

MASTERS OF LAWS: ADVANCED STUDIES IN INTERNATIONAL CHILDREN'S RIGHTS



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**Children's Right to Access to Justice: Comparative Analysis of the
Admissibility Rules of the Communication Procedures of the
Committee on the Rights of the Child and the African Committee of
Experts on the Rights and Welfare of the Child**

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Ruhama Yilma Abebe

Student Number: [REDACTED]

Thesis Supervisor: [REDACTED]

Declaration statement



Date: 01/07/2024

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Name

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Student ID

Number: [REDACTED]

Signature: [REDACTED]

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Executive Summary

The thesis commences with an introduction under Chapter I. This chapter sets out the introduction, problem definition, objective, research questions, research methodology and structure of the thesis. The objective and research question are answered in the subsequent five chapters. The main research question of this thesis is the extent to which the OPIC Communication promotes children's right to access to justice and children's rights as a while in comparison with the ACERWC. The subsequent chapters of the thesis aim to answer this research question.

The discussion and analysis under Chapter II of children's right to access to justice demonstrated that the recognition and use of the term 'access to justice' as the right of children was rare in both general human rights and specifically children's rights instruments. However, despite that, it was discovered that the basic elements of the right to access to justice were found under both general international and regional human rights law and specifically children's international and regional frameworks. Additionally, the recent inclusion of recommendations on access to justice in concluding observations by the Committee on the Rights of the Child, the mention of access to justice by both Committees in their general comments, the upcoming development of a general comment on the right to access to justice of children by the Committee on the Rights of the Child and finally the existence and growth of Communication procedures at both Committees were a positive sign of the firm acceptance of children's right to access to justice as a right at the international and regional level. Having laid down the ground work as to the recognition of the right to access to justice of children, the thesis set out to answer the other research questions.

The thesis then assessed the admissibility rules and jurisprudence of the Communication Procedure of the Committee on the Rights of the Child and the ACERWC. An assessment of the Communication procedure of the Committee on the Rights of the Child led to an understanding that the Committee has similar rules of procedure to the communication procedures of the international human rights treaty bodies. In this regard, scholars have criticized the Committee for failing to be more innovative in the adoption of admissibility rules given that its procedures are applicable to children in particular. The major admissibility rules of the Committee that were discussed were its rule of standing, exhaustion of domestic remedies and jurisdiction. The assessment of these three admissibility rules showed that while the Committee is advancing in terms of interpretation of jurisdiction, its rule and interpretation of the rule of standing and exhaustion of domestic remedies are quite strict.

Coming to the admissibility rules and jurisprudence of the communication procedure of the ACERWC, it was assessed along with the admissibility rules and jurisprudence of the African Commission on Human and People's Rights to gain a deeper understanding. According to the assessment, it was seen that the ACERWC's admissibility rules and jurisprudence are derived from and quite similar to that of the Commission. This is similar to the case of the Committee on the Rights of the Child which had a similar procedure as other international treaty body communication procedures. However, unlike that of the Committee on the Right of the Child's move to adopt similar rules, the ACERWC's decision to adopt similar rules to the Commission was lauded. This was because the Commission had quite flexible admissibility rules and jurisprudence allowing the ACERWC to commence from that and adopt even more flexible admissibility rules and jurisprudence. The focus in this assessment of the ACERWC's admissibility rule and jurisprudence were: standing and exhaustion of domestic remedies. The assessment showed that the ACERWC had a broad standing rule that allowed collective complaints and a lenient interpretation of the rule and exception of exhaustion of domestic remedies.

The comparative analysis of the admissibility procedures of the communication procedures of the Committee on the Rights of the Child and the ACERWC in light of children's right to access to justice led to the following findings. The Committee on the Rights of the Child's Communication procedure

has a more restrictive admissibility framework as compared to its regional counterpart. The ACERWC's broad standing rules and less stringent interpretation of the rule of exhaustion of domestic remedies has led to the admissibility of cases that would not have been able to be brought under the Committee on the Right of the Child's admissibility procedure. In this way, the ACERWC Communication Procedure could have been said to promote the right to access to justice of children better than that of the Communication Procedure of the Committee on the Right of the Child. However, the question is not that simple as on the ground, the ACERWC has received less than 10% the number of cases received by the Committee on the Rights of the Child making us question the practical impact of the distinction. On the other hand, despite the limited number of cases the ACERWC has handled so far, the fact that collective complaints are permitted has allowed the fulfillment of the right to access to justice of a large number of children on the ground including the Talibes case (which included around 100,000 Talibe children) and the Nubian children case in just a number of cases.

Overview of Main Findings

In this thesis, the admissibility rules of the Committee on the Rights of the Child and the ACERWC were comparatively analyzed in light of the right of access to justice for children. The major differences in this admissibility rules of were the fact that ACERWC's communication procedure is embedded in the parent document while the Committee on the Right of the Child's communication procedure is a part of an optional protocol and the large difference in the number of cases received with the ACERWC having received around 10% of the number of cases received by the Committee on the Rights of the Child. The ACERWC's embedment of the communication procedure in the main document could be said to show the significance placed on the right of access to justice of children at the ACERWC level compared to the Committee on the Rights of the Child. However, the limited number of cases at the ACERWC makes it difficult to make such a conclusion.

The comparative analysis of the admissibility procedures of the communication procedures of the Committee on the Rights of the Child and the ACERWC in light of children's right to access to justice and advancement of the rights of children as a whole led to the following findings. The Committee's Communication procedure has a more restrictive admissibility framework as compared to its regional counterpart especially regarding its rule of standing and interpretation of the rule of exhaustion of domestic remedies. However, it is quite progressive when it comes to the interpretation of the admissibility rule of jurisdiction. The ACERWC has inspired by its African counterpart the African Commission on Human and People's Rights developed broad standing rules and less stringent interpretation of the rule of exhaustion of domestic remedies that has led to the admissibility of cases that would not have been able to be brought under the Committee's admissibility procedure. In this way, the ACERWC Communication Procedure could have been said to promote the right to access to justice of children better than that of the Communication Procedure of the Committee on the Right of the Child. However, the question is not that simple as on the ground, the ACERWC has received less than 10% the number of cases received by the Committee on the Rights of the Child making one question the practical impact of the distinction. On the other hand, despite the limited number of cases the ACERWC has handled so far, the fact that collective complaints are permitted has allowed the fulfillment of the right to access to justice of a large number of children on the ground including the Talibes case (which included around 100,000 Talibe children) and the Nubian children case in just a number of cases.

Key Words

Right to Access to Justice of Children – Committee on the Rights of the Child – African Committee on the Rights of the Child – Comparative Analysis – Admissibility Rules – Exhaustion of Domestic Remedies – Standing Rules- Jurisdiction

List of Abbreviations and Acronyms

- ❖ ACERWC – African Committee of Experts on the Rights and Welfare of the Child
- ❖ ACHPR – African Charter on Human and People’s Rights
- ❖ ACHR – American Convention on Human Rights
- ❖ ACRWC – African Charter on the Rights and Welfare of the Child
- ❖ AU – African Union
- ❖ CAT - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ❖ CEDAW – Convention on the Elimination of Discrimination against Women
- ❖ CERD – Convention on Elimination of Racial Discrimination
- ❖ CMW – Convention on Migrant Workers and their families
- ❖ CRC – Convention on the Rights of the Child
- ❖ CRPD – Convention on the Rights of Persons with Disabilities
- ❖ ECHR – European Convention on Human Rights
- ❖ ECOWAS – Economic Community of West African States
- ❖ HRC – Human Rights Council
- ❖ ICCPR – International Covenant on Civil and Political Rights
- ❖ ICESCR – International Covenant on Economic, Social and Cultural Rights
- ❖ NGO – Non Governmental Organisation
- ❖ OPIC – Optional Protocol to the CRC on a Communications Procedure
- ❖ OPSC – Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography
- ❖ SADC – Southern African Development Community
- ❖ UDHR – Universal Declaration on Human Rights
- ❖ UN – United Nations
- ❖ UN OHCHR – UN High Commissioner for Human Rights

Chapter I

Introduction

1.1. Background

Children have been recognized as right holders by international and regional human rights law treaties.¹ These include the Convention on the Rights of the Child (CRC) at the international level and the African Charter on the Rights and Welfare of the Child (ACRWC). As recognized by the Committee on the Rights of the Child (herein after 'the Committee') in its General Comment No. 5 on the General Measures of Implementation of the Convention on the Rights of the Child, for any of the rights recognized in these instruments to be meaningful, "effective remedies must be available to redress violations".² The African Committee of Experts on the Rights and Welfare of the Child (herein after 'ACERWC') similarly recognized that children should have access to effective legal remedies in General Comment No. 5 on State Party Obligations under the ACRWC.³

However, despite the above emphasis on the importance of effective remedies and recognition by the Committees, neither the CRC nor the ACRWC explicitly recognize children's right to access to justice. The Committee has acknowledged this in General Comment No. 5 but highlighted that the requirement is implicit in the CRC.⁴ The Committee's recognition of children's right to access to justice as a children's right and part of the CRC can also be seen in its recent concluding observations to state's periodic reports⁵ Additionally, recognizing the importance of access to justice for children, the Committee is currently in the process of developing a General Comment dedicated to children's right to access to justice aimed at clarifying elements of and addressing children's right to access justice.⁶

¹ Kilkelly, U., "Children's Rights to Access Justice at the International Level: Challenge and Opportunity", in Pare, M., Bruning, M., Moreau, T., Siffrein-Blanc, C. (eds.), *Children's Access to Justice. A Critical Assessment*, (Intersentia, 2022), 139.; Liefaard, T., "Access to Justice for Children: Towards a Specific Research and Implementation Agenda", *International Journal of Children's Rights* 2019 (27(1)), 196.

