

Netherlands Institute for Human Rights

*Formal input to the work of the Thirteenth Session of the UN
Open-ended Working Group on Ageing*

The Netherlands Institute for Human Rights is the National Human Rights Institution for the Netherlands, accredited with A-Status. It has prepared this response upon request of the Chair of the UN Open-ended Working Group on Ageing.

13th Session of the UN Open-ended Working Group on Ageing

Input regarding: Focus area 1: “Right to health and access to health services”

- 1. What are the legal provisions and policy frameworks in your country that guarantee the right of older persons to the enjoyment of the highest attainable standard of physical and mental health, including access to promotive, preventive, curative, rehabilitative and palliative health facilities, goods and services?**

Article 22 of the Constitution of the Kingdom of the Netherlands prescribes that the authorities shall take steps to promote the health of the population. Article 1 of the Constitution prescribes that all persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on *any other grounds* whatsoever shall not be permitted. The Kingdom of the Netherlands has also ratified the International Covenant on Economic, Social and Cultural Rights, the European Social Charter and the Convention on the Rights of Persons with Disabilities (CRPD).

The Ministry of Health, Welfare and Sport bears responsibility for public health at the national level. The Ministry has established several policy programmes aimed at improving the standard of health(care) and living of older persons.ⁱ Under the Dutch Public Health Act, responsibility for public health, prevention and health promotion at the local level lies with the local authorities (municipalities, in Dutch: 'gemeenten'). Article 5a of this Act states the responsibilities that municipalities have in the field of healthcare policies for older persons. The National Health Policy Memorandum 2020-2024 [Landelijke nota gezondheidsbeleid 2020 - 2024] describes national public health priorities and provides direction for local municipalities' local health policies. One of the priorities is 'vitality in older age'.ⁱⁱ

- 2. What steps have been taken to ensure that every older person has access to affordable and good quality health care and services in older age without discrimination?**

In 2018, the Ministry, together with 35 other parties, signed the Pact for Elderly Care. The aim of the pact is to identify and break through loneliness among older persons, to organize good (health)care and support at home and to improve the quality of nursing home care.ⁱⁱⁱ In 2022, the Ministry introduced a new programme with the aim of ensuring that older persons live independently for as long as possible. Another aim is that persons are self-reliant as much as possible and that care is delivered digitally if possible. The Ministry indicated that, given the great scarcity of personnel and the rising

demand for care, in order to ensure that elderly care is well organized in the future, these steps are necessary.^{iv}

Also in 2022, the Integral Care Agreement [Integraal Zorg Akkoord, IZA] was signed by the Ministry of Health, Welfare and Sport and a number of parties in healthcare. Signatories of the IZA include the branch organization of care for older persons, persons with (chronic) illness and youth. The aim of the agreement is to ensure good, accessible and affordable healthcare.^v However, certain parties in healthcare have issued criticism about the agreement. The branch organization of care for older persons, persons with (chronic) illness and youth and the national association of general practitioners initially voiced concerns about the feasibility of the agreement, but later agreed to sign. MIND, an umbrella organization in mental healthcare has warned that the agreement limits the ‘free choice of doctor’ and has not signed the agreement.^{vi}

- 3. What data and research are available regarding older persons’ right to health and access to health care and services? Please indicate how national or sub-national data is disaggregated by sex, age and inequality dimensions, and what indicators are used to monitor the full realization of the right to health of older persons.**

There are several research institutes in the Netherlands. For example, Statistics Netherlands (CBS) and the Netherlands Institute for Social Research provide data regarding health.^{vii} The website ‘state of public health and healthcare [staat van volksgezondheid en zorg]’ presents data from various publications in the areas of public health, health care and social support.^{viii} The level of disaggregation varies. The National Institute for Public Health and the Environment (RIVM) offers data related to public health and healthcare, disaggregated by various characteristics such as sex, age, income and education level.^{ix}

- 4. What steps have been taken to provide appropriate training for legislators, policymakers, health and care personnel on the right to health of older persons?**

Older persons living in care homes

In 2016, the Netherlands Institute for Human Rights (hereafter: NIHR) published a report on the human rights of older persons in nursing homes. The report pointed at several risks, such as the lack of daytime activities for residents, and in some cases, a lack of autonomy regarding how to spend their day. The Institute recommended nursing homes to put the rights, wishes and needs of residents first and emphasized the importance of awareness of the human rights of older persons. Since then, the theme ‘meaningful daytime activities’ has been added to the Quality Framework for Nursing Home Care of the Dutch Care Institute.^x This framework is partly based on the recommendations formulated by the NIHR.

- 5. What steps have been taken to align macroeconomic policies and measures with international human rights law, to use maximum available resources**

for the realization of older persons' right to health, such as through expanding fiscal space, adopting targeted measures and international cooperation?

