



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

Distr.: General
16 June 2022

Original: English

Advance unedited version

Committee against Torture

**Decision adopted by the Committee under article 22 of the
Convention, concerning communication No. 934/2019*, ****

<i>Submitted by:</i>	Malcolm John Richards (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	New Zealand
<i>Date of complaint:</i>	13 March 2018 (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 27 May 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	12 May 2022
<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 Malcolm John Richards, a national of New Zealand, born on 13 February 1960. He claims a violation of his rights under articles 2, 10, 11, 12 and 13 of the Convention. Although not expressly invoked, the complaint also raises in substance a violation of article 14 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 not 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 admitted to Lake Alice on 19 October 1975, when he was 15, and stayed until 20 December 1975. He was sent to the hospital by his mother, who reported that he was a violent child and that she was afraid that he would kill his father if he returned home. He was diagnosed with schizophrenia. His treatment consisted of the

* Adopted by the Committee at its seventy-third session (19 April – 13 May 2022).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdoğan İşcan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



administration of electric shocks,¹ unmodified electroconvulsive therapy² and drugs.³ During the unmodified electroconvulsive therapy, no oxygen was used as required to help restart the brain to prevent damage to the brain.⁴

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 (approx. \$US 3.22 million) and a letter of apology. A further 110 claimants had come forward by 2009, including the complainant, at the announcement by the Government that it would provide further compensation. All the claims of ill-treatment and abuse were addressed by a general apology⁵ and ex gratia payments to each individual.⁶ In total, \$NZ 12.8 million was paid out by the Government to 195 victims.⁷ On 12 August 2009, the Attorney-General replied to the complainant that the Government did not intend to have an inquiry into the events at Lake Alice because it already paid compensation and apologised to all of Dr. Leeks’ patients in full and final settlement of their claims.

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 2000, the complainant submitted his case to the police, alleging criminal conduct by former Lake Alice staff, including Dr. Leeks. Then in 2003, following the invitation of the Government of New Zealand to former Lake Alice victims who had received an apology

¹ The complainant has a burn mark on his penis, nightmares and brain damage, and suffers from post-traumatic stress disorder.

² 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.

³ Stelazine, Paraldehyde and Benzhexol.

⁴ According to a letter by Dr. Leeks dated 3 March 1976, unmodified electroconvulsive therapy was administered six times to the complainant.

⁵ The Government acknowledged that there were some actions which were unacceptable, in particular the use of electric shocks and painful injections.

⁶ The complainant received \$NZ 65,000, out of which \$NZ 30,000 were deducted for legal fees, and a letter of apology dated 31 October 2001.

⁷ Legal barriers made it difficult for any complaints to turn to a court, which was the reason for the Government offering ex gratia payments.

to make a criminal complaint to the police, the Citizens Commission on Human Rights submitted several complaints to the police. 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 amount 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. In March 2010, the complainant was informed of the outcome of the investigation. Following his further requests for an investigation, the police reiterated their reply on 18 September 2012 and on 16 February 2017.

2.6 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.

2.7 In 2003, one of the victims⁸ 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 Act 1994. They had 39 allegations against Dr. Leeks of “infamous conduct” in a professional setting when practising at Lake Alice in the 1970s. Yet 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.

2.8 In 2017, the complainant denounced what happened to him at Lake Alice and requested an investigation to the Attorney-General, to the Office of the Ombudsman, to the Human Rights Commission and to the Minister of Justice, but to no avail.

The complaint

3.1 The complainant claims a violation of his rights under articles 2, 10, 11, 12 and 13 of the Convention. He also raises in substance a violation of article 14 of the Convention. He 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 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

⁸ Paul Zentveld, whose case has already been examined by the Committee: *Zentveld v. New Zealand* (CAT/C/68/D/852/2017).

person had resigned.⁹ Dr. Leeks would have faced serious disciplinary measures if he had had to face the Medical Councils in either New Zealand or Australia.

3.3 Finally, the complainant alleges that – together with the other victims – he has not had access to proper rehabilitation for torture. He also argues that the medical files of all former patients at Lake Alice should contain corrections regarding the flawed diagnosis of mental illness.

State party's observations on admissibility and the merits

4.1 On 27 November 2019, the State party submitted its observations on the admissibility and merits of the communication. It first notes that the complainant has used Mr. Paul Zentveld's communication to the Committee "as a template for his communication", hence the State party relies on its response to that communication,¹⁰ and provides additional updated information.

