Case summary:[[1]](#footnote-1) Manuway (Kerry) Doolan *(represented by counsels of the Austrlian Center for Disability Law) v Australia*

[CRPD/C/22/D/18/2013](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2f22%2fD%2f18%2f2013&Lang=en)

Communication No. 18/2013

Date of communication (initial submission): 19 September 2013

Date of adoption of Views: 30 August 2019

Invoked provisions of the Convention: [5](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [12](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [13](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [14](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [15](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [19](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [25](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [26](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5) and [28](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5)

Provisions of the Optional Protocol: 2

Keywords: Institutionalization of person with intellectual and psychosocial impairment; right to enjoy legal capacity on an equal basis with others

Decision: the State party has failed to fulfil its obligations under articles 5, 12, 13, 14 and 15 of the Convention.

Full decision in English available [here](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2f22%2fD%2f18%2f2013&Lang=en)

**Facts**

The author of the communication is Mr. Manuway Doolan, an Aboriginal national of Australia with intellectual and psychosocial disability, born on 12 March 1989. He is represented by counsels and he claims that his rights under articles [5](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [12](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [13](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [14](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [15](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [19](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [25](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [26](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5) and [28](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5) of the CRPD are being violated. The Optional Protocol entered into force for Australia on 19 September 2009.

In 2008 the author was living in a temporary supported accommodation provided by the Government of the Northern Territory (NT) of Australia. On 14 August 2008, Mr. Doolan experienced a psychotic episode and he threatened with a shard of glass a support worker. He did not harm him, but he damaged windows, furniture and a vehicle of the support service. He was arrested and charged with common assault in a circumstance of aggravation[[2]](#footnote-2), and with damage to property in a circumstance of aggravation. The author was remanded in custody and incarcerated in a high security section of Alice Springs Correctional Centre. The author was presented in the NT Supreme Court on an indictment charged with this offence and, due his intellectual disabilities, he was dealt with by the Court under the provisions of Part IIA of the NT Criminal Code – Mental impairment and unfitness to be tried.   
On 21 May 2009, the Supreme Court determined that the author was unfit to stand trial on the basis of his mental impairment, and on 31 March 2008, the author was found not guilty by reason of his mental impairment. Consequently, the Court declared him to be liable to supervision and remanded in custody in high security section of Alice Springs Centre. On 29 October 2009, the Court placed him under a Custodial Supervision Order and committed him to custody in prison. The Court fixed 9-month imprisonment for the offence of assault and 6-month for damage property, then transformed in a total period of 12 month to be served in custody. The author returned to a high security unit at Alice Springs Correctional Centre and remained there up to April 2013: he spent a total of four years and nine months in custody in prison, which is almost five times the period of custody he would have been required to serve in prison had he been convicted of the offences with which he was charged. During this period, the author was held in maximum security, being confined in isolation for long periods and provided with very limited access to mental health services and no habilitation programme. As a result, his mental health and social functioning deteriorated. On 15 June 2010, the Court ordered that the author remain in custody, even if he had already served 22 months, namely almost twice the period to which he would have been sentenced if convicted. A review was commenced in March 2012, but it remained incomplete. In April 2013, the author was transferred to Kwiyernpe House, a custodial facility, where he stayed until 9 February 2017, when he was relocated to a community residence.

**The complaints**

The author claims violations of **his rights under** [**5**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5)**,** [**12**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5)**,** [**13**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5)**,** [**14**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5)**,** [**15**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5)**,** [**19**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5)**,** [**25**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5)**,** [**26**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5) **and** [**28**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5) **of the Convention.**

The author claims that his rights under article 5, (in conjunction with 14 and 15) have been violated because up to 2013 he has been committed to indefinite custody without having been convicted of an offence. A person without a disability could not be committed to indefinite custody in prison without having been convicted of an offence: part IIA of the NT Criminal Code is a discriminatory law since it only applies to persons with disability. The author supports the same argument regarding Part 3 of the Disability Services Act of the Northern Territory of Australia (DSA), since his detention in a “secure facility” was based on the provisions of this law that allows to provide “involuntary care and treatment of persons with disability.”

The author’s rights under articles 12 and 13 (5, 14, 15 and 19) have been violated because he was held in custody in prison for a duration five time longer than the period during which a person without disability would have been committed to custody in equivalent circumstances.