- 6. What are the challenges faced by older persons in their enjoyment of the right to health, including the impact of intersectional discrimination and inequality based on age, gender, disability and other grounds?**

Older persons living independently

Government policies stimulate independent living for older persons. A growing group (over 1.2 million) of persons over-75 years old in the Netherlands live independently. Research shows that they do not always receive appropriate professional support. This is caused by several factors, such as fragmentation of laws, regulations and funding, and the fact that the system of laws and procedures can be out of touch with the daily reality of older persons.^{xi} A recent report of the NIHR also shows that on average, older persons find it more difficult to use the internet than younger persons do. Difficulties in accessing or using government or healthcare providers' websites may lead to an infringement of the right to health.^{xii} Shortages of staff in care are also cited as a major cause for the lack of sufficient or appropriate care.^{xiii} Research commissioned by NIHR has shown that 1 out of 5 older persons with an illness or disability is in need of extra support. Moreover, the level of satisfaction with received care decreases as health limitations of older persons increase.^{xiv}

Older persons living in care homes

Recent numbers show that the waiting list for elderly people who promptly need nursing home places has grown significantly in 2022, from 2762 to 4737 persons.^{xv} According to the Ministry of Health, this is mainly due to the aging population and staff shortages in care.^{xvi}

Research shows that older persons living in care homes seem to be more satisfied with the care they receive, compared to several years ago. However, they still feel that care is often rushed. Despite the fact that residents are generally satisfied with the quality of care provided, a substantial proportion of residents sees room for improvement and would like to see a better match with residents' personal preferences, both with regards to activities and in the personal interaction with staff. It is important to note that this research has been conducted before the covid-pandemic hit. During the pandemic, nursing homes locked their doors, preventing loved ones to visit residents and preventing residents from carrying out many of their usual activities. This affected many residents.^{xvii} Currently, visits are generally possible again.^{xviii}

Discrimination

In 2022, the Dutch Centre of Expertise on Health Disparities published a report on discrimination in Dutch healthcare, for which it undertook several interviews. The report did not look at older persons in particular, but it did show that patients with a migration background experience that they are treated differently or not taken as seriously as those without a migration background.^{xix} Research commissioned by the NIHR has shown that older

Moroccan women experience challenges in accessing healthcare, mainly due to difficulties in communicating with care providers. It is likely that older persons with other migration backgrounds also experience these challenges.^{xx}

- 7. What measures have been taken to eliminate ageism and discrimination based on age, including discriminatory laws, policies, practices, social norms and stereotypes that perpetuate health inequalities among older persons and prevent older persons from enjoying their right to health?**
- 8. What measures have been taken to ensure that older persons are able to exercise their legal capacity on an equal basis with others, including making an informed consent, decisions and choices about their treatment and care?**
- 9. What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress for the denial of their right to health?**

The Act on Quality, Complaints and Disputes in Health Care [Wkkgz] regulates the way in which health care providers must structure their complaints procedures. The first step in issuing a complaint is talking to the healthcare provider. The next step is contacting the care provider's complaints officer. If the complaint is not resolved that way, it can be submitted to an independent arbitration board. This board will issue a binding decision. It is also possible to file a complaint about a healthcare provider with one of the regional Disciplinary Committees for the Healthcare sector [Tuchtcolleges voor de Gezondheidszorg]. Persons who believe they have suffered damages as a result of (a lack of) medical treatment can hold the healthcare provider liable in writing. Compensation can also be claimed through the civil courts. If the healthcare provider has caused (a substantial risk of) damage to someone's health by acting incompetently, this may also be criminal offense, which can be reported to the police.

Persons, including older persons, who feel that they have been treated differently or discriminated against in access to healthcare, can also file a complaint with the NIHR. A ruling of the NIHR is authoritative but not legally binding.

- 10. What mechanisms are in place to ensure the effective and meaningful participation of older persons living in different geographic areas of the country in the planning, design, implementation and evaluation of health laws, policies, programmes and services that affect them?**

On the national level, the 'Council of elderly' advises the Ministry of Health, Welfare and Sport on topics that affect older persons.^{xxi}