4.2 The State party submits 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. After recalling the history of the complaints concerning the Child and Adolescent Unit at Lake Alice Psychiatric Hospital and the authorities' response to requests for investigation,¹¹ the State party mentions that investigation is currently underway into the sexual aspect of the Lake Alice allegations, that is, the complainant's allegation of "aversion therapy" by application of electric shock to his genitals.¹² For the State party, this demonstrates that the police continue to be responsive to complaints relating to this matter.

4.3 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 of the Convention may therefore be set aside. Moreover, although not explicitly addressed by the complainant, his communication may also raise issues relating to the right to redress under article 14 of the Convention, including compensation and rehabilitation. However, this is not applicable in this case as the alleged act of torture occurred significantly before 9 January 1990.

4.4 The State party notes that 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.

4.5 Furthermore, the State party argues that the complainant has not exhausted all available domestic remedies. He has not challenged 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 State party's 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

⁹ 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.

¹⁰ *Zentveld v. New Zealand* (CAT/C/68/D/852/2017), paras. 4.1-4.23.

¹¹ *Ibid.*, paras. 4.1-4.9 with the corresponding footnotes.

¹² The State party mentions that the complainant had not alleged the application of electric shocks to his genitals or other sexual abuse in his 2000 statement regarding the events at Lake Alice. While some of the complaints about the Child Adolescent Unit contained allegations of sexual offending, Police did not pursue these allegations in the 2006-2010 investigation. Following this investigation, however, the police continued to receive requests from three Lake Alice patients, including the complainant, to re-examine the sexual element of the Lake Alice allegations. These further requests led the police revisiting the file in 2019 and deciding to conduct further investigation into the sexual aspect.

have been successful.¹³ But now, given the lapse of time, the complainant would be unlikely to obtain a substantive remedy in any judicial review proceedings.

4.6 In addition, the complainant's most recent complaint to the police is currently being investigated and he is likely to have the opportunity to participate in the Royal Commission into historical abuse in State care.¹⁴

4.7 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 of the Convention. The events occurred in 1975 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.

4.8 The State party acknowledges that compliance with article 11 of the Convention 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 (article 2) or to review instructions, methods and practices and arrangements for the custody and treatment of persons who are detained (article 11).¹⁵ 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.

4.9 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 of the Convention, 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.

4.10 Even if articles 12 and 13 of the Convention 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.

4.11 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.¹⁶ The central question

¹³ See *Parry v. The Medical Practitioners Disciplinary Tribunal*, decision upheld by the High Court, available from www.mpdt.org.nz/decisionsorders/additionalorders/.

¹⁴ *Zentveld v. New Zealand*, para. 4.13.

¹⁵ 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).

¹⁶ 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.

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.

4.12 The State party contends that article 12 of the Convention 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.¹⁷ 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.¹⁸ In any event, the police continues to be responsive to complaints about Lake Alice, and is currently undertaking an investigation into the complainant's allegations and others of sexual offences at the Child and Adolescent Unit.

4.13 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, but only requires a competent State authority to investigate the alleged torture. That has happened, and relevant investigations are ongoing. The State party recalls that it is holding a Royal Commission of Inquiry into historical abuse in State care and it is highly likely that the events in the Child and Adolescent Unit will be considered by the Inquiry. This aspect of the complaint is therefore premature.

4.14 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.

4.15 The State party notes that, while not expressly alleging a breach of article 14 of the Convention, the complainant contends that the Government has failed to provide him adequate compensation and rehabilitation for his time at the Child and Adolescent Unit at Lake Alice. The State party reiterates that this claim is inadmissible as the alleged torture occurred before the Convention entered into force in New Zealand. In any event, the State party did provide a remedy to the complainant in relation to the alleged events: the complainant accepted the settlement paid to him; he received a personal apology from the Prime Minister and the Minister of Health on behalf of the Government; and he had the opportunity to attend a confidential listening and assistance service.¹⁹

4.16 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.

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

5.1 The complainant submitted his comments on 10 January 2020. He contends that instead of fully investigating the claims of punishment, ill-treatment and sexual abuse²⁰ at the Lake Alice hospital, the State party conducted very limited inquiries and investigations that avoided seeking any accountability for what had occurred.

¹⁷ 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.

¹⁸ *Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, p. 422.

¹⁹ *Zentveld v. New Zealand*, para. 4.4.

²⁰ He submits that he was raped, but does not give other details.

