



**Implementation of the Convention against Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment**

**Commentary by *Franciscans International* relating to the fourth to sixth
periodic reports submitted by France (CAT/C/FRA/4-6), under Art. 19 of the
Convention**

Mistreatment of Elderly Persons in Institutions

April 2010

The aging of the French population entails various challenges, including the promotion of the human rights of the elderly. There are more than 12.6 million people over the age of 60 in France (that is, 21.3% of the country's population).¹ It is estimated that this figure will increase to 22.3 million by 2050. About 6% of elderly persons currently live in institutions:

- in « EPHAD » (Housing Establishment for Dependent Elderly Persons), which may be public, associative or private: est. 495,000 people
- in retirement homes: est. 32,000 people
- in care homes (medical residences): 112,000 people
- in long-term care units: est. 18,000 people²

Franciscans International would like to draw the attention of the Committee against Torture to the situation of elderly persons in institutions and, in particular, to the significant level of mistreatment that occurs therein.

Based on a sample of 496 calls received in 2007 concerning cases of the mistreatment of elderly persons in institutions, ALMA (Allô Mistreatment of Aged Persons and/or Handicapped Persons, a pilot project, which enabled the establishment in 2008 of a national call centre: 3977), reveals that 44% of cases of repeated mistreatment concerned private establishments, whereas at least 36% of the cases were registered in public institutions.³ The same report states that in 67% of cases, mistreatment was carried out by care-staff or non-medical staff. These figures demonstrate the extent of mistreatment of elderly persons in France, both in private and public institutions.

1. Types of mistreatment:

This mistreatment can take different forms, and constitutes degrading, even inhuman, treatment according to the definition contained in the Convention

¹ According to official statistics from INSEE (Institut National de la Statistique et de l'Economie) in 2005.

² Direction de la recherche, des études, de l'évaluation et des statistiques (Drees), « Les Résidents des établissements d'hébergement pour personnes âgées en 2007 », *Etudes et Résultats*, n°699, August 2009 (<http://www.sante.gouv.fr/drees/etude-resultat/er-pdf/er699.pdf>).

³ ALMA network, *Quantitative Evaluation of Activity, "Mistreatment"*, 2007, page 22: <http://www.alma-france.org/IMG/pdf/STATISTIQUES.PPT.2007.pdf> ; ALMA specifies that these figures "only reflect a small part of the phenomenon of mistreatment. Whole sections are overlooked, such as the situation in hospitals." This was confirmed when the call centre 3977 was launched on a national scale.

It should be added that mistreatment in the home, which is not treated in this alternative report, concerns even more individuals than mistreatment in institutions. Mistreatment in the home seems to be principally committed by the family and those around, but also by home care aides. (ALMA 2007, p. 13)

against Torture. The worst cases of mistreatment can lead to the death of the victim, or to suicide.⁴ In particular, the following types of mistreatments can be noted:

Negligence:⁵ Not responding to residents' medical needs, not responding to residents' calls (or taking away the bell from "those who call too often"), not getting residents up or walking them, not allowing sufficient time for people to eat, or not helping him/her eat when the person cannot do it for himself/herself, placing the food or water beyond the person's reach, not changing dirty bed-sheets for several days, not completing the residents' personal care, putting protectors on those who are not incontinent to avoid having to accompany them to the toilet, leaving soiled protectors on incontinent persons (to the extent of causing bedsores), not finding residents' personal effects, excluding residents from social activities...

Psychological:⁶ Over-familiarity, reducing to an infantile state, pejorative nicknames, not knocking before entering the bedroom, not respecting a person's privacy (particularly physical privacy), not speaking to a person particularly while caring for that person, shutting residents in a room for long periods, socially isolating a resident, leaving a resident in bed all day, refusing to give a resident him/her own clothing and dressing him/her in clothing belonging to others...

Financial:⁷ Making repeated demands for money, blackmail, theft, theft with violence...

Physical:⁸ Being discourteous to a person during personal care, spilling food or water on a resident, feeding a person too quickly, force-feeding a person, putting a person into a bath that is too hot, shutting a person's mouth with surgical tape on the pretext that him/her cries disturb the staff, tying a person under the shower on the pretext that he/she moves too much, pulling hair, kicking, sexual touching, rape...

