



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
23 January 2020

Original: English

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention concerning communication No. 852/2017* **

<i>Submitted by:</i>	Paul Zentveld (represented by counsel Victor Boyd from the Citizens Commission on Human Rights New Zealand)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	New Zealand
<i>Date of complaint:</i>	10 July 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 20 November 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	4 December 2019
<i>Subject matter:</i>	Abuse of children in a State hospital
<i>Procedural issues:</i>	Admissibility – <i>ratione temporis</i> ; exhaustion of domestic remedies
<i>Substantive issues:</i>	Lack of prompt and impartial investigation; right to an effective domestic remedy and redress
<i>Articles of the Convention:</i>	2, 10, 11, 12, 13 and 14

1. The complainant is Paul Zentveld, a national of New Zealand, born in 1960. He claims a violation of his rights under articles 2, 10, 11, 12 and 13 of the Convention. The State party made a declaration pursuant to article 22 (1) of the Convention, effective from 10 December 1989. The complainant is represented by counsel.

Facts as presented by the complainant

2.1 The Child and Adolescent Unit at Lake Alice Hospital – a facility within the government Department of Health – operated from 1972 to 1977 under psychiatrist Dr. Selwyn Leeks. The complainant was first admitted to Lake Alice in 1974, when he was 13. He was sent to the hospital by his mother, who considered that she had “lost control” over him. He was diagnosed with a behavioural disorder. His treatment consisted of the

* Adopted by the Committee at its sixty-eighth session (11 November–6 December 2019).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



administration of electric shocks, unmodified electroconvulsive therapy,¹ drugs² and solitary confinement on the grounds of bad behaviour and “adopting a threatening attitude”. He was admitted to Lake Alice five times, for a total period of two years and 10 months.³

2.2 In 1976 and 1977, a number of complaints were made to the Government and medical organizations about treatment using an electric shock machine on children on various parts of their bodies and administering drugs delivered as a punishment and not for therapeutic purposes. In 1976 and 1977, a Commission of Inquiry was conducted into the treatment of a 13-year old boy at Lake Alice, but no wrongdoing or malpractice in the use of electroconvulsive therapy was found, one of the justifications being that such therapy given to children without anaesthetic is acceptable because their bones are supple and would not break during convulsions. In 1977, the Medical Council investigated a complaint by a former patient alleging use of an electroconvulsive therapy machine by Dr. Leeks to administer painful electric shocks, but there were no sanctions, so Dr. Leeks was free to continue to practise psychiatry on children. Also in 1977, following a complaint to the police about painful electric shocks administered to the bodies of two children at Lake Alice, the police found no criminal conduct, but only “lack of judgment” by staff. Finally, a 1977 complaint to the Ombudsman’s Office resulted in stricter rules regarding consent for patient treatment and termination of the practice of the Department of Social Welfare of placing children and young persons subject to guardianship orders in psychiatric hospitals without recourse to the formal committal procedures contained in the Mental Health Act. The complaints did not result in any prosecutions and the psychiatrist who was running the unit left New Zealand to work in Melbourne, Australia.

2.3 Much later, in 1997, several articles were published in the media in New Zealand and later in Australia on the abuse of children at Lake Alice. Thereafter, former patients started coming forward. In 1999, a civil claim was filed before the Wellington High Court on behalf of 56 former patients. That number had increased to 85 by 2001, when the Government compensated these victims with a payment of \$NZ 6 million and a letter of apology. A further 110 claimants had come forward by 2009, including the complainant, at the invitation of the Government to provide further compensation. All the claims of ill-treatment and abuse were dealt with by the way of a general apology⁴ and ex gratia payments to each individual.⁵ In total, \$NZ 12.8 million was paid out by the Government to 195 victims.⁶

2.4 In 1999, the Medical Council terminated Dr. Leeks’ medical practising registration. The Council stated that as Dr. Leeks was no longer registered with the Council, allegations of ill-treatment would not be investigated by them.

2.5 In 2001, retired High Court judge Sir Rodney Gallen was commissioned by the Government to review the complaints concerning Lake Alice. Sir Rodney found that the administration of unmodified electroconvulsive therapy was not only common at Lake Alice but routine, and that it was administered not as therapy but as a punishment. He also found that many of the children admitted to the hospital were not mentally ill.

2.6 In 2003, the complainant filed a complaint with the Medical Practitioners Board of Victoria in Australia, as Dr. Leeks had been practising there since he left New Zealand in early 1978. In 2006, the Board prepared for a formal hearing under the Medical Practice

¹ According to a November 2002 report of the New Zealand College of Psychiatrists, electroconvulsive therapy is applied by way of electrodes attached to the head. The patient is anaesthetized and given a muscle relaxant, and the electric shock administered while the patient is not conscious. Such a form of administration is designed as modified. The therapy can also be given unmodified. In such cases, the patient is conscious during the administration of the therapy.

² Stelazine, Modecate, Largactil and Paraldehyde.

³ Lake Alice Hospital nursing notes and charts indicate – over the five admissions – unmodified electroconvulsive therapy administered 15 times to the complainant in 1975.

⁴ The Government acknowledged that there were some actions which were unacceptable, in particular the use of electric shocks and painful injections.

⁵ The complainant received \$NZ 115,000 and a letter of apology.

⁶ Legal barriers made it difficult for any complaints to turn to a court, which was the reason for the Government offering ex gratia payments.

Act 1994. They had 39 allegations against Dr. Leeks of “infamous conduct” in a professional setting when practising at Lake Alice in the 1970s. The complainant was set to fly to Australia and give evidence, but on the eve of the date set for the formal hearing, 19 July 2006, Dr. Leeks resigned all forms of practice. The Board accepted this and the hearing therefore never took place, as the Board considered that it had no jurisdiction over a practitioner who had resigned. In 2011, the Australian Health Practitioner Regulation Agency stated that “the community was protected from all forms of Dr. Leeks’ Lake Alice conduct” and that the outcome was the same as if a complaint against Dr. Leeks had been successful.

2.7 Also in 2003, following the invitation of the Government of New Zealand to former Lake Alice victims who had received an apology to make a criminal complaint to the police, the Citizens Commission on Human Rights submitted several complaints to the police. In 2006, the complainant himself submitted his case to the police, alleging criminal conduct by former Lake Alice staff, including Dr. Leeks. The police investigation of the complaints of the complainant and other victims was initially focused on possible violations of the Mental Health Act 1969. The police explained that the Act was the correct legal framework under which to examine the complaints, but that part of the law required complaints of that type to be made within six months of the alleged incidents. In 2010, the police therefore closed the investigation on the grounds that they could not mount a criminal prosecution, given the passage of time since the events had taken place, the unavailability of witnesses, and the likelihood of a defence that the time limit had been exceeded and that there had already been an investigation.