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- ⁱ Rijksoverheid, ‘Ouderenzorg’ [Elderly care], via [Ouderenzorg | Rijksoverheid.nl](#).
- ⁱⁱ Loket gezond leven, Landelijke nota gezondheidsbeleid 2020-2024 [National Health Policy Note], via [Landelijke nota gezondheidsbeleid 2020-2024 | Loketgezondleven.nl](#).
- ⁱⁱⁱ Rijksoverheid, Pact voor de ouderenzorg [Pact for elderly care], March 2018, via [Pact voor de ouderenzorg | Publicatie | Rijksoverheid.nl](#).
- ^{iv} Rijksoverheid, Nieuw programma ouderenzorg: meer digitaal, meer thuis en meer eigen regie [New programme for elderly care: more digitally, more at home and more autonomy], June 2022, via [Nieuw programma ouderenzorg: meer digitaal, meer thuis en meer eigen regie | Nieuwsbericht | Rijksoverheid.nl](#).
- ^v Rijksoverheid, Integraal Zorgakkoord: samen werken aan gezonde zorg [Integral health agreement, working together for healthy health care], September 2022, via [Integraal Zorgakkoord: Samen werken aan gezonde zorg' | Rapport | Rijksoverheid.nl](#).
- ^{vi} Trouw, Waarom het zorgakkoord niet deugt volgens de vereniging van psychisch kwetsbare mensen [Why the health agreement does not work according to the association of mentally vulnerable persons], Oktober 2022, [Waarom het zorgakkoord niet deugt volgens de vereniging van psychisch kwetsbare mensen \(trouw.nl\)](#).
- ^{vii} CBS, Gezondheid en welzijn [Health and wellbeing], via [Gezondheid en welzijn \(cbs.nl\); Home | Sociaal en Cultureel Planbureau \(scp.nl\)](#).
- ^{viii} De staat van Volksgezondheid en Zorg [The state of Public Health and Healthcare] via [Home | De Staat van Volksgezondheid en Zorg \(staatvenz.nl\)](#). See also: Gezondheidsmonitor Volwassenen en Ouderen [Healthmonitor Adults and Older Persons], via [Gezondheidsmonitor Volwassenen en Ouderen | Gezondheidsmonitor \(monitorgezondheid.nl\)](#).
- ^{ix} VZinfo, Volksgezondheid en Zorg [Public Health and Healthcare], via [VZinfo | Volksgezondheid en Zorg](#)
- ^x [Kwaliteitskader Verpleeghuiszorg | Publicatie | Zorginstituut Nederland](#).
- ^{xi} SCP, Knelpunten in de zorg voor zelfstandig wonende ouderen zijn hardnekkig [Shortcomings in care for older persons living independently are persistent], June 2021, via [Knelpunten in de zorg voor zelfstandig wonende ouderen zijn hardnekkig | Nieuwsbericht | Sociaal en Cultureel Planbureau \(scp.nl\)](#).
- ^{xii} NIHR, Iedereen op eigen kracht? Nederlanders over zelfredzaamheid en mensenrechten [Everyone on their own? Dutch people on self-reliance and human rights], June 2020, via: [Iedereen op eigen kracht? Nederlanders over zelfredzaamheid en mensenrechten | College voor de Rechten van de Mens p.10](#).
- ^{xiii} SCP, Knelpunten in de zorg voor zelfstandig wonende ouderen zijn hardnekkig [Shortcomings in care for older persons living independently are persistent], June 2021, via [Knelpunten in de zorg voor zelfstandig wonende ouderen zijn hardnekkig | Nieuwsbericht | Sociaal en Cultureel Planbureau \(scp.nl\)](#).
- ^{xiv} NIHR, Zelfstandig thuiswonende ouderen en het VN-verdrag handicap [Older persons who are living independently and the Convention on the Rights of Persons with Disabilities [Zelfstandig thuiswonende ouderen en het VN-verdrag handicap | Nieuwsbericht | College voor de Rechten van de Mens \(mensenrechten.nl\)](#)
- ^{xv} NOS, Duizenden ouderen hebben acuut verpleeghuisbed nodig, tekort groeit snel [Thousands of elderly need acute nursing home bed, shortage grows rapidly], December 2022, via: [Duizenden ouderen hebben acuut verpleeghuisbed nodig, tekort groeit snel \(nos.nl\)](#).
- ^{xvi} Ministerie van Volksgezondheid, Welzijn en Sport, Antwoord op vragen van het lid Agema [Answers to questions from member of Parliament Agema], January 2023, via: [pdf \(overheid.nl\)](#).
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- ^{xviii} Patiëntenfederatie. Regels m.b.t. cliënten en patiënten in verzorgings- of verpleeghuizen (Corona-maatregelen), via: [Regels m.b.t. cliënten en patiënten in verzorgings- of verpleeghuizen \(Corona-maatregelen\) \(patiëntenfederatie.nl\)](#).
- ^{xix} Pharos, Discriminatie in de zorg leidt tot minder goede behandeling en zorgmijding [Discrimination in healthcare leads to poorer treatment and avoidance], March 2022, via: [Discriminatie in de zorg leidt tot minder goede behandeling en zorgmijding \(pharos.nl\)](#).
- ^{xx} NIHR, Ervaren knelpunten van thuiswonende ouderen vanuit mensenrechtelijk perspectief, [Experienced problems of older persons living at home from a human rights perspective], May 2020,

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^{xxi} Beter oud, Wie zitten er in de Raad van Ouderen [Who is in the council of elderly], via: [Wie zitten er in de Raad van Ouderen? Even voorstellen \(beteroud.nl\)](#).