Moreover, regarding articles 12 and 13, the author also claims that these rights have been violated because the Court determined that Mr. Doolan was unfit to be tried on the grounds of not having the legal capacity. He was also subjected to a regime of custody and he didn’t receive any disability-related support and adjustments in order to exercise his legal capacity and answer charges.

With regard to article 14 (and article 5), the author claims that his right to liberty and security had been violated because his deprivation of liberty was arbitrarily based on his disability, disproportionate to the justifying factor, and was also based upon his Aboriginal origins. Based on article 43ZA(2) of the NT Criminal Code, in fact, the Court decided that there was no practical alternative to committing him to custody in prison, since the author is a poor Aboriginal homeless without family.

With regard to Articles 19 and 28 (and 15), the author claims that for the whole period of custody at Alice Springs Correctional Centre, the author was held with convicted persons. He has not been provided with adequate housing in the community, as an alternative to custody in prison or at Kwiyernpe House. His right under article 28 of the Convention has also been violated.

With regard to Articles 15, 19 and 26, the author claim that his rights have been violated because the conditions of his deprivation of liberty were harsh and unreasonable and for the majority of this period of custody, he was detained in maximum security isolation. He is subject to involuntary treatment, which does not support his inclusion and participation in the community.

With regard to Article 26, the author claims that its violation as during his deprivation of liberty he was not provided with adequate social skills, daily living skills, communication skills or behaviour support programs. Moreover, Kwiyernpe House was unable to develop and implement habilitation and rehabilitation programmes.

With regard to Article 25, the author claims the violation of this article, since he was deprived of adequate mental health services necessary for his effective treatment and support.

**State Party’s observations on admissibility and the merits**

On 20 February 2015, the State party submitted its observations on the admissibility and merits of the communication.

1. On admissibility:

The States considers that the communication should be held inadmissible for non-exhaustion of all available domestic remedies under article 2(d) of the Optional protocol; it also presents sets of arguments related to the author’s claim under article 2 (b) and (e).

As the for non-exhaustion of all available domestic remedies, the State refers to the powers of the NT Anti-Discrimination Commissioner to investigate and conciliate complaints of discrimination, including the power to make legally binding orders. To the extent that practices or policies of the NT Government were discriminatory in relation to the author, he could have complained to the Anti-Discrimination Commissioner. In that case, the Commissioner would have had to take binding orders requiring a party to refrain from doing certain acts. Moreover, the State mentions that the author or his guardian has never challenged the Court’s finding that the author was not fit to stand trial. To the extent that the author required special accommodation under the relevant Acts to allow him to exercise his legal capacity, he could have complained a discrimination under the Anti-Discrimination Act. According to the State, both findings that the author was subject to supervision and liable for Custodial Supervision Order were able to be challenged as with any other criminal sentence, but the author’s representative has never disputed that the author required a high level of care and supervision which necessitated his accommodation.

As the inadmissibility *ratione materiae*, the State considers that the author’s claim of discrimination in relation to his Aboriginal status is inadmissible, since the non-discrimination principle under the Convention is only on the basis of disability.

As the inadmissibility for the lack of substantiation, the State considers that the author does not provide any evidence of his rights under article 25 and has not substantiated his claims under articles 26 and 28.

1. On the merits:

Regarding article 5, the State insists that the NT Criminal Code does not treat persons any differently because of their disabilities but provides for the differential treatment of people found “unfit to stand trial.” The Code is likely to disproportionately affect those who may meet those criteria for reasons associated with a disability, but such differential treatment is legitimate under international law in relation to both direct and indirect forms of discrimination: Article 5 of the Convention should be interpreted in accordance with that approach.

As the violation of article 12, the state considers the author has not provided any information on what measures he required in order to exercise legal capacity. The Northern Territory justice system provides to people with disabilities the same access to services, buildings and facilities, as well as to receive information in an accessible manner, and equal quality of service and the opportunity to make complaints and participate in relevant public consultation.

According to the State, the rights enshrined under article 13 have been accorded to the author: he has been legally represented by criminal counsel throughout the proceedings and had guardian appointed on his behalf.

With regard to Article 14, the State party agrees that detention on the basis of disability alone would be contrary to the Convention, but not in relation to the author’s circumstances. It also insists that article 14 should be interpreted consistently with the International Covenant on Civil and Political Rights[[3]](#footnote-3), and following this interpretation, the detention of the author was not arbitrary, since it was authorised under Custodial Supervision Order by the Court. The State party accepts that persons with cognitive impairments are more likely to have Custodial Supervision Order imposed on them than other persons. However, even if Indigenous persons were more likely than others to have a custodial supervision order imposed on them, this amounts to legitimate differential treatment for particular persons with disabilities because a Custodial Supervision Order is only imposed if there is no other practicable alternative which will ensure the safety of supervised persons themselves or the safety of the rest of the community.