2.8 On 4 June 2009, the Committee adopted concluding observations on the fifth periodic report of New Zealand and requested the State party to “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” (CAT/C/NZL/CO/5).

2.9 In 2015, the complainant requested the police report of the investigation regarding his complaint of torture and ill-treatment. This report included the fact that the police considered that the treatment the complainant had received amounted to a crime.⁷ Despite this finding, the police held that it was too late to prosecute.

The complaint

3.1 The complainant alleges that he was a victim of ill-treatment and torture in the Child and Adolescent Unit of Lake Alice Hospital. He complains that the State party has not ensured accountability for the staff at the hospital who abused and ill-treated children in their care. The State party’s Medical Council accepted the resignation of Dr. Selwyn Leeks in 1999, thus claiming no jurisdiction over him. The Australian Medical Practitioners Board did the same when Dr. Leeks resigned from all practice in 2009, the day before they were to begin a hearing into his practice. The State party’s police claimed they could not prosecute Dr. Leeks or other Lake Alice staff, due to the statute of limitations. Without any investigation, the alleged perpetrators received no disciplinary punishment and the State party medical authorities did not denounce the actions of former Lake Alice staff and their treatment of the victims. No official medical reviews of the practice at Lake Alice and no statement barring such practices have been released.

3.2 The complainant submits that the State party did not consider that there were avenues of formal investigation available, such as a ministerial inquiry. Lake Alice was administered and staffed by government employees. A formal inquiry would be one

⁷ Part of the police report stated: “On the face of it there appears to have been at least one occasion in 1974 when Mr. Zentveld received Ectonus therapy as opposed to ECT and there is no record of this event in the notes. It is therefore considered that a charge could be considered in relation to the application of Ectonus therapy to Mr. Zentveld in 1974.” Ectonus is another treatment that, according to a police report of 22 March 2010, entails the electroconvulsive therapy machine being used on a different setting to the setting than would be used to deliver electroconvulsive therapy. It involves the patient receiving an electric shock at a lower level of electric current as a means of modifying behaviour. It has since been characterized as “aversion therapy”.

possible way of achieving accountability for the ill-treatment suffered. Another avenue of investigation would be to require the medical authorities to investigate a former practitioner, even if that person had resigned.⁸ Dr. Leeks would have faced serious disciplinary measures if he had had to face the Medical Councils in either New Zealand or Australia.

State party's observations on admissibility and the merits

4.1 On 18 May 2018, the State party submitted observations. It first notes that the only aspect of the complaint which is not inadmissible *ratione temporis* is that the alleged main perpetrator of the abuse at Lake Alice Psychiatric Hospital, Dr. Selwyn Leeks, has not been held to account for his actions. However, the complainant's claims against Dr. Leeks have been investigated and reviewed by the police. The decision not to prosecute Dr. Leeks was taken because there was a lack of evidence to support a prosecution and because of the determination that there was no other countervailing public interest in proceeding with a prosecution. The decision was taken following previous police investigations of similar complaints and the contemporaneous examination of complaints by the police, a Commission of Inquiry and the Chief Ombudsman in the 1970s. In those circumstances, not prosecuting Dr. Leeks is not a breach of the State party's obligations under the Convention. It is now too late for a prosecution to be undertaken and there would be valid concerns for the maintenance of rights to a fair trial.

4.2 The State party took action in the 2000s to consider the claims of former patients, including the complainant, and to compensate and apologize to them for what they had experienced. Furthermore, extensive reform of the legislative regime of the rights of patients in general and of the use of electroconvulsive treatment in particular, means that similar events are exceedingly unlikely to occur again. If there is anything further to be explored in relation to the treatment of children and adolescents in the Child and Adolescent Unit at Lake Alice, then this may be achieved by the Royal Commission of Inquiry into historical abuse in State care, which was announced in February 2018.

4.3 The State party notes that complaints began to emerge in or around 1976 and 1977 concerning the Child and Adolescent Unit at Lake Alice Psychiatric Hospital: in 1977, a Commission of Inquiry was set up to investigate the treatment of an adolescent boy who had been a patient in 1975 and 1976;⁹ in 1977, a report was issued of an investigation by the Ombudsman regarding the treatment of a boy between 1973 and 1976;¹⁰ in 1977, a complaint was lodged with the Hospital Inspectorate about the treatment of two patients in 1974;¹¹ in 1977, a complaint was lodged with the "mental health authorities" about the electroconvulsive treatment of a boy;¹² in 1991, a former patient complained to the Medical Practitioners Disciplinary Committee;¹³ in 2006 disciplinary proceedings were brought

⁸ According to the complainant, the Law Society in the State party will still investigate a lawyer even if he or she has resigned from practice.

⁹ The complainant provided submissions to the Commission of Inquiry, which in the end did not find evidence of any criminal wrongdoing.

¹⁰ Following the Chief Ombudsman's investigation, the Child and Adolescent Unit was closed by 1978.

¹¹ These complaints were subsequently referred to the police, which recorded that in a media article in January 1978, the Commissioner of Police had stated that there was no evidence of criminal misconduct. There was a similar comment from the then Director of Mental Health. It is understood that Dr. Leeks left New Zealand for Australia around 1978, prior to the release of the result of the police inquiry.

¹² Police recorded that the allegations were investigated by the Medical Council and the police. Dr. Leeks did not deny applying shocks to the patients in three of the four allegations, but characterized them as aversion therapy. He denied the allegation that two boys were strapped together and given electric shocks. The Medical Council considered the possibility of a disgraceful conduct allegation against Dr. Leeks, but discontinued its investigation after hearing from Dr. Leeks. The Medical Council did not find evidence of criminal behaviour.

¹³ This complaint was received after Dr. Leeks had left New Zealand. After reviewing the medical file, the Chairman of the Committee determined that there were no grounds for any enquiry into the conduct of Dr. Leeks.

against Dr. Leeks in Victoria, Australia;¹⁴ and in 2010, the complainant brought his complaint about Dr. Leeks to the Medical Council of New Zealand.¹⁵

4.4 Following the settlement of the Lake Alice class action, the Government offered compensation and apologies to the litigants, including the complainant. The complainant also had the opportunity to attend a confidential listening and assistance service. It is not known whether he took this opportunity. This service was established by the Government in 2008 to provide a confidential and supportive forum for people who had experienced abuse or neglect during their time in State care in the residential special education, health and welfare sectors before 1992. The service is now discontinued.

