eligible for a no-fault residence permit if it can be determined that, through no fault of their own, they are unable to return to their country of origin. The same applies to stateless aliens who, through no fault of their own, are unable to return. Stateless persons who are legally resident in the Netherlands have the same rights and entitlements as other legally resident foreign nationals and are eligible for a streamlined procedure for obtaining Dutch nationality.

Further to recommendations made by the ACVZ, the government is currently examining the scope for expanding the right of stateless children born in the Netherlands to opt for Dutch nationality to include those who 'habitually' reside here and not only those with 'legal' residence status. The government takes a positive view of this idea in principle, and is working to formulate the conditions. Since nationality can only be registered in the Personal Records Database on the basis of valid documents, the children of parents who do not hold such documents must be registered as 'nationality unknown'. Obtaining either valid documents or Dutch nationality could put an end to this situation. The determination procedure could provide a solution for children who are currently registered as 'nationality unknown' but who are in fact stateless.

Section 3

3.1 (Children in conflict with the law)

Juvenile criminal law applies in the Netherlands to 12- to 18-year-olds. The Commissioner calls on the Dutch authorities to raise the current minimum age. The government believes this to be unnecessary because of the pedagogical character of juvenile criminal law. When sentencing, the courts take the age and personal circumstances of the minor into account, and his/her upbringing is the central concern in the enforcement of the sentence.

In exceptional cases the courts can try 16- and 17-year-olds according to adult criminal law instead of juvenile criminal law. According to the Criminal Code, the possible grounds for doing so are the gravity of the offence, the offender's personality or the circumstances in which the offence was committed. The application of adult criminal law to minors means that the offender was under 18 when the offence was committed. However, the majority of these offenders are actually 18 or older by the time their trial takes place. The children's judge in the Netherlands is very sparing in using the option of applying adult criminal law. Moreover, the Act of 20 December 2007 amending the Youth Care Act explicitly rules out the possibility of imposing a sentence of life imprisonment on minors.

The Commissioner recommends that the Netherlands withdraw its reservation to article 37 of the UN Convention on the Rights of the Child (UNCRC). The government believes that, by retaining the option of trying juveniles under general criminal law in exceptional cases, it is better able to fulfil the requirements that the UNCRC sets. The availability of this option avoids

the need to disproportionately increase the severity of juvenile sentences in order to have sufficient scope to impose an adequate penalty on juveniles who have committed very serious offences. Without it, all children who come under juvenile criminal law could face far stiffer sentences. This is why the Netherlands, when it signed the UNCRC, entered a reservation to article 37 (c).

It was recently laid down by statute that if the children's judge places a minor under a hospital order (*terbeschikkingstelling*; TBS) – a measure under adult criminal law – the order will be executed in a young offender institution, i.e. not in an adult detention facility, until the offender reaches the age of 21. No minors were placed in a custodial institution in 2013.

The principle that deprivation of liberty is a measure of last resort for juveniles is expressed among other places in article 493 of the Code of Criminal Procedure, which states that the court must assess whether the pre-trial detention of the juvenile can be suspended. This provision applies explicitly to juveniles. This practice is entirely in line with article 37 (b) of the UNCRC. In 2012 and 2013, the pre-trial detention of minors was suspended in 65.0% and 63.6% of cases respectively. The average length of pre-trial detention in those years was 38 and 34 days respectively.

There are no special statutory provisions on the length of pre-trial detention for juveniles. In practice, however, applications to the court for a detention order (*gevangenhouding*) – or an extension thereof – are made for thirty days in juvenile cases, instead of immediately being made for ninety days as is regularly the case for adults. The government sees no reason for further statutory provisions to fix the maximum duration of pre-trial detention for defendants who are minors.

The suspension of pre-trial detention is in all cases accompanied by compulsory supervision by the youth probation service. Also, conditions may be attached such as restraining orders and training orders.

In 2012 and 2013, 6.9% and 6.4% respectively of juvenile defendants were placed in pre-trial detention. In most instances juveniles were given an alternative sanction, i.e. one not entailing the deprivation of liberty.

The Commissioner takes the view that the conditions in which minors are held in police cells must be improved. In mid-2013 the police introduced a number of internal measures to improve their policies and practices on this matter.[2] For example: the treatment of minors is adapted to their age; minors are not held in the same cell as adults; minors and adults do not use the exercise yard at the same time; only one minor may be held in a cell designed for children; age-appropriate reading matter is made available to minors in the cells; minors are informed of the police station rules in language they can understand. In addition, the police keep a record of the number of minors who are remanded in police custody (*in verzekering gesteld*). At present it is not possible to generate age-differentiated statistics at national level on the number of minors who have been remanded in police custody.

