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Neurodiversity Before the UN Committee on the Rights of Persons with Disabilities

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Abstract

We review the role of the treaty bodies in the UN system to demonstrate their potential in protecting human rights. We then discuss the disability rights and justice movement and the subsequent movement for neurodiversity rights to foreground the core issues that emerge in the discussion of communications before the Committee on the Rights of Persons with Disabilities. We identify core tenants of the neurodiversity movement that are central to the decisions of the Committee on the Rights of Persons with Disabilities. We then discuss the cases brought by neurodivergent petitioners. Our focus here is on the ability of the CRPD to receive individual complaints from people in ratifying states who believe that their rights arising out of the treaty have been violated. These individual complaints brought by individuals against their governments in an international venue can serve as a catalyst to pressure states to make significant changes in their domestic human rights practices. We conclude with our analysis of the potential impact of the CRPD and suggestions for future work.

Keywords: neurodiversity; human rights; UN CRPD

1. Introduction

The passage of the *Convention on the Rights of Persons with Disabilities* in the UN General Assembly in 2006 was a watershed moment in international law and the culmination of decades of work by disabilities rights and justice advocates. The treaty enshrines a rights-based approach to disability, prioritizing respect for personal dignity and individual autonomy (Article 3); non-discrimination (Article 12); accessibility (Article 9); independent living and community inclusion (Article 19); and the right to an equal education (Article 24). The treaty implicitly and overtly rejects previous approaches to disability that called for habilitation and institutionalization with a privileged deference to the opinions of medical personnel over the voices of people with disabilities in decisions about their lives and care. Beyond the progress that the establishment of this treaty represents for the larger disability community, it has also served as a new standard in many national courts. This represents an international engagement of a conversation that has been happening at the domestic level [1–3]. From a comparative law perspective, the treaty has been instrumental in the domestic setting, altering the ways that some national courts protect the human rights of persons with disabilities in several national jurisdictions [4]. In other words, the treaty has diffused and been "domesticated" into national law [4]. This is not the first international body to embrace concerns over the role of neurodiversity as the International

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Criminal Court has made limited forays into the concept of neurological-based affirmative defenses [5].

One pathway through which this domestication has occurred is the Committee on the Rights of Persons with Disabilities. The *Convention on the Rights of Persons with Disabilities*, like the other core UN human rights treaties, empowers a committee of experts—the Committee on the Rights of Persons with Disabilities—that receives communications from individuals in ratifying states about grievances that arise out of violations of the Convention. In this article, we examine the communications brought to the Committee by neurodivergent petitioners to better understand how this body is moving to recognize and support neurodiverse people. The neurodiversity movement has emerged relatively recently, as compared to the movement for disability rights, whose origins can be traced to the early 20th century. We wondered whether more recent political efforts to frame out and distinguish themselves from the disability justice movement has given neurodivergent petitioners any traction in this body. Has the rise of the neurodiversity movement lead to greater rights protections for neurodiverse populations? And what might be the future for domesticating rights for neurodiverse populations via decisions coming out of the UNCRPD?

We demonstrate that the Committee on the Rights of Persons with Disabilities (CRPD or "the Committee") shows promise for an expansion of the institutional support for the human rights of neurodiverse petitioners and their families. It is still too soon to have certainty, but the early indications based on our readings of the cases indicate that the Committee is moving to advance the rights of neurodiverse populations. That is, at this early stage of development of the legal regime arising out of the Committee, we see signs of promise of the future development and expansion of the protections for the neurodiverse community.

1.1. Why Study the Rights of Neurodivergent Petitioners?

It is hard to overstate the extent to which the *UN Convention on the Rights of Persons with Disabilities* represents progress over previous and often prevailing approaches to the rights of people with disabilities. Disability rights and justice advocates have fought against systems that silenced, harmed, and institutionalized those with a host of disabilities. The disability rights and justice community has come incredibly far—demanding full inclusion in their communities and literally dragging themselves up the Capitol steps to demand passage of the Americans with Disabilities Act in 1990 [6]. This movement has shifted the paradigm around disability from hiding and institutionalizing people with disabilities, to recognizing their advocacy and prioritizing their voices in their fight for justice. Yet the movement for the rights of neurodivergent people is relatively new compared to the much longer history of the disability rights movement. Moreover, many in the neurodivergent community see themselves as distinct from the population of persons with disabilities—many neurodivergent minds can be understood not as disabled, but rather as standard variations across the population in neuro-cognitive functioning [7] (p. 3). From this perspective, the committee that receives and reviews communications as a part of the UN's oversight of the *Convention on the Rights of Persons with Disabilities* is an appropriate venue for exploring whether international experts in disability (as represented by the panel of experts on the Committee on Rights of Persons with Disabilities (henceforth the CRPD or the Committee) have embraced the approach of the neurodiversity movement. While the neurodivergent population may have different accommodation needs than those people with disabilities that manifest in physical ways—whether vision, hearing, mobility, or other issues—there can be no real argument that, at least for many in the neurodivergent population, they belong under the larger people with disabilities umbrella. The wide range

of ways in which neurodiversity can present itself means some in the population may face unique challenges. Avoidant/Restrictive Food Intake Disorder (ARFID), common among the neurodiverse, is a complex eating condition that causes people to severely limit the amount or variety of the foods they eat, without being driven by body image or weight loss goals. Others may suffer from various forms of apraxia where the mind cannot compel the body to act as the person desires—for instance if a police officer orders a child to raise their hands but the child suffers from apraxia, tragedy might occur if the officer is unaware the child is incapable of raising their hands. Some members of the neurodiverse population are non-speaking. In other words, the range of individual impact means those who identify as neurodivergent often face challenges that are unusual or alien to the systems, communities, and institutions that can impact their lives.