² Committee on the Rights of the Child, 'General Comment No. 5 on General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, para. 6)', para. 24, (2003).

³ African Committee of Experts on the Rights and Welfare of the Child, 'General Comment No. 5 on "State Party Obligations under the African Charter on the Rights of the Child (Article 1) and Systems Strengthening for Child Protection', 18, (2018).

⁴ General Comment No. 5 at Supra note 2.

⁵ See Committee on the Rights of the Child, *Concluding Observations on the Combined Third to Sixth Periodic Reports of South Africa*, CRC/C/ZAF/CO/3-6, para. 11 (2024); Committee on the Rights of the Child, *Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the Russian Federation*, CRC/C/RUS/CO/6-7, para. 11 (2024); Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Lithuania*, CRC/C/LTU/CO/5-6, para. 14 (2024); Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of the Congo*, CRC/C/COG/CO/5-6, para. 11 (2024); Committee on the Rights of the Child, *Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Bulgaria*, CRC/C/BGR/CO/6-7, para. 11 (2024); Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Togo*, CRC/C/TGO/CO/5-6, para. 12 (2023); Committee on the Rights of the Child, *Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/6-7, para. 17 (2023); Committee on the Rights of the Child, *Concluding Observations on the Sixth Periodic Report of the Dominican Republic*, CRC/C/DOM/CO/6, para. 13 (2023).

⁶ Committee on the Rights of the Child, '[Concept Note: General Comment on Children's Rights to Access to Justice and Effective Remedies](#)', (2024).

The ACERWC has similarly highlighted the importance of access to justice for children in by celebrating the 2020 'Day of the African Child' under the theme of 'Access to Child Friendly Justice Systems'.⁷

Although as can be seen from the above, the Committees have recognized the importance of the right to access to justice of children, the focus of both Committees regarding this basic right has mainly been at the national or domestic level.⁸ However, the need for access to justice at the international and regional level could be argued to have been recognized by both Committees, as both incorporate a communication procedure in their system.⁹ The communication procedure of the Committee on the Rights of the Child was established by the Optional Protocol to the Convention on the Rights of the Child (CRC) on a Communications Procedure (OPIC) that came into force in 2014.¹⁰ The communication procedure of the ACERWC was established by and forms part of the main convention i.e. the ACRWC which entered into force in 1999.¹¹

The CRC Committee's Communication Procedure under the OPIC has been lauded for providing a forum for children's rights issues to be raised and remedied.¹² However, the OPIC as well as the jurisprudence of the Committee especially when seen in light of the ACERWC points to stricter rules and interpretation of admissibility by the former. There is a need to understand these distinctions and their impact if any on children's access to justice.

This thesis attempts to comparatively analyse the distinctions in the admissibility rules and their interpretation in receipt of Communications by the Committee on the Rights of the Child and the ACERWC and their implication for children's right to access justice.

1.1. Problem Definition

With the 10 year anniversary of OPIC and over 2 decades of the ACRWC and the impending General Comment on Access to Justice by the Committee, it is time to look inward. As mentioned previously, the CRC Committee's Communication Procedure under OPIC has been lauded for providing a forum for children's rights issues to be raised and remedied.¹³ However, the OPIC as well as the jurisprudence of the Committee especially when seen in light of the ACERWC points to stricter rules and interpretation of admissibility of admissibility by the former. In light of OPIC's and the ACERWC's communication procedure's significance to advancing the rights of children and providing access to justice, there is a need to comparatively analyze the admissibility procedures and their interpretations of the two Committees and the implications if any on children's right to access justice and advancing the rights of children as a whole.

1.2. Objective

⁷ ACERWC, [Outcome Statement: Day of the African Child 2020](#), (2020).

⁸ Kikelly, U., 2022 at Supra note 1.

⁹ Liefwaard, T., 2019 at Supra note 1, 197.

¹⁰ See [UNTC](#), accessed June, 2024.

¹¹ See [Overview Of The African Charter On The Rights And Welfare Of The Child | ACERWC - African Committee of Experts on the Rights and Welfare of the Child](#).

¹² Liefwaard, T., "A Decade of the Optional Protocol to the CRC on a Communications Procedure: Progress, Challenges and the Pathways Ahead for Children's Access to Justice", *International Journal of Children's Rights* 2024 (32(1)), 1-8.

¹³ Ibid.

The thesis is aimed at comparatively analyzing the procedural or admissibility rules and jurisprudence under the OPIC and the ACERWC Communication Mechanisms in light of children's right to access to justice to determine the extent to which the OPIC Communication Procedure and the ACERWC Communication procedure are conducive to the promotion of children's right to access to justice and children's rights as a whole.

1.3. Research Questions

In light of the objective indicated in the previous sub-section, the main research question of this thesis is:

- ❖ To what extent does the OPIC Communication Procedure promote children's right to access to justice and children's rights as a whole in comparison with the ACERWC?

To answer the main research question, the following sub-questions will be answered in the upcoming chapters:

- ❖ Do children have the right to access to justice under international and regional human rights and children's rights law?
- ❖ What is the difference in the procedural or admissibility rules and their interpretation under the OPIC and the ACERWC Communication Mechanisms?
- ❖ Does the distinction in the admissibility requirements and their interpretation have an impact on children's access to justice?
- ❖ Which mechanism presents procedural requirements and interpretations that are more conducive to promoting children's access to justice and children's rights as a whole?

1.4. Research Methodology

In conducting analysis, the paper makes use of both primary and secondary resources. The research was primarily based on desk-based or doctrinal research relying on the analysis of legal instruments, cases, and academic publications among others. The main legal instruments used in this thesis are the UN CRC, the ACERWC and the OPIC but other international and regional human rights instruments are also assessed. However, the thesis was also supported by the information gathered from the conference organized by Leiden University to commemorate 10 Years of OPIC (10 Years of OPIC – Pathways of Access to Justice for Children) from presentations and conversations with children's rights experts. In addition, the author also had an opportunity to have conversations with other children's rights experts at other occasions.

1.5. Structure

The thesis has 6 chapters including this one. The second chapter conceptualizes access to justice as a human and child right and trace its basis in international and regional human and children's rights frameworks. The third chapter assesses the admissibility rules of the communication procedures of international treaty bodies in general and more specifically the Committee on the Rights of the Child in light of children's right of access to justice. The fourth chapter assesses the admissibility rules of the communication procedures of the African regional treaty bodies with a focus on the ACERWC in light of children's right of access to justice. The fifth chapter provides a comparative analysis of the admissibility rules of the Committee on the Rights of the Child's and the ACERWC communication procedure discussed in previous chapters to identify the commonalities and distinctions of the two and assess them in light of children's right of access to justice. The sixth chapter which is also the final chapter provides conclusions and recommendations on the basis of the findings in the previous chapters.

Chapter II

Children's Right to Access to Justice

2.1. Introduction

Access to Justice is one of the sub-goals of the Sustainable Development Goals (SDGs) of the United Nations.¹⁴ Sustainable Development Goal 16 which forms one of the 17 Sustainable Development Goal of the UN requires states to among others provide and ensure equal access to justice for all.¹⁵ In order to achieve this goal, states must ensure access to justice by 2030. Whether or not this can actually be achieved within this time frame is unfortunately doubtful. But, it does indicate the level of importance and urgency placed on access to justice by the international community.

2.1.1. Meaning and Elements of Access to Justice

Justice is a concept that has perplexed and fascinated people for centuries. However, there does not seem to be a consensus on its meaning and understanding nor a universal definition.¹⁶ It is not within the scope of this thesis to unpack this complexity or outline the various theories. However, there is still a need to briefly highlight the meaning and elements of access to justice before delving into the right of access to justice and its recognition as a human and children's right.