5.2 As to the Government's financial redress, the complainant submits that this was a form of compensation for the rapes, drugging and beatings, but not for torture. He explains that he voted against settlement, as they all voted on whether to accept the pay-out or keep fighting. The monetary amount was divided by the number of days spent at Lake Alice, without taking into account the damage caused. Moreover, the ex-gratia payments had 40% deductions for lawyer.

5.3 According to the complainant, the police have failed in all their investigations to date. He claims that his first complaint was to the police in 1980, but it was not taken seriously, and he was even threatened with arrest. Then in the 2002-2010 investigations, the police only interviewed one of the complainants out of approximately 42 and refused information from other parties.²¹ The pending investigations of his complaint of rape, drugging and beatings are delayed, probably hoping that Dr. Leeks dies before they have to decide to move forward with laying charges. There does not appear to be any real intention to prosecute these alleged crimes.

5.4 As to the Royal Commission of Inquiry, the complainant recalls that it has no power to award redress to victims. He was allegedly informed by one of the Commissioners that they could do nothing for the complainant than to record his story and apologise for what happened. Anyway, he does not consider the apology received from the Prime Minister to be sincere, so he cannot accept it.

5.5 The complainant insists that at Lake Alice, electroconvulsive therapy was also given as a form of punishment for misdemeanours, in particular its brutal use when applied to the genitals of several boys, including himself. He does not understand why the Medical Council, when presented with serious allegations of abuse and ill-treatment amid controversy surrounding Dr. Leeks and Lake Alice, did not conduct an in-depth investigation. He alleges that other professional bodies can proceed with disciplinary investigations and measures even if persons resign their position.

5.6 As to the confidential listening and assistance service referred to by the State party, the complainant declares that he was awarded nine hours of counselling for trauma, not for torture and for a life destroyed, given that even now in his 60s, he is still haunted by Dr. Leeks' treatment in Lake Alice. The recommendations of this service were never implemented²² nor released to the public.

5.7 The complainant considers that the State party cannot invoke as an excuse the fact that the Convention entered into force in 1990 while the facts occurred in 1975 because the allegations of torture and ill-treatment were brought to the authorities' attention in 1999 through a class-action suit and in 2001 through Sir Rodney Gallen's report. However, the State party failed to prosecute this case with the full force of the law, which shows unwillingness to truly investigate what happened. This unwillingness is still present in the State party's attempt to dismiss the complainant's case before the Committee. The complainant deems that the State party, the Medical Council and the police were negligent in their duty to protect vulnerable children while in State care.

5.8 Contrary to the police statement that the case is not in the public interest, the complainant believes that there is interest in this case, though he does not believe that Dr. Leeks and the Lake Alice staff will be held accountable as a result of the inquiry by the Royal Commission of Inquiry into historical abuse in State care. What the State party is failing to reveal is why was Dr. Leeks and the staff allowed to get away with what they did even after it has come to light that he has tortured and maimed over 200 children.

²¹ He alleges that two police officers wanted to press forward with the case and were apparently taken off the case. The Attorney General at the time was changed, which shows the Government's determination to keep the truth from coming out.

²² Judge Carolyn Henwood, who was the chair of the confidential listening and assistance service, which heard from more than 1100 people who were abused in state care, made seven recommendations, including that an independent body be set up to discover the extent of the abuse, to monitor the ministry's care of children and to investigate complaints. She also considered that there was no accountability in the system, see <https://www.rnz.co.nz/news/national/319324/judge-%27lost-faith%27-in-govt%27s-handling-of-state-care-child-abuse>.

5.9 Finally, the complainant alleges to have information that Crown Law are holding onto 38 interviews with former Lake Alice staff that would potentially convict Dr. Leeks. He believes these documents to be vital, yet they have never been given to the police. According to the complainant, the Crown Law lawyers appear to have been perverting the course of justice for years and in a position of a conflict of interest.

Additional submission from the State party

6.1 On 24 November 2021, the State party provided further observations. It noted that the complainant's reply contained several factual allegations that were not contained in his original communication and therefore provides an update on the police's investigation, the Royal Commission of Inquiry and the protections and regulations that govern the use of electroconvulsive therapy.

6.2 In response to the Committee's decision concerning Mr. Zentveld's communication,²³ the police undertook an extensive file review of the previous investigations relating to the Child and Adolescent Unit. A three-phase investigation plan into allegations of sexual abuse in the Child and Adolescent Unit was also developed and put into action. To ensure independence and impartiality in this exercise, police officers who had previously been involved in investigations about Lake Alice were not used for this investigation. Because of a statutory limitation period in relation to charges under the Mental Health Act 1969 and the fact that the Crimes of Torture Act 1989 was not in force at the relevant time, the police has focused on the Crimes Act 1961 to assess the allegations of abuse.

