



CITIZENS COMMISSION ON HUMAN RIGHTS NEW ZEALAND

Established in 1969 by the Church of Scientology to investigate and expose psychiatric violations of human rights

13 May 2010

**International
Founding
Commissioner**

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BEFORE THE UNITED NATIONS COMMITTEE AGAINST TORTURE

IN RESPONSE TO CONCLUDING OBSERVATIONS IN THE MATTER OF
NEW ZEALAND'S 5TH PERIODIC REPORT, ONE YEAR ON

**ALLEGATIONS OF TORTURE AND/OR CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT**

**New Zealand
Commissioners**

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Introduction and Background

The Citizens Commission on Human Rights (CCHR) is an international charity that assists victims and families suffering abuse surrounding the mental health or psychiatric system.

CCHR operates in hundreds of offices in 34 countries. CCHR has long sought to restore basic inalienable human rights to the field of mental health, including, but not limited to, full informed consent regarding the medical legitimacy of psychiatric diagnosis, the risks of psychiatric treatments, the right to all available medical alternatives, and the right to refuse any treatment considered harmful.

CCHR was co-founded in 1969 by the Church of Scientology and Professor of Psychiatry Emeritus Dr. Thomas Szasz at a time when patients were being warehoused in institutions and stripped of all constitutional, civil and human rights.

CCHR functions as a mental health watchdog, working alongside many medical professionals including doctors, scientists, nurses and those few psychiatrists who have taken a stance against the biological/drug model of "disease" that is continually promoted by the psychiatric/pharmaceutical industry as a way to sell drugs. It is a non political, non-religious, non-profit organization dedicated solely to the broad education and eradication of mental health abuse and empowering the victims of such abuse.

CCHR's Board of Advisers, called Commissioners, include doctors, scientists, psychologists, lawyers, legislators, educators, business professionals, artists and civil and human rights representatives.

NGO submission/comments in response to CAT observations

Although there were only four areas of concern requiring 12 month response from the State, we have made comments on a few other items due to their importance and relevance to the other sections. The Commission is primarily concerned with paragraph 11 of your report, "Allegations of ill-treatment," as we are the main New Zealand NGO working in this area.

"4. Incorporation of the Convention in national legislation"

CCHR agrees that the NZ Bill of Rights Act should not be junior to other legislation as advised by UN Human Rights Committee, so that legislation is able to comply with International Human Rights principles, including other conventions and instruments ratified by NZ. This would assist greatly in bringing a resurgence in fair and equitable justice throughout the courts (though it would need time to filter through) in particular the Family Court. We also suggest the establishment of a watchdog in oversight of these human rights implementations and adherence, or incorporate them into law so as to be adjudicated on through the courts.

"5. Protection of minorities from torture and ill-treatment"

Maori and Pacific people are hugely over represented in NZ institutions, it should also be noted this includes mental health. To caution however, from our experience, we are not wanting to see more of the same mental health services thrown at Maori, Pacific Peoples or the mentally ill. Throwing more money into ill-conceived psychotropic drug related programs will only spiral these groups into further marginalisation and discrimination. Independent, factual research (health not "mental" health focussed) programs for and by Maori that get back to workable traditional methods of teaching and holistic health should be supported by the State.

Independent mechanisms for complaint, investigation, etc also need to be established, possibly linked to the Optional Protocol to the Convention Against Torture, supplying it teeth to not only look into issues, but be able to investigate promptly and impartially, refer any alleged perpetrators to prosecution, and the victims accorded redress, including adequate compensation and rehabilitation.

"7. Training of law enforcement personnel and immigration officials"

Having worked with victims of torture and ill-treatment for many years in New Zealand, this has been one of the critical and frustrating issues. There really are no independent agencies that can receive complaints, competently and independently investigate allegations of torture and ill-treatment per the Istanbul Protocol. We are not aware of any investigation of torture and/or cruel, inhuman or degrading treatment or punishment in New Zealand (at any time), which is not to say that it has not occurred, but more that there seems a blinkered vision approach to these abhorrent acts – hear no evil, see no evil, speak no evil.

Education and training of law enforcement and immigration personnel should also extend to the agencies overseeing the OPCAT as previously mentioned.

