Case summary:[[1]](#footnote-1) *D.R. v Australia*

Case code: CRPD/C/17/D/14/2013

Communication no 14/2013

Date of communication (initial submission): 14 August 2013

Date of adoption of Views: 24 March 2017

Invoked provisions of the Convention: Articles [4](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#4), [5 (2),](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5) [12,](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12) [14](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#14), [18](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#18), [19](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#19), [22](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#22), [26](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#26)

and [28](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#28)

Provisions of the Optional Protocol: Article [2](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx#2)

Keywords: disability, non-discrimination, respect for privacy, living independently and being included in the community, liberty of movement, rehabilitation, legal capacity, inclusion, institutionalization, exhaustion of domestic remedies

Decision: Inadmissibility under article [2(d)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx#2) of the Optional Protocol

Full decision in HTML format (webpage): [Arabic](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssBJ9E3UTYMV65MVabAyM%2fT4g5vvT5%2fWtUO531LLsKnSiJZbN1Zcn2RLjDMBCXMGhpvzt%2b%2fBuFIlc5JizpEPZsBlgMJY9sXkSaYuMSi71qSTAl%2fCyIto9a7Ws2i7tuDYPQ%3d%3d), [Chinese](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssBJ9E3UTYMV65MVabAyM%2fT4g5vvT5%2fWtUO531LLsKnSiJZbN1Zcn2RLjDMBCXMGht3XKU%2b2MTfWIAZZseWcb6SMMbbohKVQDlKpolbe3lnc%2f%2feONIh30j0QaUL%2f7LS7%2bQ%3d%3d), [English](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssBJ9E3UTYMV65MVabAyM%2fT4g5vvT5%2fWtUO531LLsKnSiJZbN1Zcn2RLjDMBCXMGhs3AIU6NGpmGt6z28e9flz1NEfgNHYWcy08PVCLN7GInaSy4yQA2TaV78z8DgG8Kpw%3d%3d), [French](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssBJ9E3UTYMV65MVabAyM%2fT4g5vvT5%2fWtUO531LLsKnSiJZbN1Zcn2RLjDMBCXMGhmwOnTlkAwGahZ6o9G4ZRkUqYdDiPWqJS737oDQVO4gxn4yFmxodbBRTPBvUchmJFg%3d%3d), [Russian](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssBJ9E3UTYMV65MVabAyM%2fT4g5vvT5%2fWtUO531LLsKnSiJZbN1Zcn2RLjDMBCXMGhlTZLEL5X%2fBH5ACwGCUudYp%2bn143FGWiWYbR92wYSpxodwltkIoIHtsFbACPJJBSsA%3d%3d) and [Spanish](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssBJ9E3UTYMV65MVabAyM%2fT4g5vvT5%2fWtUO531LLsKnSiJZbN1Zcn2RLjDMBCXMGhsNPhbG2ugViDyJAB1YtcOwoTdb4i4g%2f8YsnKCEHTMKxr0ISixBDq721rwErPXQLAg%3d%3d)

For full decision in PDF and/or Word format in UN official languages search in <https://documents.un.org>, fill the blank space after ‘Symbol’ with the CRPD case code mentioned above and then click on ‘Details’.

Facts

The author is a person with intellectual disability arising from an acquired brain injury. On 8 July 1998, the author was admitted to a slow-stream rehabilitation service, Jacana Acquired Brain Injury Centre in a suburb of Brisbane, administrated by an agency of the government of Queensland. In July 2000, the medical staff advised the author that his rehabilitation programme would cease and determined that accommodation and disability support services had to be made available before the author could be discharged. From July 2000 to August 2010, the medical staff made unsuccessful referrals and applications on behalf of the author for community-based accommodation and support services.

In August 2010, the Queensland Department of Communities Housing and Homelessness Services assessed the author as eligible for social housing with a “high need” for housing. The assessment from the Housing and Homelessness Services mentioned that social housing would not be allocated to the author unless he was first provided with disability support services. However, the Disability and Community Care Services stated that it had not the capacity to fund disability support services for the author. Consequently, the author did not receive any accommodation and support services and he could not be discharged.