The UN High Commissioner for Human Rights (OHCHR) in its report on 'access to justice for children' issued in 2013 defined 'access to justice' as *"the ability to obtain a just and timely remedy for violations"*.¹⁷ Whalen-Bridge highlights that the definition of access to justice has changed over time and currently focuses on effective access including various elements such as *"legal advisors other than lawyers, public legal education, social services and political representation, and informal legal resolution platforms"*.¹⁸

2.2. Access to Justice as a Human Right

Is access to justice recognized as a human right? This is the question that needs to be answered before proceeding with this discussion. The term 'right to access justice' has not explicitly been used under most international human rights instruments with the exception of the Convention on the Rights of Persons with Disabilities (CRPD). Rather, international and regional instruments have utilized the terms 'effective remedy', 'right to take proceedings before a court', as well as 'right to a fair and public hearing'. The provisions will be assessed below.

To begin with, the Universal Declaration on Human Rights (UDHR) provides for the right to an effective remedy¹⁹ and the right to a fair and public hearing²⁰. Similarly, the International Covenant on

¹⁴ Sustainable Development Goals, Goal 16 (2015) available at [Goal 16 | Department of Economic and Social Affairs \(un.org\)](https://www.un.org/sustainabledevelopment/goals/goal-16/)

¹⁵ UN, Sustainable Development Goals, (2015) available at [sdgs_targets_overview_resource.pdf \(un.org\)](https://www.un.org/sustainabledevelopment/targets/targets-overview/).

¹⁶ Ratnapala, S., *Jurisprudence*, (Cambridge University Press, 2009), 318.

¹⁷ UN High Commissioner for Human Rights (OHCHR), *Access to Justice for Children: Report of the United Nations High Commissioner for Human Rights, A/HRC/25/35*, para. 4 (2013).

¹⁸ Whalen-Bridge, H., "Understanding and Comparing Access to Justice", in Whalen-Bridge, H. (ed.), *The Role of Lawyers in Access to Justice: Asian and Comparative Perspectives* (Cambridge University Press, 2022), 2.

¹⁹ UDHR, Article 8.

²⁰ UDHR, Article 10.

Civil and Political Rights (ICCPR) recognizes the right to an effective remedy²¹, right to take proceedings before a court,²² and right to a fair and public hearing²³. The Human Rights Committee's General Comment No. 31 on the Nature of the General Obligation Imposed on States Parties to the International Covenant on Civil and Political Rights (ICCPR) reiterates that individuals have the right to an effective remedy in case of rights violations as per Article 2 (3) of the ICCPR.²⁴ The General Comment provides for certain basic elements of accessible and effective remedies which include establishment of appropriate judicial and administrative mechanisms,²⁵ investigation of allegation of violations,²⁶ cessation of ongoing of violation,²⁷ reparation,²⁸ and provision and implementation of interim measures²⁹. The General Comment also highlights that remedies should be adopted taking into account special vulnerability of certain groups including children in particular.³⁰

The more specific conventions such as the Convention on the Elimination of Racial Discrimination (CERD) and Convention on Migrant Workers and their Families (CMW) also follow a similar trend in that they provide for right to effective remedy in case of the former³¹ and the right to a fair and public hearing³² and the right to an effective remedy³³ in case of the latter.

As mentioned above, the CRPD is the first convention to explicitly recognize the right to access to justice and require states to ensure 'effective access to justice' for persons with disabilities on equal basis with others.³⁴ This was intentional, with earlier discussions on the Convention initially considering including the right to access to justice in other articles and later a decision was made to include a specific provision instead.³⁵

The conceptualization of the right to access to justice as a human right under the European, African and Inter-American human right system is also similar to most of the international frameworks. To commence with the European human right framework, both the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights (ECHR) recognize the right to an

²¹ ICCPR, Article 2 (3) (a).

²² ICCPR, Article 9 (4).

²³ ICCPR, Article 14 (1).

²⁴ Human Rights Committee (HRC), 'General Comment No. 31 on the Nature of the General Legal Obligation Imposed on State Parties to the Covenant', *CCPR/C/21/Rev.1/Add.13*, 2004, para. 8.

²⁵ *Id.*, para. 15.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Id.*, para. 16.

²⁹ *Id.*, para. 19.

³⁰ HRC, para. 15.

³¹ CERD, Article 6.

³² CMW, Article 18 (1).

³³ CMW, Article 83 (a).

³⁴ CRPD, Article 13 (1).

³⁵ Human Rights Council (HRC), "Right to Access to Justice under Article 13 of the Convention on the Rights of Persons with Disabilities", *Annual Report of the Office of the United Nations High Commissioner for Human Rights*, 2017, para. 13.

effective remedy and a fair trial.³⁶ The former treaty makes explicit reference to access to justice as related to the need for legal aid in case of insufficient resources to ensure 'effective access to justice'.³⁷

The African Charter on Human and People's Rights (ACHPR) and the Protocol to the ACHPR on the Rights of Women in Africa (Maputo Protocol) are relevant under the African system. The ACHPR utilizes quite a different terminology as it provides for the right of a person to have their cause heard.³⁸ The Maputo Protocol makes an explicit use of the term 'access to justice' and calls upon states to ensure effective access to judicial and legal services to women.³⁹ The Protocol also provides for state's obligation to provide for appropriate remedies.⁴⁰

Finally, the Inter-American Human Rights system provides for the right to simple and prompt recourse or any other effective recourse⁴¹ as well as the right to a fair trial (including right to a hearing)⁴² under the American Convention on Human Rights.

Another question that needs to be addressed is the nature of 'access to justice' as a right. Francioni raises the question of whether 'access to justice' is a self-standing right or a procedural guarantee mostly aimed at implementing or enforcing a substantive right.⁴³ Most international and regional human right treaties according to the assessment limit the right to treaties recognized in the treaty and consider it as a procedural guarantee as opposed to recognizing it as a self-standing right.⁴⁴ There are two exceptions to this. The first one is the American Convention on Human Rights (ACHR) which provides a much broader access to justice right as identified by Francioni. The second one is the Convention on the Rights of Persons with Disabilities (CRPD). This Convention which is a later addition to the international human rights framework provides for what could be termed a self-standing right to access to justice in that it did not limit the right to the treaty rights.⁴⁵

2.3. Access to Justice as a Child Right

Children do enjoy the general human right to access to justice discussed in the previous sub-section. However, it is worth exploring access to justice specifically as a child right as well given the unique status of children and various specific constraints faced by children in exercising their right to access to justice.

The 2013 OHCHR Report on Access to Justice for Children deems access to justice as '*a fundamental right in itself and an essential prerequisite for protection and promotion of all other human*

³⁶ Charter of the Fundamental Rights of the European Union, Article 47 and ECHR, Article 13 and Article 6.

³⁷ Charter of the Fundamental Rights of the European Union, Article 13.

³⁸ ACHPR, Article 7 (1).

³⁹ Maputo Protocol, Article 8 (a).

⁴⁰ Maputo Protocol, Article 25 (a).

⁴¹ ACHR, Article 25.

⁴² ACHR, Article 8 (1).

⁴³ Francioni, F., "The Rights of Access to Justice under Customary International Law", in F. Francioni, *Access to Justice as a Human Right*, (2007), 31 - 32.

⁴⁴ Ibid.

⁴⁵ CRPD, Article 13 (1).

rights'.⁴⁶ Following the above report on children's access to justice, the Human Rights Council adopted a resolution on children's right to access to justice a year later.⁴⁷ The Resolution calls on states to "to respect and ensure access to justice for each child within their jurisdiction without discrimination".⁴⁸

Both the OHCHR report and the HRC Resolution identify certain barriers to access to justice for children including inadequate awareness or lack of information on the rights of the child, limitation of capacity to initiate or participate in proceedings, the complexity of the justice system, non-child friendly legislation and proceedings, absence of trained and specialized professionals, cultural issues, lack of capacity, costs of proceedings, discrimination, cultural and social norms, physical barriers as well as various other difficulties.⁴⁹ Martin similarly highlights that children experience various obstacles in exercising their right to access to justice at the national or domestic level including inadequate awareness of their rights and available remedies⁵⁰, lack of capacity, increased financial constraints, and time constraints.⁵¹

As regards the elements of the right to access to justice of children, the OHCHR report mentioned above indicates that 'right to information, an effective remedy, a fair trial, to be heard and to enjoy these rights without discrimination' form a major elements.⁵²

Furthermore, according to the OHCHR report, legal empowerment of children and availability of child-sensitive justice form part of the right of children to access to justice.⁵³ Liefwaard highlights that the former aspect i.e. 'legal empowerment of children' requires the existence of legal status, legal capacity and legal representation for children among others.⁵⁴ The Resolution similarly provides for specific requirements for the fulfillment of children's right to access to justice such as the need to take into account best interests of the child as a primary consideration in pursuance of remedies as well as the need for child sensitive justice which is accessible, age-appropriate, speedy and adopted to the needs and rights of children.⁵⁵

2.3.1. International Framework

In this part, the basic instruments and jurisprudence relevant in tracing children's right to access to justice at the international level will be briefly discussed.