Hospital restrains man for six years

4:00 AM Thursday Nov 5, 2009

A mentally ill patient held in restraints and kept in solitary confinement for almost six years is one of several disturbing cases of possibly inhumane treatment the country's Ombudsmen have uncovered in New Zealand detention facilities.

The public watchdogs found the patient in virtually constant "seclusion" – solitary confinement in a bare room – at the mental health unit of a district health board.

Chief Ombudsman Beverley Wakem would not name the board last night, but said it claimed the detention and use of restraints was required because the patient was likely to attack other patients and staff.

But Ms Wakem said that after her office became involved, the patient was moved to a more suitable facility.

"Why nobody thought to look at that and make that assessment before we arrived on the scene is a cause for concern," she told the *Herald*.

The patient was one example of "potential cruel and inhumane treatment" the Ombudsmen identified during the first nationwide investigation of detention facilities, done over the past year.

The investigation also found a young intellectually disabled patient being kept in unwarranted and lengthy "seclusion", and another mental health patient who had been kept without any consent for years.

Ms Wakem said the health boards responsible took action immediately.

But the Health Ministry's director of mental health, Dr David Chaplow, said last night that he knew nothing of the cases and would be ordering an urgent report.

Dr Chaplow said he knew of one patient with a mixture of autism, intellectual disability and mental illness that was particularly challenging, "but I have never known a case in seclusion for six years".

The annual mental health services report says 1395 patients were secluded for between two minutes and 365 days in the past year.

Dr Chaplow said there was now a "sinking lid" policy on seclusion, but it had a place in mental health care.

The Ombudsmen's investigation covered prisons, mental health units, immigration detention centres, court cells and youth facilities.

It was detailed in the Ombudsmen's annual report, issued yesterday, and also raised concerns that prisoners were not given electric fans to control cell ventilation or temperature.

It said in excessive temperatures the lack of fans could amount to "cruel" or "inhumane" treatment.

It noted this was more likely with increasing lock-down times and double-bunking as the prison population reached crisis point.

Corrections prison services manager Karen Urwin said the department had looked into buying fans for every prison cell, but had decided it was not an effective use of taxpayers' money as extreme heat waves were rare in New Zealand.

* Case studies

CASE 1: Mental health patient in "virtually constant restraint and seclusion for nearly six years".

CASE 2: Young intellectually disabled patient kept in "seclusion" for lengthy period.

CASE 3: Mental health patient "treated for some years without any apparent consent of any kind".



The Ombudsmen's report claims several mentally ill patients have been treated inhumanely, including one who was restrained and kept in seclusion for almost six years. File photo / Herald on Sunday

“9. Conditions of detention”

The introduction of OPCAT into New Zealand is an enormous step in the right direction for monitoring and establishing preventative mechanisms of human rights within places of detention. Major departures were uncovered and often rectified not long after the investigation occurred, enabling detaining agencies to operate more within the Convention. However what of the victims of these incidents or allegations of torture and/or cruel, inhuman or degrading treatment or punishment? Avenues of prompt and impartial investigation, perpetrators held to account/prosecuted, victims accorded redress, including adequate compensation and rehabilitation are not applied at all.

One case in point, the Ombudsmen uncovered a mentally ill patient held in restraints and in solitary confinement for almost six (6) years; a young intellectually disabled patient being kept in unwarranted and lengthy seclusion, and another patient who had been kept without any consent for years. These cases are modern day examples of cruel, inhuman or degrading treatment or punishment and are completely unacceptable. (See “11. Allegations of ill-treatment” for more information on reluctance of State to investigate and prosecute mental health staff).

The fact the NZ Director-General of Mental Health (who published a report into seclusion throughout NZ) didn't know about the cases above, provides some insight into how cases of ill-treatment are still an issue throughout our country.

Furthermore, the mentally ill are not afforded a lawyer through the normal committal process and in fact have fewer rights than criminals. Mental health is a huge area needing urgent attention and too complex to go into in this report, but which could be the subject of a UN Special Rapporteur investigation. The fact that facilities assisting those distressed with possible mental health issues are included in the OPCAT places of “detention” straight away points towards coercion, force, restraint when dealing with this under-represented minority group.

Other issues include proper medical care, thorough physical testing; appropriate culturally, spiritually, gender, disability, etc informed consent around diagnosis and treatment including knowledge and understanding of any and all adverse reactions as well as alternatives.