The author argues that his current residential setting at the Jacana Centre entails lack of privacy, risk of theft and damage, and that the independent living is not respected in the residential institution. On 9 September 2011, solicitors acting on the author`s behalf alleged that the author had been subjected to discrimination by the governments of Australia and Queensland in terms of his access to accommodation and to disability-support services as a consequence of his disability, in violation of the Australian Disability Discrimination Act 1992, and considered the author’s rights under the Convention were also violated.

On 4 November 2012, the Attorney-General’s Department under the Government of Australia denied all allegations and argued that a complain under the Australian Human Rights Commission Act as the Commission is limited to administrative acts. On 2 July 2012, the Australian Human Rights Commission argued that the Commission has no power to inquire into acts or practices of the government of Queensland that were inconsistent with or contrary to the author’s human rights.

Consequently, the solicitors concluded that at a disability discrimination claim would fail before the courts and the author argued that a direct disability discrimination claim would also fail. Further, only the Public Trustee has power to initiate legal proceedings for a claim of disability-based discrimination, as the author is subject to compulsory administration. Concerning the procedure before the Australian Human Rights Commission, the State Party refused to participate in conciliation and, according to the author, the procedure is not effective as there is no enforceable remedy for any violation of human rights.

The complaint

The author claims that State has breached its obligations under Articles [14](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#14), [18](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#18), [19](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#19), [22](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#22), [26](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#26) and [28](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#28), in conjunction with Articles [4](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#4) and [5(2)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5) of the CRPD.

Regarding Article 14, the author argues that his stay, against his will, at Jacana has continued after the entry into force of the Convention for the State party, and that it amounts to an arbitrary detention on discriminatory grounds. Further, the lack of community-based accommodation and disability support services from the State of Queensland leave him segregated and isolated from the community.

Regarding Article 18, being compelled to live at the Jacana facility, the author argues he was deprived of his liberty of movement, and of his right to choose his residence. Regarding Article 19, the author argues this institutionalization was against his choice and prevented him from living independently in the place of his choice, and with whom he chooses, and being included in the community, being obliged to live in a medically oriented residential institution.

Regarding Article 22, the author argues that his privacy is subject to constant interference at the Jacana facility as, while he has a single room, he otherwise has very little privacy from staff and other residents, who are able to enter his room at any time. Regarding Article 26, the author argues that Jacana facility did not provide rehabilitation services for his full inclusion in the community and that would enable him to strengthen and maintain his abilities. Jacana is a medically oriented institution in which he is isolated from the community and where he does not have access to the required rehabilitation services.

Regarding Article 28, the author argues that his forced accommodation in a ward and the repeated denial of access to public housing and to disability support services have prevented him from accessing the adequate standard of living and social protection. Regarding Articles 4 and 5, the author argues that State party failed to prohibit discrimination based on disability and to provide equal and effective legal protection against discrimination, as no measures have been taken to ensure the implementation of articles 14, 18, 19, 22, 26 and 28.

State party’s observations on the admissibility and merits

The State explains the procedures and every step the author did and how the Queensland Department of Communities Housing and Homelessness Services and Disability and Community Care Services and the Jacana Centre react to the author’s requests, rejecting the allegations of the author.

The State also submits that the author **failed to exhaust available domestic remedies** as the author’s complaint under the Disability Discrimination Act was still subject to conciliation with the Human Rights Commission when the author submitted his communication. He has not brought proceedings in the federal courts to exhaust domestic remedies.

Regarding Article 19, the State party submits that it is an economic, social and cultural right that would require a significant expenditure of resources by States parties, and should accordingly be subjected to subjected to progressive realisation. Regarding Article 28, the State rejects the allegation of the author, who has been “repeatedly refused” an access to public housing programmes. He has been categorised as “very high need” for housing assistance, which puts the author at the top of the waiting lists. Therefore, the State takes measures to take into account the particular circumstances of persons with disabilities for a full realization of economic, social and cultural rights.

