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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 18/2013*, **

Communication submitted by:	Manuway (Kerry) Doolan (represented by counsel, Phillip French and Mark Patrick, Australian Centre for Disability Law)
Alleged victim:	The author
State party:	Australia
Date of communication:	19 September 2013 (initial submission)
Document references:	Decision taken pursuant to rule 70 of the Committee's rules of procedure, transmitted to the State party on 22 November 2013 (not issued in document form)
Date of adoption of Views:	30 August 2019
Subject matters:	Institutionalization of person with intellectual and psychosocial impairment; right to enjoy legal capacity on an equal basis with others
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Access to court; intellectual and psychosocial disability; exercise of legal capacity; deprivation of liberty; discrimination on the ground of disability; restrictions of rights
Articles of the Convention:	5, 12, 13, 14, 15, 19, 25, 26 and 28
Article of the Optional Protocol:	2

1. The author of the communication is Manuway (Kerry) Doolan, an Aboriginal national of Australia, born on 12 March 1989. He claims to be a victim of violations by the State party of articles 5, 12, 13, 14, 15, 19, 25, 26 and 28 of the Convention. The Optional

* Adopted by the Committee at its twenty-second session (26 August–20 September 2019).

** The following members of the Committee participated in the examination of the communication: Ahmad Alsaif, Martin Mwesigwa Babu, Monthian Buntan, Imed Eddine Chaker, Amalia Eva Gamio Ríos, Jun Ishikawa, Samuel Njuguna Kabue, Kim Mi Yeon, László Gábor Lovászy, Robert George Martin, Dmitry Rebrov, Jonas Ruskus, Markus Schefer and Risnawati Utami. Pursuant to rule 60 (1) (c) of the Committee's rules of procedure, Rosemary Kayess did not participate in the examination of the present communication.

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Protocol entered into force for the State party on 19 September 2009. The author is represented by counsel.

A. Summary of the information and arguments submitted by the parties

The facts as submitted by the author

2.1 The author has intellectual and psychosocial impairments. On 14 August 2008, he was arrested and charged with common assault in a circumstance of aggravation because he threatened a person with a shard of glass, which is considered an offensive weapon pursuant to section 188 of the Criminal Code of the Northern Territory of Australia,[1] and with damage to property in a circumstance of aggravation because the damages were valued at approximately 5,200 Australian dollars.[2] At the time, the author was living in a temporary supported accommodation provided by the government of the Northern Territory of Australia under its Aged and Disability Program. On the afternoon of 14 August 2008, the author appears to have experienced a psychotic episode that involved delusions of hallucinations triggered by the sound of a group of girls laughing as they passed by the house. The episode was very distressing to the author because he was convinced that the girls were making fun of him. He threatened a disability support worker who was providing him with treatment that day. He did not harm him, but he damaged some windows, some furniture and a motor vehicle that also belonged to the support services.

2.2 Following his arrest, the author was remanded in custody and incarcerated in a high-security section of Alice Springs Correctional Centre. He was brought before the Northern Territory Supreme Court on an indictment dated 8 October 2008. In view of his intellectual impairment, the Court applied the provisions of part II.A of the Northern Territory Criminal Code, on mental impairment and unfitness to be tried.

2.3 On 21 May 2009, with the consent of both counsel for the Director of Public Prosecution and the author, a judge of the Northern Territory Supreme Court determined that the author was unfit to stand trial on the basis of his mental impairment.[3] The Court also determined that there was no reasonable prospect of the author becoming fit to be tried for these offences within 12 months.[4] These determinations required the Court to conduct, on 31 March 2008, a special hearing before a jury. The jury found the author not guilty of the offences with which he had been charged by reason of his mental impairment. As a consequence of the verdict, the Court had to determine if the author ought to be released unconditionally or if he ought to be liable to supervision. The Court declared that the author was liable to supervision and, as a result, he was remanded in custody until a further determination of the Court, and was returned to the high-security section of Alice Springs Correctional Centre.

2.4 On 29 October 2009, the Northern Territory Supreme Court placed the author under a custodial supervision order and committed him to custody in prison.[5] The Court was required to fix a term appropriate for the offence concerned and to specify that term in the order.[6] The Court would have imposed a sentence of 9 months of imprisonment for the offence of assault and 6 months of imprisonment for the offence of unlawfully damaging property had the author been held guilty for the offences, to be served cumulatively for a total period in custody of 12 months. The author returned to the high-security unit at Alice

[1] The offence carries a maximum penalty of five years of imprisonment.

[2] The offence carries a maximum penalty of 14 years of imprisonment.

[3] Section 43T of the Criminal Code.

[4] Section 43R (3) of the Criminal Code.

[5] A supervision order may be either of a custodial or a non-custodial nature (section 43ZA (1) of the Northern Territory Criminal Code). If a custodial supervision order is issued, the Court must commit the affected person to custody in prison or another appropriate place. Although the statutory scheme does not exactly define or designate what constitutes "another appropriate place", the chief executive officer (health) may provide the Court with a certificate stating that facilities or services are available in an appropriate place for the custody, care and treatment of the person.

[6] In general, that term will be equivalent to the period of imprisonment and/or supervision that would have corresponded to the sentence imposed if the person had been found guilty (section 43ZG (2)).

Springs Correctional Centre, where he remained until April 2013. He therefore 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 had he been convicted of the offences with which he was charged.

2.5 For almost the whole period, the author was held in maximum security, being confined to his cell in isolation for long periods. He was provided with very limited access to the mental health services necessary for the stabilization of his mental health condition and his recovery, or to the habilitation and rehabilitation programmes necessary for him to develop communications, social and living skills and behaviours. As a consequence, the author's mental health condition and social functioning deteriorated, and he became more dependent and institutionalized.