“10. Ensuring prosecution”

The effectiveness of impartial and swift justice has on preventing further abuse cannot be understated. It is one of the key strategies with the establishment of international instruments. There is a repulsion towards Crimes of Torture and this almost seems to have extended though to a disbelief or a “head in the sand” approach to these extremely serious allegations. The clean, green image should be preserved for New Zealand, but through owning up for misdeeds and putting them right fast with appropriate remedies in place for the victims, including prosecution for the perpetrators, will bring this about. Take more responsibility, not less for these issues is the way forward to a better world.

Drawing by ex-Lake Alice victim who witnessed psychiatrist and two nurses holding down boy (approx 14 years of age) and shocking him on leg



“11. Allegations of ill-treatment

11. The Committee is concerned that allegations of cruel, inhuman or degrading treatment, inflicted by persons acting in an official capacity against children in State institutions, and against patients in psychiatric hospitals have not been investigated, perpetrators not prosecuted, and victims not accorded redress, including adequate compensation and rehabilitation. (arts.12, 14 and 16)

The State party should take appropriate measures to ensure that allegations of cruel, inhuman or degrading treatment in the “historic cases” are investigated promptly and impartially, perpetrators duly prosecuted, and the victims accorded redress, including adequate compensation and rehabilitation.”

The Commission has a large amount of experience concerning this section, hence a more detailed response. CCHR understands the above issue came to your attention via lawyers working newly in the area of psychiatric abuse, once there was recognition gained early this century surrounding the torture and/or cruel, inhuman or degrading treatment or punishment of children at Lake Alice psychiatric Hospital.

Following government payouts (approx. NZ\$12 million) to almost 200 victims of Lake Alice, lawyers were able to assist hundreds of similar victims from other psychiatric institutions from around the country. This then extended to welfare homes and other institutions where vulnerable people (often minors and Wards of the State) were held at times indefinitely and against their will, subjected to unrestricted regimes, powerless to stop or alter their situation. Many, hundreds if not thousands were affected by this and even died without any chance of an investigation or redress of any kind. Some evidence of this are the hundreds of unmarked graves at these institutions.

Background

In New Zealand CCHR has operated since 1976. One of their first actions was to visit psychiatric hospitals around the country and with permission of the Superintendent of Lake Alice Hospital near Wanganui, CCHR toured through this premise. During this tour alarming allegations came forward about young children being punished with painful injections and electric shocks. This was investigated further and some statements taken independent of the hospital by CCHR. Attempts to gain recognition of torture and cruel, inhuman and degrading treatment and punishment were done in conjunction with other NGOs including the Auckland Committee On Racism and Discrimination (ACORD) and the women’s section of the Values Party.

Governmental investigations took place following the allegations, but they were heavily defended, terms of reference made narrow and isolated (focussing on one or two instances). Essentially the children were “not believed” making it impossible for them to gain any form of impartial investigation, proper redress or any perpetrators prosecuted or held to account. It was not till most of them grew up, more than 20+ years later and with the help of lawyers, CCHR and the media that there was enough public outcry to push for partial redress via the government or the courts.

After many years of persistence, in 2001 the government settled outside of court with 95 of the victims for NZ\$6.5 million and wrote each a letter of apology from the then Prime Minister and Health Minister. The State opened the door for more victims to come forward to receive payouts and to date nearly 200 have received the ex-gratia payments of over NZ\$12 million, each receiving between \$30,000 and \$100,000 (excluding those that died).

This is partly commendable by the State in that they finally acknowledged the abuses took place and stated they shouldn't have; though stopped short to say it was torture and/or cruel, inhuman or degrading treatment or punishment of children at the hands of State employees in a State institution. There was no attempt whatsoever to look into the allegations as acts or victims of torture by the psychiatrist, psychologist and nursing staff implicated, many of whom have gone on to continued work (four whom were known to have been working in mental health till very recently), without any question or blemish to their record.

This report to The Committee Against Torture is mainly to do with events at the Child and Adolescent Unit at Lake Alice Hospital, which was in operation from 1972 to 1978. However, CCHR has also been involved in many other issues of this nature, and with recognition finally by the State (2001) that these abuses actually occurred in psychiatric facilities run by the State, this has opened the door for many others to be heard. CCHR has assisted many victims who were still young people not long out of the psychiatric hospital, and others who have come forward more recently, often never able to disclose what had happened to them due to the level of degradation and stigma attached to them by staff within the mental health system.