4.5 The State party then refers to the complaints to the police in the 2000s. In 2002, several former patients involved in civil proceedings complained to the police.¹⁶ Two further complaints followed in 2006, including one by the complainant on 21 April 2006. Complaints referred to the application of electric shocks and the administration of drugs as punishment, and also alleged instances of sexual offending.

4.6 The police took a number of steps to investigate the complainant's allegations and see if further inquiry was warranted: it made contact with the person who represented most of the claimants in the civil action and obtained the files relating to those whose complaints had been referred to the police; it received additional files from other complainants or through intermediaries; searches were undertaken to locate earlier complaints; medical records, where available, were obtained; inquiries were carried out with some of the staff identified by the patients and their statements recorded; some of the key statements made earlier by staff witnesses were obtained; an expert opinion regarding the use of electroconvulsive therapy on children was obtained; the site of the former Lake Alice Psychiatric Hospital was photographed and the site plans obtained; and the complainants' statements were analysed against the available medical notes. The police found evidence of the application of electroconvulsive therapy in both treatment modes and the application of electric shocks in circumstances that might suggest use as a form of aversion therapy or

¹⁴ In a letter dated 20 July 2006, the Medical Practitioner Board of Victoria, Australia, advised the complainant that Dr. Leeks had ceased all forms of medical practice and given an undertaking that he would not return to practice in any jurisdiction. The Board explained that its primary role was to protect the community and in light of the undertaking received from Dr. Leeks, it would not be proceeding with the hearing. In a letter of 23 September 2011 addressed to another Lake Alice victim, the Australian Health Practitioner Regulation Agency observed that Dr. Leeks' undertaking to discontinue practice was the most severe outcome that might have been achieved by any formal Board hearing.

¹⁵ On 22 June 2012, Council responded that an investigation process had been initiated in 1977, but that there were no records of what had occurred. It was also not clear what alternatives were available to the Medical Council in 1977. The Council stated: "if a similar complaint came to the Medical Council of New Zealand now, they would assess it and either deal with it as an issue of competence or of conduct. Under both those pathways the possible interventions are multiple. While the Council can in some serious circumstances temporarily suspend a doctor's practising certificate, any removal from the register would depend on a successful prosecution on conduct grounds with the Health Practitioners Disciplinary Tribunal". According to the Council, there was no capacity to relitigate what was done all those years ago against current processes and standards. The Chair advised that there was no jurisdiction over Dr. Leeks following his deregistration.

¹⁶ The police needed to determine the evidential sufficiency of the complaints and weigh the public interest factors in a prosecution. One of the complaints received was selected as a representative complaint for evaluation. This was a complaint from the same adolescent boy who had been the subject of the Commission of Inquiry in 1977. In April 2004, the police determined there was insufficient evidence to initiate a criminal prosecution responsibly. However, it was considered that the complaint raised serious questions that merited further investigation. On 7 October 2004, the police took a statement from a former school teacher at Lake Alice during the 1970s, who stated that electroconvulsive therapy was administered as a punishment for failing to achieve adequate grades in school work and for other behavioural issues. The police also entered into correspondence with various parties who had an interest in the investigation. In September 2005, they received a media inquiry regarding the possible extradition of Dr. Leeks from Australia. The police confirmed their view that no activity or intervention with patients at Lake Alice had been disclosed that amounted to a criminal offence.

punishment. In the exercise of its prosecutorial decision, the police considered the legal position regarding the alleged offences.

4.7 The care and treatment of patients suffering mental illness in the 1970s were subject to the Mental Health Act 1969. Section 112 of the Act included an offence of ill-treating a person with a mental disorder. While this would have been the appropriate charge for the police to consider on the facts, a six-month time limit for commencing proceedings had long expired. A charge against Dr. Leeks under the Act was therefore time-barred.

4.8 The police then considered the Crimes Act 1961. According to section 195 of the Act, anyone who, having custody, control or charge of a child under the age of 16 years, wilfully ill-treats the child in a manner likely to cause them unnecessary suffering, actual bodily harm, injury to health or any mental disorder or disability, is liable to a term of imprisonment not exceeding five years. However, the police determined that there was unlikely to be sufficient evidence to successfully prosecute a charge of wilful cruelty to a child against Dr. Leeks. It considered that several potential witnesses were dead; one of the nurses interviewed had the onset of dementia; most of the former nursing staff were in their 60s or 70s; and Dr. Leeks himself was resident in Australia and by then an Australian citizen.¹⁷ The police also considered it relevant that the investigation of the complaint brought by the complainant was the seventh examination by New Zealand agencies of those or related facts since 1977. Over 30 years had elapsed since the alleged offending. Issues of abuse of process were noted, although not considered.

4.9 In or around December 2009, the police reached a final view that there was no realistic prospect that a criminal prosecution of Dr. Leeks would be successful and having regard to the guidelines for prosecution published by the Solicitor-General, there was no countervailing public interest in proceeding with a prosecution. The complainant was advised by a letter, dated 15 March 2010, of the outcome of the investigation.

4.10 The State party considers that the communication is inadmissible on several grounds. The Convention entered into force for the State party on 9 January 1990. Insofar as it seeks to impugn the actions of the State party prior to that date, the communication is inadmissible *ratione temporis*. Allegations of breach of articles 2, 10 and 11 may therefore be set aside.

4.11 Aspects of the communication seek to impugn agents outside the State party's jurisdiction. Insofar as it impugns the decisions of institutions such as the Medical Practitioners Board of Victoria, Australia, the communication is inadmissible.

4.12 Furthermore, the complainant has not exhausted all available domestic remedies. He has not reviewed the decisions of the Medical Council of New Zealand. The decision of the Medical Council not to investigate Dr. Leeks cannot be attributed to the Government because the Council is an independent regulatory body. However, while the Council decided not to prosecute Dr. Leeks, it has always been the case that decisions of the Council may be challenged in the higher courts. Neither the complainant nor others sought at the relevant time a judicial review of the decision of the Council not to investigate Dr. Leeks. It remains a possibility that such a review may well have been successful.¹⁸ But now, given the lapse of time, the complainant would be unlikely to obtain a substantive remedy in any judicial review proceedings.