2.6 When the Northern Territory Supreme Court committed the author to custody in prison, it set a date for a major review of the order to determine whether he ought to be released. On 15 June 2010, the Court ordered that the author should remain in custody, despite having already served 22 months, namely almost twice the period to which he would have been sentenced had he been convicted. The Court also purportedly conducted periodic reviews of the author's circumstances. A review commenced in March 2012 but remains incomplete as the only outcome of that review was the ordering of further reports.

2.7 In April 2013, the author was transferred to Kwiyernpe House, a custodial facility built in 2013 by the Northern Territory government and operated by the Aged and Disability Program of the Northern Territory Department of Health.

The complaint

3.1 The author submits that the State party has violated his rights under articles 5, 12, 13, 14, 15, 19, 25, 26 and 28 of the Convention. His communication concerns conduct carried out after 19 September 2009, prior conduct being included by way of background information only.

3.2 The author's right to equality and non-discrimination under article 5, his right to liberty and security under article 14 and his right to freedom from torture and cruel, inhuman or degrading treatment or punishment under article 15 of the Convention were violated because until April 2013 he was committed to indefinite custody in prison 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. In that sense, part II.A of the Northern Territory Criminal Code is a discriminatory law in that it applies only to persons with disabilities.

3.3 The author's right to non-discrimination under article 5 has also been violated because after April 2013 he was detained in a secure facility established according to the provisions of part 3 of the Disability Services Act of the Northern Territory of Australia, which deals with the "involuntary treatment and care of persons with a disability". Part 3 of the Act is also a discriminatory law in that it applies only to persons with disabilities. The major and periodic reviews of the author's custodial supervision order have failed to protect his right to equality before the law under article 12 of the Convention. They have simply resulted in the perpetuation of his inequality. Consequently, the law authorizes and does not protect the author from such discrimination.

3.4 The author's rights under articles 5, 14 and 15, as well as his right to equal recognition before the law under article 12, his right to access to justice under article 13 and his right to live independently and be included in the community under article 19 of the Convention have been violated because he was held in custody in prison for a period five times longer than the period for which a person without a disability would have been committed to custody in equivalent circumstances.

3.5 Articles 12, 13, 14 and 15 of the Convention have been violated because the Court determined that the author was unfit to be tried on the grounds of not having the legal capacity to answer the charges brought against him. He was not convicted for the alleged offences, but was subjected to a regime of custody and control. The author was not

provided with the disability-related support and adjustments he required in order to exercise his legal capacity and answer charges. This situation has persisted since September 2009.

3.6 The author's right to liberty and security under article 14 has been violated because his deprivation of liberty was arbitrarily based on his disability, was disproportionate to the justifying factor[7] and was also based on his Aboriginal origins. Aboriginal persons with disabilities are significantly more likely to be subject to custodial supervision orders because they are disproportionately exposed to poverty and homelessness, and have few or no stable and supportive family and community ties. Pursuant to article 43ZA (2) of the Northern Territory Criminal Code, the Court must not issue a custodial supervision order committing a person to custody in prison unless it is satisfied that there is no practical alternative given the circumstances of the person, including appropriate accommodation and disability support services. Because the author is a poor Aboriginal homeless person without a family, the Court decided that there was no practical alternative to committing him to custody in prison. Moreover, 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, which violates his right to live independently and to be included in the community under article 19. His right to an adequate standard of living and social protection under article 28 of the Convention has also been violated.

3.7 Articles 15, 19 and 26 of the Convention have been violated because the conditions of his deprivation of liberty at Alice Springs Correctional Centre were harsh and unreasonable. For the majority of his period in custody, the author was detained in maximum security, fully isolated from others. Lack of access to the mental health, habilitation and rehabilitation services and programmes he required due to his disability caused him mental distress. His functional abilities deteriorated and he became more dependent and institutionalized. Similarly, at Kwiyernpe House – which is a prison-like secure care facility adjacent to the Correctional Centre – the conditions of deprivation of liberty were harsh and unreasonable. The author was subjected to continuing control and supervision, and was confined to the facility unless authorized, always under the supervision and control of staff. He was subjected to involuntary treatment, which did not support his inclusion and participation in the community. Kwiyernpe House has been unable to recruit a sufficient number of appropriate staff for the development and implementation of habilitation and rehabilitation programmes. Few such programmes were developed for the author; those that were implemented were inadequate and were provided on a compulsory rather than on a voluntary basis. Article 26 of the Convention has been violated because the author has not been provided with adequate social skills, daily living skills, communication skills or behaviour support programmes. He has been deprived of the adequate mental health services necessary for the effective stabilization, treatment and support of his psychotic condition and his recovery from it, which violates article 25 of the Convention.

3.8 Articles 19 and 26 have also been violated because the author was held in custody on a compulsory basis. He was and remains unable to choose his place of residence or with whom to live on an equal basis with others. He continues to be deprived of the in-home, residential and other community support services that are necessary for him to live, and he cannot be included in the community, which reinforces his isolation and segregation from the community.

State party's observations on admissibility and the merits

4.1 On 20 October 2015, the State party submitted observations on admissibility and the merits. It considers the author's claims inadmissible because he has not exhausted all available domestic remedies. To the extent that the Committee finds any of his allegations to be admissible, they are without merit. In any event, the author is not subject to orders under the Northern Territory Disability Services Act, but is in custody pursuant to the terms of the Northern Territory Criminal Code. Hence, the terms of the Act are not relevant to his communication.