Some of the ill-treatment appears widespread and systemic in nature, and although this concentrates on one institution to emphasise and focus the attention of the Committee, it is by no means the full extent, as evidenced by literally hundreds (nearly 1,000) being prepared for filing in the High Court of similar serious complaints from others in State care.

Mindset of State Officials Concerning Psychiatric Staff

Although no one should be above the law, it seemed there has been some longstanding view that psychiatrists and mental health staff can do no harm. Historic or contemporary cases seemed to be dealt similarly, like there is an unspoken sanction that maintains their innocence. This is certainly not the case when dealing with the clergy, and when the victims of Lake Alice see cases as old as 50-70+ years being extradited and called to account; they either feel a hopelessness in a sense of injustice or even somehow they deserved what happened to them.

It wasn't until lawyers put cases to court and the Crown used the mental health legislation against any action that we realised where this attitude may be stemming from.

Legislation exists in New Zealand under mental health law that holds immunity from civil and criminal prosecution of the State and mental health staff.

“Mental Health Act 1969

124 Protection Of Persons Acting Under Authority Of Act (Repealed)

(1) Neither the Crown nor any person who does any act in pursuance or intended pursuance of any of the provisions of this Act shall be under any civil or criminal liability in respect of any such act, whether on the ground of want of jurisdiction, or mistake of law or fact, or any other ground unless the person has acted in bad faith or without reasonable care.

(2) No proceedings, civil or criminal, shall be brought against the Crown or any person in any Court in respect of any such act except by leave of a Judge of the [High Court]. Such leave shall not be given unless the Judge is satisfied that there is substantial ground for the contention that the person in respect of whose act or omission it is sought to bring the proceedings has acted in bad faith or without reasonable care.

(3) Notice of any application under subsection (2) of this section shall be given to the party against whom it is sought to bring the proceedings, and that party shall be entitled to be heard against the application. Page 67

(4) Leave to bring such proceedings shall not be granted unless application for such leave is made within 6 months after the act complained of, or, in the case of a continuance of injury or damage, within 6 months after the ceasing of such injury or damage:

Provided that in estimating the said period of 6 months no account shall be taken of any time or times during which the person injured was detained, whether lawfully or unlawfully, as a mentally disordered person, or was ignorant of the facts that constitute the cause of action, or of any time or times during which any defendant was out of New Zealand.

(5) In granting leave to bring any proceedings as aforesaid, the Judge may limit the time within which such leave may be exercised.

(6) No claim or demand or action for damages in respect of any wrongful act or default committed by any person at any time during his absence on leave from any hospital or house in which he has been a patient under this Act, or at any time after his discharge there from, shall be made or brought against the Crown or against any person acting under the authority of this Act in the matter of the grant of leave of absence to or the discharge of the patient:

Provided that nothing in this subsection shall be construed to limit the provisions of [the Accident Compensation Act 1982], so far as it is applicable.”

Child patients

It has been estimated that 350 children were held in the Child & Adolescent Unit during the period between 1972 and 1977. Almost 200 have made complaints of torture and/or cruel, inhuman or degrading treatment or punishment by staff, using painful drug injections, solitary confinement and more revealing, painful electric shocks to various body parts, including the legs, shoulders, hands and even the genitals.

The youngest victim that CCHR has interviewed was 9 years old when admitted to the hospital. However, from our research the average age of the patient victims was 14, the oldest 17 and the youngest we have been told was 4 years of age.

In the main the abuse includes physical, sexual and psychological abuse, seclusion, threats, and the undergoing and witnessing of cruel, inhumane, and degrading treatment (painful psychotropic drugs and painful electric shocks). In some cases the abuse was prolonged.

As children and even in adulthood, many did not understand why they were there, other than they were naughty or their parents no longer wanted them. The “treatment” regime was terrifying to them, but at the same time “official” as they were merely kids and this was the place where they were housed, clothed and fed so they had to deal with it however they could.