1.2. Method and Plan of the Article

In our analysis we reviewed and assessed every communication received by the Committee tasked with receiving individual complaints and overseeing state implementation of the *Convention on the Rights of Persons with Disabilities.* At the time of this writing there have been few cases submitted by neurodivergent petitioners. Out of 66 total referrals submitted to the CRPD and available in the United Nations Treaty Body Adjudication Database, just 6 center on claims from neurodivergent petitioners. This number also excludes those communications that were submitted but discontinued. Accordingly, although our analysis is a preliminary assessment of the institution, we provide a careful sorting out of each communication from neurodivergent petitioners and their families. We begin by reviewing the role of the treaty bodies in the UN system to demonstrate their functions in protecting human rights. We then move into a brief discussion of the disability rights and justice movement and the subsequent movement for neurodiversity rights to foreground the core issues that emerge in the discussion of communications before the Committee. We identify several core tenants of the neurodiversity movement that may be apparent in the decisions of the CRPD. We then proceed with our discussion of the cases brought by neurodivergent petitioners. We conclude with our analysis and suggestions for future work.

1.3. The Role of the UN Treaty Bodies

As of the writing of this article, 8 UN human rights treaty bodies have emerged to promote state implementation of the terms of human rights treaties.[1] The bodies are independent groups of experts on the topic covered by the treaty. The Committee on the Prevention of Discrimination Against Women, for example, oversees state implementation of the Convention on the Elimination of All Forms of Discrimination Against Women. The Committee on the Rights of the Child oversees state implementation of the Convention on the Rights of the Child. For the complete list of the UN Treaty Bodies and the treaties they monitor see Table 1.

The treaty bodies engage in several activities that advance human rights within the states that have ratified the treaties. These activities include, among others, reviewing reports on treaty implementation submitted by state's parties. The committees frequently note patterns or problem areas that states need to address to be compliant with the treaty. For example, the *Committee on the Rights of Persons with Disabilities* reviewed Spain's implementation of the treaty and recommended that Spain forego prosecuting parents of special needs children for neglect, when those parents demand equal access to education for their children, a practice that Spain had consistently engaged in.[2] The treaty bodies can also visit the states they are reviewing on fact finding missions to gather the necessary information to resolve the matter before them. In 2024 following their visit to Australia, the Committee against Torture made a series of recommendations for Australia to improve

treatment of detainees across state prisons and immigration detention centers. Included in their recommendations was an urgent request to stop subjecting detained children to solitary confinement.[3]

Table 1. UN Treaty Bodies and Treaties Monitored.

Committee (Abbreviation)	Monitors
Human Rights Committee (CCPR)	International Covenant on Civil and Political Rights
Committee on Economic, Social and Cultural Rights (CESCR)	International Covenant on Economic, Social and Cultural Rights
Committee on the Elimination of Racial Discrimination (CERD)	International Convention on the Elimination of All Forms of Racial Discrimination
Committee on the Elimination of Discrimination against Women (CEDAW)	Convention on the Elimination of All Forms of Discrimination against Women
Committee against Torture (CAT)	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Committee on the Rights of the Child (CRC)	Convention on the Rights of the Child
Committee on Migrant Workers (CMW)	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
Committee on the Rights of Persons with Disabilities (CRPD) (not yet empowered to hear cases)	Convention on the Rights of Persons with Disabilities
Committee on Enforced Disappearances (CED)	International Convention for the Protection of All Persons from Enforced Disappearance

However, our focus here is on yet another function of treaty bodies: their ability to receive individual complaints from people in ratifying states who believe that their rights arising out of the treaty have been violated. These individual complaints brought by individuals against their governments in an international venue can serve as a catalyst to pressure states to make significant changes in their domestic human rights practices [8]. For instance, when a Hungarian woman submitted a complaint to the Committee on the Elimination of Discrimination Against Women for the absence of restraining orders in Hungarian law, she was able, with the support of civil society actors, to pressure the Hungarian legislature to change the law [8]. In this way, though the individual complaint procedures do not automatically change state laws and practices, they can be an important catalyst for domestic legal change. We review the cases submitted to the CRPD to determine whether similar processes are at play for neurodivergent populations at the UN.