[7] Had he been convicted of those offences, he would have been sentenced to 12 months in prison.

4.2 The State party accepts that the author was committed to custody at Alice Springs Correctional Centre and that he currently resides at a secure care facility. However, unless otherwise indicated, it does not accept the author's version of the facts.

4.3 The Northern Territory Supreme Court's periodic reviews have consistently concluded that, due to the lack of any other appropriate facility, there was no practical alternative to custody in the Correctional Centre. The Northern Territory Department of Health conducted risk assessments in relation to the author for the Court's consideration. In the risk assessment dated 19 December 2011, a forensic psychologist found that, without the provision of significant support, future violence was a high risk. With appropriate support, the risk would be moderate.

4.4 The State party contests the allegation that the author was held in maximum security and confined in his cell in isolation for long periods at Alice Springs Correctional Centre. His care was supervised by the Northern Territory Department of Health and he received case management, disability and therapeutic services through the Forensic Disability Unit of the Aged and Disability Program, with the goal of progressing to a point where he could be placed in the least restrictive environment possible. An average of three individual sessions were scheduled each week and habilitation exercises included teaching coping and tolerance skills, progressive muscle relaxation, activities designed to increase the author's communication abilities and activity sequencing training to assist him in improving or arresting the deterioration of his memory. The author was mainly housed in a high-support unit dedicated to the treatment and accommodation of forensic patients and other inmates with intellectual and psychosocial illnesses and other disabilities. While the unit is within the maximum security section of the Correctional Centre, the environment is significantly different to that in the general maximum security section. The author was supported by disability support workers and could access family. Outside business hours, staff of the unit also provided health and welfare support to supervised persons. The author had access to the courtyard and was provided with increasing access to low-security areas and, once the pre-requisite steps for external release had been completed, to areas outside the grounds of the Correctional Centre. He also participated in a day-release programme, which was however suspended at times following incidents of behaviour of concern or as a result of his lack of interest in the activities offered.

4.5 The author isolated himself (or was isolated) at times, when he expressed the desire to be alone, or, in line with best practices in disability support, in response to incidents of certain behaviour, for the safety of the author or staff and support workers. The author was at most times separated from mainstream inmates not held in the high-support unit. Often such mixing was designed to enable the residents of the unit, including the author, to participate in recreational activities outside of that unit.

4.6 The secure care facility in which the author was subsequently held provides a secure residential environment 24 hours a day, seven days a week by delivering supervision and intensive disability services and support. After the author was transferred there in April 2013, the Northern Territory Supreme Court continued to periodically review and supervise the arrangements for the author's care in accordance with the Northern Territory Criminal Code. The Northern Territory Department of Health continues to report to the Court on the author and his progress. The author is generally supported by two disability support workers at all times. Each day, he is taken out of the facility to visit family members or to engage in recreational activities, including regular visits to the cinema, to outdoor recreation spaces and national parks, to shops or malls in Alice Springs and to the local swimming pool. As a matter of general habilitation and rehabilitation, he also has music therapy once a week and access to musical instruments. Reports of the Department of Health indicate that he has made good progress both at the Correctional Centre and at the secure facility centre.

4.7 As to the admissibility of the communication, the State party submits that the author has not exhausted domestic remedies with respect to his allegations under articles 5, 12, 13 and 14. The Northern Territory Anti-Discrimination Act 1992 prohibits discrimination in the Northern Territory on the basis of disability and provides the Northern Territory Anti-Discrimination Commissioner with powers to investigate and conciliate complaints of discrimination, including the power to make legally binding orders. To the extent that

practices or policies of the Northern Territory government were discriminatory in relation to the author, it was up to him to complain to the Anti-Discrimination Commissioner. The Commissioner would have had the power to issue binding orders requiring a party to carry out, or refrain from carrying out, certain acts, providing the author with an effective remedy.

4.8 Neither the author nor his guardian has ever challenged the Court's finding that the author was not fit to stand trial, while it was subject to the ordinary processes of appeal. To the extent that the author required special accommodation under the relevant acts to allow him to exercise his legal capacity, it was up to him to make a complaint of discrimination pursuant to section 24 of the Anti-Discrimination Act. Also, both findings that the author was subject to supervision and liable to a custodial supervision order could have been challenged, as with any other criminal sentence. During proceedings, the author's representative never disputed that the author required a high level of care and supervision and that this necessitated his accommodation in a secure care facility and, prior to this facility being available, the Correctional Centre.

4.9 Except for some allegations regarding breaches of articles 14 (unrelated to racial discrimination), 15 and 19, all the author's allegations are insufficiently substantiated. In particular, he has not specified which, if any, adjustments could have been made – or what supports could have been offered which were not offered – to enable the exercise of his legal capacity. He did not provide any evidence that he has been deprived of adequate mental health services nor that his health has deteriorated due to a deprivation or inadequacy of care. He has also not substantiated his claims under article 26 in relation to the provision and adequacy of habilitation and rehabilitation services to him or his claims under article 28 that he has not been provided with the disability-related services required to live in the community.

4.10 Finally, the Convention is concerned with discrimination on the basis of disability, not race or other characteristics. The author's related claim under article 5 is therefore inadmissible *ratione materiae*.

4.11 On the merits, the State party insists that the Northern Territory 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 and well-established in 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. The Code meets the test for legitimate differential treatment,[8] both in relation to findings of fitness to plead and in relation to the issuing of custodial orders, and therefore does not constitute a violation of article 12 (2). The bases on which custodial supervision orders are imposed and continued are clear, objective and reasonable, and are not defined by reference to disability.