Moreover, according to the State, the prohibition against arbitrary detention does not mean that persons with a disability, cannot be detained at all or cannot be made subject to indefinite custody orders. Detention of a person with a disability is not inconsistent with States’ obligations under the Convention, where it is based on sound, objective justifications and supported by appropriate legal safeguards. The length of time the author would have served if convicted is one factor to take into account in assessing whether his detention became arbitrary.

As the violation of article 15, the State admits that is undesirable for persons who are not accused to be detained in correctional centres; however, there may be exceptional circumstances that warrant detention in correctional centres as the unavailability of places in specialised facilities. According to the State, the author did not prove any evidence for the decline in his condition being caused by an inadequacy in the care received while in custody.

At Alice Springs Correctional Centre, the author was not separated at all times from convicted offenders, but in State’s opinion, this does not constitute a violation of article 15.

According to the State, the detention at Secure Care Facility is not arbitrary as it is reasonable, necessary and proportionate given the circumstances; moreover, evidences from independent psychologists suggest that constant care was necessary to support the author.

Certain author’s treatment and care may, from time to time, be administered involuntarily, such as medication on an emergency basis during behaviours of concern. However, in accordance with State’s interpretive declaration to the Convention, the State considers that this is reasonable, necessary and proportionate and it is used only as a last resort. Therefore, the occasional involuntary treatment does not find unreasonable conditions of detention.

Finally, the length of time in custody does not of itself amount to a violation of article 15. If or when it becomes feasible for the author to be cared for in a less restrictive setting, the legislation requires that the Court put those arrangements in place. Therefore, the period the author has spent in custody has not been disproportionate.

With regard to the violation of Article 19 claimed by the author, the States affirms that the author has failed to demonstrate how article 19 is relevant to his claims, as he is currently housed in a new purpose-built facility, in receipt of a very high-level of disability-related care and support services.

With reference the article 26, the State contests the lack or inadequate habilitation/rehabilitation services claimed by the author; they were available to him at Correctional Centre included regular medical and psychological assessment, support from disability support workers, occupational therapy, community access and recreational visits. There are a range of recreational activities provided, including access to sports equipment and musical instruments.

According to the State, article 28 of the Convention does not require States to provide housing to all on demand. Even though the author has expressed a desire to be accommodated in his community, this does not mean that his accommodation at Secure Care Facility results in his rights under article 28 being breached. Accommodation in the community would result in a reduction in the level and quality of care, supervision and disability-related services provided to him.

**Author’s comments on the State party’s submission**

On 12 October 2017, the author first addressed the question of remedies.

The Anti-Discrimination Act prohibits discrimination on the ground of disability, but it is not a fundamental law that has a capacity to over-ride or invalidate other laws of the Northern Territory - such as Part IIA of the NT Criminal Code. The Anti-Discrimination Act[[4]](#footnote-4) specifically authorises a person to do a discriminatory act that is necessary to comply with an act or regulation or is authorised by a court or tribunal. In this case, all of the conduct complained of by the author has been authorised by the NT Supreme Court under the provisions of Part IIA of the NT Criminal Code.

The author has already complained to the Australian Human Rights Commission, which found that the author’s rights under articles 14(1), 19, 25, 26(1) and 28(1) have been violated. The Commission made a series of recommendations to the Government. However, the Attorney-General for Australia rejected the recommendations since the Commission had no jurisdiction to undertake this inquiry.

As to the possibility to appeal the Court finding that he was not fit to stand trial and to complain under the Anti-Discrimination Act, the author does not contend the misapplication of the law by the Supreme Court; his contention is, rather, that Part IIA of the NT Criminal Code is discriminatory law a on the basis of his disability, since it does not provide for adaptations and adjustments that would enable his culpability for the offences to be determined taking into account his intellectual disability. As to remedies for deprivation of liberty, the author accepts again the correct application of Part IIA of the NT Criminal Code in his case and thus, any appeal would be a futility.