6.3 In phase one of the investigation plan, the police assessed the scope of the allegations that might be investigated, and reviewed the documents on the police file from the 2002-2010 investigations. This included reviewing statements on the police file which had been made in connection with civil litigation against the Government, statements on file from former Lake Alice staff, and other relevant documents. This initial review was comprehensive and completed within a month.

6.4 In phase two, the police conducted interviews and analysed the evidence obtained. To assist with this work, it employed a specialist analyst to work alongside detectives. The police did not treat any single victim's evidence as being representative, but rather sourced evidence from any person who stepped forward as a potential victim.²⁴ This evidence gathering and investigation phase included the review of additional statements made in connection with the civil litigation against the Government, information and records from previous hearings and investigations by the New Zealand Medical Council and Victoria Medical Council, and additional information and records from the Ministry of Health, the District Health Board for the region of New Zealand in which the Lake Alice Psychiatric Hospital operated, the Crown Law Office, the Citizens Commission of Human Rights, Police Archives, and Archives New Zealand.

6.5 From previous statements made by former patients in connection with civil litigation against the Government, the police identified former patients who alleged they received electroconvulsive therapy to their genitals, and former patients who alleged that the electroconvulsive therapy they received at Lake Alice was not therapeutic, but given as a punishment. Of the 13 former patients identified by the police who had disclosed receiving electroconvulsive therapy to their genitals, four were deceased. Of the remaining nine, six agreed to be interviewed and three declined. Of the three who declined, two agreed to their previous statements being used. The police used detectives who are specially trained in evidential interviewing for sensitive personal crimes to conduct these interviews, so that allegations were more formally and comprehensively recorded.

6.6 Additional to those patients who had provided previous statements, many more former patients were identified through hospital and other records. Past police contact with former

²³ *Zentveld v. New Zealand*.

²⁴ In so doing, the police took into consideration the Committee's finding 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: *Zentveld v. New Zealand*, para. 9.8.

patients of the Child and Adolescent Unit has, however, been traumatising for certain individuals. If former patients had not previously been involved or engaged with any investigation, hearing or class action, it was therefore decided to minimise the risk of trauma by not approaching them, but rather by publicising the investigation and allowing anyone who wished to be involved to contact the police. Three former patients reached out to the police and requested an interview following the publicization of the investigation.

6.7 In total, the police identified 136 former patients of the Child and Adolescent Unit who alleged the use of electroconvulsive therapy on their genitals and/or as a punishment (comprising 133 whose previous statements were available to the police, and three who reached out to police following publicization of the investigation). Of these, 63 were interviewed, 37 were approached but declined an interview, 31 are now deceased and the police have not been able to locate five. Of the 37 who declined to be interviewed, 20 allowed the police to use their previous statements made in connection with civil litigation against the Government. As such, the police investigation is now considering the evidence of 83 former patients of the Child and Adolescent Unit (63 interviewees and 20 whose previous statements may be used).

6.8 Police's investigation into allegations of abuse in the Child and Adolescent Unit is now in its third and final stage. Phase three of the investigation has been focused on Dr. Selwyn Leeks and former staff members of the Child and Adolescent Unit as persons of interest. The police prepared a summary of evidence gained from phases one and two of the investigation, and sought to interview people who had worked in the Child and Adolescent Unit during the relevant period. Priority has been given to the staff named by the former patients or other staff as being present or witnesses to the alleged incidents. Of the 66 people positively identified by the police who had worked in the Child and Adolescent Unit during the relevant period, 37 are now deceased, 15 were interviewed, and 2 were approached but were unfit to be interviewed. Based on the investigation to date, the police do not consider the remaining 12 are likely to have new information relevant to the investigation.

6.9 The police are now in the final decision-making phase with respect to the investigation and is considering whether a prosecution should be brought against Dr. Leeks and/or any of the other staff members of the Child and Adolescent Unit. This assessment involves determining whether a prosecution would meet the test set out in the Solicitor-General's prosecution guidelines, which requires there to be sufficient evidence for a conviction and sufficient public interest. It has sought advice from a Crown Solicitor about whether the relevant threshold for criminal charges has been reached in relation to any individual, and whether extradition of Dr. Leeks from Australia would be an available option. It has also asked an independent Queen's Counsel to review the Crown Solicitor's advice.