4.13 In addition, the complainant is likely to have the opportunity to participate in the Royal Commission into historical abuse in State care.¹⁹ The communication predates the announcement of the Royal Commission and has not taken this into consideration. Although the Government has yet to make a final decision on the terms of reference for the Commission, the indications are that the State care to be examined will include child welfare and youth justice placements as well as care in psychiatric hospitals. It follows that

¹⁷ He was reported then to be an alert 80 years of age. Acting on legal advice, he had declined to be interviewed.

¹⁸ See *Parry v. The Medical Practitioners Disciplinary Tribunal*, decision upheld by the High Court, available from www.mpdt.org.nz/decisionsorders/additionalorders/.

¹⁹ Royal Commissions of Inquiry report to the Governor-General, the Queen's representative, and the report is tabled in the parliament.

there is a strong likelihood the Commission will consider the claims of former patients of the Child and Adolescent Unit. However, the State party acknowledges that a Royal Commission aims to inform policy going forward and “has no power to determine the civil, criminal, or disciplinary liability of any person”.²⁰ This means that the inquiry will not necessarily undertake the sort of forensic inquiry that might have been expected in a criminal prosecution. Conversely, it also means that the Royal Commission does not give rise to the concerns about a fair trial that would accompany any decision to prosecute Dr. Leeks.

4.14 Finally, the time that has elapsed since the events and the complainant’s purported exhaustion of domestic remedies (a claim with which the State party does not agree) is unreasonably prolonged, so as to render consideration by the State party of the claims and relief sought by the complainant unduly difficult.²¹ On 15 March 2010, the complainant was informed by the police that it would not be prosecuting Dr. Leeks. The complainant lodged his complaint with the Committee on 30 October 2017 without explaining the delay.²² In conjunction with the fact that the events invoked occurred over 40 years ago, any consideration of the complainant’s claims by the Government, insofar as they relate to the criminal culpability of Dr. Leeks, is now unduly difficult. There would also be valid concerns for the maintenance of the right to a fair trial for all parties involved if a criminal prosecution were to be attempted now.

4.15 On the merits, the State party first submits that the documents communicated to the Committee furnish no proof that the Government has failed to discharge its obligations under article 10. The events occurred between 1972 and 1977 and the complainant has not raised any issues of insufficient education and information of personnel during the relevant post-ratification period. Article 10 is not therefore engaged.

4.16 The State party acknowledges that compliance with article 11 is a step it can take to ensure it complies with its article 2 obligations. Even if article 11 is relevant for the pre-ratification period, with which it does not agree, the State party submits there was comprehensive compliance in the 1970s with the requirement to take effective legislative, administrative, judicial or other measures to prevent acts of torture (art. 2) or to review instructions, methods and practices and arrangements for the custody and treatment of persons who are detained (art. 11).²³ Those early reviews by the relevant State agencies are significant because they occurred at the same time as or close in time to the operation of the Child and Adolescent Unit at Lake Alice; their examination of relevant issues was thorough, the Commission of Inquiry and the Ombudsman having the ability to call and receive evidence, and no prosecutorial outcomes followed the investigations.

4.17 In regard to the post-ratification period, the documents communicated to the Committee furnish no proof that the State party has failed to discharge its obligations under articles 2 and 11, either considering article 11 on its own, or in conjunction with article 2. In the 2000s, when further complaints emerged, the State party acted responsibly to consider the allegations and to compensate and apologize to former patients, including the complainant. Although the settlement process was not a government inquiry per se, the settlement examined individual cases and avoided the need for claimants to endure the stress and risk of a civil trial to establish their claims. There have also been substantial changes in medical practice since the operation of the Child and Adolescent Unit. Medical professionals operate now in a very different regulatory framework. As a result, the events at Lake Alice Psychiatric Hospital are very unlikely to occur again in the State party.

²⁰ Inquiries Act 2013, section 11 (1).

²¹ Rule 113 (f) of the rules of procedure of the Committee.

²² The State party also refers to the former rules of procedure of the Human Rights Committee, which provided in rule 96 (c) that a communication might constitute an abuse of the right of submission when it is submitted five years after the exhaustion of domestic remedies.

²³ The State party refers to the several contemporaneous inquiries into the practices in the Child and Adolescent Unit while it was operating (the 1977 Commission of Inquiry report and the report issued by the Chief Ombudsman, along with two police investigations in 1977, none of which found any evidence of criminal misconduct).

4.18 Even if articles 12 and 13 are relevant for the pre-ratification period, there was comprehensive compliance with these articles. Investigations in the 1970s of allegations concerning the Lake Alice Psychiatric Hospital were timely and conducted in a prompt and impartial manner in accordance with articles 12 and 13. As regards the post-ratification period, it is without contest that the complainant has exercised his right to complain to the police. The State party interprets the complainant to be alleging in the main that article 12 has been breached because the police did not prosecute Dr. Leeks; the Government has not held a ministerial inquiry into the events at Lake Alice; and the Medical Council decision not to investigate Dr. Leeks, because he was no longer a member of the New Zealand medical profession, was inadequate.

4.19 Numerous investigations have been undertaken by the police, starting in the 1970s and more recently in the 2000s. Those investigations have sought to determine both the nature and circumstances of alleged criminal offending at Lake Alice Psychiatric Hospital and to establish the identity of any person who may have been involved.²⁴ The central question which arises in the present communication is whether the decision of the police not to prosecute Dr. Leeks was a breach of either articles 12 or 13. The State party submits it was not.

4.20 Article 12 does not oblige States parties to prosecute an individual accused of torture in circumstances where there is insufficient evidence for a prosecution to succeed. The article 12 obligation imposes a duty on a State party to investigate torture when it has reasonable grounds to do so. The police investigated and decided not to prosecute Dr. Leeks because of lack of sufficient evidence and a determination that the public interest did not merit prosecution. That decision was taken and reviewed by senior members of the police. The decision is not inconsistent with either article 12 or 13, as has been recognized by leading commentators.²⁵ The International Court of Justice has also considered that the obligation to submit a case to the competent authorities under article 7 (1) of the Convention may or may not result in instituting proceedings, in the light of the evidence before them.²⁶ Moreover, given the length of time which has elapsed since the acts which constitute alleged torture and the resulting unavailability of witnesses, there is a real prospect that Dr. Leeks' right to a fair trial and the rights of any former staff members would be infringed if there was to be a criminal prosecution now.

