

to: hrc-sr-torture@un.org,

“Input to the Report of the Special Rapporteur on Torture”,

by **25 November 2022**. Please note that responses should be 2500 words maximum.

(i) Challenges, impediments and obstacles to effective national investigations and prosecutions of acts of torture: What are the main impediments preventing full and prompt investigations into allegations of torture – consider matters such as gaps in legal and regulatory frameworks, political-cultural-leadership, institutional, practical and other challenges?

The State of New Zealand was subject to two formal complaints to the UN Committee Against Torture concerning the psychiatric hospital, Lake Alice, and the treatment of children there in the 1970s.

The reason it reached the United Nations was because the State failed to conduct a proper, independent, investigation into what happened there.

In the mid-1970s there were authorities in health, social welfare and education who had received complaints about children being punished with electric shocks and painful psychiatric drugs. They failed to act to investigate the reports.

Our group (Citizens Commission on Human Rights NZ) published a report in early 1976 that children were being punished with shocks and drugs and in early 1977 there were two official inquiries into isolated cases and a police investigation. There were no findings of culpability or accountability regarding the treatment as it was excused as being acceptable, with a number of psychiatrists endorsing the practice of Dr Selwyn Leeks, who headed the Child and Adolescent Unit at Lake Alice, and administered the electroshock treatment.

New Zealand signed the UN Convention Against Torture in 1989 and passed a Crimes of Torture Act.

In the mid-1990s two former child patients, now adults, filed a legal suit against Dr Leeks and the State. And by the later 1990s there were 95 former patients taking part in a class action suit against the government.

The State chose to side with Dr Leeks and defend the claims of ill treatment even though they knew the nature of the claims of ill treatment were meritorious as the medical files at their disposal contained the evidence that drugs and electroshocks were administered as punishment when the children misbehaved.

When these health and Crown Law authorities and legal counsel decided to defend the psychiatrist and his staff they were complicit in knowing that he had in fact committed criminal acts of cruelty to children. They could have, and should have, turned the matter into a criminal case and then dealt with the civil claims after the findings of a criminal investigation.

Instead of pursuing a criminal investigation the State authorities only dealt with the civil claims and in 2001 recompensed the claimants with ex-gratia payments averaging NZD 60,000 each. These payments settled the civil suit out of court and there was no accountability for the psychiatrist, the former staff and the officials who were responsible for the hospital.

Sir Rodney Gallen, the retired High Court judge who was appointed to assess the individual cases of the 95 claimants as to how much money they should receive, wrote a report giving an overview of what he had found out having personally interviewed 40 claimants and examined the files of the remaining 45 others. His report clearly showed the extent of the torturous treatment the children in Lake Alice received and the government made moves to suppress it being published. Having failed, the report was published and for the first time the New Zealand public got some idea of the widespread abuse of children who were in State care while treated by Dr Leeks.

It was after this report was made public that our group filed criminal complaints against the psychiatrist and his staff on behalf of six former patients. These complaints were joined by 38 more former patients and a police investigation started. It ran for eight years and in 2010 the police announced there was no criminal case to answer for.

Knowing this to be untrue CCHR NZ filed reports with the UN Committee Against Torture and in 2015 travelled to Geneva with Paul Zentveld, one of the Lake Alice survivors, to make a personal representation to the Committee. The result of these representations was that the UNCAT urged the NZ State to open a new impartial investigation into Lake Alice.

The NZ State never did, which led to the formal complaint filed on behalf of Paul Zentveld to the Committee Against Torture in 2017 claiming the NZ State were in breach of the Convention Against Torture for not conducting a proper, independent investigation into the alleged torture of children in the Lake Alice Child and Adolescent Unit. (see attachment 1)

By this time there was a Royal Commission of Inquiry into Abuse in State and Faith-based Care being called for, as the Lake Alice matter had opened up the widespread abuse of people (mainly children) in care in State and church-run institutions. A lot of people were coming forward with claims of abuse in Social Welfare homes, other psychiatric hospitals and church-based care. This had been predicted by the government in the late 1990s when dealing with the first round of Lake Alice claimants, which appeared to be a major reason they worked to keep a lid on the criminal nature of the abuse and deal with the matter from a civil claims perspective and to keep the monetary redress figures low.

For example in the early 2000s, one law firm—Cooper Legal—had over 300 cases of people who had been abused in State-run institutions and church care. The government were compensating these victims with figures of around 5,000 to 20,000 NZD. Few, if any, of these claims resulted in criminal convictions even though perpetrators of serious sexual and physical abuse were known to authorities who were dealing with compensation.