The author does not agree that Part IIA of the Code constitutes legitimate differential treatment which does not amount to discrimination: the practical effect of the author being found not guilty because of intellectual and psychosocial disabilities was that he has been confined in detention facilities for a period far in excess of any term of imprisonment that might have been imposed had he been convicted of the offences with which he was charged. Nor do the provisions of Part IIA of the Code constitute legitimate differential treatment on the basis that they operate to protect the community from a “continuing danger” presented by the author. In fact, only persons with cognitive impairment may be subjected to these provisions.

**State party’s additional observation**

In January 2016, the author was gradually relocated from the Secure Care Facility to a community residence. Since 9 February 2017, he lives in a house in Alice Springs, together with another person requiring similar care. He is assisted on a full-time basis by disability support staff. On 22 May 2017, the author’s Custodial Supervision Order was formally varied to a Non-Custodial Supervision Order, under the recommendation of the NT Department of Health. The author’s Supervision Order permits his return to the Secure Care Facility if his behaviour deteriorates; to this end, an application to the Supreme Court must be made if he is to remain at the Secure Care Facility for more than two working days. The author continues to be subject to a Guardianship Order whereby the Office of the Public Guardian and the Community Guardian are to be consulted for all health and accommodation related matters.

**Committee’s consideration of admissibility**

In accordance with article 2 of the OP and with rule 65 of the rules of procedure, the Committee has to decide on the admissibility of the communication before considering any claim in a communication.

First, the Committee has ascertained that the same matter was not been examined and it is not being examined under another procedural of international investigation or settlement.

Second, the Committee notes the State’s arguments relating to the lack of exhaustion of domestic remedies in respect of the author’s claims and it noted as well the authors’ arguments saying that the Anti-Discrimination Act is not a fundamental law that can invalidate other laws such as the NT Criminal Code, and that section 53 of Anti-Discriminatory Act provides for an exception to perform a discriminatory act. The Committee also notes that the author’s complaints before the Australian Human Rights Commission have not led to any response from the part of the NT Government and that the Australian Human Rights Commission cannot be considered as effective remedies, since it does not give any enforceable remedy for violations of human rights. Accordingly, the complaint under article 5 is admissible under article 2(d) of the Optional Protocol.

With regard to Article 12, 13 and 14, the Committee notes that the author has never appealed against the Supreme Court’s finding that he was not fit to stand trial (art.12), as well as for the violation of article that he has not made a complaint of discrimination under section 24 of the Anti-Discrimination Act to request special accommodation (art.13) and that he has never challenged the custodial supervision orders (art.14). However, the Committee also recalls its jurisprudence and that domestic remedies do not need to be exhausted if they objectively have no prospect of success. In this connection, the Committee notes the author’s argument that for his appeal to have any chance of success he would have had to demonstrate that the Court’s decisions were in error, while in fact they were adopted in compliance with the Northern Territory Criminal Code. The Committee notes that this appreciation does not correspond to a question of interpretation or application of the legislation by domestic courts. In view thereof, the Committee considers that no additional effective remedies were available to the author; thus, his claims under articles 12, 13 and 14 are also admissible under article 2(d) of the Optional Protocol.

Third, the Committee notes the State party’s plea of inadmissibility *ratione materiae* of the author’s claims since the article 5 of the Convention covers only discrimination on the basis of disability. The Committee recalls that all possible grounds of discrimination and their intersections must be taken into account, including indigenous origin. Nonetheless, it also notes that the author does not explain the extent to which his aboriginal origin had impacted on the violations of his rights under the Convention; it considers thus that the author has not sufficiently substantiated this claim for the purpose of admissibility.

Finally, the Committee notes the State’s argument that all of the author’s allegations – except for some allegations under articles 14 (unrelated to racial discrimination), 15 and 19 – should be considered inadmissible for lack of substantiation and lack of merits. However, the Committee considers that, for the purposes of admissibility, the author has sufficiently substantiated his claims under articles 5,12,13,14,15,19,25,26 and 28.

In view thereof, the Committee declares the communication admissible.

**Committee’s consideration of the merits**

With reference to the author’s allegations under article 5 of the Convention, the Committee recalls that under article 5(1) and (2) of the Convention, States parties must ensure that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and benefit of the law.