4.21 As to the State party's decision not to hold a ministerial inquiry, the Convention does not include the obligation to hold an inquiry of that nature, it only requires a competent State authority to investigate the alleged torture. In any event, government inquiries cannot determine the civil, criminal or disciplinary liability of any person, but are directed at establishing the facts that occurred in relation to a certain event, with a view to informing policy development in the future. The State party recalls that it has in fact decided to hold a Royal Commission of Inquiry into historical abuse in State care and that the events underpinning the complainant's claim may well be considered by the Commission.

4.22 As to the complainant's allegation that the Medical Council should have investigated Dr. Leeks, the State party refers to its arguments on admissibility that, on the one hand, the Council is a body independent from Government, hence its decision cannot be attributed to the Government and, on the other hand, aggrieved claimants, including the complainant, retained the right at the time to seek review of that decision in the higher court, but they chose not to exercise that right.

4.23 Finally, the State party refers to the steps it has taken to change medical practice so that the events at Lake Alice Psychiatric Hospital are very unlikely to occur again.

²⁴ That is the standard the Committee has required in order for an investigation to be considered effective, see *Kirsanov v. Russian Federation* (CAT/C/52/D/478/2011), para. 11.3.

²⁵ See Manfred Nowak and Elizabeth McArthur, *The United Nations Convention against Torture: a Commentary* (Oxford, Oxford University Press, 2008), pp. 361–362 and 415. See also Chris Ingelse, *The UN Committee against Torture* (South Holland, Kluwer Law International, 2001), p. 329.

²⁶ *Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422.

Complainant's comments on the State party's observations on admissibility and the merits

5.1 The complainant submitted his comments on 23 December 2018. He contends that instead of fully investigating the claims of punishment, ill-treatment and sexual abuse at the Lake Alice hospital, the State party conducted very limited inquiries and investigations that avoided seeking any accountability for what had occurred. The four inquiries and investigations that took place in 1977 looked at isolated complaints and exonerated the psychiatrist in charge of the Child and Adolescent Unit, along with the other medical staff and authorities involved.

5.2 In the early 2000s, when almost 100 claimants were alleging ill-treatment, physical abuse, punishment and sexual abuse, instead of an open court action there was a negotiated settlement, ex gratia compensation and an apology to almost 200 former child patients of Lake Alice. What the State party did not bank on was that the former High Court judge assessing the claims would write his own non-commissioned report on what he found when investigating the Lake Alice cases²⁷ and that this would be reported in the New Zealand media, thus further exposing the level of cruel ill-treatment of children in State care.²⁸

5.3 The complainant then refers to the various Lake Alice inquiries and investigations. The State party claims that the 1977 Commission of Inquiry and the report issued by the Chief Ombudsman, responding to isolated complaints of abuse at Lake Alice, were significant in that they were contemporaneous to the alleged abuses. However, in his 2001 report, Sir Rodney Gallen explains why those inquiries were not adequate in the way the children's complaints were discounted. He found the accounts of the claimants to be consistent and supported by the medical notes. It was his report that the Government considered was evidence that ill-treatment had occurred at Lake Alice. For the first time, the State party had in their possession comprehensive information from over 90 former child patients/residents of Lake Alice, detailing what had happened to them in the 1970s. The statements and records had never been collectively examined during former inquiries and investigations and thus Sir Rodney Gallen was able to determine that unmodified electroconvulsive therapy was routinely used on the children as a punishment.

5.4 Because the medical authorities in New Zealand and Australia refused to pursue any case against Dr. Leeks after he resigned as a practitioner, he was never answerable to them or to any medical practitioner's code of conduct. That left the police and the complaints that were filed with them in 2002 and afterwards as the only possible recourse for accountability for what occurred. However, even if the police had access to the most comprehensive evidence as to what occurred at Lake Alice, they essentially took the same path as the 1977 investigations, looked at just one case and claimed there was no criminal liability.

5.5 As to the six-month time limit for commencing proceedings under the Mental Health Act 1969, the complainant alleges that section 124 of that Act would have been applicable to the Lake Alice claimants, who first learned that they were able to pursue criminal complaints some time after they received a formal government apology and a financial payout in 2001 and 2002.

5.6 As to the police statement that under the Crimes Act 1961, wilful cruelty to children might be a difficult charge to pursue, the complainant considers that there were many corroborating statements by former patients and reports and statements of persons whose advice was sought by the police. With the wealth of information before them, it is surprising that they could not mount a criminal complaint against the psychiatrist and

²⁷ While the report was not an investigation with the formal rules of an inquiry, it was the first time someone in authority had published their findings having looked at more than 90 of the Lake Alice cases, their written statements and supporting medical records and had personally interviewed 41 of them. Up until that time, only isolated cases had been looked at during previous inquiries and investigations.

²⁸ When the Evening Post newspaper went to publish the Gallen report, the Crown attempted to prevent it, claiming it was confidential. The application of the Crown was denied in the High Court. The report made nationwide news and revealed to the public of New Zealand the scale of the abuse to which the children at Lake Alice had been subjected.

certain members of staff of the Unit. The complainant believes the police took a long time with their investigation before they made their final report in 2010. During this time, they had interviewed only 1 of the 41 people who had filed criminal complaints, whereas Sir Rodney Gallen had managed to interview 41 complainants for his report in a much shorter space of time. Just like the inadequate investigations of the late 1970s, it appears that the police chose not to look at all of the Lake Alice cases in detail and collectively in terms of their corroborative evidence. The complainant believes that their reasoning is inadequate given the high profile and public interest in the case.

5.7 Referring to the countervailing public interest, the complainant submits that during the period the police received the complaints, public interest in the abuse of children in State care never waned. In 2004, the State party recognized the underlying problems experienced by the historically abused claimants and established a confidential forum as a means of discussing their experiences for people who were in psychiatric hospitals and institutions. In 2008, the Government then opened up a wider forum with the confidential listening and assistance service for victims of psychiatric and State care abuse and neglect. Over a period of seven years 1,103 people came forward.

5.8 Contrary to the State party's allegations, the abuses at the Lake Alice Child and Adolescent Unit continue to be in the public interest and in the news. In a television broadcast on 25 November 2018, an investigative journalist reported on the failure of the police to properly investigate the claims of ill-treatment and criminal wrongdoing at Lake Alice.²⁹ This indicates that there may well have been grounds for a prosecution for alleged offences committed in the Lake Alice Unit. It also appears that there may have been reasons not to prosecute any of the Lake Alice cases other than those set out in the State party's report.