1.4. The Disability Rights Movement and the Movement for Neurodiversity

The neurodiversity rights movement grew out of the broader, disability rights movement. Prior to the 1970s, disability advocacy organizations in the United States tended to focus on a single group or disability. For example, one of the earliest national disability rights organizations that claimed members from across the US was the National Association of the Deaf, which has been active since 1880 [9] (p. 212). Other groups advocated for the rights of populations, such as the Disabled American Veterans (DAV), which emerged

after World War I to demand rights for veterans injured during the war [9,10] (p. 50). The American Foundation for the Blind was created in 1921 as a repository for information for blind people, while the NFB or National Federation for the Blind was created in 1940 as the "first self- advocacy organization created by the blind for themselves" and remains the largest organization of the blind that advocates for equal rights [10] (p. 51). Organizations largely driven by parents, The United Cerebral Palsy Organization, also emerged around this time and was created by parents putting ads in newspapers to find other parents of children with cerebral palsy [11] (p. 9).

This piece-meal approach of advocacy made identifying shared goals and achieving larger statutory victories for these groups challenging. But these organizations learned from the sweeping changes associated with the Civil Rights Movement that ushered in legal victories for racial and ethnic minorities in the United States in the 1960s and 1970s. Stroman references the rise of "cross-disability awareness"—if the various groups coalesced into larger, broader disability organizations, that they would collectively have more power to effect change [10] (p. 70). Underpinning these efforts were a shift from rehabilitation which placed the person under the care of a professional to independent living which focuses on integrating people with disabilities into society [12]. This shift deemphasized medical models of disability in favor of social models [13] (pp. 14–15). "Nothing about us without us" highlights the central tenant that self-advocacy played and continues to play today both in the disability rights movement and the neurodiversity rights movement that emerged from the broader movement. The dramatic increase in mobilization and activity in the disability rights movement in the US during this era yielded many of the federal laws that exist today including the IDEA (1975), the Americans with Disabilities Act (1990), and ushered in the Disability Justice Movement, which examines the intersections of disability and ableism as they relate to other forms of oppression.

The autism rights movement introduced the term neurodiversity. Though Judy Singer, an Australian Sociologist is often credited with the creation of the term, more recent work has shown the collective development of the concept, emanating from discussion and debate among autistic people and activists online [14] (p. 1591). Neurodiversity means "variation in neurocognitive functioning" [7] (p. 3). The concept encompasses *both* those who are neurotypical and those who identify as neurodivergent "those with a condition that renders their neurocognitive functioning significantly different from a 'normal' range" [15] (p. 2). In other words, the term refers to what Silberman understands to be a biological fact. Neurodivergent is thus an umbrella term, encompassing a long and often debated list of conditions including: "Learning Disabilities, Dyslexia, Dyscalculia, and Dyspraxia; clinical conditions, such as Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Conditions, Developmental Language Disorder, Tic Disorders, and cognitive impairment due to acquired brain injury" [16] (p. 329).

Because norms, laws, and institutions within society tend to privilege neurotypical populations, the neurodiversity movement "aligns itself with diversity and inclusion, seeking similar equity to race, gender and LGBTQIA2S+ movements and has a relationship with other disability inclusion approaches" [16] (pp. 330–331). Doyle et al. (2022) demonstrate that within the United Kingdom the population prevalence rates of neurominorities (those with one or more of the above conditions) is approximately 15–20% [16] (p. 331). This movement has made great strides in advancing global understandings about neurodiversity. From seeing neurodiversity as a competitive advantage for individuals in the business world [17,18] to reframing what was once considered a cognitive disorder into a natural cognitive difference [19].

The core principles of the neurodiversity movement that have emerged include the emphasis on neurodiversity as a natural cognitive variation rather than as a disorder re-

quiring medical intervention [19] In practice there are several targets or goals for which the movement has advocated that should be apparent in the CRPD's consideration of communications from neurodivergent petitioners if the movement has gained traction among the experts at the CRPD. Members of the community often advocate for neurodiverse people to live in their communities, rather than in institutions and that society take care to recognize varied forms of communication [20]. Another set of goals include differentiating between independence (doing things for oneself) and autonomy (having a say in the direction of one's own life) such that even those with high levels of support needs have a say in their life circumstances [20]. The movement emphasizes support for a good quality of life for both neurodivergent people and their caregivers/parents. Finally, the movement advocates for the end of harmful treatments and attempts to "cure" neurodiverse differences [20]. We take our cues from these targets of the movement and will look for references to independence/autonomy, voice or self-advocacy, emphasis on quality of life for neurodiverse people and their caregivers, and a rejection of medical "cures" or treatments for neurodiverse people in the decisions and writings of the CPRD.

1.5. The Rights of Persons with Disabilities at the UN and the Emergence of the Treaty

Despite more recent efforts and successes of the neurodiversity movement, within the United Nations there was very little attention to people with disabilities from its inception in 1945, through approximately 1970. Until 1970, Degener and Begg (2017) refer to persons with disabilities "as invisible citizens" at the UN—only scantly, if ever mentioned as objects of rehabilitation, a particular subset of refugees, or in larger conversations about social security funding [21] (p. 3). Among three of the core United Nations human rights treaties, the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights both in 1966, there is no mention of persons with disabilities.

The decade of the 1970s saw the first non-binding UN declarations that addressed the rights of persons with disabilities through the introduction of the 1971 Declaration on the Rights of Mentally Retarded Persons and the 1975 Declaration on the Rights of Persons with Disabilities. Yet these documents adhered soundly to the medical model of disability—providing that rights should be granted to people with disabilities but could be significantly limited or restricted so long as such restrictions did not constitute abuse [21] (p. 5). Following decades of passionate advocacy, the disability rights movement was successful in eliciting the support of the UN General Assembly for the passage of a global disability rights treaty.