⁴⁶ OHCHR, 2013 at Supra note 14, para. 3.

⁴⁷ Human Rights Council (HRC), "Resolution on Rights of the Child: Access to Justice for Children", *A/HRC/RES/25/6*, (2014).

⁴⁸ *Id.*, para. 5.

⁴⁹ OHCHR, 2013 at Supra note 17, para. 14 – 17 and HRC, 2014 at supra note 47 at preamble .

⁵⁰ Kikelly, U., 2022 at Supra note 1, 145.

⁵¹ Martin, L., "Securing Access to Justice for Children", *Harvard Civil Rights-Civil Liberties Law Review* 2022 (57(2)), 618.

⁵² OHCHR , 2013 at Supra note 17;

⁵³ *Id.*, para. 5 and para. 7.

⁵⁴ Liefwaard, T., 2019 at Supra note 1, 198.

⁵⁵ HRC, 2014 at Supra note 47, preamble.

2.3.1.1. Convention on the Rights of the Child (CRC)

The CRC was adopted by the UN General Assembly in 1989 and came into force just a year later in 1990.⁵⁶ This Convention has currently been ratified by all UN member states with the exception of the United States of America at 196 state parties.⁵⁷ The CRC is the main instrument at the international as regards international children's rights.

Taking into account the major importance of access to remedy or access to justice as a human right and especially its importance given the difficulties experienced by children as discussed in the previous sections, one would imagine that the major international human rights treaty on children's rights i.e. the CRC would entrench such right within its text. Unfortunately, this is not the case and this convention does not specifically provide for the access to justice even in terms of 'right to a remedy or recourse or even 'fair trial'.⁵⁸

The Committee has acknowledged this in its General Comment No. 5 on the General Measures of Implementation of the Convention on the Rights of the Child but highlighted that the requirement is implicit in the CRC.⁵⁹ The Committee also indicated that for any of the rights recognized in the instruments to be meaningful, "*effective remedies must be available to redress violations*".⁶⁰ The Committee also noted the need for states to provide children with '*access to independent complaints procedures and the courts with necessary legal and other assistance*'⁶¹ as well as the need for appropriate reparation in case of rights violations in General Comment No. 5⁶². The General Comment further reiterates the existence of difficulties experienced by children in access to remedies due to their special and dependent status.⁶³ Taking this into account, it highlighted the need for child-sensitive procedures and the provision of child friendly information.⁶⁴

Noting the absence of an explicit reference to the right to access to justice under the CRC, there is a need to assess which particular provisions of the CRC could be particularly relevant. To commence, Committee's elaboration of the requirement of 'effective remedy' in this particular General Comment focused on the interpretation of Article 4 of the CRC on general measures of implementation and the explicit mention of Article 39 could be argued to a reading by the Committee of the right to access to justice of children under Article 4 and 39 of the CRC. Considering that the provision of access to justice is an integral aspect of ensuring the respect for the other rights, the understanding of children's right to access to justice as a measure of implementation of the CRC falling under Article 4 generally and Article 39 can be justified. Article 4 of the CRC provides for calls for measures of implementation for the rights in the CRC as a whole while Article 39 of the CRC provides the right to remedy for child

⁵⁶ See [Convention on the Rights of the Child | OHCHR](#).

⁵⁷ OHCHR, [CRC Status of Ratification](#), (2023).

⁵⁸ Liefwaard, T., 2019 at Supra note 1, 195 – 196; Kilkelly, U., 2022 at Supra note 1, 139.

⁵⁹ Francioni, F., 2007 at Supra note 43.

⁶⁰ Committee on the Rights of the Child, *General Comment No. 5 on General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, para. 6)*, para. 24 (2003)

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

victims specifically the right to receive physical and psychological recovery and social reintegration in a suitable environment.

Furthermore, upon a holistic analysis of the provisions of the CRC, Liefwaard argues that the right to best interest of the child as a primary consideration⁶⁵ and the right to be heard⁶⁶ as well as the right to be protected against torture⁶⁷ and the right not to be separated from parents⁶⁸ under the CRC can be said to implicitly provide a legal ground for children's right to access to justice.⁶⁹

The CRC also has provisions that provide for elements of access to justice in different circumstances such as alternative care and juvenile justice and are relevant to the discussion on children's right to access to justice under the CRC. Regarding alternative care, Article 25 calls for a periodic review of placement as related to children in alternative care. Regarding juvenile justice, the CRC calls for prompt access to legal assistance and right to challenge legality in cases of deprivation of liberty⁷⁰ and for a fair hearing⁷¹ and review of decisions and measures⁷² in cases of children accused of having infringed the penal law.

2.3.1.2. Third Optional Protocol to the CRC on a Communication Procedure (OPIC)

Another framework that is relevant to the discussion of children's right to access to justice is the OPIC. The Optional Protocol to the CRC on a Communications Procedure (OPIC) was adopted by the General Assembly of the UN in 2011 and opened for signature in 2012.⁷³ OPIC then came into force upon its 10th ratification in 2014.⁷⁴ The OPIC has been ratified by 53.⁷⁵

The OPIC constitutes of 4 major parts excluding the preamble. The preamble recognizes the difficulty experienced by children in obtaining remedies due to their special and dependent status⁷⁶ and encourages states to develop national mechanisms to enable children to have access effective remedies at the domestic level in case of right violation.⁷⁷ The OPIC is then aimed at reinforcing and complementing national and regional mechanisms⁷⁸ rather than overriding or replacing them. Part I constitutes of general provisions including the competence of the Committee, the general principles, rules of procedure and protection measures. The general principles correspond with two of the general principles of the CRC i.e. the best interest of the child and the right to be heard of the child. Part II of

⁶⁵ CRC, Article 3 (1)

⁶⁶ CRC, Article 12

⁶⁷ CRC, Article 37 (a)

⁶⁸ CRC, Article 9.

⁶⁹ Liefwaard, T., "Children's Rights Remedies under International Human Rights Law: How to Secure Children's Rights Complaint Outcomes in Access to Justice?", *De Jure Law Journal* 2022 (56), 490.

⁷⁰ CRC, Article 37 (d).

⁷¹ CRC, Article 40 (2) (iii).

⁷² CRC, Article 40 (2) (v).

⁷³ See [UNTC](#), accessed June, 2024.

⁷⁴ *Ibid*

⁷⁵ *Ibid*

⁷⁶ OPIC, para. 5.

⁷⁷ OPIC, para. 8.

⁷⁸ OPIC, para. 6.

the OPIC provides the procedures for submission, consideration and follow up of individual communications as well as a provision on inter-state communications. The third part is dedicated to inquiry and its basic procedures. The fourth and final part is dedicated to miscellaneous matters regarding the Committees views and the treaty itself. The focus of this thesis is on the individual communication procedure aspect of the Optional Protocol.

The OPIC recognizes the difficulties experienced by children in pursuing remedies.⁷⁹ It also calls for states to provide for mechanisms to ensure that children have access to effective remedies at the domestic level.⁸⁰ The Protocol also calls for the recognition of the best interests of the child as a primary consideration in the pursuit of remedies and for such remedies to take into account the need for child-sensitive procedures.⁸¹ Most importantly, as will be discussed in Chapter III of this thesis, the OPIC provides for a communication procedure allowing children to bring their complaints at the international level.

As Kilkelly notes, the Committee has traditionally focused on national rather than international mechanisms.⁸² This can be seen in the above discussed provisions of the CRC, OPSC and General Comment No. 5. This focus is justifiable as national mechanisms are expected to be the most accessible and quickest forums for accessing justice for children⁸³, as well as the state's status as a primary duty bearer in the fulfilment of the right to access to justice of children. However, as Liefaard notes access to justice at the international level can be said to have been recognized within the international children's rights framework in light of the adoption of the OPIC.⁸⁴

2.3.1.3. Upcoming General Comment No. 27 on Children's Right to Access to Justice and Effective Remedies

The Committee is currently in the process of developing a General Comment on 'children's rights to access to justice and effective remedies'.⁸⁵ According to the Concept Note on developed by the Committee in the development of this General Comment, the General Comment is aimed at providing an authoritative guidance to state parties on the measures they should take in ensuring children's right to access to justice and effective remedies.⁸⁶

In this Concept Note, the Committee again reiterates the implicit recognition of the right to remedy in the CRC.⁸⁷ The Committee also highlights the significant role played by access to justice in the combatting of inequality, challenging of discriminatory practices, advancing accountability of states among others.⁸⁸

⁷⁹ OPIC, Preamble, para. 5.