The discrimination can result from the discriminatory effect of a rule or measure that is not intended to discriminate, as the case of the Part IIA of the NT Criminal Code. In fact, under NT Criminal Code, once the person is found unfit to stand trial and can be maintained in custody for an unlimited period of time because a supervision order is for an indefinite term[[5]](#footnote-5). The person will be presumed to remain not mentally fit to stand trial until the contrary is found. In the present case, the author was charged in November 2007 with common assault in a circumstance of aggravation, declared unfit to stand trial in December 2007 and a custody order was made; the author was detained at Alice Springs Correctional Centre until June 2013. On 9 February 2017, he relocated to a community residence.

The Committee notes that throughout the author’s detention, the whole judicial procedure focused on his mental capacity to stand trial and the state did not give any possibility to plead not guilty and to respond the charges against him: the State party did not provide measures to support the author in the exercise of his legal capacity. Recalling its General Comment No. 6[[6]](#footnote-6), the Committee highlights that States parties must eliminate barriers to gaining access to all the protections of the law and the benefits of equal access to the law and justice to assert rights. The Committee therefore considers that Part IIA of the NT Criminal Code resulted in discriminatory treatment of the author’s case, in violation of article 5(1) and (2) of the Convention.

With regard to the author’s argument that his detention in a Secure Care Facility established only for persons with disabilities is a violation of article 5, the Committee also notes that he stayed there until 9 February 2017, when he relocated to a community residence and that the author was not consulted at any stage of the procedures regarding his custody and accommodation. In this connection, the Committee recalls that the Convention recognizes the right not to be obliged to live in a particular living arrangement on account of one’s disability and that institutionalization of persons with disabilities as a condition to receive public sector mental health services constitutes differential treatment on the basis of disability and, as such, is discriminatory[[7]](#footnote-7). Therefore, the Committee considers that confining the author to live in a special institution on account of his disability from April 2013 to February 2017 amounted to a violation of article 5 of the Convention.

As regards the author’s submission that the decision that he was unfit to stand trial deprived him of the possibility to exercise his legal capacity to answer the charges brought against him, thereby amounting to a violation of article 12(2-3) and 13(1) of the Convention, the Committee recalls that a person’s status as a person with disability or the existence of an impairment must never be grounds for denying legal capacity or any of the rights provided for in article 12. Moreover, States parties have the obligation to recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life and they must provide access to the support that persons with disabilities may require to exercise their legal capacity. Under article 13(1), States parties must ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations.

In the present case, the decision that the author was unfit to stand trial because of his intellectual and psychosocial impairment resulted in a denial of his right to exercise his legal capacity to plead not guilty and to test the evidence against him. Furthermore, The Committee considers that no adequate form of support or accommodation was provided by the State party to enable the author to stand trial and exercise legal capacity. In view thereof, the Committee considers that the situation under review amounts to a violation of the author’s rights under articles 12(2) and (3) and 13(1) of the Convention.

As to the author’s allegations of the violation of Article 14 related to his detention, the Committee reaffirms that all persons with disabilities, and especially persons with intellectual and psychosocial disabilities, are entitled to liberty pursuant to article 14. In the present case, the Committee notes that, following the Supreme Court decision of 4 December 2007 to declare the author unfit to stand trial, he was then committed to custody in prison following the Supreme Court decision of 22 December 2008. The Committee also notes that this decision was adopted because of the lack of available alternatives and support services. The author’s detention was therefore decided on the basis of the assessment by the State party’s authorities of potential consequences of his intellectual disability; thereby converting his disability into the core cause of his detention. The Committee considers that the author’s detention amounted to a violation of article 14(1)(b) of the Convention according to which “the existence of a disability shall in no case justify a deprivation of liberty.”

With reference to the author’s allegations under article 15 of the Convention, the Committee emphasizes that States parties are in a special position to safeguard the rights of persons deprived of their liberty, including to prevent any form of treatment contrary to article 15. In this context, State party authorities must pay special attention to the particular needs and possible vulnerability of the person concerned, including because of his or her disability. The Committee further recalls that the failure to adopt relevant measures and to provide sufficient reasonable accommodation when they are required by persons with disabilities who have been deprived of their liberty may constitute a breach of article 15(2) of the Convention. In the present case, the State party admits that the author was not separated at all times from convicted offenders, temporarily held in isolation and that sometimes subject to involuntary treatment. Additionally, the Committee notes that the author was committed to custody for more than seven years, and his custody was deemed indefinite in so far as, in compliance with Part IIA of the NT Criminal Code. Taking into account the irreparable psychological effects that indefinite detention may have on the detained person, the Committee considers that the indefinite custody to which he was subjected amounts to inhuman and degrading treatment. Regardless of whether the author has not demonstrated that he was subjected to violence from other prisoners, the indefinite character of his custody, his detention in a correctional centre without being convicted of a criminal offence, his periodic isolation, his involuntary treatment and his detention together with convicted offenders amounted to a violation of article 15 of the Convention.