Civil⁹ and other: Retaining identity papers, opening mail, not respecting the private nature of a visit, not respecting dietary or cultural requirements...

⁴ Suicide rates among elderly persons in France are significantly higher than in the rest of the population. According to the figures from the National Institute for Medical Research, the suicide rate among the general population in France is 17.1 for 100,000 persons. In the case of persons aged 75-84, this rate increases to 32; for the age group 85-94, the rate is 44; and for persons above 95, the rate is 38.8.

⁵ ALMA (2007): Negligence happens in 34% of the cases of mistreatment in institutions.

⁶ ALMA (2007): Psychological mistreatment happens in 19% of the cases of mistreatment in institutions.

⁷ ALMA (2007): Financial mistreatment happens in 14% of the cases of mistreatment in institutions

⁸ ALMA (2007): Physical mistreatment happens in 11% of the cases of mistreatment in institutions

⁹ ALMA (2007): Civil forms of mistreatment happens in 8% of the cases of mistreatment in institutions

Added to this is the fact that it is sometimes difficult for families to make complaints about particular practices, because of the risk of reprisal against their relatives. The shortage of places in institutions must also be taken into account (“If you are not happy, all you have to do is take your relative out of the institution.”)

Personnel are, in some cases, dismissed by their superiors for bringing to light a situation of mistreatment.

2. The National Plan to Eradicate Mistreatment (2007)¹⁰

The recent increased awareness of French public authorities of different forms of mistreatment of elderly persons has resulted in the adoption of a national plan to eradicate this phenomenon.

The following key measures are contained in the plan:

- Creation of the National Agency for Social and Medico-Social Assessment (with a budget of 5 million Euros), which aims to provide institutions with good practice guides, and facilitate the regular monitoring of institutions by empowering the independent organisations in charge of assessing the implementation of good practices;
- This external independent evaluation will be in addition to the auto-evaluation that the institutions will henceforth be obliged to carry out every 5 years;
- Training of personnel on ‘well-treatment’, and offering personal psychological support;
- Increase in professional staff in institutions;
- Renovation of institutions to humanise the standard of living and improve the quality of service;
- Facilitation of reporting of mistreatment, particularly through the creation of a national phone number, and regional (*départementale*) telephone antennas, to ensure close support;
- Nomination of “mistreatment correspondents” at the level of the competent regional (*départementaux*) services;
- Doubling of the number of inspections in the field, from 750 to 1500 inspection per year, and systematic sanctioning of those proven responsible for acts of mistreatment.

¹⁰ *Plan to foster “well-treatment” (bientraitance) and reinforce the eradication of mistreatment*, presented 14 March 2007 by M. Philippe Bas, Minister for Social Security, Elderly Persons, Handicapped Persons and the Family (available on the Internet: <http://www.travail-solidarite.gouv.fr/IMG/pdf/presentation.plan.pdf>)

In spite of this national plan, a number of serious obstacles still exist in the protection of elderly persons from mistreatment:

- **Professional staff in institutions:** The ratio of personnel (nurses and auxiliary nurses) to patients remains largely insufficient. The "Old Age Solidarity" (*Solidarité grand âge*) plan of 2006 had announced a 1 caretaker per patient ratio. However, in 2009, the Government went back on its word and announced as objectives 0.6 in EPHAD and 0.8 in long-term care units. The understaffing is, in and of itself, a source of mistreatment. On the one hand, the necessary cares are not correctly administered. In fact, there are currently instances where 3-4 caretakers must care for 35 dependents in long-stay units. There are also cases where auxiliary nurses are given just 6 minutes to wash a bedridden person, which is impossible. There has also been a report of an auxiliary nurse who was ordered to wash 16 people in one morning. Such requirements cause stress, and thus increase the risk of mistreatment.
- **Renovation of institutions:** In 2005, the Court of Auditors noted that "there are currently: only about 25% of retirement homes that meet the specifications of space, accessibility, safety and hygiene; about 60% of retirement homes that "no longer meet all the current housing conditions" and about 15% of retirement homes "have not completed the humanisation programme launched in 1975". The institutions "adapted to the reception of persons with dementia" make up a very small percentage." The situation has not changed very much since 2005.
- **Reporting of mistreatment:** To our knowledge, the system of "mistreatment correspondents" has not been put in place.