3.2 (Children living in poverty)

The Commissioner identifies the issue of children growing up in poverty as requiring attention. The government sees it as vital that children can develop and participate in society, even if they grow up in a household that has a low income or difficulties with debt. This is why its policy on poverty and debt places special emphasis on the position of children. Because work is the quickest route out of poverty, the government is making a substantial commitment to boosting jobs and making it financially attractive for families on social assistance benefits to take up employment (in part by reforming schemes for children).

The government has also made extra money available to fight poverty and debt: €80 million in 2014 and €100 million per year from 2015. The majority of this money will go to the municipal authorities, since they are the closest to ordinary citizens and are best-placed to take stock of local problems and formulate adequate measures to tackle them. The State Secretary for Social Affairs and Employment has asked municipalities to focus in particular on the position of children and has brought the recommendations of the Children's Ombudsman to their attention. The use of these additional funds will be monitored and accounted for at local level. The State Secretary for Social Affairs and Employment will keep track of municipalities' policies on poverty and debt, including how they address the issue of children living in poverty. The House of Representatives will be informed on this matter in autumn 2014.

3.3 (Child abuse)

[2] Parliamentary Papers, House of Representatives, 2011/12, 24 587, no. 471.

The Commissioner calls on the Netherlands to improve access to services for the reintegration of victims and make adequate funding available. There has been substantial investment in recent years in the identification and reporting of child abuse. Measures in this area include the introduction in July 2013 of a statutory requirement to follow a domestic violence and child abuse protocol, the promotion of expertise and public information campaigns. The protocol contains a step-by-step plan giving professionals clear guidance on what to do when faced with indications of domestic violence and child abuse. As a result of these investments, the number of contacts with the Advice and Reporting Centre for Child Abuse and Neglect has double over the past ten years. Figures are published annually. Help to victims is usually provided on a voluntary basis and is focused on the family. If the courts decide it is necessary, they may impose measures to help the child, i.e. by issuing a supervision or care order. Children in the Caribbean part of the Netherlands are helped in their own surroundings as far as possible. If necessary facilities in the Netherlands may be employed.

3.4 (Access to education for children with disabilities)
The Commissioner expresses concern about the fact that many children with disabilities are segregated from their peers in the education system. Fortunately great improvements have been made since 2010. The Special Education and Special Secondary Education (Quality) Act entered into force on 1 August 2013. Schools anticipated the introduction of the Act and the percentage of failing schools and seriously failing schools fell sharply from 25% in 2010 to 9% in 2013. The amendment is not mentioned in the Netherlands Youth Institute's text on inclusive education cited by the Commissioner.

With the introduction of the Appropriate Education Act on 1 August 2014 and the associated duty of care, it is not the parents who have to find an appropriate place for their child, but the school at which parents have enrolled their child.

Moreover, the Commissioner's report states that the Netherlands Institute for Human Rights has made it clear to the consortia of schools that schools have an obligation to make effective accommodations for pupils who need them. If parents and/or pupils feel they have encountered discrimination they can institute proceedings with the Institute.

The government's position in the debate on the inclusion of pupils in mainstream education is that every child is entitled to receive education appropriate to his or her needs. In some cases

this will be special education. It should be noted that parents also think it is important that special education is available.

The government acknowledges that children whose care needs are such that they have to attend a care institution rather than school constitute a very small minority, but this does not mean that their development receives less attention. The care devoted to their development is provided in the context of a care institution rather than a school. The Dutch government acknowledges the Commissioner's recommendations concerning effective monitoring and will act upon them. The Netherlands Initiative for Education Research has developed an extensive monitoring and evaluation programme.

The recommendation to set a goal to considerably reduce special schooling accompanied by a clear timetable is not compatible with the scope enjoyed by consortia and schools to ensure comprehensive educational provision in their region based on their own choices and judgments.

When appropriate education (*passend onderwijs*) was introduced, a lot of time and money was spent on informing parents, teachers and administrators using a variety of means including leaflets, websites and support centres, as well as a telephone helpline to ensure everyone could get access to the information they needed. The Teachers Agenda and programmes to improve educational quality like *School aan Zet* are providing a framework for investment in the complex skills that go beyond the basic competencies taught in teacher training courses and that are needed by teachers to handle differences in the classroom more effectively. Many resources, including specially adapted tests, have been developed for the various groups of pupils with disabilities in both mainstream and special education in order to support teachers and pupils.