4.12 The author has not provided any information on what measures he required in order to exercise legal capacity. The Northern Territory justice system provides people with disabilities the same opportunities as to persons without disabilities to access services of equal quality, as well as buildings and facilities, to receive information in an accessible manner, to have the opportunity to make complaints and to participate in relevant public consultations. The rights enshrined under article 13 have been accorded to the author. He has been legally represented by experienced criminal counsel throughout the proceedings and has also had a guardian appointed on his behalf. The State party is not aware of any requests to support the author's participation in the proceedings which were denied.

[8] The treatment is aimed at achieving a legitimate purpose that is based on reasonable and objective criteria and that is proportionate to the aim. See, for example, Committee on the Elimination of Racial Discrimination general recommendation No. 14 (1993) on article 1 (1) of the Convention, para. 2; Human Rights Committee general comment No. 18 (1989) on non-discrimination, para. 13; and Committee on Economic, Social and Cultural Rights general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 13.

4.13 Detention on the basis of disability alone would be contrary to article 14,[9] but argues that that was not the case in relation to the author's circumstances. Article 14 (1) (b) of the Convention is to be interpreted consistently with the well-established prohibition on arbitrary detention set out international law, for example in article 9 (1) of the International Covenant on Civil and Political Rights. 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.[10]

4.14 At all times, the detention of the author has been lawful. It was authorized by the custodial supervision order issued by the Court, which was not arbitrary or discriminatory. The State party accepts that persons with cognitive impairments are more likely to have a custodial supervision order imposed on them than persons without cognitive impairments. However, even if indigenous persons were more likely than non-indigenous persons to have a custodial – rather than a non-custodial – supervision order imposed on them, that 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 that will ensure the safety of either the supervised person or that of the rest of the community.

4.15 There is no blanket rule stating that detention for a particular duration will necessarily be considered arbitrary. The determining factor is not the length of detention but, rather, whether the grounds for continuing detention are justifiable. Prohibition against arbitrary detention does not mean that persons with a disability, including persons with cognitive impairment, cannot be detained at all or cannot be made subject to indefinite custody orders. Detention of a person with disability is not inconsistent with States' obligations under the Convention, or other human rights treaties, 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 but one factor to take into account in assessing whether his detention became arbitrary.

4.16 Taken alone, detention of the author in a correctional centre does not amount to degrading treatment or punishment in relation to article 15. In principle, it is undesirable for persons who are not accused or convicted of criminal offences to be detained in correctional centres. However, there may be exceptional circumstances that warrant the detention in correctional centres of such persons – for example, if necessary on a temporary basis pending the availability of a place in a specialized facility. Moreover, the author was not detained in isolation from others. While he may have temporarily been held in isolation when he was exhibiting behaviour of particular concern or when he chose to withdraw, this was for short periods of time and was reasonable and proportionate in the circumstances.

4.17 The author has not referred to any evidence that suggests that the decline in his condition has been caused by an inadequacy in the care received while in custody. In periodic reviews, including the most recent, dated 14 August 2014, it has been noted that he is progressing well and is continuing to benefit from his treatment programme.

4.18 While in custody at Alice Springs Correctional Centre, the author was not separated at all times from convicted offenders, but his interaction with convicted offenders does not in and of itself amount to a violation of article 15. The author has not complained about any particular episode involving other inmates, nor has he indicated what, if anything, about the mixing with mainstream inmates has resulted in treatment amounting to a violation of article 15.

4.19 As to the conditions at the secure care facility, constant supervision and the presence of an escort when leaving the facility do not amount to harsh conditions of detention.

[9] The State party expresses disagreement with the Committee's Statement of September 2014 that article 14 prohibits detention of persons on the grounds of disability, even where "there are other reasons for their detention, including that they are dangerous to themselves or to others" and that "it is contrary to article 14 to allow for the detention of persons with disabilities based on the perceived danger of persons to themselves or to others". See CRPD Committee, "Statement on article 14 of the Convention on the Rights of Persons with Disabilities", September 2014, paras. 1 and 2.

[10] *A v. Australia* (CCPR/C/59/D/560/1993), para. 9.2, and *Van Alphen v. Netherlands* (CCPR/C/39/D/305/1988), para. 5.8.

Evidence from independent psychologists and other relevant professionals suggests that constant supervision and care is necessary to support the author and keep himself and others safe. Moreover, the author's detention at the secure care facility is not arbitrary as it is reasonable, necessary and proportionate given the circumstances, and represents a least restrictive environment for accommodating the author, a person with complex needs who is not otherwise able to be supported by his family or in the community. The State party contests the allegation that the author is not being provided with adequate mental health services. Certain aspects of the author's treatment and care may from time to time be administered involuntarily, such as medication on an emergency basis during manifestations of behaviours of concern but, in accordance with its interpretive declaration to the Convention lodged upon ratification on 17 July 2008, the State party considers that this is reasonable, necessary and proportionate and is used only as a last resort. Therefore, the fact that the author is sometimes subjected to involuntary treatment does not amount to harsh and unreasonable conditions of detention.

4.20 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 of time the author has spent in custody has not been disproportionate.