⁸⁰ OPIC, Preamble, para. 8.

⁸¹ OPIC, Preamble, para. 7.

⁸² Kilkelly, U., 2022 at Supra note 1, 147.

⁸³ Skelton, A., "International Children's Rights Law: Complaints and Remedies", in Kilkelly, U., and Liefaard, T. (eds.), *International Human Rights of Children* 2019, 68.

⁸⁴ Liefaard, T., 2019 at Supra note 1, 197.

⁸⁵ Committee on the Rights of the Child, [Concept Note: General Comment on Children's Rights to Access to Justice and Effective Remedies](#), (2024).

⁸⁶ Id, para. 16.

⁸⁷ Id, para. 2.

⁸⁸ Id, para. 1.

This General Comment will be different from the Committee's previous General Comment No. 24 on Children's Rights in the Child Justice System. Unlike General Comment No. 24 which is focused specifically on children alleged as, accused of or proven to have violated penal law (children in conflict with the law), the upcoming General Comment is focused on the much wider subject matter of children's right to access to justice and effective remedies as a whole.⁸⁹

The General Comment is also intended to clarify the various constituent elements of this fundamental right including the empowerment of children, development of child-centered justice systems, establishment of child accessible complaints mechanisms, right to receive advice and representation in child-friendly manner and basic procedural rights of children.⁹⁰

2.3.1.4. Other

Another relevant instrument as regards children's right to access to justice is the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC). This Protocol is relevant to this discussion as it provides for remedy for children who are victims of sale, child prostitution or child pornography.⁹¹

The Committee's recognition of the right to access to justice as a children's rights can also be seen in its recently growing jurisprudence as part of its concluding observations to state's periodic reports, its days of general discussion and certain individual communications.⁹² The Committee has been seen increasingly calling upon states to ensure the right of children to access to justice and has even began dedicating separate sub-sections to 'access to justice and remedies' in its concluding observations.⁹³ This can for instance be seen from the Committee's recent Concluding Observation to Russia, Lithuania, Republic of Congo, South Africa among others.⁹⁴

2.3.2. Regional Framework

At the African Regional level, the major instrument that needs to be discussed here is the African Charter on the Rights and Welfare of the Child (ACRWC). The ACRWC is the only regional child rights

⁸⁹ Id, par. 3 – 6.

⁹⁰ Id, para. 9 – 13.

⁹¹ OPSC, Article 9.

⁹² Committee on the Rights of the Child, 2024 at Supra note 85, para. 8.

⁹³ See Committee on the Rights of the Child, *Concluding Observations on the Combined Third to Sixth Periodic Reports of South Africa*, CRC/C/ZAF/CO/3-6, para. 11 (2024); Committee on the Rights of the Child, *Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the Russian Federation*, CRC/C/RUS/CO/6-7, para. 11 (2024); Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Lithuania*, CRC/C/LTU/CO/5-6, para. 14 (2024); Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of the Congo*, CRC/C/COG/CO/5-6, para. 11 (2024); Committee on the Rights of the Child, *Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Bulgaria*, CRC/C/BGR/CO/6-7, para. 11 (2024); Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Togo*, CRC/C/TGO/CO/5-6, para. 12 (2023); Committee on the Rights of the Child, *Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/6-7, para. 17 (2023); Committee on the Rights of the Child, *Concluding Observations on the Sixth Periodic Report of the Dominican Republic*, CRC/C/DOM/CO/6, para. 13 (2023).

⁹⁴ Ibid.

focused human rights instrument in the world.⁹⁵ It complements the CRC and includes additional elements that are relevant to the African context.⁹⁶ It was adopted by the African Union in 1990 and entered into force in 1999.⁹⁷ The ACRWC has been ratified by most of the countries in the African continent.⁹⁸

Unfortunately, much like the CRC, the ACRWC does not mention access to justice nor remedies for children. However, it also contains provisions that provide for children's access to justice including juvenile justice. The main provision in this regard is the provision on 'administration of juvenile justice' which provides for rights forming elements of access to justices such as the right to legal assistance and the right to an appeal.⁹⁹ Additionally, children have the right to be heard either directly or through an impartial representative in judicial or administrative proceedings.¹⁰⁰

Additionally, General Comment No. 5 on State Party Obligations under ACRWC of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) specifically mentions 'access to justice' for children. The General Comment calls for constitutional entrenchment of 'access to justice'.¹⁰¹ It calls for a broad locus standi rule in constitutions allowing broad interest groups and civil society organisations to bring or litigate cases on behalf of affected children.¹⁰² In order to do this, it requires Constitutions to include provisions on the right to approach a court by any person including children themselves acting their own interests.¹⁰³ The General Comment goes further and requires legislation to indicate measures to allow children to '*engage effectively with a child-sensitive justice system*'.¹⁰⁴

The above is mainly a display of the right of access to justice at the domestic level. Furthermore, the ACRWC establishes a treaty body termed the 'African Committee of Experts on the Rights and Welfare of the Child (ACERWC)¹⁰⁵ which has the power to receive Communications as per the ACRWC¹⁰⁶ providing for a regional forum for children's access to justice. This Committee has the power to monitor the implementation of the Charter¹⁰⁷ and is among others tasked with reviewing state

⁹⁵ Mezmur, B. & Kahbila, B., "Follow-up as a 'choice-less choice': towards improving the implementation of decisions on communications of the African Children's Committee", *African Human Rights Yearbook* 2018 (2), 201.

⁹⁶ Lloyd, A., "Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the Gauntlet", *International Journal of Children's Rights* 2002 (10), 180.

⁹⁷ See [Overview Of The African Charter On The Rights And Welfare Of The Child | ACERWC - African Committee of Experts on the Rights and Welfare of the Child](#)

⁹⁸ Ibid.

⁹⁹ ACRWC, Article 17

¹⁰⁰ ACRWC, Article 4 (2)

¹⁰¹ ACERWC, *General Comment 1 on State Party Obligations under ACRWC (Article 1) and Systems Strengthening for Child Protection*, 19 (2018).

¹⁰² Ibid

¹⁰³ Ibid.

¹⁰⁴ Id, 23.

¹⁰⁵ ACRWC, Article 32.

¹⁰⁶ ACRWC, Article 44.

¹⁰⁷ ACRWC, Article 42 (b).

parties' reports on the Charter.¹⁰⁸ The ACERWC also has the power to receive Communications as per the ACRWC.¹⁰⁹

Additionally, the ACERWC has had a Day of the African Child themed around 'Access to Child Friendly Justice Systems' in 2020.¹¹⁰ As part of the Outcome Statement, the ACERWC urged states among others to ensure that the best interests of the child is the primary consideration for proceedings involving children, ensure that proceedings involving children are speedy and with confidentiality, establish child friendly courts, and establish a comprehensive specialized justice system for children.¹¹¹

2.4. Conclusion

In this chapter, children's right to access to justice was explored. The first part of the chapter gave a brief overview of the meaning and importance of access to justice. Before commencing to discussion of the right of access to justice as a child right, the right of access to justice as a human right in general was assessed in order to lay the ground work. In this part, both international and regional human right frameworks on access to justice were assessed. As discussed, with the exception of the CRPD at the international level, none of the other international human rights instruments explicitly refer to the right of access to justice. However, all of the discussed international or regional human rights instruments provide for elements of access to justice as rights. An assessment of these instruments shows that the right to access to justice has been recognized as a human right at both the international and regional level.

The third and final part of the chapter aimed to assess the international and African children's right framework to explore children's right to access to justice. In order to do that, the CRC and the ACRWC were assessed. Similar to the general human rights framework, it was shown that the children's right framework also failed to explicitly use the terminology 'right to access to justice'. However, elements of access to justice can be found in the rights in both instruments. Additionally, both the Committees have in their General Comments on Implementation explicitly recognized the right to effective remedy. Furthermore, the Committee has explicitly called for states to advance the access to justice for children in its recent concluding observations and is currently developing a General Comment on 'Access to Justice' for children. Finally, the existence of a communication procedure at both the international (Committee on the Rights of the Child) and the ACERWC level could be considered also a recognition of children's right to access to justice.

In the next two chapters, the children's rights communication procedures at the international and African level which were mentioned briefly in this Chapter will be discussed in detail.

¹⁰⁸ ACRWC, Article 43.

¹⁰⁹ ACRWC, Article 44.

¹¹⁰ ACERWC, [Outcome Statement: Day of the African Child 2020 | African Union \(au.int\)](#) (2020).