In 2018 the Royal Commission was established by the recently elected Labour government and they were tasked with looking at the abuse that took place between 1950 and 1999 in State and faith-based institutions. It has been running for the past four years and to date they have heard from 2,167 people who have related their experiences of abuse while in care.

In early 2020 the UNCAT decision on Paul Zentveld's case was published. It found in his favour and the Committee urged the NZ State to undertake a new criminal investigation; to assess redress and to make the decision broadly known.

A criminal investigation was promptly started and in mid-2021 the Royal Commission made a case study of Lake Alice and held a hearing into it for two weeks, where it heard from survivors and other witnesses. This hearing removed any doubt that what the children and young people were subjected to inside the Children's Unit was torture. Survivors talked about the ECT machine being used as punishment where the psychiatrist would apply

the electrodes to various parts of their bodies. They were given shocks to the arms and shoulders for fighting and legs for running away. Several said they also received shocks to their genitals. One testimony described Dr Leeks administering shocks around his face and jaw and eventually his temples, knocking him out.

Drugs were also used as punishment and Paraldehyde was the most common as it caused excruciating pain when given intramuscularly to the buttocks. The survivors testified this left them unable to walk for several hours because of the pain. Seclusion was also used as a punishment on a regular basis.

The Royal Commission hearing heard apologies from the Ministry of Health, the Medical Council of New Zealand, the Crown Law Office and the NZ Police for failing to act on behalf of the Lake Alice victims and for their systemic failures.

By December of 2021 the police announced they were charging a former Lake Alice nurse with cruelty to children. Their two-year investigation concluded that of the surviving staff who could have been prosecuted, two were incapacitated mentally to stand trial—the psychiatrist Dr Leeks and another charge nurse. The police did say there was sufficient evidence however to charge them.

Dr Leeks died in January 2022.

The trial for the charge nurse is to take place in August 2023.

Another Lake Alice survivor, Malcolm Richards, had filed a formal complaint to the Committee Against Torture in early 2018 following Paul Zentveld's lead. The decision on his case was published in June 2022, and once again the UNCAT found in his favour, further criticising the NZ government for not acting much sooner when it could have, especially in the early 2000's police investigation which languished for eight years. (see attachment 2)

What has emerged after this was that even in the most recent police investigation that did result in criminal charges laid, the Crown Law Office were very reluctant in turning over documents requested by the police, which delayed their investigation by almost a year. This appeared to be a continuation of unwillingness to truly confront the serious nature of the crimes being looked into—torture of children by state-backed psychiatry. (see attachment 3)

This is further evidenced by the New Zealand government's unwillingness to make the UNCAT decisions for Paul Zentveld and Malcolm Richards widely known. Perhaps, what would be the most simple of things to do, is in fact the hardest. The decisions have been put only on three government websites—Police, Human Rights Commission and the new Redress taskforce website. All of the media resulting from the decisions were the actions of the survivors and our group.

Moreover, neither Malcolm nor Paul received any communication from anyone in government as a result of their UN cases. This brings us to the situation of redress.

In New Zealand the Attorney General maintains the Convention Against Torture was signed with a condition that victims of torture can only receive redress at their discretion. Also, the Attorney General is an elected politician, which does not make him or her independent from the ruling State party.

In writing to the Attorney General, Malcolm received a reply saying that redress for him would be addressed by a redress committee that the government is currently putting together. He was told by a person on the Redress task force that this committee might be up and running by 2024.

The victims of the Lake Alice abuse and torture are all in their 60s now. Many suffer from poor health and all suffer severe psychological difficulties and damage. Several are dead and quite a number of these by their own hand.

For many their concern is that they will not be alive much longer to benefit from the redress when it finally does arrive.

The NZ State has tried to cover up the torture at the Lake Alice Child Psychiatric Unit for about 40 years and now it has been exposed, the State has been slow in acting to acknowledge their failing to uphold the Convention Against Torture and slow to start paying proper redress to the victims of the torture.

(ii) **Regulatory frameworks:** How is torture (and other forms of cruel, inhuman or degrading treatment or punishment, as applicable) criminalized in your national legislation? Please provide examples (and copies) of national laws that criminalize torture (and other forms of cruel, inhuman or degrading treatment or punishment, as applicable), and approaches to questions such as immunities, amnesties, statutes of limitations, defences of superior orders, and sentencing.

I have attached the New Zealand Crimes of Torture Act 1989.

Mike Ferriss
Director
Citizens Commission on Human Rights New Zealand