4.21 The author has failed to demonstrate how article 19 is relevant to his claims, as he is a person subject to a custodial supervision order who was subsequently housed in a new purpose-built facility and who was in receipt of a very high level of disability-related care and support services. When taken into custody, he was living in a supported accommodation situation, with full-time disability support workers to assist him. His needs, however, proved too complex to be managed successfully in that less restrictive setting. Furthermore, the State party does not accept that it is not doing everything it can, to the maximum extent of its available resources, to make progress in the realization of the rights set out in article 19 and refers to the significant expenditure made by Australia on both health and disability support services.[11]

4.22 The State party does not accept the author's claim under article 26 that he received no habilitation or rehabilitation services, or that the services he received were inadequate. The services available to him at Alice Springs Correctional Centre included regular medical and psychological assessments, support from disability support workers, occupational therapy, community access and recreational visits. Residents at the secure care facility are encouraged to develop or maintain daily living skills, such as caring for themselves, preparing meals and cooking, cleaning and other household tasks, to enable them to live as independently as possible, in anticipation that they may be able to leave the facility and live in a less restrictive environment. There are a range of recreational activities provided, including access to sports equipment and musical instruments, to ensure that persons living there do not become passive, dependent or institutionalized. The State party also does not accept the assertion that the secure care facility has been unable to recruit appropriate staff.

4.23 Finally, article 28 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 the secure care facility results in his rights under article 28 being breached. The author was living in supported accommodation at the time of his arrest, a situation that proved to be inadequate for his needs and that placed those caring for him in danger when he exhibited behaviours of concern. Accommodation in the community would result in a reduction in the level and quality of care, supervision and disability-related services provided to him, as well as in a significant and unacceptable increase in the risk of harm to the author, to those caring for him and to the wider community. While the author's previous accommodation at the Correctional Centre was not ideal, the author has, nonetheless, at all times been provided with an adequate level of disability-related services and support. Soon after the Northern Territory government became aware of the author's situation and his accommodation at the Correctional Centre, it decided to build – and

[11] During 2012 and 2013, there was significant expenditure – which also represented a notable increase on previous expenditure – on disability-related services. Australian Institute of Health and Welfare, *Australia's Health 2012*, (Canberra, 21 May 2012), p. 473.

allocated significant funding for – the secure care facility, which was built in part to provide appropriate accommodation for the author specifically.

Author's comments on the State party's observations

5.1 On 12 October 2017, the author first addressed the question of remedies. The Anti-Discrimination Act prohibits discrimination on the ground of disability in specified areas of life subject to certain exemptions and defences. It is not a fundamental law that has a capacity to override or invalidate other laws of the Northern Territory, such as part II.A of the Northern Territory Criminal Code. Section 53 of the Anti-Discrimination Act specifically authorizes a person to carry out a discriminatory act that is necessary to comply with, or is authorized by an Act or regulation of the Northern Territory or an order of a court or tribunal. In the present case, all of the conduct complained of by the author has been authorized by the Northern Territory Supreme Court under the provisions of part II.A of the Criminal Code.

5.2 The author has already complained to the Australian Human Rights Commission that his indefinite detention was contrary to the Convention. The Commission found that his rights under articles 14 (1), 19, 25, 26 (1) and 28 (1) of the Convention had been violated, and made a series of recommendations to the Government directed at providing remedies for the author and at addressing the systemic issues raised. The Attorney-General for Australia tabled the report in Parliament but then rejected it, claiming that the Commission had no jurisdiction to undertake such an inquiry. The report has also been referred to the Northern Territory Chief Minister and Attorney-General by the author's advocate, but the Northern Territory government has failed to provide any response.

5.3 As to the possibility of appealing the Court finding that the author was not fit to stand trial and to complain under the Anti-Discrimination Act about the Court's failure to provide reasonable adjustments to him to enable him to exercise legal capacity, the author does not contend that the Supreme Court has misapplied the law. It has been correctly applied and no appeal would have any prospect of success in these circumstances. The author's contention is, rather, that part II.A of the Northern Territory Criminal Code is an unjust law that discriminates against him on the basis of his disability, in violation of his right to equality before the law. It does so by absolving him of criminal responsibility on the basis of his imputed legal incapacity. The law does not provide for adaptations and adjustments that would enable his culpability for the offences to be determined taking into account his cognitive impairment. No part of this regime is in any way concerned with the implementation of the obligation contained in article 12 (3) to provide support to persons to enable them to exercise legal capacity in the trial process.[12] The State party has not made available any accommodation to allow him to participate effectively in the legal process, in violation of article 13. And neither the Government of Australia nor the government of the Northern Territory has a constitutional or statutory bill of rights that might be invoked by the author to invalidate part II.A of the Northern Territory Criminal Code.

5.4 As to remedies for deprivation of liberty, the author accepts again that part II.A of the Northern Territory Criminal Code has been correctly applied in his case and that, as a consequence, any appeal from an application of the law in his case would be a futility. His lay advocates and guardians have repeatedly, over many years, made representations and submissions at all levels of the Northern Territory Government calling for appropriate community based support outside a prison or other custodial care environment.

5.5 In *Noble v. Australia*, the Committee considered the State party's argument that the terms of the Western Australian Criminal Law (Mental Impaired Accused) Act 1996, which also establishes a regime for the differential treatment of accused persons with cognitive impairments who are found unfit to stand trial, constituted legitimate differential treatment, but rejected that contention, finding that such a regime constituted a violation of articles 5 (1) and (2) of the Convention.[13] The position of the author under part II.A of the Northern Territory Criminal Code is equivalent to that of Mr. Noble.

[12] *Noble v. Australia* (CRPD/C/16/D/7/2012), paras. 8.5 and 8.6.

[13] Ibid., para. 8.4.

5.6 The author contests the argument that part II.A of the Code constitutes legitimate differential treatment that does not amount to discrimination. The practical effect of the author being found not guilty because of intellectual and psychosocial impairment has been that he has been subjected to a custodial supervision order and 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.