A system of bad behaviour marks were kept on the children (A-D), if you ended up with a “D” you got a bolt of electricity in the form of unmodified ECT (electro-convulsive treatment, electroshock given without muscle relaxants or anaesthetics). Other punishments were lock-ups in seclusion, painful Paraldehyde injections often in the buttocks (glass syringes were required due to the drug dissolving plastic). One allegation included nurses throwing these at the children’s bare buttocks like darts; as they are made out of glass and heavy, you can imagine how painful that would have been.

We were told in L.A we were a nobody
just a number sometimes I have to
question: Do they know something I dont?
were they Right?

Bruce



Reamped drawing of what I witness

13 year old boy
(name removed)

L.A receiving Ect. on up left leg
Close to Groin. Male nurses unnamed.

To my knowledge all of these crimes have never
being followed up by NZ police nor have they
ever contacted me

Bruce

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Therapy vs. torture and/or cruel, inhuman or degrading treatment or punishment

CCHR believes the use of force in the form of painful injections, electroshock, restraints and seclusion should be banned from hospitals. We understand however at the time these “treatments” were in vogue within psychiatry. The difference here is “how” these treatments or devices were being employed by the mental health staff. A carpenter has many tools at his disposal such as a hammer or drill to construct or destruct buildings, furniture, etc; should he then decide to use these to cause bodily harm or threaten another, this would then change the purpose and intent of their use.

The use of an ECT machine to punish and do such actions as deliberately cause pain; fluctuate the painful intensity; knocking a child unconscious; attaching electrodes to other body parts other than the temples, such as arms, legs, shoulder and even genitals, etc created a different and illegal use of these devices.

Other incidents of concern surround how the psychiatrist dealt with a couple of the boys who were offending against other boys at the unit. He orchestrated his staff to hook up the offending boy to the ECT machine, and then got the abused boys in one at a time to turn the dial and shock the boy, traumatising not just the boy but also those who were made to mete out the punishment.

Previous investigation/inquires

In 1976/7 there were three separate inquiries into individual patient cases of complaint. The complaints came from the parents of the children about the treatment that had been received. The inquiries were unfortunately quite narrow, the focus mainly on matters of consent for mental health treatment, rather than looking or believing the children’s complaint surrounding the nature and extent of the “treatment.”

In one case it was maintained that consent was implied because consent had been obtained from a General Practitioner. Attempts to obtain consent were only meagre in that there was no real attempt to involve parents in consent for treatment where children had been previously made Wards of the State by the Department of Social Welfare (DSW).

The Superintendent of the Lake Alice Hospital was quoted as saying in 1977 that consent for ECT treatment was “administrative rubbish”; and the Director General of Mental Health considered consent was only a benefit for legal reasons to assist doctors, not as a help for a child or guardian. Lawyers reviewing medical records found many of the children admitted and treated did not have a mental disorder. This has recently been confirmed by a registered psychiatric nurse who worked in the unit.

Also as part of a judicial review into one case relating to abuses of a young girl at Lake Alice, the Review Officer in giving his decision said:

“Looking at the medical opinions, the Corporation’s Medical Advisors, Dr Spence and Dr Percival, were of the view that the diagnosis/diagnoses and treatment given were appropriate at the time. However, I prefer the more persuasive opinions from Dr McGeorge (concurring by medical adviser Dr Pope) and Professor Werry, who have experience and expertise in the psychiatric field, which supports the claim for incorrect

diagnosis/diagnoses and inappropriate treatment when the applicant was in Lake Alice Hospital between 1975 and 1977. It is Professor Werry's opinion that there was medical error from inaccurate diagnosis, inadequate diagnostic and progress procedures, grossly inadequate documentation by Dr Leeks of his reasons for treatment, and the type of treatments and the reasons given for the treatments prescribed. Dr McGeorge indicates there is no evidence to support the diagnoses and that the treatment given was inappropriate. I am satisfied on the balance of probabilities, the medical evidence supports the claim for medical misadventure through medical error."

After inquiring into the case of only one boy, the Ombudsman who conducted the investigation made a strong suggestion in his report that the Government should legislate that the use of unmodified ECT treatment on children be banned. The Government has not seriously taken this up or inquired into this. ECT is still permitted for use in minors in NZ.

In 2001 the Government described in general apology letters to the victims, the treatment and what happened as being unacceptable and should not have happened, but would not inquire properly support/instruct a medical regulatory body to inquire into what happened, ie., NZ Medical and Nursing Councils, nor ask the Police to investigate/prosecute.