The UNCRPD was adopted by the General Assembly in December 2006, opened for signature in March 2007 and entered into force/came into effect in May 2008. The Committee of 18 independent experts who compose the Committee on the Rights of Persons with Disabilities was able to both receive individual submissions and examine cases of alleged grave and systematic violations of the Convention in 2008. To date 193 states have ratified or acceded to the treaty, while 108 of those states have also ratified or acceded to the Optional Protocol of the Convention on the Rights of People with Disabilities, which empowers the CRPD to receive communications.[4]

1.6. Review of Communications Submitted by Neurodiverse Litigants

As of the writing of this article, the UN Committee on the Rights of Persons with Disabilities has received 6 submissions from neurodiverse litigants. Across these petitions, even when the CRPD determines that a case is inadmissible, they often emphasize principles that we see reflected within the neurodiversity movement. We consider references to the

following principles in the Committee's decisions to be support for neurodiverse petitioners regardless of the ultimate outcome—independence/autonomy, voice or self-advocacy, emphasis on quality of life for neurodiverse people and their caregivers, and a rejection of cures or treatments for neurodiverse people. We discuss the cases below.

1.7. Bacher v. Austria (2014)

The first communication the Committee received from a neurodivergent petitioner was received in February 2014, from Simon Bacher, an Austrian man with Down's Syndrome, autism, mobility impairments and chronic health conditions. He lived with his family in a house that could only be reached by a steep, narrow footpath (CRPD/C19/D/26/2014, p. 2).[5] Because the path became dangerous in bad weather, his parents built a protective roof over it after receiving municipal approval and financial support from the local government. However, a neighboring property owner sued, arguing that the roof interfered with his legal right of way. Austrian courts ordered the roof removed.

After the roof was demolished, the path deteriorated further, making it difficult and, at times, unsafe for Simon to leave or access medical care and other services. Over several years, his family sought assistance through the courts, local authorities, disability advocates, politicians, and mediation efforts, but no lasting solution was reached. The family also argued that officials repeatedly failed to consider Simon's disability-related needs, and at one point the mayor suggested that Simon be placed in a residential institution or that the family move away (CRPD/C19/D/26/2014, p. 3). After exhausting all available domestic efforts, Simon's legal guardian submitted a complaint to the UN Committee on the Rights of Persons with Disabilities, alleging that Austria had failed to protect his rights.

The Committee found that Austria violated Simon Bacher's right to accessibility under Article 9 of the Convention, read together with the general principles in Article 3. It emphasized that accessibility is a precondition for persons with disabilities to live independently and participate fully and equally in society, and that States have a positive obligation to remove barriers and ensure access to the physical environment (CRPD/C19/D/26/2014, p. 14). Although the dispute arose between private neighbors over a right of way, the Committee held that the State remained responsible for ensuring that its courts and authorities interpreted and applied domestic law consistently with the Convention. The Austrian courts focused narrowly on the property dispute and failed to meaningfully consider Mr. Bacher's disability-related needs or the impact that removing the roof would have on his ability to safely access his home and essential services (CRPD/C19/D/26/2014, p. 13).

Importantly, the Committee stressed that accessibility extends beyond entry to a home. Accessibility is essential for accessing community life, healthcare, education, and other public services. By failing to consider reasonable accommodations and the broader consequences of its decisions for Mr. Bacher's independence and inclusion, Austria denied him effective accessibility and violated its obligations under the Convention.

1.8. EOJ, OOJ, FIJ & EJ v Sweden (2015)

The second case that the Committee received that involved a neurodiverse petitioner was *EOJ, OOJ, FIJ, & EJ v. Sweden* (CRPD/C/18/D/28/2015). O.O.J., a Nigerian national, lived in Sweden with his wife and two children. Their son, E.O.J., was born in Sweden in 2010 and was diagnosed with autism and other developmental disabilities in 2013. After the family's applications for residence permits were denied, they applied for asylum, arguing that returning to Nigeria would place their son at serious risk because he required specialized behavioral therapy, education, and healthcare that they believed were unavailable there.

Swedish migration authorities rejected both the asylum application and the family's request for residence permits based on E.O.J.'s medical needs, concluding that appropriate treatment and educational services for autistic children were available in Nigeria (CRPD/C/18/D/2015 p. 2).[6] The family disputed this finding by contacting hospitals and medical professionals in Nigeria, who reportedly informed them that specialized autism services were unavailable or severely limited. They also submitted reports from healthcare professionals, educators, and autism advocates describing E.O.J.'s need for continuous treatment and the lack of adequate services in Nigeria. Despite these submissions, the authorities maintained the deportation order, leading the family to file a complaint with the UN Committee on the Rights of Persons with Disabilities.

The Committee did not decide the merits of the case. Instead, it found the communication inadmissible because the family had not exhausted available domestic remedies. Before the Committee ruled, Sweden's deportation order had expired under Swedish law after four years, meaning it was no longer enforceable. As a result, the family was entitled to submit a new application for residence permits, which would receive a full review by the Migration Agency and could be appealed through the Swedish courts (CRPD/C/18/D/2015 p. 12). The Committee concluded that this constituted an effective domestic remedy that had not yet been exhausted (CRPD/C/18/D/2015 p. 13).