¹¹¹ Ibid.

Chapter III

Communication Procedure under the OPIC

3.1. Background and Introduction

As mentioned previously, the communication procedure of the Committee is established as part of the OPIC and not the CRC itself.¹¹² The exclusion of a communication procedure from the text of the CRC was due to an absence of consensus and lack of sufficient support attributed to various reasons including the argument that 'socio-economic rights' which are a part of the CRC are non-justiciable.¹¹³

After the adoption of the CRC, the need for a communication procedure was not raised again until the 10th Anniversary Commemoration of the CRC during which the adoption of a communication procedure was included in the recommendations.¹¹⁴ However, the process did not advance further until the adoption of General Comment No. 5 in 2003 which in addition to highlighting the need for effective remedies emphasized the need for economic, social and cultural rights to be regarded as justiciable.¹¹⁵ The conversation to develop a communication procedure was then restarted in 2007 when the Chairperson of the Committee and members of the NGO Group for the CRC in Geneva reopened the discussion.¹¹⁶ A year later, the Committee made a decision to endorse the campaign for a communication procedure.¹¹⁷ The Committee along with the OHCHR and the NGO Working group (formed that year) then worked to encourage states to establish an 'open-ended working group' which held two sessions before the final text of the OPIC was approved by the General Assembly.¹¹⁸

The push to adopt the OPIC was pushed by various things including the adoption of communication procedures by other treaty bodies including especially ICESCR which rendered arguments regarding justiciability of economic, social and cultural rights difficult to maintain¹¹⁹ as well as the spotlight shone on children's access to justice in the report and later resolution of the OHCHR.

As discussed previously in the previous chapter, the OPIC establishes an individual communication procedure, interstate communication procedure as well as an inquiry procedure.¹²⁰ The focus of this thesis is on the individual communication procedure mechanism.

Certain additional documents such as the rules of procedure on individual communications, the guidelines on third party intervention, the guideline on oral submissions among others have been

¹¹² See CRC and OPIC.

¹¹³ Lee, Y., 'Communications Procedure under the Convention on the Right of the Child: 3rd Optional Protocol', *International Journal of Child Rights* 2010 (18), 569.; Pinheiro, S., 'Reasons and timing to elaborate a communications procedure under the Convention on the Rights of the Child' 2009 A/HRC/WG.7/1/ CRP.4 2; Mezmur, B., "No Second Chance for First Impressions: The First Amicable Settlement under the African Children's Charter", *African Human Rights Law Journal* 2019 (19(1)), 63.

¹¹⁴ Lee, Y., 2010 at Supra note 95.

¹¹⁵ Id, 570.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Skelton, 2019 at Supra note 83, 72-73.

¹¹⁹ Ibid.

¹²⁰ See Chapter II, Section 2.3.1.4.

enacted by the Committee on the rights of the child to supplement the OPIC. The rules of procedure on individual communication are particularly relevant for the discussion in this thesis.

As part of the individual communications procedure of the OPIC, 238 cases have been submitted since its entry into operation.¹²¹ Among these cases, 137 have received a decision while the remaining 101 are currently pending. The inquiry procedure has resulted in 1 final decision while others are still in the pipeline. Finally, the interstate communication has not yet been used.

3.2. Admissibility Rules and Jurisprudence of International Communication Procedures

Before commencing to assess the admissibility rules and jurisprudence under the OPIC, it is necessary to understand the general admissibility rules and jurisprudence of international treaty based communication procedures. This will allow for analyzing the OPIC admissibility rules comparatively to the other Communication Procedures and place it within this context to understand the existence of if any of special child related features or peculiarities in the OPIC.

Among the ten core international human rights treaties, all the human rights mechanisms with the exception of the UDHR establish a form of individual communications procedure either via the main text or an optional protocol.

The major admissibility rules are: standing, exhaustion of domestic remedies, identified applicant, in line with the right of submission, compatible with provisions, non-pendency or res judicata, and rationae temporis.

3.2.1. Standing

The standing requirement does not differ much among the major human rights communication mechanisms. The Optional Protocol of the ICCPR indicates that individuals claiming to be victims of violations of rights under the ICCPR have standing to bring a communication.¹²² The Human Rights Committee's (HRC) decision in J.R.T and the W.G. Party vs. Canada and A Group of Associations for the Defence of the Rights of Disabled and Handicapped Persons in Italy vs. Italy confirm that organisations cannot bring a communication.¹²³ The HRC has however allowed victims to authorize NGOs to act on their behalf.¹²⁴ Further, the Committee has however recognized that a group of individuals claiming to be similarly affected could collectively submit a communication in Lubicon Lake Brand Vs. Canada.¹²⁵

The CAT and CMW similarly allow individuals claiming to be victims to bring a communication.¹²⁶ Additionally, both also allow communications to be brought on behalf of such individuals.¹²⁷ The Human Rights Committee has also later recognized this rule under its rules of procedure.¹²⁸

¹²¹ See [Jurisprudence Database \(ohchr.org\)](https://www.ohchr.org/JurisprudenceDatabase)

¹²² OP-ICCPR, Article 1.

¹²³ Ibid.

¹²⁴ Id, 229.

¹²⁵ Id, 227.

¹²⁶ CAT, Article 22 (1); CMW, Article 77 (1).

¹²⁷ Ibid.

¹²⁸ HRC, 'Rules of Procedure', CCPR/C/3/Rev.12, Rule 91 & Rule 99 (b) (2021).

The CERD goes a step further in one way and allows both individuals and groups of individuals claiming to be victims to bring a communication.¹²⁹ However, it is also a step back in that the text itself does not seem to allow persons to bring a case on behalf of the individuals or groups of individuals. However, the Rules of Procedure recognized that in case the victim is unable to bring the communication and the person bringing the pleading can justify acting on the victim's behalf, this might exceptionally be allowed. And, NGOs have been allowed to bring communications on their own behalf if they have been victims or on behalf of identified victims who have authorized them.¹³⁰

The text of the Optional Protocol of the CEDAW and the Optional Protocol of the ICESCR seem to provide the broadest standing mandate compared to the previous treaties in that they allow both individuals and groups claiming to be victims as well as persons acting on behalf of them to bring a communication.¹³¹ The latter can only be done with the consent of the individual or group unless bringing the communication without consent can be justified.¹³²

In effect, though the text of the treaties might differ, the treaty bodies via their rules of procedure seem to have adopted quite similar rules of standing. None of them allow for *actio popularis* or collective complaints.

3.2.2. Exhaustion of domestic remedies

Exhaustion of domestic remedies requires the applicants to bring the case at hand to the available domestic courts or tribunals in the country. The rule of exhaustion of domestic remedies is a rule that is to be found in all of the international communication mechanisms. The rationale for this rule lies in the importance of local remedies¹³³ and can be seen as the other side of a state's duty to provide local remedies¹³⁴.

In this context, domestic remedies can include judicial, administrative or extraordinary remedies.¹³⁵ Extraordinary remedies are not in general required to be exhausted to indicate exhaustion of domestic remedies.¹³⁶

This rule can be found under Article 2 of the Optional Protocol of the ICCPR, Article 14 (2) and (7) (a) of CERD, Article 4 of the Optional Protocol of the CEDAW, Article 22 (4) (b) of the CAT, Article 77 (3) (b) of the CMW and Article 3 (1) of the Optional Protocol of the ICESCR.

The rule of exhaustion of domestic remedies is not without exceptions. The main exception is the exception of 'unreasonably prolonged' application of remedies. This exception can be found in all of

¹²⁹ CERD, Article 14 (1).

¹³⁰ Lindblom, A., "Standing before International Judicial and quasi-Judicial Bodies, in *Non-Governmental Organisations in International Law*", Cambridge Studies in International and Comparative Law 2006, 223.

¹³¹ OP-CEDAW, Article 2, OP-ICESCR, Article 2.

¹³² *Ibid.*

¹³³ Trindade, A., *The Access of Individuals to International Justice*, (Oxford University Press, 2011), 101.

¹³⁴ *Id.*, 99.

¹³⁵ Skelton, A., 2019 at *Supra* note 83, 69.

¹³⁶ *Id.*, 70 – 71.

the above communication mechanisms.¹³⁷ Additionally, the exception of ‘unlikely to bring effective relief’ can be found under CMW¹³⁸, CAT¹³⁹ and the Optional Protocol of the CEDAW¹⁴⁰.