Government out-of-court/ex-gratia payments/compensation

In 1997 law firm Grant Cameron Associates representing 95 of the former victims brought a legal class action against the Government. There were a great number of allegations of inhuman treatment and abuse concerning the same hospital and staff.

In 2001 Mr Cameron wrote to his clients explaining the Government's response and offer. The following points 7, 8, and 9 of the letter give an outline of the settlement but the offer does not take into account any formal investigation of medical staff or an inquiry into the allegations of torture of children by State staff.

"7. The Crown has decided to recognise that these events took place, and that in so far as money reasonably can, a global sum should be paid to this group by way of an "apology/recognition" award. It is important that you understand that this payment is not in the nature of compensatory damages or anything like that, as such damages could only be obtainable in a courtroom after a long and protracted process and then, only in a few cases that escaped the legal barriers that exist.

8. Instead, the award is intended to serve as a recognition that these events occurred and as an official apology for the fact that you suffered as a result.

9. The Crown is making this offer on the basis that it recognises that many of you would fail in any legal claim that was brought before the courts. At the same time, a small number of people would escape the effects of the Limitation Act and would recover some of the damages before the courts. The Government has been very concerned that an injustice could be caused with some people getting something and others getting nothing."

Retired High Court Judge commented on Lake Alice cases

Sir Rodney Gallen, a retired High Court Judge was appointed as an independent determinator to apportion the amounts that were paid out to the 95 individuals. Sir Rodney Gallen was a QC (Queens Counsel) when practising law. He was New Zealand's longest serving High Court Justice before becoming a Justice of the High Court of Appeal, and at times he had been the Acting Chief Justice of New Zealand.

Sir Rodney personally interviewed 41 of the cases and read the files of another 44. He was so disturbed by what he heard and read that he went outside his brief and wrote a report. The report makes chilling reading. It describes abuses of children while under the care of the State in the child and adolescent unit at the Lake Alice psychiatric hospital (section excerpted below, full text available upon request).

“I have no power to make an apology, but what I can do is give some indication of my concern at the deeply disturbing and distressing material made available to me. Had there been merely one or two accounts alleging the kind of treatment which is the subject of complaint, it might have been possible to say that these should have been, to some extent, discounted because of the circumstances. In this case there are in excess of 90 accounts, all of which refer to similar circumstances. Many of these corroborate material contained in other statements in circumstances where there could have been no opportunity for the persons making the statements to confer. The vast majority of the complainants do not know who the other complainants are, they live in different parts of the country, and some overseas. When, further, there is independent corroboration of material contained in these statements in such medical records as have been retained, then it is not possible to dismiss the complaints in this way.”

“Almost every complainant asks that some system be put in place which would prevent any such situation developing again.”

The Police investigation

Since 2002 the New Zealand Police has received approximately 55 complaints from individuals concerning staff conduct.

The NZ Police has just recently announced in a media release (30 March 2010) that they will not be continuing their investigation into former staff conduct, stating insufficient evidence. One of the reasons given was that the appropriate legislation for Police,

“...complaints of this type would have been a section of the Mental Health Act 1969. Unfortunately that legislation required that any prosecution must be brought within six months of the date the Act complained of and therefore could not be applied in these circumstances.” In other words when the victims were still children or youth.

Mr Cameron, the lawyer who worked with the first 95 victims stated recently after the Police decision not to prosecute the staff:

“On my recollection of the file... there was a very large amount of information which indicated that Dr Leeks should have been facing some sort of charges.”

“That documentary evidence would have been pretty powerful in itself.”

Many of the Lake Alice patients were Wards of the State, without mental illnesses, and should not have received ECT, he said. "So it was complete abuse to apply ECT."

He also criticised the length of the investigation, saying it should have been completed after the civil settlements.

"That's the criticism I think should have been levelled. That instead of getting on with the job in 2002 and having it resolved in 2002, here we are eight years down the track and that's totally outrageous."

It was also "not good enough," that police failed to speak with all of the complainants as part of the inquiry," he said.

CCHR made several attempts over the years to assist the Police in their investigation, supplied as much documentary evidence, victims and ex-staff details. Throughout the eight years they had the complaints, none of our victims were interviewed as a part of their criminal investigation over that time.