The Committee also clarified an important jurisdictional point. It stated that a state may, in some circumstances, be responsible under the Convention for removing a person to another country where they would face violations of their rights under the Convention. In other words, the Convention can have extraterritorial effect in deportation cases. However, because the family could pursue new domestic proceedings, the Committee did not examine whether deporting the child to Nigeria would have violated his rights under the Convention (CRPD/C/18/D/2015 p. 12).

1.9. T.M. v. Greece (2017)

TM v. Greece (CRPD/C/21/42/2017)[7] was the third submission received by the Committee alleging violations of the Convention from a woman diagnosed with Asperger syndrome. T.M., a Greek woman diagnosed with Asperger syndrome in 2016, applied for disability certification through Greece's Disability Certification Centre (KEPA) to qualify for disability benefits. Under Greek law, Asperger syndrome is recognized as a lifelong disability with a disability rating of 67–80%, which qualifies a person for social benefits (CRPD/C/21/42/2017, p. 2). However, the first-degree Health Committee disregarded her medical diagnosis, instead diagnosing her with a severe borderline personality disorder and assigning her a disability rating of 50%, making her ineligible for benefits. T.M. challenged the diagnosis, arguing that it was incorrect and prevented her from being recognized as an autistic person and from accessing disability-related social protection. She also claimed that the incorrect diagnosis caused psychological harm and that her confidential medical information was accessible to other public authorities through an interconnected government database (CRPD/C/21/42/2017, pp. 2–3).

T.M. alleged that Greece violated her rights to equality and full participation (Articles 1 and 3), freedom from exploitation, violence, and abuse (Article 16), respect for her physical and mental integrity (Article 17), privacy (Article 22), health (Article 25), habilitation and rehabilitation (Article 26), an adequate standard of living and social protection (Article 28), and participation in cultural life (Article 30).

The Committee found the communication inadmissible because T.M. had not exhausted available domestic remedies. It noted that she did not complete the administrative review process by allowing the second-degree Health Committee to examine her case, nor did she appeal any adverse decision before the administrative courts. Although T.M.

argued that these procedures would likely uphold the incorrect diagnosis and would take many years to complete, the Committee held that mere doubts about the effectiveness or duration of domestic remedies do not excuse a complainant from pursuing them. Accordingly, the Committee concluded that the communication was inadmissible under Article 2 (d) of the Optional Protocol (CRPD/C/21/42/2017, p. 5).

1.10. D.L. v. Sweden (2015)

D.L., a Swedish student with autism and a developmental disability, filed the fourth neurodivergent based communication summitted to the Committee. D.L. attended a special needs school where he communicated using facilitated communication. According to D.L., facilitated communication allowed him to express complex thoughts, participate in class, and interact effectively with teachers and classmates (CRPD/C/17/D/31/2015, p. 2).[8] Before using facilitated communication, he relied mainly on picture-based communication, which often left him unable to express himself and resulted in frustration and frequent behavioral outbursts (CRPD/C/17/D/31/2015, p. 2).

In December 2014, the Swedish Schools Inspectorate ordered the Municipality of Gothenburg to stop using facilitated communication in all its schools, and the municipality implemented the ban. D.L. argued that the prohibition forced him to revert to picture-based communication, significantly reducing his ability to participate in class, demonstrate his learning, and communicate his thoughts. He also claimed that the ban caused a deterioration in his mental health, leading to increased frustration, aggressive outbursts, and a greater reliance on Valium to manage his behavior (CRPD/C/17/D/31/2015, pp. 2–3).

D.L. appealed the Schools Inspectorate's decision, but the Administrative Court held that the decision was not subject to appeal, and the Administrative Court of Appeal refused him leave to appeal. He then brought a complaint before the Committee, alleging that Sweden's prohibition of facilitated communication violated his rights to non-discrimination and reasonable accommodation (Article 5), education (Article 24), and health (Article 25), read together with the Convention's provisions on communication, accessibility, equal recognition before the law, and freedom of expression (Articles 2, 3, 4, 9, 12, and 21) (CRPD/C/17/D/31/2015, p. 3).

The Committee did not consider the merits of D.L.'s claims. Instead, it declared the communication inadmissible because D.L. had not exhausted available domestic remedies. Specifically, although he appealed the Schools Inspectorate's decision to the Administrative Court and the Administrative Court of Appeal, he did not seek leave to appeal to the Swedish Supreme Administrative Court, which remained an available remedy. D.L. argued that an appeal to the Supreme Administrative Court would have been unlikely to succeed because the court grants leave in only about 2% of cases and hears only exceptional cases. The Committee rejected this argument, emphasizing that mere doubts about the effectiveness of a domestic remedy do not excuse a complainant from pursuing it. It also found no evidence that an appeal would have been ineffective or unreasonably prolonged. As a result, the Committee concluded that D.L. had failed to exhaust domestic remedies, rendering the communication inadmissible under Article 2 (d) of the Optional Protocol (CRPD/C/17/D/31/2015, pp. 6–7).