Recently, we learned of a case of a caretaker who had complained to her manager regarding a case of mistreatment (a resident forced to shower after having been violently undressed and tackled to the ground). This caretaker was dismissed by her manager for having reported these facts.

- **National call centre:** The plan notably led to the establishment of a national call centre (**3977**) by the State Secretary for Solidarity in 2008. In 2009, heavy media coverage of cases of mistreatment (particularly the case of a private establishment in Bayonne, which was finally forced to close its doors) resulted

in the emergency number being overloaded. By May 2009 (before the emergence of the mediatised cases), Afbah (French Association for the Protection of the Elderly and Disabled, or *Association française pour la bientraitance des aînés et handicapés*) which manages 3977, regretted that **only 65% of calls could be handled**.¹¹

- **Closing of institutions with systematic mistreatment:** According to the national plan and French legislation, the institutions where mistreatment is systematic should be provisionally or definitively closed. However, there are many obstacles to such closures. For one, as all the institutions are full, the relocation of elderly persons to other institutions is difficult. Moreover, the closure of an institution comes at a high political cost, as it provokes the dissatisfaction of local officials, unemployed staff...As a result, the closure of chronically dysfunctional institutions is extremely rare.

For example, we are dealing with a case of a retirement home with 200 residents in central France, which has been declared inadequate for the past 14 years, and regularly reported for mistreatment, but which nevertheless continues to operate.

- **Inspections:** The highly mediatised case (October 2009) of the retirement home of Bayonne is emblematic. Although it was examined in 2006 and 2009, the mistreatment in this institution persisted. The administrative inspection by DDASS in January 2009 revealed, according to the Prosecutor of Bayonne, "failures and suspicions regarding the quality of care for residents." The establishment did not provide the medical and professional infrastructure needed by dependent persons. Moreover, it did not have the permission to receive dependent persons. The hygiene conditions were deplorable, some people were in their excrements, people lacked assistance, particularly at night, and some were attached to their beds for no apparent medical reason. It was the denunciation by a liberal nurse in September 2009 that finally led to the investigation and subsequent closure of the establishment.
- **Lack of financial resources of regional (*départementales*) structures in charge of follow-up to the plan:** The national plan relies on regional (*départementales*) structures, and gives them the responsibility to implement

¹¹ Although the administrators of Number 3977 had anticipated 10,000 to 15,000 calls per year, it received more than 63,000 in the course of the first 15 months of its existence. 80% of these calls concerned mistreatment in private homes, and 20% in institutions. It resulted in 7,745 files being opened.

complementary measures and coordinate the care of victims. However, these structures continue to lack the financial means and professional skills necessary to successfully carry out their task.

- **Access to the attending physician:** Some months ago, the National Council of the College of Physicians published a statement entitled "Mistreatment of Elderly Persons and Medical Ethics", denouncing the fact that some establishments refuse the right of their residents to be treated by their attending physician.

3. Franciscans International's Recommendations

France must persist in its efforts to promote the protection of elderly persons, and work to eradicate their mistreatment. In particular, this includes taking the following measures:

- Improving and coordinating the training of caretakers and non-caretakers, so that they develop an appropriate attitude towards elderly persons and identify and report cases of mistreatment, and develop training for managers of institutions to respond appropriately to cases of mistreatment and protect those who report abuses;
- Increasing staff in institutions and ensuring that the issue of mistreatment is taken into account in the selection criteria for recruitment;
- Providing the 3977 call centre with sufficient financial resources to enable it to respond to all calls;
- Systematically identifying and bringing to justice those responsible for mistreatment;
- Nominating "mistreatment correspondents" in each region (*département*);
- Valuing more highly the role of elderly persons in society; encouraging a positive image of elderly persons through programmes and campaigns.