



## Convention on the Rights of Persons with Disabilities

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### Committee on the Rights of Persons with Disabilities

#### Decision adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 73/2019\*\*, \*\*\*

<i>Communication submitted by:</i>	A.N.P. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	South Africa
<i>Date of communication:</i>	19 September 2017 (initial submission)
<i>Date of adoption of decision:</i>	28 August 2020
<i>Subject matter:</i>	Tax rebates for persons with disabilities
<i>Procedural issue:</i>	Non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Equality of opportunity; general obligations under the Convention; equality under the law; stereotypes, prejudices and harmful practices relating to persons with disabilities; access to support required in exercising legal capacity; equal right to own or inherit property; access to justice; prevention of subjection to torture or cruel, inhuman or degrading treatment or punishment; integrity of the person; adequate standard of living; social protection
<i>Articles of the Convention:</i>	1, 3 (e), 4 (1) (d), 5 (1), 8 (1) (b), 12 (3) and (5), 13 (1), 15 (2), 17 and 28 (1) and (2)
<i>Article of the Optional Protocol:</i>	2 (d)

1.1 The author of the communication is A.N.P., a national of South Africa, born in 1951. He claims to be the victim of a violation, by the State party, of his rights under articles 1, 3 (e), 4 (1) (d), 5 (1), 8 (1) (b), 12 (3) and (5), 13 (1), 15 (2), 17 and 28 (1) and (2) of the Convention. The Optional Protocol to the Convention entered into force for the State party on 30 December 2007. The author is not represented.

\* Reissued for technical reasons on 8 December 2020.

\*\* Adopted by the Committee at its twenty-third session (17 August–11 September 2020).

\*\*\* The following members of the Committee participated in the examination of the communication: Ahmad Alsaif, Danlami Umaru Basharu, Monthian Buntan, Imed Eddine Chaker, Gertrude Oforiwa Fefoame, Mara Cristina Gabrilli, Amalia Eva Gamio Ríos, Ishikawa Jun, Samuel Njuguna Kabue, Kim Mi Yeon, László Gábor Lovász, Robert George Martin, Dmitry Rebrov, Jonas Ruskus, Markus Schefer and Risnawati Utami.



1.2 On 12 November 2019, the Special Rapporteur on communications under the Optional Protocol, acting on behalf of the Committee, decided to register the communication without transmitting it to the State party for observations.

## **A. Summary of the information and arguments submitted by the party**

### **Facts as submitted by the author**

2.1 The author has multiple permanent medical disabilities and chronic conditions, in connection with which he has received modest monthly payments from a permanent disability insurance claim. He is the sole inhabitant of a flat that he co-owns with his brother under sectional title. Starting in 2008, he has filed annual applications with the City of Cape Town for rebates on the municipal taxes payable over the ownership of the flat under the rates rebate programme for disabled persons and senior citizens. The author states that such rebates are supposed to be made available to persons with disabilities and senior citizens with low to moderate incomes because municipal property taxes “far exceed any reasonable cost” of municipal services and effectively amount to wealth redistribution.

2.2 The City of Cape Town denied the author’s applications covering the period 2008–2013 on 22 March 2011 and 23 April 2013, and rejected his appeals on 30 April 2012 and 23 May 2013, including on the ground that his income was too high. According to the author, the City had falsely and without any reason classified the insurance payments as income. He states that the definition of “gross monthly household income” in the City’s Rates Policy allows the City to define any receipt of capital as income and includes categories beyond ordinary definitions of income, contrary to national government norms and practices. He adds that the South African Revenue Service does not regard payments from a disability insurance claim as income and that South African law distinguishes between receipts of a capital nature and those of a revenue nature. The author’s actual income would have rendered him eligible for the full, or almost the full, tax rebate rate. The author adds that for the years 2014–2018, his applications have not yet been finalized, owing to what he describes as the City of Cape Town’s unjustified demands and refusals to properly answer correspondence and to explain its policies.

2.3 The author adds that the City of Cape Town has misapplied the Rates Policy also in the sense that it considered the income of the other co-owner of the flat, even though the Rates Policy prescribes the aggregation of all co-owners’ incomes only if the applicant is not a natural person.