6.10 When a final decision is made by the police about whether to prosecute Dr. Leeks and/or any of the other former staff members of the Child and Adolescent Unit, it will inform the former patients of the Child and Adolescent Unit who have been involved in the current investigation, including the complainant. The police have also kept the complainant informed as the investigation has progressed. While the investigation has progressed more slowly than anticipated due to the need to obtain specialist legal and medical opinions, and due to COVID-19 related pressures, the police will release a decision as to whether charges will be laid as soon as possible.

6.11 The State party also informs that the Royal Commission has confirmed that it will be inquiring into the abuse experienced in the Child and Adolescent Unit at Lake Alice. In June 2021, it held dedicated hearings to inquire into the abuse in the Child and Adolescent Unit. It heard from survivors of the Unit, including the complainant, experts and institutional witnesses. The final report of the Royal Commission is due in June 2023.

6.12 As regards institutional witnesses, both the Director of Criminal Investigations and the Solicitor-General acknowledged errors in previous investigations and inquiries into the abuse in the Child and Adolescent Unit. The police acknowledged that from 2002 to 2010 it did not accord sufficient priority and resources to the investigation of allegations of criminal offending at the Child and Adolescent Unit. This resulted in unacceptable delays in the investigation and meant that not all allegations were thoroughly investigated. The police apologised to the Lake Alice survivors for these failings. The police also acknowledged that

the scope of its earlier investigations should have included the use of paraldehyde as punishment, and that various statements from survivors had been lost between 2002 and 2006 and therefore had likely not been investigated properly during that period.

6.13 On 1 February 2022, the State party informed that the police has completed the investigation to a point where it has decided to lay charges against a former staff member of the Child and Adolescent Unit, who is now 89 years old. The charges are eight counts of wilful ill-treatment of a child with respect to seven former patients of the Unit. The police have also announced that the investigation found sufficient evidence to charge two other former staff members with wilful ill-treatment of a child, one of whom was 92-year-old Dr. Leeks.²⁵ However, both of these individuals were medically unfit to stand trial. Since this decision, Dr. Leeks has died.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 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. The Committee considers that it is precluded from examining the complainant's allegations in respect of acts committed outside the State party's jurisdiction and declares these claims inadmissible under article 22 (1) of the Convention.

7.3 The Committee notes the State party's argument that the complainant's claims under articles 2, 10 and 11 of the Convention are inadmissible *ratione temporis* because the alleged violations occurred before the entry into force of the Convention for the State party. 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 as of the date of a State party's ratification or accession to the Convention, or recognition of the Committee's competence through its declaration under article 22, even where these investigations refer to violations occurred prior to that date.

7.4 In the present case, the Committee notes that the alleged torture and abuse of the complainant took place between 19 October and 20 December 1975, during the period that he stayed at the Child and Adolescent Unit of the Lake Alice Psychiatric Hospital, and that the State party's declaration pursuant to article 22 (1) of the Convention was effective from 9 January 1990. The Committee observes that the treatment to which the complainant was subjected preceded the entry into force of the Convention for the State party. Therefore, the Committee considers that it has no competence *ratione temporis* to assess the alleged violation of the substantive obligation contained in article 2 (1) of the Convention and related to the treatment to which the complainant was subjected in 1975.

7.5 The Committee recalls, nonetheless, that articles 12 and 13 of the Convention establish a procedural obligation for States parties to investigate allegations of torture and other acts of cruel, inhuman or degrading treatment or punishment. The Committee observes that the complainant filed a case with the police in 2000 against hospital staff and Dr. Leeks, and that the police closed the investigation in 2010, namely, well after the entry into force of the Convention for the State party. The Committee therefore concludes that the complainant's procedural claims under articles 12 and 13 of the Convention are within the Committee's

²⁵ The police press release mentions: "it is important to note that this finding does not mean Mr. Leeks is guilty of the alleged offence – he cannot be charged as he is unable to defend himself in court." It also mentions that the matter is now before the court.

competence *ratione temporis* and that it is therefore not precluded by article 22 (5) (b) of the Convention from examining these claims.²⁶

7.6 The Committee notes the State party's arguments relating to the lack of exhaustion of domestic remedies because, on one hand, the complainant has failed to challenge before national 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 observes that, although the complainant has not disputed the possibility of contesting the decision of the Medical Council before domestic courts, 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.²⁷

7.7 The Committee notes that the complainant does not provide any arguments to explain how his rights under articles 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.

7.8 However, the Committee notes the complainant's claim that the State party has not ensured an adequate investigation and 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.²⁸

Consideration of the merits

8.1 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.