1.11. Calleja Loma v. Spain (2017)

The fifth neurodivergent based communication was filed by the parents of Rubén Calleja Loma. Calleja Loma, a Spanish student with Down syndrome, attended a mainstream public primary school with the support of a special education assistant. Until fourth grade, he was successfully integrated into the school. During the 2009–2010 and 2010–2011 school years, however, his parents alleged that several teachers subjected him to discrimi-

nation, neglect, and abuse. Witnesses reported that one teacher threatened and physically mistreated Rubén, while another teacher slapped him. His parents repeatedly complained to education authorities, but no investigation was carried out (CRPD/C/23/D/41/2017 p. 2).[9]

During this period, educational reports described Rubén as having behavioral and psychological problems and recommended that he be transferred to a special education school. His parents challenged these reports, arguing that they ignored the discrimination and abuse he had experienced and failed to recognize that his difficulties stemmed from the hostile school environment and inadequate educational support, which was documented by a psychologist. A social worker also recommended transferring Rubén to another mainstream school rather than placing him in special education (CRPD/C/23/D/41/2017 p. 2).

Despite his parents' objections, the education authorities decided to enroll Rubén in a special education center. His parents challenged the decision through the Spanish courts, arguing that it violated his right to inclusive education and equality and that reasonable accommodations had not been provided in the mainstream school. The domestic courts upheld the placement in special education (CRPD/C/23/D/41/2017 p. 3). When his parents refused to send him to the special education center, they were prosecuted for child neglect, although they were later acquitted (CRPD/C/23/D/41/2017 p. 5). After exhausting domestic remedies, including an unsuccessful application to the European Court of Human Rights, Rubén and his father brought a complaint before the UN Committee on the Rights of Persons with Disabilities.

In the Committee's decision, they reference their inquiry into Spain (unrelated to the present communication) and reference the medical model which permeates Spain's educational system disproportionately affecting people with intellectual, psychological, and/or multiple disabilities. (p. 10) Spain has had an enduring problem with inclusive education that predates this petition (paragraph 8.6). "The Committee is concerned that a high number of children with disabilities, including autism, intellectual or psychosocial and multiple disabilities, are still receiving segregated special education (CRPD/C/23/D/41/2017 p. 10)."

The Committee found that Spain had violated Rubén's rights under the Convention by placing him in a special education school without first adequately considering whether he could remain in mainstream education with reasonable accommodations. It held that the authorities relied heavily on reports recommending special education while failing to properly consider evidence that Rubén's difficulties were largely the result of discrimination, abuse, and insufficient support in his mainstream school. The Committee concluded that Spain had not carried out an individualized assessment of his educational needs or meaningfully explored accommodations that would have enabled him to continue in inclusive education, in violation of Article 24, read together with Article 4 (CRPD/C/23/D/41/2017, pp. 9–10).

The Committee also found that Spain violated Rubén's and his parents' rights under Article 23, the right to family life by prosecuting his parents for child neglect after they refused to send him to a special education school. In their opinion, the Committee notes the seriousness of this allegation as it could have caused the parents to lose custody of Rubén (CRPD/C/23/D/41/2017, p. 11). Although they were ultimately acquitted, the prosecution and financial costs imposed on them placed an excessive emotional and financial burden on the family. The Committee also found that Spain violated Articles 15 and 17 by failing to effectively investigate credible allegations that Rubén had been subjected to discrimination, abuse, and physical mistreatment by teachers at his mainstream school. Despite witness

testimony and judicial acknowledgment that there may have been "abnormal functioning" at the school, the authorities failed to conduct a thorough investigation into the allegations.

The Committee's recommendations in this case constituted a watershed moment in the movement to mainstream children with disabilities because of the sweeping nature of the recommendations in the case. The Committee recommended that Spain compensate the family, ensure Rubén's access to a genuinely inclusive vocational education program, investigate the alleged abuse, publicly acknowledge the violations, and reform its education system to eliminate segregated education and guarantee inclusive education with reasonable accommodations for students with disabilities (CRPD/C/23/D/41/2017, p. 11).

1.12. E.O.J., S.J., and E.J. v. Sweden (2023)

The sixth communication that the Committee has received from a neurodivergent petitioner is *E.O.J. S.J., and E.J. v. Sweden* (CRPD/C/31/D/104/2023).[10] This is the same family with an Autistic child (E.O.J.) whose case was determined to be inadmissible by the Committee because they had not exhausted domestic remedies for their asylum case back in 2017. When F.I.J, the mother, re-submitted the petition in 2022, her eldest child with autism, E.O.J is 12 years old and she has since given birth to a second child, E.J., who has also been diagnosed with autism and other developmental disabilities. The communication also lists S.J., their third child, as a petitioner but because the family does not provide evidence that he suffers from a disability, he is not addressed in the decision. After the 2017 decision, the family submitted new asylum and residence applications in Sweden based on updated medical evidence concerning E.O.J.'s disabilities and the diagnosis of autism in his younger brother, E.J.