2.4 The author claims that he has exhausted all available domestic remedies. He states that his complaints and appeals to the City of Cape Town’s senior echelons – including the Mayor, the Deputy Mayor, the Speaker, the Director of Revenue, the City Manager, the Director of Legal Services, the City Ombudsman and the ward councillors – have either been “brushed aside” or ignored. The author suspects that his applications were denied because such was the Deputy Mayor’s wish, irrespective of the law. The author had a personal meeting with city officials, during which he was asked to submit a “motivation” for his objection to the qualification of disability insurance payments as income, even though, according to the author, he should not have to substantiate a request for a correct application of the law, and the motivation that he submitted was not properly considered. He was subsequently requested to provide evidence of expenditures even though that was irrelevant. He disputes the adequacy of the City of Cape Town’s response to the email he sent in response to the decision of 30 April 2012. He had raised some of the decision’s deficiencies, but the City responded only that the decision was regarded as “functus officio” and that he had thus exhausted internal remedies. He submits that the City of Cape Town has thus failed to provide just and accountable government.

2.5 Moreover, from December 2013 onwards, the author has brought claims of violations of the Convention to the South African Human Rights Commission, the Office of the Public Protector, the Western Cape provincial government, the office of the Presidency and other government departments. The author comments that these authorities have been lacking in response and that where they did reply, the replies were factually inaccurate, misleading and lacking in remedial actions and substantiation of the City’s decision-making.

2.6 The author lodged a complaint with the South African Human Rights Commission in December 2013, which “closed” the complaint and referred it to the Office of the Public Protector, to which the author had also complained directly. His appeal was denied and receipt of an updated complaint was not acknowledged. On several occasions, the Office tried to “close down” his complaint. Receipt of the author’s updates has not been confirmed and his enquiries have not received any substantive response, despite a proposed reopening of his case and a proposed meeting of the Office with the Commission.

2.7 The author additionally sent complaints to three departments of the Western Cape provincial government, which were “either ignored or not prosecuted with the dedication and vigour necessary”. Complaints concerning the Western Cape provincial government’s handling of his case did not receive a substantive response either.

2.8 The author’s complaint to the office of the Presidency was assigned a reference number, but was not followed up on by the Office. His complaints to the Auditor General, the ministry responsible for cooperative government, the Ministry of Women, Children and People with Disabilities, the Public Service Commission and the department of justice were either “completely ignored” or were met with “a further lack of attention and response”.

2.9 The author adds that although he was advised by City of Cape Town officials of the possibility of seeking remedies in the South African courts, it is evident that this is not a viable option for a person in a poor financial situation and in poor health. Moreover, if he were to bring a claim to the courts, the City of Cape Town would expend taxpayers’ money in defending its actions.

2.10 The author claims that the authorities’ decisions on his tax rebate claims have been unlawful under the State party’s constitution and the City of Cape Town’s Rebates Policy, as well as unreasonable and discriminatory given that others in the same position have received rebates. He adds, in this respect, that the City’s rates rebate department confirmed to him that the payment of a disability insurance as a lump sum rather than the instalments that he received would not have been counted as income. He states that it is likely that his case is not isolated and that other persons with disabilities and senior citizens could be victims of similar violations of the Convention by the State party.

2.11 The author disputes that the City of Cape Town officials who dealt with his applications had the required expertise. He requests that an evaluation of whether their qualifications are relevant and adequate be undertaken, as the information requested under the Promotion of Access to Information Act was given only in part, and not in a timely manner. Moreover, the Revenue Department’s files show that the decision-making process was not recorded or documented, and also reveal a lack of other relevant documentation. The author submits that the treatment of his case falls below professional standards, and requests that the matters be investigated as professional misconduct.

2.12 The author further disputes undated internal correspondence of the City of Cape Town concerning his case, which states that all discretions as allowed by the Rates Policy were applied. The correspondence states that tax rebates are intended for those who have limited resources, which the author takes as an indication that the City targeted him despite the fact that he is not well off, that he has no ability to pay over the long term and that his so-called ability to pay only comes from the depletion of his finite and limited capital resources from the disability insurance payments.

## **Complaint**

3.1 According to the author, the City of Cape Town’s denial of social assistance in the form of rebates on property taxes constitutes a violation of his right to social protection under article 28 (2) of the Convention. Moreover, the author claims that he was made to pay undue amounts of taxes, amounting to a violation of his right to an adequate standard of living under article 28 (1), as well as arbitrary deprivation of the right to property, under article 12 (5) of the Convention. He further claims violations of his right to equality, under articles 3 (e) and 5 (1), and of his right to freedom from degrading treatment, under article 15 (2) of the Convention. He also claims that the State party has violated his rights under article 17 of the Convention in that the stress and mental and physical effects have had a

foreseeable negative impact on his mental and physical integrity and have significantly increased his early mortality risk.