5.9 Interest is still strong, with the Government having announced in February 2018 that there will be a Royal Commission of Inquiry into historical abuse in State care and in November announcing the terms of reference. This should be the largest inquiry of its kind in the country's history, as it is set to span a period of four years.

5.10 In response to the alleged delay in submitting his communication, the complainant mentions that he submitted his complaint to the police in 2006. In 2010, he received notification that the police would not be instituting a prosecution against Dr. Leeks or any of the staff or hospital authorities at Lake Alice. In 2015, the complainant requested the police file relating to his complaint and found that there was a possibility of a criminal charge. It was two years after this discovery that he decided to take his case to the Committee.

5.11 The State party is confident that similar events will not take place again owing to the safeguards within the legislation surrounding psychiatric treatment. There are however no guarantees that future serious allegations of ill-treatment and physical and sexual abuse of psychiatric patients, young or old, will not be covered up in the way the cases and complaints of Lake Alice have been, through official channels, obfuscation and not actually believing the patients and their complaints, especially at the time or near the time they occur. By not conducting a full and independent inquiry, either through the medical, civil or criminal courts, the events of Lake Alice have never been properly aired through the open examination which such courts provide.

5.12 The State party has raised a criticism that the Gallen report in 2001 did not take into account the views of the staff, the nurses or the doctors at Lake Alice, but the Government has never provided the opportunity or the forum to air those views. The Royal Commission of Inquiry may be the only avenue left to investigate the Lake Alice cases in an open and unbiased forum. However, it is not certain that the Commission will look into why the police did not mount a full investigation of the Lake Alice complaints and lay charges against Dr. Leeks and certain former members of staff, or the failure of the Medical Council

²⁹ See Mike Wesley-Smith, "Glimmer of hope for Lake Alice state abuse survivors", Newshub (24 November 2018), available from www.newshub.co.nz/home/shows/2018/11/glimmer-of-hope-for-lake-alice-state-abuse-survivors.html.

to pursue the serious complaint in 1977 and the fact of Dr. Leeks being allowed to leave the country and later resign without having his practice investigated.

5.13 The State party had a duty of care to the young people who went to Lake Alice. It was not enough to conduct superficial investigations and pretend these were isolated incidents and the children not credible witnesses. Nor was it enough just to make ex gratia payments to victims, while claiming no liability, when many of them wanted those responsible to be held accountable. The State party could take further steps to ensure this complaint is fully investigated and those responsible for what occurred at Lake Alice are held accountable for their actions.

Additional submission from the State party

6.1 On 15 May 2019, the State party provided further observations. As to allegations that police investigations conducted between 2002 and 2010 were inadequate, the State party explains that the decision in the early 2000s to choose a representative complaint for analysis was an exercise of police prosecutorial discretion. It was and is accepted practice that complaints which raise common legal issues are able to be examined on a representative basis. This did not mean that the other complaints received were ignored. Similarly, when the complainant made his complaint in 2006, police had access to past complaints and were able to analyse the legal issues that were common to the decision they were required to make as to whether to prosecute Dr. Leeks. In the light of the steps already undertaken by the police and the information that the police had from prior investigations into the Lake Alice hospital, the criticism that the police did not interview a sufficient number of victims is not valid and it was not a breach of the State party's article 12 obligations.

6.2 As to the allegation that the six-month time limit for bringing a charge of "neglect or ill-treatment of a mentally disordered person" under section 112 of the Mental Health Act 1969 could be extended by applying section 124 of that Act, the State party submits that the New Zealand Court of Appeal has rejected the proposition that the six-month time frame within which an application for leave to bring a civil or criminal claim in respect of acts done in the pursuance of the Mental Health Act 1969 only starts to run from the cessation of the injury or damage to the person who wishes to bring the action or prosecution.³⁰ As such, in 2010 the police were correct to determine that no charges could be brought against Dr. Leeks under the Mental Health Act.

6.3 The State party advises the Committee that allegations of sexual assault at the Lake Alice hospital are currently being investigated by the police. The catalyst for the investigation was three witnesses coming forward to make complaints to the police in early 2019. The police did not pursue the allegations of sexual assault at the Lake Alice hospital between 2006 and 2010 because the claims at that point were considered too vague to be properly investigated or the suspect and/or complainant was dead. The fact that the police have opened an investigation into matters concerning the Lake Alice hospital in response to recent complaints demonstrates that they continue to be responsive to complaints relating to this matter.

6.4 In November 2018, an independent inquiry into the New Zealand mental health system recommended that the Mental Health (Compulsory Assessment and Treatment) Act 1992 be repealed. The Government is currently considering that recommendation and work is already under way to revise the guidelines under that Act. The revisions seek to align the application of the current legislation as closely as possible with the State party's obligations under the Convention on the Rights of Persons with Disabilities.

6.5 The terms of reference of the Royal Commission of Inquiry into historical abuse in State care have been finalized. The Commission will consider the experiences of children, young persons and vulnerable adults who were in care between 1 January 1950 and 31 December 1999. For the purposes of the inquiry, "State care" includes "psychiatric hospitals or facilities (including all places within those facilities)". Accordingly, events at Lake Alice during the 1970s fall within the terms of reference of the Commission. The

³⁰ See *Longman v. Residual Health Management Unit* [2008] NZCA 363 and [2009] 2 NZLR 424.

complainant and others who were patients at Lake Alice during that time will be able to make submissions and participate in the inquiry process. The Commission may directly comment on the events at Lake Alice during that period and the lessons which can be learned from those events. The Commission will have extensive powers, including the power to summon witnesses and require any person to produce information. It is to deliver its final report to the Governor-General of New Zealand by 3 January 2023. The final report must be presented to the House of Representatives as soon as practicable after that date. In the light of these comprehensive reviews, the State party has complied with and will continue to comply with its obligation under article 11.

Additional submission from the complainant

7. On 22 May 2019, the complainant records that the new police investigation into allegations of sexual assault, the revision of the guidelines under the Mental Health Act 1992 and the Royal Commission of Inquiry have transpired since his initial complaint to the Committee. In the matter of the Royal Commission of Inquiry, there has been a very recent announcement that the Commission will begin hearing evidence in early 2020 from people who have been in institutions. It is being proposed by the Minister of State Services that the Government responds to the Commission as concerns become evident, rather than wait until 2023 when the Commission is due to complete its work. It may therefore also be reasonable to see what transpires from the Commission's investigation into Lake Alice. With its ability to summon witnesses, it might well uncover information as to why earlier medical, government and police investigations did not amount to anything.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint contained in a communication, the Committee must decide whether the complaint is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The Committee notes that the State party submits four sets of arguments relating to the admissibility of the communication, which it will examine separately.