The family argued that deportation to Nigeria would expose E.O.J. and E.J. to serious harm because they required specialized education, healthcare, rehabilitation, and daily support that were unavailable or inaccessible in Nigeria. They submitted medical reports describing E.O.J.'s autism, intellectual disability, and ADHD, as well as evidence that E.J. had autism, significant communication impairments, and highly specific feeding needs, including reliance on a single nutritional product unavailable in Nigeria. They also presented reports describing discrimination against children with disabilities in Nigeria and the lack of adequate autism services (CRPD/C/31/D/104/2023, pp. 3–4).

The Swedish Migration Agency and courts rejected the family's applications, concluding that adequate healthcare and educational services were available in Nigeria and that the children could return with the support of their parents. The family argued that the authorities relied on outdated country information, failed to properly assess the children's best interests and disability-related needs, and did not sufficiently consider the consequences of deportation. They also complained that the Migration Court failed to hear E.O.J. during the proceedings despite a request that he be allowed to express his views. After exhausting domestic remedies, the family submitted a communication to the Committee on the Rights of Persons with Disabilities (CRPD/C/31/D/104/2023, pp. 4–5).

The Committee declared most of the author's claims inadmissible because they were either insufficiently substantiated or outside the Committee's jurisdiction (CRPD/C/31/D/104/2023, pp. 8–10). Although it reaffirmed that the principle of non-refoulement may apply where deportation would expose a person to serious violations of rights under the Convention, it concluded that the author had not demonstrated that Sweden's assessment of the risks to the children was arbitrary or manifestly unjust. The Committee therefore dismissed the claims relating to the children's best interests, right to life, freedom from cruel, inhuman or degrading treatment, family life, education, health, habilitation and rehabilitation, and an adequate standard of living. It also found inadmissible the claims concerning humanitarian grounds, legal capacity, and the alleged risk of eviction.

The Committee found, however, that the complaint regarding Article 7 (3) of the Convention—the right of children with disabilities to express their views in matters affecting them—was admissible (CRPD/C/31/D/104/2023, p. 10). It emphasized that Article 7 (3) requires States Parties to ensure that children with disabilities are able to express their views freely in judicial and administrative proceedings and to receive appropriate support to do so. The Committee noted that E.O.J. was between seven and twelve years old during the domestic proceedings, that his mother had specifically requested that he be heard, and that Sweden had not provided any explanation for failing to hear him or describe any measures taken to facilitate his participation. The fact that his parents had opportunities to submit evidence did not satisfy the State's obligation to hear the child directly or through appropriate means. Accordingly, the Committee concluded that Sweden violated Article 7 (3) of the Convention by failing to ensure E.O.J.'s right to participate in the asylum proceedings affecting him.

As a remedy, the Committee recommended that Sweden quash the family's removal order, reassess E.O.J.'s asylum application after hearing him, provide him with adequate compensation, and take broader measures to ensure that children with disabilities are able to express their views and participate effectively in future asylum proceedings.

2. Analysis

Recall that across these cases, in order to determine if we see support for the rights and aspirational goals of neurodiverse petitioners, we expected the CRPD to emphasize the following in decisions and writings—independence/autonomy, voice or self-advocacy, support for varied forms of communication, emphasis on quality of life for neurodiverse people and their caregivers, and a rejection of medical cures or treatments for neurodiverse people. Though we have few cases, we do see evidence of the Committee's support all the core tenants of the neurodiversity movement. Here, we align the cases and evidence from those cases with the aspirational goals to assess in a preliminary way whether the institution is embracing the rights of the neurodiverse in the manner the aspirational goals suggest.

The Committee's support for independence/autonomy is shown in *Bacher v. Austria*, Calleja Loma, and *EOJ* et al. v. Sweden. There is mixed support for varied forms of communication—evident in *OOJ v. Sweden* but not in *D.L. v. Sweden*. The Committee's support for voice or self-advocacy is evident in *OOJ v. Sweden*. The Committee's support for quality of life for neurodiverse people and their caregivers is shown in *Calleja Loma v. Spain* as is their rejection of the medical models as a legitimate philosophy for special education.

For Bacher, a seemingly private conflict over a footpath was instead a situation that inhibited Bacher's rights under the CRPD and thus required Austrian authorities to intervene to ensure that all Austrian courts and authorities made decisions consistent with their obligations under the CRPD. The previous decisions of Austrian courts inhibited Bacher's right to accessibility, which the Committee holds is a precondition for an independent life (CRPD/C19/D/26/2014, p. 14). There is little said about either Downs or ASD other than when the municipal authorities recommended institutionalization for him and the family responded that due to his ASD, he required a familiar environment. Still, the committee reminded Austria that accessibility and access to the community is a key principle of the treaty and also of the movement for neurodiversity. The Committee's emphasis on Bacher's independence/autonomy, his right to remain in his family home despite the challenges, reinforces key principles of the movement for neurodiversity.

In *EOJ* et al. *v. Sweden (2015)*, the case is inadmissible due to non-exhaustion of domestic remedies, however the Nigerian family could reapply for residency permits even though their current ones had expired. We get some sense about the Committee's advocacy for neurodiverse people when they clarify, however that "the removal by a state party of

an individual to a jurisdiction where they would face violations of the convention engages the responsibility of the removing state under the Convention (CRPD/C/18/D/2015, p. 12).” The family provided evidence that treatment for Autism in Nigeria was significantly less available than in Sweden and argued that it would be a violation of the Convention to send the family back to a country where their child would not receive effective care. The Committee therefore takes the threat of removal of those supports seriously and indicates a preliminary support for this neurodivergent child, despite finding the communication itself inadmissible.

