**Presentation UN CRPD Day of General Discussion on CRPD art 24**

**Geneva, April 15 2015**

Dear Madam Chair, Distinguished Members of the Committee, Ladies and Gentlemen,

Thank you for the opportunity to speak today and to contribute to your work on a General Comment art 24. I am Agnes van Wijnen from the Netherlands, and I’m the developer and project-manager of the In1school project that is initiated by NSGK, the Dutch Association for Disabled Children.

**In1school** promotes that all children have the right to go to the same neighbourhood school. Our goal is to get the right to inclusive education on the agenda, and in the law and to start a change towards realisation of inclusive education. We inform, conduct research and bring people and organisations together on IE. And we challenge violations of the right to inclusive education in court as part of our strategic litigation strategy. This way we work towards a lasting change in the education system in the Netherlands, inspired by the CRPD.

We start from scratch: the Netherlands has not ratified the CRPD yet, the government does not want to change our education system nor the legislation, and school practice is characterized by exclusion and segregation. Currently 66 up to 80% of children with disabilities are in special schools in NL. But even if the CRPD is not yet binding in NL, International law, research and emerging jurisprudence is on our side: Inclusive education is a human right!

In order to reach our ambitious goals we need the best experts who know what they are talking about. The In1school project-team consists almost completely of people with visible and invisible impairments and parents of children with disabilities who struggle daily to prevent or end exclusion of their children. Now I will share the main findings of our research:

**1. Legal Opinion** by EDF professor Lisa Waddington and Carly Toepke; Main question was if and how the right to inclusive education is guaranteed in international treaties, specifically CRC and CRPD. Conclusions: State Parties are legally obliged to offer accessible and inclusive education on all levels to every child. The CRPD mentions almost the same obligations as the CRC, but more detailed and explicit than the CRC. The right to inclusive education is enshrined in both CRC and CRPD. Exclusion, segregation as well as denial of reasonable accommodation and accessibility in mainstream education violate the respective articles in both conventions. As far as we know this legal opinion is the first in the English speaking world. For DPO’s and NGO’s worldwide it is important to have such legal opinions which interpret the content of human rights treaties and compare them to domestic law. If we don’t have a right to IE in domestic law and practice, we have to take recourse to international human rights treaties.

**2. Jurisprudence** by Jacqueline Schoonheim; We did an analysis of 166 Dutch cases and 40 cases from other countries and European courts on the right to inclusive education according to CRC and CRPD and European human rights law. In Dutch jurisprudence we found no recognition of the right to inclusive education nor any reference to the relevant articles in international treaties. This is similar in many countries around the world. However, we found cases from Colombia (Lambrano vs Municipality of Montereria) and from Italy, which do refer to international law. In both countries the constitutional courts have issued judgements that recognise the right to IE, and based these on several international treaties. According to the Columbian Constitutional Court the CRPD demands that States not only avoid discrimination, but actively fulfil that people can enjoy their basic rights on an equal foot with others. Furthermore the Columbian Court evaluated the Columbian legislation and policy on education in the light of the CRPD. They ordered the Colombian government to correct the policy accordingly and to develop effective mechanisms to ensure IE for people with disabilities. We feel this jurisprudence could serve as role model for Dutch courts and we hope they will raise awareness among lawyers, politicians and school authorities.

**3. Practices of Inclusive education** by Heleen Hartholt; More than 100 video fragments with examples of IE are collected. The research identified the following Success Factors for inclusive education:

1. Celebrating diversity in the whole school and with all involved is essential
2. School is a community to learn with and from each other, teacher-student, student-teacher and peer to peer.
3. Key are high expectations from all learners. What counts is dedication, progress made and social behaviour
4. Child as an individual is central, this calls for workshop teaching with possibilities for differentiating and Universal Design for Learning. Main question is: How can we support every learner to be successful?
5. Co-teaching: teachers work together and teaching takes place mainly in the class.
6. Peer to peer assistence; children learn more from their age-peers than from others. This stimulates a feeling of competence and strengthen relations.
7. Leadership; the director of the school is advisor and stimulator of the process.
8. Curriculum Differentiating; Teachers have freedom to develop individual learning paths within the general curriculum.
9. Supportive policy from community, region and government;
10. Cooperation between all stakeholders like parents, teachers, students, experts, management and other personnel

**4. Research on practices of inclusive education** by Sandrien Banens.

* Ruys (2015) concluded that the presence of learners that need extra care in mainstream school, like students with severe learning or behavioural problems, does not negatively influence the schoolresults of their fellow students. She found this in both primary and secondary education. (*Empirical studies in the Economics of Education*) She analysed the scores of endtests (CITO) of more than 462.000 primary school kids, and the examresults of 518.985 secondary school students.
* De Graaf (2014) analysed research results on the effect of participation in regular schools. He concludes that children with an intellectual disability develop better in language and experience better schoolresults in regular schools than in special schools.
* Wocken (2005) concludes that the longer a learner stays in special education, the worse her or his results will be in spelling and in IQ tests

**In concluding** distinguished Members of the Committee, ladies and gentleman, allow me to share with you what we need from the General Comment art 24 in order to stimulate, strengthen and speed up the implementation of IE for all children all over the world. We need:

1. A clear statement from the CRPD Committee that art 24 proclaims the right to inclusive education for all children. **All** children can learn. No child should be tested whether or not they are ‘fit’ to attend a school before they are granted access to a school.
2. We need a statement about the negative impact of segregated education on opportunities, self-esteem and dignity of individual children and the segregation in society at large, now and in the future.
3. We need a statement to attract attention to the core purpose of education: the complete development of human potential and the sense of dignity and self esteem, […] as mentioned in art 24 and as contrary to utility driven education
4. We wish for an explanation on the nature and core elements of inclusive education. Here we gladly point to the recent Thematic Study of the OHCHR on IE which gives a clear, concrete picture of what IE looks like in practice and what elements it must contain. For example lessons in communication and mobility skills, braille and sign language, available for all students.
5. We need a statement on the obligations of state parties in education, in particular the obligations to invest in and work on a structural basis on the accessibility of all schools. So without waiting for the first person to ask for individual accommodations and in the meantime having to try to ‘survive’ inaccessibility.
6. We need a firm statement from the Committee that the ‘reasonable accommodation’ clause may not be used as an excuse to exclude children, while mainstream schools remain inaccessible.
7. We wish for a statement that special schools most often lead to segregation, that segregated education is not equal and it does not allow and prepare for participation in the community. Special schools imply discrimination and thus a violation of human rights. As long as special schools exist they will be filled with children with disabilities.
8. We need clear cut recommendations to State Parties to spread information on the nature and core elements of inclusive education among policy makers, education professionals and parents
9. We need recommendations to State Parties that the whole legal system, meaning judges, lawyers, attorneys and complaint committees needs to be educated on the CRPD, specifically on art 24 and on the use of human rights treaties in general in court-cases. Attention is also needed on the superseding nature of international human rights treaties above national or regional legislation.
10. We need the whole treaty body system, starting with the CRC, CEDAW and CRPD to structurally question segregated education as discrimination for all learners, to ask for data on children in special education, and to bring up the need for action on inclusive education in every constructive dialogue with all State Parties.

Thank you for your attention!