5.7 Nor do the provisions of part II.A 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. Only persons with cognitive impairment may be subjected to these provisions, rather than all persons within the general population who may engage in conduct that presents a continuing danger to the community. Part II.A is manifestly discriminatory for this reason alone.

5.8 As the State party admits, justices of the Northern Territory Supreme Court repeatedly expressed concern about the author's incarceration in a criminal justice facility. The Court was clearly of the view that this was not necessary to protect the community, provided a less restrictive community-based alternative to custody was available. The Northern Territory government failed to make any such alternative available for years. The State party also does not identify the form of self-harm to which it claims the author is at risk. While incarcerated in prison, the author was subjected to actual violence from other prisoners and to the continuing risk of such violence.

5.9 The author's detention is arbitrary because it is based on his disability. It is therefore discriminatory and in violation of article 14. Regular Court review of the author's circumstances did not and does not render his detention any less discriminatory or arbitrary. The Court's decision to continue his detention in a correctional facility was based upon the absence of alternatives to prison, not upon his assessed level of dangerousness. The State party has not established that at the material time it was pursuing any plan, to the maximum extent of its available resources, to address the multiple and aggravated social disadvantage of the author as a disabled and Aboriginal person.

5.10 Detention at Alice Springs Correctional Centre subjected the author to degrading treatment and punishment in violation of article 15 of the Convention.[14] He was committed to imprisonment in that facility without ever having been convicted of any offence that would provide an objective justification for his detention, the justifying factor being his intellectual and psychosocial impairment, and he was accommodated with persons who had been convicted of criminal offences.

5.11 The author rejects the State party's contentions that he was not held in isolation and that he was provided with the habilitation, rehabilitation and mental health and other support services he required. His mental and functional capacities deteriorated as a result. He was in high-security detention at all times, he was in isolation frequently and for long periods of time and he was exposed to violence and oppression from the general prison population. He was deprived of meaningful habilitation, rehabilitation, and leisure activities and personal comforts. The reviews conducted by the Northern Territory Supreme Court make it clear that his mental and functional integrity and capacity declined as a result of his imprisonment.

5.12 The author's mental health and disability-related needs were not adequately addressed, in violation of articles 25 and 26. Positive behaviour support plans may have been developed, but these could not be effectively implemented due to the environmental conditions and lack of staff within the prison. The author did not ever receive 24-hour disability support seven days a week at Alice Springs Correctional Centre. The author's access to mental health services improved somewhat at the secure care facility.

5.13 Finally, indefinite incarceration in a prison and a prison-like detention centre does not realize the author's right to housing under article 28. Community-based accommodation and support required by the author are fully capable of being provided in a community setting. In other areas of Australia, persons with intellectual disability who have been in

[14] Ibid., para. 8.9.

contact with the criminal justice system, including those who have been charged with far more serious offences than those with which the author was charged, are effectively supported in far less restrictive and much more enabling environments.[15]

State party's additional observations

6.1 On 12 February 2018, the State party reiterated its submissions, referred to its response to the Committee's views in *Noble v. Australia*[16] and provided a factual update on the author's situation.

6.2 In January 2016, the author was gradually relocated from the secure care facility to a community residence. Since 9 February 2017, he has been living 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 who have previous experience working with indigenous people with intellectual disabilities. They hold monthly meetings chaired by the group home manager to discuss the author's health and behaviour, trends, desired outcomes and relevant updates.

6.3 On 22 May 2017, the author's custodial supervision order was formally varied to a non-custodial supervision order. The application to vary the order was recommended and initiated by the Northern Territory Department of Health, taking into account, among other things, of the progress made by the author. The author's current supervision order permits him to return to the secure care facility if his behaviour deteriorates. Were he to remain at the secure care facility for more than two working days, an application to the Supreme Court must be made.

6.4 The author continues to have regular contact with his family and a good rapport with the disability support staff who work with him. He 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.

B. Committee's consideration of admissibility and the merits

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, whether the case is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 2 (c) of the Optional Protocol, that the same matter has not already been examined by the Committee and nor has it been or is it being examined under another procedure of international investigation or settlement.

7.3 The Committee notes that the State party submits three sets of arguments relating to the admissibility of the author's claims under article 2 (b), (d) and (e) of the Optional Protocol, which it will examine separately.

7.4 Firstly, the Committee notes the State party's arguments relating to the lack of exhaustion of domestic remedies in respect of the author's claims under articles 5, 12, 13 and 14 of the Convention. According to the State party, in respect of the allegations under article 5, it was up to the author to complain to the Northern Territory Anti-Discrimination Commissioner, who has the power to investigate and issue legally binding orders. According to the author, the Anti-Discrimination Act is not a fundamental law that can invalidate other laws of the Northern Territories, such as the Northern Territory Criminal Code, and section 53 of that Act provides for an exception, allowing the performance of a discriminatory act if such an act is authorized by a court. The Committee also notes that the

[15] See, for example, Shannon McDermott, Jasmine Bruce, Karen R. Fisher, and Ryan Gleeson, "Evaluation of the integrated services project for clients with challenging behaviour: final report", (Sydney, Social Policy Research Centre, January 2010).

[16] See www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Humanrights communications.aspx.

author's complaints before the Australian Human Rights Commission have not led to any response from the Northern Territory government. The Committee therefore considers that the procedures before the Northern Territory Anti-Discrimination Commissioner and the Australian Human Rights Commission do not give rise to any enforceable remedy for violations of human rights and cannot, therefore, be considered as effective remedies.[17] Accordingly, the complaint under article 5 is admissible under article 2 (d) of the Optional Protocol.