Regarding Article 14, the State argues that the author has “significant cognitive disabilities and requires substantial, if not full-time, support and assistance”, which requires an assistance of the medical staff. Further, the author has limited financial means, a range of matters restrict his ability to participate in the open housing market, he cannot reside with family and must therefore be accommodated within existing social housing stock. The State party thus submits that the author is not subject to detention under article 14(1). Regarding Article 18, the State argues that there is no deprivation of liberty. The author is able to freely choose the place of residence and at Jacana Centre he can move around the building and participate in recreational activities. The State also reiterated that the Department of Housing and Public Works has consistently supported his preferences for residing in particular locations, on an equal basis with others, despite the fact that his choices have affected his ability to be housed. Regarding Article 22, the State argues that any access to the author’s room is done respecting the author’s privacy and according his high level of care.

Regarding Article 26, the State argues that all activities and rehabilitation services received by the author develop and maintain his daily living skills in order to prepare him to his return to the community. Further, the State party rejects the author’s claim that that realization is not progressing to the maximum extent of the State party’s available resources, and submits that expenditure on disability support services has increased by 23 per cent since 2008.

Regarding articles 4 and 5, the State argues that it devotes significant effort, including increasing available financial resources, to ensuring that persons with disabilities in Australia are able to enjoy fully, and on an equal basis with others, all human rights and fundamental freedoms the legislations, which prohibit discrimination and oblige States parties to take appropriate measures, are in place at the Commonwealth level and in states and territories.

Issues and proceedings before the Committee

Consideration of admissibility

First, the Committee ascertained that the same matter has not already been examined by it and has not been or is not being examined under another procedure of international investigation or settlement, as required by [article 2(c) of the OP](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx).

Regarding inadmissibility for non-exhaustion of domestic remedies, the Committee notes the State’s arguments that the author has not exhausted all available domestic remedies, as he did not submit a complaint to the Anti-Discrimination Commission Queensland and as the discrimination complaints he had submitted to the Australian Human Rights Commission were still in course. The Committee also notes the author’s submission that the courts of the State could not provide him with an effective and reasonably accessible remedy under the Disability Discrimination Act or the Anti-Discrimination Act for the following reasons (a) the discrimination he claimed cannot give rise to disability-based discrimination claims; (b) the conduct of the State of Queensland would be likely considered reasonable and the support qualified as undue burden. Consequently, the conduct of the State of Queensland would be considered as reasonable; (c) his complaints against the Commonwealth would have failed.

The Committee recalls that although there is no requirement to exhaust all available domestic remedies when “the application of the remedies is unreasonably prolonged or unlikely to bring effective relief, merely doubting their effectiveness does not absolve the author of a communication from the obligation to exhaust those remedies”[[2]](#footnote-2). As the Anti-Discrimination Commission Queensland and the Australian Human Rights Commission do not give rise to any enforceable remedy for violations of human rights, those are not considered as effective remedies. Further, as the author did not initiate any proceedings before the federal courts, the Committee is not able to determine whether the author could initiate legal proceedings by himself.

Finally, the author does not substantiate his claims on the fact that available remedies would be unlikely to bring effective relief, while the State refers to a range of successful discrimination complaints made under the Disability Discrimination Act against actions of the Commonwealth and the states and territories. In this case, the Committee states it is not in a position to conclude whether the author has fulfilled his obligation to exhaust domestic remedies. Consequently, the Committee considers the inadmissibility of the author’s claims under article 2(d) of the Optional Protocol.

Conclusion

The Committee concluded that the communication is inadmissible under [article 2(d)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx#2) of the Optional Protocol.

1. This summary has been prepared by the International Disability Alliance. For more information on how to lodge individual communications under the Optional Protocol to the CRPD, visit [IDA’s disability rights litigation website.](http://www.internationaldisabilityalliance.org/es/node/105)  [↑](#footnote-ref-1)
2. Human Rights Committee, communication [No. 1511/2006](http://www.worldcourts.com/hrc/eng/decisions/2009.03.27_Garcia_Perea_v_Spain.htm), *Garcia Perea and Garcia Perea v. Spain*, decision of inadmissibility adopted on 27 March 2009, para. 6.2 ; communication [No. 2325/2013](http://hrlibrary.umn.edu/undocs/2325-2013.pdf), *Kandem Foumbi v. Cameroon*, decision of inadmissibility adopted on 28 October 2014, para. 8.4. [↑](#footnote-ref-2)