3.2 Furthermore, the author claims that the failure of redress mechanisms within the City of Cape Town and other organs of the State party to properly act on his complaint with fairness and independence amounts to a breach of his right to access to justice under articles 8 (1) (b) and 13 (1) of the Convention. He adds, in this respect, that the City of Cape Town's Revenue Department, in its decision of 22 March 2011, failed to advise him of his right to appeal and that, during the appeal, he was not advised of his rights and was not allowed to make any submissions or provide further information.

3.3 Finally, the author claims a violation of his right to respect for private life as, first, the City of Cape Town unnecessarily sent back his documents, thus putting sensitive information at risk of loss, and sent it to the wrong address; second, despite confirmation by postal services, the City claimed not to have received documents sent and thus did not properly protect confidential financial and health information; and third, the author was required to submit information about his expenses even though it was unnecessary.

3.4 The author requests that his situation be remedied, including with respect to the protection of his rights, the assurance of non-repetition of violations, a reversal of the rebate decisions and compensation for losses and damages.

#### **Additional submissions from the author**

4.1 On 2 October 2017, the author provided further submissions, reiterating that he has exhausted all available domestic remedies. He states that he has done so over the course of almost four years and that it would be unreasonable to expect him to wait longer, given that the remedies engaged had proven ineffective. In a submission dated 4 October 2017, the author adds that he lacks the health required to undergo the stress of a court application, as well as the necessary financial resources, and that he has therefore addressed other authorities for remedies. He explains that his monthly income is only 6,000 rand, and that lawyers in South Africa charge between 2,000 and 3,000 rand per hour.

4.2 On 26 September and 7, 10 and 24 December 2019, the author made further submissions, in which he details that, but for timely remedial actions, he would be denied rebates also for the years 2013–2020 and that his applications concerning those years have not been ruled on. His complaints to various departments in the City of Cape Town and other authorities had continued to be either ignored or not responded to substantively.

4.3 On 10 June 2020, the author communicated that the City of Cape Town had still not provided him with the rebates requested and that it continued to fail to respond to his correspondence. The author submits that the closure by the Public Protector of his case was invalid and that he is not aware of any further action taken by the South African Human Rights Commission.

## **B. Committee's consideration of admissibility**

5.1 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 claim is admissible under the Optional Protocol.

5.2 The Committee notes the author's claim that he has exhausted all available domestic remedies, as required under article 2 (d) of the Optional Protocol. He brought the refusal of his tax rebates applications to the attention of various departments in the City of Cape Town and to the South African Human Rights Commission, the Office of the Public Protector, the Western Cape provincial government, the office of the Presidency and other government departments. The Committee also notes the author's claim that he lacks the health required to undergo the stress of a court application, as well as the necessary financial resources, and that he has therefore addressed the aforementioned authorities instead. Finally, the Committee notes the author's contention that the City of Cape Town would expend taxpayers' money in judicial proceedings.

5.3 The Committee recalls that domestic remedies need not be exhausted if they objectively have no prospect of success, but that mere doubts as to the effectiveness of those remedies do not absolve the author from the obligation to exhaust them.<sup>1</sup> The Committee considers that the author has not effectively shown that bringing a complaint to the South African courts would objectively have no prospect of success. The Committee notes that the author's comment that legal aid fees are steep is of a general nature. The author has not explained whether he undertook any efforts to obtain access to low-cost or free legal aid for the purpose of a court application, or whether there were any circumstances rendering it unreasonable for him to undertake such efforts.<sup>2</sup> Further, the author has provided no substantiation demonstrating that his health situation inhibits him from submitting a claim to the South African courts, including through a lawyer. Finally, the Committee considers that the contention that judicial proceedings cost taxpayers money is immaterial to the requirement of exhaustion of domestic remedies. In the circumstances, the Committee finds that it is precluded from considering the communication under article 2 (d) of the Optional Protocol.

## C. Conclusion

6 The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 (d) of the Optional Protocol;
  - (b) That the present decision shall be transmitted to the State party and to the author of the communication.
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<sup>1</sup> *D.L. v. Sweden* (CRPD/C/17/D/31/2015), para. 7.3.

<sup>2</sup> *S.C. v. Brazil* (CRPD/C/12/D/10/2013), para. 6.5.