However, the Committee does not provide support for neurodivergent people across all of the cases it deems inadmissible. In *TM v. Greece* we learn little about the CRPD's understanding of or support for neurodiversity. T.M. claimed psychological harm arising out of the denial of her status as an autistic person by a Greek Health Board, but the Committee argues that she has yet to exhaust domestic remedies available and says nothing about her status as a neurodiverse person.

In both *Calleja Loma v. Spain* and *OOJ v. Sweden (2023)*, the Committee decides in favor of neurodivergent children over the steadfast objections of Spain and Sweden. The Calleja Loma case is significant globally for the Committee's full-throated objection of the medical model in shaping how education is delivered to children with special needs. The Committee chastised Spain for violating Ruben's rights under Article 24 of the treaty for relying on reports that recommended he be sent to a special school due to his “difficulties” in a mainstream class. The Committee, unlike all Spanish courts that previously reviewed the case highlighted the government's failure to investigate the source of Reuben's “difficulties.” With multiple eye-witness testimonials, the child was physically and emotionally abused by school staff, who then recommended that he be sent away to a special school. The Committee's defense of Rueben's right to remain in his community speaks to their understanding that neurodivergent people deserve to remain within their communities and that all available supports should be provided to that end. Moreover, the Committee further echoes the goals of the movement for neurodiversity by finding that Spain had violated the Calleja Loma's right to family life under Article 23 of the treaty, when the state prosecuted the parents for neglect when they refused to send their child to the special school. This is a critically important case for revealing where the CRPD is moving in its defense of rights for the most vulnerable in the neurodivergent community.

With respect to voice and self-advocacy and support for alternative forms of communication, the Committee has a mixed record across two of the cases we explored. For D.L., the non-speaking child with Autism in Sweden who prefers to use facilitated communication in school, the Committee could have echoed the goals of the neurodiversity movement—to support communication in its varied forms. Yet, we see in the decision that they simply address the fact that D.L. had not exhausted domestic remedies. Unlike in other cases, where they nevertheless commented on the merits of the case, they refrain from weighing in on both the use of alternative communication and on what we argue amounts to the rejection of self-advocacy (by denying a non-speaking child his preferred form of communication in school).

However, in *OOJ v. Sweden (2023)*, the most recent decision on the merits for a neurodiverse petitioner coming out of the CRPD, they find in favor of OOJ, the Nigerian child with Autism who Swedish authorities are attempting to deport to Nigeria. Interestingly, in this case the Committee deems all but one violation inadmissible. OOJ wins this case because he was denied the ability to testify in the Swedish migration hearing on his own behalf and over his parents' objections. His voice was quite literally silenced by Swedish migration authorities, in violation of Article 7 (3). Here the Committee provides strong

support for self-advocacy and voice for neurodivergent people in support of the movement for neurodiversity.

3. Conclusions

Although we are in the early stages of the work of the Committee, we are able to draw some conclusions from the actions it has taken so far. For domestic level advocates, it is critical that structures for exhaustion of domestic remedies are developed to assist families impacted by neurodivergence that may have claims that are appropriately resolved by the Committee. The complexity of a multi-scalar legal system, where levels of domestic law impact the capacity to avail oneself of the international protocols, must be made manageable for the potential litigants. Simply claiming an additional avenue of an administrative remedy would have failed will likely never be successful before the Committee. Once a litigant makes their way to the Committee, there should be a high level of confidence that the Committee members will adhere to the spirit of the Convention and maintain a focus and reliance on assessments of independence/autonomy, voice or self-advocacy, support for alternative communication methods, quality of life for neurodiverse people and their caregivers and rejection of the medical model of disability.

Future research might focus on the ways in which the concepts from the CRPD might be successfully introduced at the domestic level. This would include not only an embrace of the guiding principles but also some efforts at easing the administrative pathway that must be exhausted before the Committee will take up a referral. We expect that as the international protocols continue to develop in concert with the domestic protocols, the multiple layers of law and legal institutions will mold each other so that diffusion will occur in both directions. The Committee may continue to be a guiding institution that assists the domestic actors as they develop their own domestic legal regime for neurodivergent people and their families.

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Notes

1 If the International Convention on the Rights of Migrant Workers and Members of their Families receives additional ratifications, the treaty body associated with it will become operative bringing the number of treaty bodies to 9. At the time of writing, it exists only on paper.
2 CRPD/C/ESP/IR/1, para. 84(e).
3 CAT/C/AUS/CO/6.
4 https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd.Cases access date 7 October 2026.
5 *Bacher v. Sweden*, CRPD/C19/D/26/2014.
6 *EOJ, OOJ, FIJ, EJ v. Sweden*, CRPD/C/18/D/2015.
7 *TM v. Greece*, CRPD/C/21/42/2017.
8 *D.L. V Sweden*, CRPD/C/17/D/31/2015.

[9] *Calleja Loma v. Spain*, CRPD/C/23/D/41/2017.
[10] *OOJ V. Sweden*, CRPD/C/31/D/104/2023.

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