7.5 The Committee also notes that the author has not appealed against the Supreme Court's finding that he was not fit to stand trial (art. 12), 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 that domestic remedies need not 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 relies on the law itself, alleging that it violates the author's rights under the Convention, and it 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 and that his claims under articles 12, 13 and 14 are also admissible under article 2 (d) of the Optional Protocol.

7.6 Secondly, the Committee notes the State party's plea of inadmissibility *ratione materiae* of the author's claims in relation to his Aboriginal status on the grounds that article 5 of the Convention covers only discrimination on the basis of disability. The author has not commented on this aspect. In this connection, the Committee recalls that all possible grounds of discrimination and their intersections must be taken into account, including indigenous origin.[18] Nonetheless, it also notes that the author does not provide arguments to explain the extent to which his Aboriginal origin has had any specific impact on the violations of his rights under the Convention and therefore considers that the author has not sufficiently substantiated this claim for the purpose of admissibility.

7.7 Thirdly, the Committee notes the State party's argument that all of the author's allegations – except for some allegations under articles 14 (unrelated to racial discrimination), 15 and 19 of the Convention – should be considered inadmissible for lack of substantiation and lack of merits under article 2 (e) of the Optional Protocol. 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 of the Convention.

7.8 Accordingly, and in the absence of other obstacles to admissibility, the Committee declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information that it has received, in accordance with article 5 of the Optional Protocol and rule 73 (1) of its rules of procedure.

8.2 The Committee notes the author's submission under article 5 of the Convention that part II.A of the Northern Territory Criminal Code is discriminatory as it applies only to persons with cognitive impairment and that it provides for the indefinite detention of such persons even when they are not found guilty of a criminal offence, while persons without cognitive impairments are protected from such treatment through the application of the rules of due process and a fair trial. According to the State party, the Criminal Code is not discriminatory but provides for legitimate differential treatment of certain persons with disabilities, subject to safeguards for ensuring that the treatment is proportionate to its aims.

[17] *Mutatis mutandis*, *D.R. v. Australia* (CRPD/C/17/D/14/2013), para. 6.3.

[18] See the Committee's general comment No. 6 (2018) on equality and non-discrimination, para. 21.

8.3 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 equal benefit of the law, and must take all appropriate steps to ensure that reasonable accommodation is provided to promote equality and eliminate discrimination. The Committee also recalls that discrimination can result from the discriminatory effect of a rule or measure that is not intended to discriminate, but that disproportionately affects persons with disabilities.[19] In the present case, the Committee notes that part II.A of the Northern Territory Criminal Code is intended to address the situation of persons with intellectual and psychosocial impairments who are found unfit to stand trial on that basis. The issue before the Committee is therefore whether the differential treatment provided under part II.A is reasonable or whether it results in the discriminatory treatment of persons with disabilities.

8.4 The Committee notes that, under part II.A of the Northern Territory Criminal Code, a person found unfit to stand trial can be kept in custody for an unlimited period of time because, as provided by section 43ZC of the Code, a supervision order is for an indefinite term, subject to conditions regarding its variation, revocation or major review. The person subject to a supervision order will be presumed to be unfit to stand trial until the contrary is found. In the meantime, he or she cannot exercise his or her legal capacity before the courts. In the present case, the author was charged in October 2008 with common assault in a circumstance of aggravation. In May 2009, he was declared unfit to stand trial. A custody order was made and the author was detained at Alice Springs Correctional Centre until April 2013, when he was placed in a Secure Care Facility. Eventually, on 9 February 2017, he was 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 without giving him any possibility to plead not guilty or to respond to the charges against him. The Committee also notes that, according to the information available, the State party did not analyse which measures could have been adopted to provide the author with the support and accommodation he required to exercise his legal capacity, nor did it take any measures in that regard. As a result of the application of part II.A of the Northern Territory Criminal Code, the author was not heard at any stage of the proceedings, depriving him of his right to a fair trial and of the protection and equal benefit of the law. As clarified in paragraph 16 of the Committee's general comment No. 6 (2018) on equality and non-discrimination, the term "equal benefit of the law" means that States parties must eliminate barriers to gaining access to all of 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 II.A of the Criminal Code resulted in the discriminatory treatment of the author's case, in violation of article 5 (1) and (2) of the Convention.

8.5 The Committee notes the author's allegation that his detention in a secure care facility established only for persons with disabilities amounted to a violation of article 5. The Committee also notes the State party's submission that the author, who was subject to a custodial supervision order, was housed in that new purpose-built facility and received a very high level of disability-related care and support services. The author stayed in the facility until 9 February 2017, when he relocated to a community residence where he receives specific support. In that connection, the Committee notes that, according to the information on file, the author was not consulted at any stage of the procedures regarding his custody and accommodation. Taking note of the above, 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 the 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.[20] 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.

8.6 As regards the author's allegations under articles 12 (2) and (3) and 13 (1) of the Convention, the Committee notes the author's submission that the decision that he was

[19] *S.C. v. Brazil* (CRPD/C/12/D/10/2013), para. 6.4, and *Noble v. Australia*, para. 8.3.

[20] General comment No. 6, para. 58.

unfit to stand trial deprived him of the possibility to exercise his legal capacity to answer the charges against him and that this amounts to a violation of article 12 (2) and (3) of the Convention. The Committee recalls that a person's status as a person with disabilities or the existence of an impairment must never be grounds for denying legal capacity or any of the rights provided for in article 12[21] and that, under article 12 (2), 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. Under article 12 (3), States parties must provide access to the support that persons with disabilities may require to exercise their legal capacity. The Committee also recalls that, 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.

