

The New Zealand Government submits the following information to the Committee against Torture in response to the Decision adopted by the Committee concerning communication No. 852/2017.

Introduction

On 4 December 2019, the Committee against Torture (**Committee**) adopted its decision (**Decision**) under article 22 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**Convention**), concerning communication No. 852/2017 (**Communication**).

The Committee, acting under article 22(7) of the Convention, has decided that the facts before it revealed a violation by the State party of articles 12, 13 and 14 of the Convention.¹

The Committee has urged the State party:

1. to 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 perpetrators, and the application of the corresponding penalties under domestic law;
2. to provide the complainant with access to appropriate redress, including compensation and access to the truth, in line with the outcome of the investigation; and
3. to make public the Committee's decision and disseminate its content widely, with a view to prevent similar violations of the Convention in the future.

The Committee has requested the State party to inform it of the steps it has taken in response to the above findings.

The State party's response

In response to the Decision, New Zealand Police, as the competent national authority, has committed to a prompt, independent and impartial investigation of the allegations advanced by the complainant.

Police has undertaken an extensive file review of the previous investigations relating to the Child and Adolescent Unit at Lake Alice Hospital. A three phase investigation plan has also been developed and put into action.

Phase One

In phase one of the investigation plan, Police will assess the scope of the allegations that might be investigated and continue to search for relevant documents held in other agencies, notably New Zealand's Ministry of Health and Crown Law Office. This phase will include examining statements on file from former Lake Alice staff, to determine who it may be appropriate to approach to further assist the investigation.

The State party has previously submitted observations to the Committee regarding the statutory limitation period imposed by the Mental Health Act 1969. Action under the Crimes of Torture Act 1989, which has been suggested as an alternative, would also not appear to be available, as this statute was not in force at the relevant times. Police is accordingly focused on the Crimes Act 1961 to address the allegations of ill-treatment that have been raised by the complainant.

¹ CAT/C/68/D/852/201

Police considers the allegations of ECT applied to patients' genitals *could* reach the threshold of an indecent assault under the Crimes Act 1961. It is those aspects of the complaint that Police is focussed on investigating - along with other, analogous, complaints.

Phase Two

In phase two of the investigation plan, Police will conduct interviews and analyse the evidence obtained. Police has employed a specialist analyst, who will work alongside detectives, to complete this work. Police will source evidence from any person who steps forward as a potential victim (that is, not treating any single victim's evidence as being representative).

Police has knowledge of 11 potential former Lake Alice Hospital patients who have alleged the use of ECT on their genitals. Three of these people are deceased, leaving eight individuals to be located. Once located, approaches will be made to see if they wish to be interviewed by detectives who are specially trained in evidential interviewing for sensitive personal crimes, in order that their allegations can be more formally and comprehensively recorded.

Police has also identified additional former patients who believe the ECT they received at Lake Alice was not therapeutic, but given as a punishment. Police will consider approaching these former patients, to ascertain whether they wish to take part in evidential interviews to document their alleged victimisation. These interviews could then form the basis for further Police action.

Phase Three

In phase three of the investigation plan, Police will focus on Dr Selwyn Leeks as a person of interest, preparing a summary of evidence gained from phases one and two of the investigation, and reaching out to Dr Leeks to gauge his preparedness to engage with Police detectives.

Police anticipates then being in a position to send the accumulated evidence to the Crown Law Office for its assessment and advice.

The Crown Law Office will be asked whether the relevant threshold for criminal charges is reached, and whether extradition of Dr Leeks from Australia would be an available option.

General comments

Significant Police resource is being applied to this work. The initial file review was comprehensive and completed within a month-long period. The three phase investigation plan is on track. Further, to help vouchsafe the independence and impartiality of the exercise, staff who have been involved in prior Lake Alice investigations are not being used to investigate the current or any future complaints.

In line with its core commitment to provide victim-centric services, New Zealand Police has also committed to keep the complainant (and others who have alleged criminal mistreatment during their time at Lake Alice) updated about the progress of its ongoing investigative work [again, in line with the Committee's urgings - at para 11(b) of CAT/C/68/D/852/201].

Whilst there has already been media reporting associated with the Committee's Decision, options will also be explored to make the Decision more widely available (notably, by linking to or hosting a copy of it on Police's public-facing website) – in line with para 11(c) of CAT/C/68/D/852/201.

Royal Commission of Inquiry

The State party is mindful that the Royal Commission of Inquiry into Abuse in State Care and Faith-Based Institutions will soon commence an investigation and public hearings into the operation of the Child and Adolescent Unit at Lake Alice Hospital [see: www.abuseincare.org.nz/news/royal-commission-statement/]. Police expects to be required to provide information to the Commission regarding its prosecutorial response to the allegations concerning the Child and Adolescent Unit.

Police is mindful that care will need to be taken before the Royal Commission to ensure that Police's investigative efforts (and any prospects for future prosecutions) are not compromised.