8.2 The Committee notes that the main issue before it consists in determining whether the complainant's allegations of torture and abuse by staff of the Child and Adolescent Unit at Lake Alice Psychiatric Hospital in 1975 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.²⁹ That is not an obligation of result, but one of means.³⁰ 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.

8.3 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. According to the police report, dated 22 March 2010, the Unit was closed in 1979 "following concern about supervision and a number of critical

²⁶ *Zentveld v. New Zealand*, para. 8.3.

²⁷ *Zentveld v. New Zealand*, para. 8.5.

²⁸ See Committee against Torture, general comment No. 3 (2012) on the implementation of article 14, paras. 16 and 17.

²⁹ See *Kirsanov v. Russian Federation*, para. 11.3.

³⁰ 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.

investigations.”³¹ The Committee also notes that the State party does not contest the claim that the complainant was subjected to electroshocks and drugging for non-therapeutically purposes, beatings and rape while at the Unit. The letter of apology that the complainant received on 31 October 2001 mentions that the Government apologized for the “treatment” that the complainant had “received and may have witnessed” at Lake Alice. The Committee considers that the treatment alleged by the complainant meets the threshold of torture, as defined in article 1 of the Convention.

8.4 The Committee further notes that in his 2000 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 subsequent 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.”³²

8.5 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.³³ 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-treatment³⁴. The 2010 police report also notes the “intense and ongoing media interest in this case.”³⁵ 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 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.

8.6 The Committee takes note of the updated information regarding the recent police decision to press charges against three former staff members of the Child and Adolescent Unit, one of which is now 89 years old, another is medically unfit to stand trial and the main suspect – Dr. Leeks – has died in the meantime. 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 abuse in State care, including the events at Lake Alice, and that the police has finally decided to press charges only in 2022. 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.³⁶

³¹ *Zentveld v. New Zealand*, para. 9.3.

³² *Ibid.*, para. 9.4.

³³ CAT/C/NZL/CO/5, para. 11.

³⁴ CAT/C/NZL/CO/6, para. 15.

³⁵ *Idem.*

³⁶ *Ibid.*, para. 9.5.

8.7 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.”³⁷ Then following requests by victims, investigations were re-opened in 2019 into the sexual aspect of the Lake Alice allegations, which led the police in 2021 to consider that they gathered enough evidence to charge these persons with wilful ill-treatment of a child, though the main suspect Dr. Leeks could not be charged as he was unable to defend himself in court. The Committee expresses concern for the important lapse of time between the two police investigations that led to opposing results, which raises doubts as to the effectiveness of the police investigation, which should be capable of identifying those responsible for the violations. In this respect, the Committee notes that the police acknowledged errors in previous investigations and inquiries into the abuse in the Child and Adolescent Unit, which resulted in unacceptable delays in the investigation and meant that not all allegations were thoroughly investigated.

8.8 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 in 1975 and then made an attempt to complain to the police in 1980, but his complaint was not taken seriously, and he was even threatened with arrest. 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.³⁸ 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, it is only in 2021 that the police concluded its investigation.

8.9 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,” which in the specific circumstances of such undisputed historic complaints triggers the risk of ignoring the systemic character of the issue at stake and all the surrounding circumstances. The Committee however notes the State party’s statement that in the new investigations started in 2019 – and as a result of the Committee’s decision in *Zentveld v. New Zealand* – the police did not treat any single victim’s evidence as being representative, but rather sourced evidence from any person who stepped forward as a potential victim.

8.10 In the light of the above, the Committee considers that the State party has failed to conduct a prompt and impartial investigation into the acts of torture alleged by the complainant while he was at the Child and Adolescent Unit of the Lake Alice Psychiatric Hospital, in violation of the State party’s obligations under articles 12 and 13 of the Convention.

8.11 The Committee finally notes the complainant’s uncontested claim that the Government has failed to provide him with adequate compensation and rehabilitation for the torture endured during his time at the Child and Adolescent Unit at Lake Alice. The Committee therefore concludes that the complainant’s rights under article 14 of the Convention to obtain redress, including rehabilitation, have also been violated.

9. 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.

10. The Committee urges the State party to:

³⁷ Ibid., para. 9.6.

³⁸ See, for example, *Kabura v. Burundi* (CAT/C/59/D/549/2013), para. 7.4.

(a) Proceed with a timely consideration by the courts of all allegations of torture made by the complainant including, where appropriate, the application on perpetrators 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 trial;

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

11. 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.