3.2.3. Other Admissibility Rules

In this part, the admissibility rules of identified applicant, in line with the right of submission, compatible with provisions, non-pendency or res judicata and jurisdiction will be briefly discussed. None of the communication mechanisms accept anonymous communications and require the identification of the applicant.¹⁴¹ Similarly, all of the procedures with the exception of CERD deem what they consider to be an ‘abuse of the right of submission’¹⁴² and incompatible with the provisions of the treaty¹⁴³ inadmissible. The rule of non-pendency or res judicata have also been incorporated¹⁴⁴ Finally, the individuals or groups must be subject to the jurisdiction of the state party alleged to have violated their rights.¹⁴⁵

3.3. Admissibility Rules and Jurisprudence of OPIC

The OPIC’s admissibility rules are quite similar to the admissibility rules of the other international human right communication mechanisms. The only exceptions are the inadmissibility grounds of the communication being ‘manifestly ill-founded’ or not ‘sufficiently substantiated’.¹⁴⁶ In fact, the OPIC has been criticized for not containing innovative features and merely sticking to the general style of existing treaty bodies.¹⁴⁷

Among the 32 decisions of inadmissibility decisions made by the Committee on the Rights of the Child until 2023, the major reasons for decision of inadmissibility were as follows (it should be noted that the reasons overlap).¹⁴⁸ Insufficient or non-substantiation of claims was the top reason for inadmissibility with 12 out of the 32 cases. Non-exhaustion of domestic remedies has been a ground for inadmissibility in 8 of the cases followed by manifestly ill-founded which was the reason for inadmissibility in 5 cases.

¹³⁷ OP-ICCPR, Article 5 (2) (b); CERD, Article 11 (3) & Article 14 (7) (a); OP-CEDAW, Article 4 (1); CAT, Article 21 (1) (c) & Article 22 (5) (b); CMW, Article 76 (1) (c) & Article 77 (3) (b); OP-ICESCR, Article 3 (1).

¹³⁸ CMW, Article 77 (3) (b),

¹³⁹ CAT, Article 22 (5) (b) & Article 21 (1) (c).

¹⁴⁰ OP-CEDAW, Article 4 (1).

¹⁴¹ OP-ICCPR, Article 2, CERD, Article 14 (6) (a); OP-CEDAW, Article 3, CAT, Article 22 (2); CMW, Article 7 (2); OP-ICESCR, Article 3 (2) (g).

¹⁴² OP-ICCPR, Article 3; OP-CEDAW, Article 2 (d); CAT, Article 22 (2); CMW, Article 77 (2); OP-ICESCR, Article 3 (2) (f).

¹⁴³ OP-ICCPR, Article 3; OP-CEDAW, Article 2 (b); CAT, Article 22 (2); CMW, Article 77 (2); OP-ICESCR, Article 3 (2) (d).

¹⁴⁴ OP-ICCPR, Article 5 (2) (a); OP-CEDAW, Article 4 (2) (a); CAT, Article 22 (5) (a); CMW, Article 77 (3) (a); OP-ICESCR, Article 3 (2) (d).

¹⁴⁵ OP-ICCPR, Article 1, CERD, Article 14 (1), OP-CEDAW, Article 2; CAT, Article 22 (1); CMW, Article 77 (1); OP-ICESCR, Article 2.

¹⁴⁶ OPIC, Article 7 (f).

¹⁴⁷ Buck, T. & Wabwile, M., “The Potential and Promise of Communications Procedures under the Third Protocol to the Convention on the Rights of the Child”, *International Human Rights Law Review* 2013 (2), 116.

¹⁴⁸ See [Jurisprudence Database \(ohchr.org\)](https://www.ohchr.org/Jurisprudence-Database)

3.3.1. Standing

The persons who can bring a case under OPIC include: an individual or group of individuals claiming to be victims as well as persons representing them with their consent.¹⁴⁹ This standing rule is identical to the Optional Protocol of CEDAW and Optional Protocol of ICESCR and quite similar to the overall standing rules in the international treaty body system as discussed in the previous sub-section. The initial draft text of the OPIC allowed communications both from individuals as well as NGOs. However, the final draft only allowed ‘individuals’.¹⁵⁰

The issue of whether to extend the standing rule beyond this and allow collective complaints under the OPIC was a controversial issue during the drafting of the OPIC¹⁵¹ with most states arguing for the exclusion of a collective complaints procedure.¹⁵² The reasons raised by the states included the following. First of all, they argued that it did not add value as a protection gap did not exist.¹⁵³ Secondly, they argued that it overlapped with the inquiry procedure and even the reporting procedure. Thirdly, they also argued that the procedure for individual communications as it stood already envisaged submission of communications by groups of individuals. Finally, they raised the argument that there was a risk of abstract and hypothetical proceedings straining the limited resources among others.¹⁵⁴

On the other hand NGOs, experts as well as CRC Committee members at the time argued for the inclusion of this procedure.¹⁵⁵ According to Skelton, the supporters of inclusion presented the following arguments.¹⁵⁶ First of all, they argued that collective complaints would fill a protection gap and did not actually overlap with the inquiry procedure.¹⁵⁷ Secondly, they also argued that it would result in the reduction of caseloads as it avoids the examination of identical individual communications.¹⁵⁸ Finally, it would avoid the process of having to identify individual victims which in addition to being difficult results in the risk of re-victimization as well as further harm.¹⁵⁹ However, despite the arguments presented by the supporters of the inclusion, the ‘collective complaints’ procedure which was initially included in the draft was deleted in the final Protocol.¹⁶⁰

A glance at the jurisprudence of the Committee reveals that the above risk of duplication of cases or examination of identical individual communications and a resulting increase in caseload may have occurred. This was for instance the case with similar communications regarding the issue of age

¹⁴⁹ OPIC, Article 5 (1).

¹⁵⁰ Egan, S., “The Complaints Mechanism for the Convention on the Rights of the Child: A Mini Step Forward for Children”, *International Journal of Children’s Rights* 2014 (22) 211 – 212.

¹⁵¹ Skelton, A., 2019 at Supra note 83, 74.

¹⁵² Buck, T. and Wabwile, M., 2013 at Supra note 124, 116.

¹⁵³ HRC, “Report of the Open-Ended Working Group on an Optional Protocol to the Convention on the Rights of the Child to Provide a Communications Procedure”, A/HRC/17/36, para. 48 (2011).

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Skelton, A., 2019 at Supra note 83.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Egan, S., 2014 AT Supra note 150.

identification of unaccompanied children being brought against Spain by various victims.¹⁶¹ In order to resolve this and reduce its case load, the Committee seems to have adopted a strategy of grouping cases together to reduce the case load.¹⁶² Whether or not this strategy ultimately has the impact of reducing the case load is to be seen. Moreover, it is to be noted that this strategy does not seem to reduce the burden of the applicant children.

3.3.2. Exhaustion of Domestic Remedies

The rule of exhaustion of domestic remedies is, similar to the previously discussed international communications mechanisms, one of the basic rules of admissibility under the OPIC.¹⁶³ The communication must then be brought within a year upon the exhaustion of domestic remedies unless it was not possible to do so within the year.¹⁶⁴ The two main exceptions to the rule of exhaustion of domestic remedies identified above regarding the other international human rights communication mechanisms i.e. 'unreasonably prolonged' and 'unlikely to bring effective relief' can also be found under the OPIC.¹⁶⁵ Given the nearly identical nature of the rule, scholars such as Egan have raised concerns regarding whether application of a similar level of strictness of the rule of exhaustion of domestic remedies to children as that of adults is acceptable given the various challenges faced by children in the justice system.¹⁶⁶

The Committee has interpreted the exceptions discussed above in various cases. In *A.E.A. vs. Spain*, the Committee interpreted the almost two years exclusion of the child from education to be an 'unreasonably prolonged' bypassing the exhaustion of domestic remedies rule.¹⁶⁷ In the case at hand, A.E.A. was a child with Moroccan nationality born and living in Spain who was unable to access education.¹⁶⁸ The application for enrollment was ignored via the regular process and had also been brought to the courts but the court had not made its decision almost two years after the application.¹⁶⁹ Two years was not understood as a general 'limit' to determine 'unreasonable prolongation' applicable to all cases. Rather, the decision was said to be due to the pertinence of primary education and non-compliance of the state with the interim measure of the Committee.¹⁷⁰

¹⁶¹ See Committee on the Rights of the Child, *N.B.F. v. Spain*, CRC/C/79/D/11/2017, 2018; Committee on the Rights of the Child, *A.L. v. Spain*, CRC/C/81/D/16/2017, 2019; Committee on the Rights of the Child, *J.A.B. v. Spain*, CRC/C/81/D/22/2017, 2019; Committee on the Rights of the Child, *M.T. v. Spain*, CRC/C/82/D/17/2017, 2019; Committee on the Rights of the Child, *R.K v. Spain*, CRC/C/82/D/27/2017, 2019; Committee on the Rights of the Child, *A.D. v. Spain*, CRC/C/83/D/21/2017, 2020; Committee on the Rights of the Child, *M.A.B. v. Spain*, CRC/C/83/D/24/2017, 2020; and others.