8.3 Firstly, the State party argues that the complainant's allegations under articles 2, 10 and 11 of the Convention should be declared inadmissible *ratione temporis*. The complainant has not commented on this aspect. The Committee notes that the alleged events took place between 1974 and 1977, when the complainant had been admitted to the Child and Adolescent Unit at the Lake Alice Psychiatric Hospital, and that the State party's declaration pursuant to article 22 (1) of the Convention was effective from 10 December 1989. The Committee observes that even though the alleged ill-treatment preceded the adoption and entry into force of the Convention for the State party, the prohibition of torture and other ill-treatment was nonetheless universally accepted as absolute at that time.³¹ The Committee recalls that a State party's obligations under the Convention apply from the date of its entry into force for that State party. However, the Committee can examine alleged violations of procedural obligations under the Convention which occurred before a State party's ratification or accession to the Convention, or recognition of the Committee's competence through its declaration under article 22 and of other obligations that have similar legal effect under the Convention. In that connection, the Committee notes that both the filing of the complaint to the police and their decision not to investigate Dr. Leeks occurred after the entry into force of article 22 of the Convention for the State party. The Committee therefore considers that, while the acts of ill-treatment occurred between

³¹ See, for example, article 5 of the Universal Declaration of Human Rights; article 32 of the Fourth Geneva Convention, which however applies to armed conflict; and article 7 of the International Covenant on Civil and Political Rights, which was adopted and opened for signature, ratification and accession in 1966 and entered into force in 1976.

1974 and 1977, the contested investigation of those acts by the State party is within the Committee's competence *ratione temporis*.

8.4 Secondly, the Committee notes the State party's argument that the complainant's claims related to decisions by Australian institutions are inadmissible as the alleged acts of agents took place outside the State party's jurisdiction (para. 4.11 above). The Committee considers that it is precluded, *ratione loci*, from examining the complainant's allegations in respect of acts committed outside the State party's jurisdiction.

8.5 Thirdly, the Committee notes the State party's arguments relating to the lack of exhaustion of domestic remedies by the complainant. According to the State party, on the one hand the complainant has not contested before the courts the decision of the Medical Council not to investigate Dr. Leeks and on the other hand, he will have the opportunity to participate in the newly established Royal Commission of Inquiry into historical abuse in State care. The Committee notes that, although the complainant has not disputed the possibility of contesting the decision of the Medical Council before the courts, the Committee considers that the procedure before the Medical Council, which the State party itself admits is an independent regulatory body, cannot replace a criminal investigation into the facts alleged by the complainant. The Committee also notes the State party's acknowledgment that the Royal Commission of Inquiry has no power to establish criminal liability. The Committee therefore considers that no additional effective remedies were available to the complainant for his claims under articles 12 and 13 of the Convention.

8.6 Fourthly, the State party invokes rule 113 (f) of the rules of procedure of the Committee to claim that the time elapsed since the purported exhaustion of domestic remedies is unreasonably prolonged, so as to render consideration of the claims and relief sought by the complainant unduly difficult for the State party. However, the Committee notes the complainant's uncontested assertion that he received the police notification in 2010 and that he requested the police file in 2015, at which point he became aware of the possibility of a criminal charge for the treatment he had received at Lake Alice. The Committee points out that neither the Convention nor the Committee's rules of procedure establish a time limit for submitting a complaint. While the complainant does not explain why it took him five years to request the police report of the investigation, the Committee notes that he introduced his communication in 2017, that is, two years after becoming aware of the details of the police investigation. Consequently, the Committee finds that there are no obstacles to admissibility under rule 113 (f) of the Committee's rules of procedure.

8.7 The Committee notes that the complainant does not provide any arguments to explain how his rights under articles 2, 10 and 11 of the Convention have been violated. The Committee therefore considers this part of the complaint to be ill-founded and declares it inadmissible pursuant to article 22 (2) of the Convention.

8.8 However, the Committee notes the complainant's claim that the State party has not ensured accountability for the treatment that he suffered while at Lake Alice Hospital, which is contrary to articles 12 and 13 of the Convention. The Committee considers that the complainant has sufficiently substantiated this claim for the purposes of admissibility. As the Committee finds no further obstacles to admissibility, it declares this part of the communication containing claims under articles 12 and 13 of the Convention admissible and proceeds with its consideration of the merits. Furthermore, the Committee considers that the complainant's claims are admissible insofar as they raise issues under article 14, considered in the present case in relation to articles 12 and 13 on the procedural aspects of the right to justice and to the truth.³²

Consideration of the merits

9.1 In accordance with article 22 (4) of the Convention, the Committee has considered the present communication in the light of all the information made available to it by the parties.

³² See Committee against Torture, general comment No. 3 (2012) on the implementation of article 14, paras. 16 and 17.

9.2 The Committee notes that the main issue before it consists in determining whether the complainant's allegations of abuse by staff of the Child and Adolescent Unit at Lake Alice Psychiatric Hospital between 1974 and 1977 have been promptly and impartially examined by the competent authorities, in accordance with articles 12 and 13 of the Convention. The Committee recalls its jurisprudence that a criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who may have been involved.³³ That is not an obligation of result, but one of means.³⁴ The Committee must therefore assess whether the authorities of the State party have taken reasonable steps to conduct an investigation that is capable not only of establishing the facts, but also of identifying and punishing those responsible.

9.3 The Committee first notes that the State party does not contest the events that took place in the 1970s at the Lake Alice Child and Adolescent Unit. Complaints for those events were first filed in 1976, with the complainant participating in the 1977 Commission of Inquiry. According to the police report, dated 22 March 2010, the Unit was closed in 1979 "following concern about supervision and a number of critical investigations". The Committee also notes that the State party does not contest the claim that the complainant was a victim of those events. The letter of apology that the complainant received on or around 23 December 2002 mentions that the Government apologized for the "treatment" that the complainant had "received and may have witnessed" at Lake Alice. The Committee also notes that the State party does not contest the claim that the treatment alleged by the complainant meets the threshold of torture, as defined in article 1 of the Convention, or, at least, of ill-treatment, as defined in article 16 of the Convention.