In a letter dated 7 April 2010 in response to an Official Information Act request for details on the outcome, advice, etc received and used by the Police in their investigation, Assistant Commissioner of Police, Mr Malcolm Burgess stated:

"... I would note that most of the material relevant to your request on the file has originally been provided by your organisation or by the complainants themselves and can be obtained from either of those two sources."

This leads one to ask what work they actually did during the eight (8) years they investigated the allegations. It seems there was a lack of will to acknowledge these abuses were as serious as they were, investigate promptly and impartially, have any perpetrators prosecuted if found, and the victims accorded redress, including adequate compensation and rehabilitation.

Queens Counsel says enough evidence to charge

Dr David Collins, QC before he became New Zealand's Solicitor General, was employed by the Crown to handle the second round of Lake Alice payouts. Dr Collins saw approximately 85 of the files and interviewed many of the second round of claimants. In 2006 during an interview with CCHR, Dr Collins said:

"If the Police had seen the files that I have, they would lay a charge."

Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) also weighed in. In 2001 the Chair of the college's faculty of child and adolescent psychiatry Louise Newman said:

"The practices alleged can only be described as severe child abuse and torture."

Craig Patterson, CEO of RANZCP in 2001 stated in a 20/20 television documentary on the children of Lake Alice:

"It is torture. It is terror. And this college certainly, this organization and its fellowship, absolutely distances itself from that form of behaviour."

“Electric shocks, for the purposes of getting children to modify behaviour, is not medicine.

“It is not psychiatry, it is unacceptable. And in these circumstances it is assault. It is grievous bodily harm.

“If the allegations against Dr Leeks are shown to be correct, he should not be a psychiatrist. I’d probably go a step further and say he shouldn’t be a doctor at all.

“We’re calling on action to occur urgently and quickly. This is not something that can just sit around.”

Confidential forum for psychiatric patients

After the Lake Alice cases were compensated and officially acknowledged that what happened shouldn’t have, there were a steadily growing number of psychiatric victims of cruel, inhuman and/or degrading treatment or punishment coming forward. In 2005 the Government set up the Confidential Forum for Former In-Patients of Psychiatric Hospitals. This service was unable to determine and acknowledge liability or the truth of the victims’/participants’ experiences or stories, but nonetheless formed the basis of yet another damning report of terrible abuse in State care (around 500 people came forward).

Essentially this was a listening service where people could tell someone of their experiences of abuse. After this, the government then established the Confidential Listening and Advice Service to enable others from various institutions to be able to be listened to.

These services are fine, though were reported about in a law journal as a means to mitigate against civil and criminal suits against the government or state services, rather than to deal with the allegations promptly and impartially, perpetrators prosecuted if found guilty and victims accorded redress.