8.7 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, while noting the State party's argument that the Northern Territory justice system provides people with disabilities the same opportunities as those without disabilities to access services, buildings and facilities, and that the State party is not aware of any requests to support the author's participation in the proceedings that have been denied, the Committee also notes the author's statement that the law does not provide for adaptations and adjustments that would enable his culpability for the offences to be determined taking into account his cognitive impairment. The Committee considers that no adequate form of support or accommodation was provided by the State party's authorities to enable the author to stand trial and exercise legal capacity. He therefore never had the opportunity to have the criminal charges against him determined. The Committee considers that, while States parties have a certain margin of appreciation to determine the procedural arrangements to enable persons with disabilities to exercise their legal capacity,[22] the relevant rights of the person concerned must be respected. That did not happen in the author's case, as he had no possibility to do so, and was not provided with adequate support or accommodation to exercise his rights to access to justice and a fair trial. 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.[23]

8.8 As to the author's allegations relating to his detention, the Committee reaffirms that liberty and security of the person is one of the most precious rights to which everyone is entitled. In particular, all persons with disabilities, and especially persons with intellectual and psychosocial disabilities, are entitled to liberty pursuant to article 14 of the Convention.[24] In the present case, the Committee notes that, following the Supreme Court decision of 4 December 2007 declaring the author unfit to stand trial, the author was committed to custody in prison following the Supreme Court decision of 22 December 2008. The Committee also notes that justices of the Supreme Court expressed concern about the author's incarceration in a criminal justice facility, but 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, in the absence of any criminal conviction, thereby converting his disability into the core cause of his detention. The Committee therefore considers that the author's detention amounts 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.[25]

8.9 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 owing to the extent of the control that they exercise over

[21] See the Committee's general comment No. 1 (2014) on equal recognition before the law, para. 9.

[22] *Jungelin v. Sweden* (CRPD/C/12/D/5/2011), para. 10.5.

[23] *Noble v. Australia*, para. 8.6.

[24] See paragraph 3 of the Committee's guidelines on the right to liberty and security of persons with disabilities (A/72/55, annex).

[25] See also *Noble v. Australia*, para. 8.7.

those persons,[26] including to prevent any form of treatment contrary to article 15 and to safeguard the rights established under the Convention. 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 disability. The Committee further recalls that the failure to adopt relevant measures and to provide sufficient reasonable accommodation when required by persons with disabilities who have been deprived of their liberty may constitute a breach of article 15 (2) of the Convention.

8.10 In the present case, the author submits that he was detained in maximum security, was held in custody with convicted persons, was subjected to involuntary treatment and was also subjected to acts of violence from other prisoners. The State party admits that the author was not separated at all times from convicted offenders, that he was temporarily held in isolation and that he was sometimes subjected to involuntary treatment. Additionally, the Committee notes that the author was committed to custody, first in Alice Springs Correctional Centre and then in a secure care facility, for more than nine years, without having any prior indication as to the expected duration of his detention. His custody was deemed indefinite insofar as, in compliance with section 43ZC of part II.A of the Northern Territory Criminal Code, a supervision order is for an indefinite term. Taking into account the irreparable psychological effects that indefinite detention may have on a detained person, the Committee considers that the indefinite custody to which the author was subjected amounts to inhuman and degrading treatment.[27] The Committee therefore considers that – even though 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 amount to a violation of article 15 of the Convention.

8.11 The Committee take notes of the author's submissions under article 19 that he was not provided with adequate housing in the community, as an alternative to custody in the Correctional Centre or the secure care facility. 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 to grant the author the possibility of living in a 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 does not need to be addressed further.

8.12 Finally, the Committee notes the author's allegations that he lacked access to health care (art. 25 of the Convention), habilitation and rehabilitation services (art. 26), and that his right to an adequate standard of living and social protection (art. 28) had been violated. The Committee also notes the State party's arguments that, while the author remained in custody, it had allocated significant expenditure to both health and disability support services, that the author received adequate health, habilitation and rehabilitation services and adequate accommodation, that the secure care facility had been built in part to provide appropriate accommodation to the author and that the author 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.

8.13 In the light of the above, the Committee concludes that the State party has failed to fulfil its obligations under articles 5, 12, 13, 14 and 15 of the Convention.

[26] See *Guerrero Larez v. Bolivarian Republic of Venezuela* (CAT/C/54/D/456/2011), para. 6.4, and *Yrusta v. Argentina* (CED/C/10/D/1/2013), para. 10.5.

[27] Alfred de Zayas, "Human rights and indefinite detention", *International Review of the Red Cross*, vol. 87, No. 857 (March 2005), pp. 19 and 20.

C. Conclusion and recommendations

9. 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 and 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 that regard, and considering the far-ranging impact of the violations found in the present case, the Committee recalls in particular the recommendations on liberty and security of the person contained in its concluding observations on the initial report of Australia (CRPD/C/AUS/CO/1, para. 32) and requests the State party to:

(i) Amend part II.A of the Northern Territory Criminal Code and all equivalent or related federal and State legislation, in close consultation with persons with disabilities and their representative organizations, in such a way as to comply with the principles of the Convention and with the Committee's guidelines on the right to liberty and security of persons with disabilities;

(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) Protect 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, is provided to staff working with persons with intellectual and psychosocial disabilities, members of the Law Reform Commission and Parliament, judicial officers and staff involved in facilitating the work of the judiciary, and avoid using high-security institutions for the confinement of, persons with intellectual and psychosocial disabilities.

10. 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 the recommendations of the Committee.