9.4 The Committee further notes that in his 2006 complaint to the police, the complainant referred to the application of electric shocks and the administration of drugs as punishment, as well as instances of sexual offending at a time when he was still a child in State care. However, despite the gravity of those allegations and his particular vulnerability as a child at the time of events and also despite the findings by a retired High Court judge that electroconvulsive therapy was constantly used on the children as a punishment, the Committee notes that, following a police investigation that lasted for over three and a half years, the resulting report, dated 22 March 2010, did not clarify whether the alleged treatment was indeed applied as a punishment. The report notes that "there is evidence of the application of ECT in both treatment modes. There is also evidence of the application of electric shocks in circumstances that might suggest use as a form of aversion therapy or punishment." The report also mentions that "this is the seventh examination of these or related facts". In that connection, the Committee recalls its recommendation to the State party to investigate promptly and impartially the allegations of ill-treatment in the "historic cases" and to prosecute the perpetrators (para. 2.8 above). The Committee also recalls the State party's response that the Police Complaints Authority "may technically decide not to action a complaint of torture when the complainant has had knowledge for more than 12 months before the complaint was made. However, given the seriousness of the accusation, it is likely that the Authority would investigate historic complaints of torture" (CAT/C/NZL/Q/5/Add.1, para. 120). The Committee further recalls its finding in its 2015 concluding observations on the State party's sixth periodic report that "the State party failed to investigate or hold any individual accountable for the nearly 200 allegations of torture and ill-treatment against minors at Lake Alice Hospital", together with its recommendation to conduct prompt, impartial and thorough investigations into all allegations of ill-treatment in health-care institutions and prosecute persons suspected of ill-treatment (CAT/C/NZL/CO/6, para. 15). The 2010 police report also notes the "intense and ongoing media interest in this case". The Committee therefore expresses concern that despite repeated investigations into the same matter, police acknowledgment of "evidence of the application" and the State party's acknowledgment before the Committee of the seriousness of historic complaints of torture, while admitting the continuing public interest in the matter, the authorities of the State party made no consistent efforts to establish the facts of such a

³³ See *Kirsanov v. Russian Federation*, para. 11.3.

³⁴ See, for example, European Court of Human Rights, *C.A.S. and C.S. v. Romania*, application No. 26692/05, 20 March 2012, para. 70.

sensitive historical issue involving the abuse of children in State care. They have also failed to expressly acknowledge and qualify the alleged treatment inflicted on the complainant.

9.5 In its observations, the State party claims that the decision not to prosecute Dr. Leeks was informed by a lack of evidence and a determination that there was no other countervailing public interest in proceeding with a prosecution. However, the State party has not demonstrated that it made sufficient efforts to clarify the facts. The State party admits not only that complaints related to treatment at the Lake Alice hospital in the 1970s began to emerge and have continued since 1976, but also that as recently as 2018 a Royal Commission of Inquiry was established to look into historic abuses in State care, including the events at Lake Alice, and that new related complaints lodged in 2019 are being investigated by the police. In the absence of convincing explanations by the State party, the Committee fails to see why there is no countervailing public interest in proceeding with a prosecution. The case concerns violence in State care inflicted upon a vulnerable group and independent bodies cannot be delegated to decide on criminal matters. In that connection, the Committee notes that the Medical Council also refused to take action by accepting cancellation of Dr. Leeks' registration as a medical practitioner. The State party endorsed such an act, leading to impunity, despite its obligation to protect those in a vulnerable position against abuse and with no other legal possibility of taking further their allegations to the competent authorities.

9.6 The 2010 police report further mentions that "the charges were only considered in relation to the guilt of the main suspect, Dr. Leeks", concluding that "there was unlikely to be sufficient evidence to successfully prosecute a charge of wilful cruelty to a child". The Committee expresses concern that the authorities have not tried to find out if anybody else could be held responsible for the alleged violations, which raises doubts as to the effectiveness of the police investigation, which should be capable of identifying those responsible for the violations.

9.7 The Committee further notes that the police investigation attached significant weight to the fact that the appropriate charge for the police to consider the facts was time-barred by a six-month time limit. However, neither the State party's observations nor the police have established if the complainant, who was a child when he suffered the abuse, could have effectively complained in the six-month-period after he was released from the Lake Alice hospital, where he had been sent by his own mother. The Committee notes that the complainant stayed there until 1975 and then provided submissions to the 1977 Commission of Inquiry. In that connection, the Committee draws attention to the State party's obligation under article 12 of the Convention to ensure that its competent authorities proceed ex officio to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.³⁵ The Committee notes that it was only in 2003 that the Government invited former Lake Alice victims to make a criminal complaint to the police and yet, in spite of this express invitation, the police have still not clarified the facts surrounding the events in question.

9.8 Finally, the Committee notes that, when confronted with several complaints in respect of the events at the Lake Alice hospital, the investigative authorities of the State party chose only a "representative complaint for analysis". The Committee considers that in the specific circumstances of such undisputed historic complaints, choosing to analyse only one complaint triggers the risk of ignoring the systemic character of the issue at stake and all the surrounding circumstances.

9.9 In the light of the above, the Committee considers that the State party's failure to conduct an effective investigation into the circumstances surrounding the acts of torture and ill-treatment suffered by the complainant while he was at the Child and Adolescent Unit of the Lake Alice Psychiatric Hospital is incompatible with the State party's obligations under articles 12, 13 and 14 of the Convention to ensure that the competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture and/or ill-treatment has been committed.³⁶

³⁵ See, for example, *Kabura v. Burundi* (CAT/C/59/D/549/2013), para. 7.4.

³⁶ See Committee against Torture, general comment No. 3, para. 40.

10. The Committee, acting under article 22 (7) of the Convention, decides that the facts before it reveal a violation by the State party of articles 12, 13 and 14 of the Convention.

11. The Committee urges the State party to:

(a) Conduct a prompt, impartial and independent investigation into all allegations of torture and ill-treatment made by the complainant including, where appropriate, the filing of specific torture and/or ill-treatment charges against the perpetrators and the application of the corresponding penalties under domestic law;

(b) Provide the complainant with access to appropriate redress, including fair compensation and access to the truth, in line with the outcome of the investigation;

(c) Make public the present decision and disseminate its content widely, with a view to preventing similar violations of the Convention in the future.

12. In accordance with rule 118 (5) of its rules of procedure, the Committee requests the State party to inform it, within 90 days of the date of transmission of this decision, of the steps it has taken in response to the above findings.