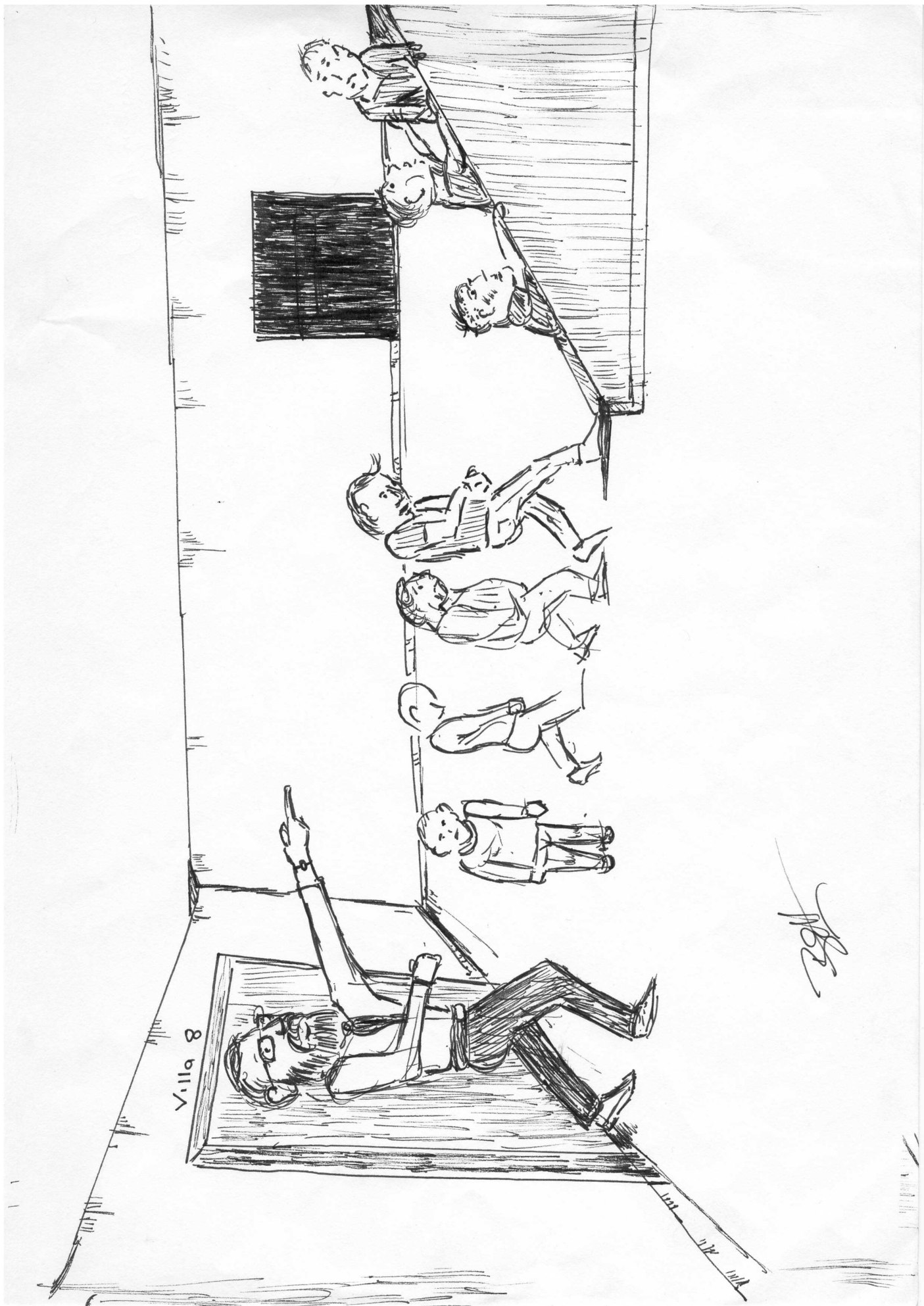
Conclusion

The Government paid out \$12.7 million to over 193 former victims in ex gratia payments. The Government has made the payouts without admitting any legal liability. The former staff, psychiatrist and nurses have not admitted any wrongdoing.

It must be mentioned that to this date no official recognition or accountability of the perpetrators of the alleged torture or cruel, inhuman or degrading treatment or punishment of the children of Lake Alice has occurred.

There has not been a proper investigation and report with findings on what happened. Many former victims and three additional cases CCHR are working with (who have not made claims for the payouts) want this to occur. This would help them to achieve some closure. It would greatly assist in targeting actual preventative measures and safeguards for the future.

We would like to present details of these issues to a special rapporteur in New Zealand if possible. CCHR could help facilitate interviews with victims and staff from the unit, as well as connect them with others from other institutions, lawyers, etc. It is often difficult to describe on paper what has occurred. This is one of the reasons why we have inserted a couple of pictures, penned by one of the victims showing scenes he recalled as a child.



Handwritten signature or initials.

14. **Withdrawal of reservation to article 14**

Agreed, see other sections for information.

16. **Use of taser weapons**

The Commission is concerned with the introduction and use of tasers by NZ Police. It is well documented that persons under the influence of or withdrawal from psychotropic drugs can exhibit unusual and sometimes bizarre behaviour. There are instances where mentally ill have been targeted overseas and within New Zealand. Our concern is that their use could be increased due to misunderstood views of their dangerousness and also the effects the taser would have on the victim.

In closing

We wish to thank you all for the opportunity to make comment on these important issues concerning New Zealand and the implementation of human rights. Members of the Commission would like to attend the Committee's examination of New Zealand's report and offer any more detail as required in person to this submission, but funding would preclude this from being able to occur at this time. However, should a UN Special Rapporteur or official of the Committee be travelling to New Zealand, we would support the opportunity to be able to discuss these and other issues.

Thank you all for your time.

Yours faithfully



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