With reference to the author’s allegations under article 19 of the Convention, the Committee notes the State party’s submission that the Supreme Court’s periodic reviews have consistently concluded that due to the lack of an appropriate facility, there was no practical alternative to custody in the Correctional Centre. The Committee also notes the favourable decision implemented on 9 February 2017 whereby the author was granted community residence in Alice Springs. In view thereof, the Committee considers that the issue raised by the author concerning the alleged violation of article 19 of the Convention has become moot. Accordingly, in view of the circumstances of the case, this particular issue needs not be further addressed in the context of the communication under review.

Finally, with regard to the author’s allegations that his rights under article 25, 26 has been violated, the Committee also notes the State party’s arguments that while the author was maintained in custody, it had allocated significant expenditure on both health and disability support services, that the author received adequate health, habilitation and rehabilitation services and adequate accommodation, that the Secure Care Facility was built in part to provide appropriate accommodation to the author, and that he was eventually relocated to a community residence. The Committee notes that the statements of the author and of the State party are not consistent, and that the information provided does not enable it to conclude that violations of articles 25, 26 and 28 of the Convention have occurred.

**Conclusion**

The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under articles 5, 12, 13, 14 and 15 of the Convention. The Committee therefore makes the following recommendations to the State party:

(a) Concerning the author, the State party is under an obligation to:

(i) Provide him with an effective remedy, including reimbursement of any legal costs incurred by him, together with compensation;

(ii)Publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population.

(b) In general, the State party is under an obligation to take measures to prevent similar violations in the future. In this regard, and considering the far-ranging impact of the violations found in the present case, the Committee refers to the recommendations contained in its concluding observations (CRPD/C/AUS/CO/1, para. 32) and requires the State party to:

(i) Adopt the necessary amendments of Part IIA of the Criminal Code of the Northern Territory of Australia and all equivalent or related federal and state legislation, in close consultation with persons with disabilities and their representative organizations, ensuring its compliance with the principles of the Convention and with the Committee’s guidelines on article 14 of the Convention;

(ii) Ensure without delay that adequate support and accommodation measures are provided to persons with intellectual and psychosocial disabilities to enable them to exercise their legal capacity before the courts whenever necessary;

(iii) To allow the exercise of the right to live independently and be included in the community by taking steps to the maximum of its available resources to create community residences in order to replace any institutionalized settings with independent living support services;

(iv) Ensure that appropriate and regular training on the scope of the Convention and its Optional Protocol, including on the exercise of legal capacity and access to justice by, and avoiding using high-security institutions for the confinement of, persons with intellectual and psychosocial disabilities, is provided to staff of the Review Board, members of the Law Reform Commission and Parliament, judicial officers and staff involved in facilitating the work of the judiciary.

In accordance with article 5 of the Optional Protocol and rule 75 of the Committee’s rules of procedure, the State party should submit to the Committee within six months a written response, including information on any action taken in the light of the present Views and recommendations of the Committee.

1. This case 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, consult IDA’s factsheet available on [IDA’s disability rights litigation website.](http://www.internationaldisabilityalliance.org/en/disability-rights-litigationhttp:/www.internationaldisabilityalliance.org/en/disability-rights-litigation)  [↑](#footnote-ref-1)
2. Pursuant to section 188 of the Criminal Code of the Northern Territory of Australia (the NT Criminal Code). [↑](#footnote-ref-2)
3. it should be interpreted consistently with Art.9(1) CCPR: “*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”.* In this context, the State party mention that “the test adopted by the Human Rights Committee as to whether detention is arbitrary is whether, in all the circumstances, the detention is appropriate, justifiable, reasonable, necessary and proportionate”. [↑](#footnote-ref-3)
4. See: Section 53 of the Anti-Discrimination Act. [↑](#footnote-ref-4)
5. As provided by the section 43ZC of the Code. [↑](#footnote-ref-5)
6. GC. 6 on Article 5: Equality and non-discrimination; see: [CRPD/C/CG/6/para.16.](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/6&Lang=en) [↑](#footnote-ref-6)
7. See  [CRPD/C/CG/6/para.58.](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/6&Lang=en) [↑](#footnote-ref-7)