¹⁶² Valentine, J., '[Grouping individual communications together: a new strategy to address the backlog of work facing the CRC Committee?](#)', *Leiden Children's Rights Observatory* 2021.

¹⁶³ OPIC Article 7 (e).

¹⁶⁴ OPIC, Article 7 (h).

¹⁶⁵ OPIC, Article 7 (e).

¹⁶⁶ Skelton, A, 2019 at Supra note 83, 72.

¹⁶⁷ Doek, J., "Individual Communications submitted under the Optional Protocol to the CRC on a Communications Procedure and Admissibility", *Leiden Children's Rights Observatory Papers* 2022 (2), 29 – 30.

¹⁶⁸ CRC, *A.E.A. vs. Spain*, Views adopted by the Committee under the Optional Protocol to the CRC on a Communications Procedure, concerning Communication No. 115/2020, CRC/C/D/115/2020, 2021.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid; Doek, J., 2022 at Supra note 167.

The famous climate change case of *Sacchi et al. vs. Argentina*¹⁷¹ also contributed to the jurisprudence of the Committee on the understanding of 'exhaustion of domestic remedies'. In this case, the Committee underlined that the rule of 'exhaustion of domestic remedies' would not be applicable where there is 'no objective prospect of success' such as where the claim would be inevitably dismissed under the domestic law or as demonstrated by the jurisprudence of the highest courts.¹⁷² However, the Committee argued that this exception was not fulfilled in the case at hand and that 'mere doubts or assumptions about the success or effectiveness of remedies' is not sufficient to serve as an exception to the rule of exhaustion of remedies.¹⁷³ The decision of the Committee in this case has garnered both critiques and acclaims from the human rights community. As regards the interpretation of the rule of exhaustion of domestic remedies, the views of scholars have been divided. Nolan argues that the committee's decision was justified as waiving the requirement of exhaustion of domestic remedies in the case at hand might have implications on all other complaints perhaps rendering the Committee a tribunal of 'first instance of preference' and would undermine the various national level efforts.¹⁷⁴ She argues further that the Committee could not have received this case without undermining the exhaustion of domestic remedies requirement and its own legitimacy.¹⁷⁵ Suedi similarly argues that the Committee's decision on exhaustion of domestic remedies was warranted as a decision otherwise would have undermined its previous jurisprudence and its legitimacy.¹⁷⁶ Tigre and Lichet also present similar arguments.¹⁷⁷ Wewerinke-Singh on the other hand critiques the decision of the Committee regarding exhaustion of domestic remedies.¹⁷⁸ She argues that given looming risk of permanent loss of homes for the child authors from small island states requiring them to 'experiment with largely untested, highly complex and expensive transnational litigation' would mean that their case cannot be heard by the Committee until it is too late to prevent serious violation of their rights.¹⁷⁹

3.3.3. Jurisdiction

¹⁷¹ CRC, *Chiara Sacchi et al. vs. Argentina*, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, concerning Communication No. 104/2019, CRC/C/88/104/2019 (herein after *Sacchi vs. Argentina*), 2021, para.10.17.

¹⁷² *Ibid.*

¹⁷³ The rule by the Committee that 'mere doubts or assumptions about the success or effectiveness of remedies' is not sufficient to serve as exception to the rule of exhaustion of exhaustion of domestic remedies was established by the Committee in *D.C. vs. Germany* on the basis of earlier decisions by the Human Rights Committee including *R.T. vs. France*. See CRC, *D.C. vs. Germany*, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, concerning Communication No. 60/2018, CRC/C/83/60/2018, para. 6.5.

¹⁷⁴ Nolan, A., [Children's Rights and Climate Change at the UN Committee on the Rights of the Child: Pragmatism and Principle in Sacchi v Argentina – EJIL: Talk! \(ejiltalk.org\)](#), *Blog of the European Journal of International Law*, 2021.

¹⁷⁵ *Ibid.*

¹⁷⁶ Suedi, Y., "Litigating Climate Change before the Committee on the Rights of the Child in *Sacchi v Argentina et al.* Breaking New Ground?", *Nordic Journal of Human Rights* 2022 (40(4)), 561.

¹⁷⁷ Tigre, M., and Lichet, V., '[The CRC Decision in Sacchi v. Argentina | ASIL](#)', *American Society of International Law*, 2021 (25(26)).

¹⁷⁸ Wewerinke-Singh, M., '[Communication 104/2019 Chiara Sacchi et al v. Argentina et al.](#)', *Leiden Children's Rights Observatory*, 2021, Case Note 2021/10.

¹⁷⁹ *Ibid.*

The OPIC much like the other international communication mechanisms requires the victim to be within the jurisdiction of a state party and claiming violation from such state party.¹⁸⁰ Beyond the more uncontested discussion of jurisdiction, Committee has dealt with the issue of jurisdiction in two major cases among others.

The first one is L.H et al. and AF vs. France¹⁸¹ which related to the repatriation of children of parents linked to terrorism in Syria.¹⁸² In determining jurisdiction in the case, the Committee first commences by distinguishing between 'jurisdiction' and 'territory'.¹⁸³ The Committee underlined that jurisdiction of states is not limited to their territory. It further highlighted that states have extraterritorial responsibility for children who are their nationals in migration contexts.¹⁸⁴ In this case, the Committee ruled that given the circumstances of the case including the fact that the children in question had French nationality, the country's capability and power to protect the children by repatriation or other, the country's rapport with the non-state actors occupying the area as well as the previous actions taken by the country, the state/ France exercised jurisdiction over the children.¹⁸⁵ Commenting on this case, Duffy highlights both the strengths and weaknesses of the decision of the Committee regarding jurisdiction and extra territorial obligations.¹⁸⁶ She argues the Committee addressed this issue taking into account the exceptional and dire humanitarian needs and vulnerability and rejected a strict formalist approach to interpretation of jurisdiction.¹⁸⁷ Despite these strengths of the decision of the Committee, she highlights that the Committee failure to base its decision on clear legal standards undermines legal certainty and weakens the impact of the decision.¹⁸⁸ Milanovic criticizes the decision of the Committee arguing that the use of 'nationality' as a 'but for' ground even if not as the only ground by the Committee in the case is problematic as among others due to the poor nature of nationality as a normative foundation for non-political rights, ground of nationality not being particularly helpful to the children in the case at hand, and the large distinction between laws of states on the acquisition of nationality.¹⁸⁹ Skelton on the other hand argues that the decision demonstrated the Committee's flexible approach to the case at hand which combined a comprehensive understanding of the facts and the required normative link and not only relied on the jurisprudence of other treaty bodies but went beyond them.¹⁹⁰

The Sacchi et al. vs. Argentina case also pushed the boundaries of the interpretation of jurisdiction by the Committee. In this case, the issue related to the jurisdictional issues as regards 'transboundary

¹⁸⁰ OPIC, Article 5 (1).

¹⁸¹ CRC, *L.H. et al. and A.F vs. France*, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure concerning Communications No. 79/2019 and No. 109/2019, 2020, CRC/C/85/79/2019 & CRC/C/85/D/109/2019.

¹⁸² *Id.*, para. 2.1 – 2.3.

¹⁸³ *Id.*, para. 9.5 – 9.6.

¹⁸⁴ *Ibid*

¹⁸⁵ *Id.*, para. 9.7.

¹⁸⁶ Duffy, H., '[Communications No. 79/2019 and 109/2019 L.H. et al v. France and 77/2019 F.B. et al v. France](#);', *Leiden Children's Rights Observatory*, 2021 Case Note 2021/3.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ Milanovic, M., '[Repatriating the Children of Foreign Terrorist Fighters and the Extraterritorial Application of Human Rights – EJIL: Talk! \(ejiltalk.org\)](#)', *Blog of the European Journal of International Law*, 2020.

¹⁹⁰ Skelton, A., 'Child Rights Jurisprudence without Borders Developments in Extraterritorial Jurisdiction', *De Jure Law Journal* 2023, 623.

harm related to climate change'.¹⁹¹ In making its decision in this regard, the Committee relied on the Inter-American Court of Human Rights' advisory note on environment and human rights and the Joint statement on human rights and climate change issued by the Committee along with four other treaty bodies. And, on the basis of the above ruled that in cases of transboundary harm as a result of emissions from a particular state party, in which the causal link between the act and negative impact has been established, children are considered to be within the jurisdiction of the state party having control over the emissions.¹⁹² Further, the Committee added that to establish jurisdiction, the alleged harm suffered by the victims should be 'reasonably foreseeable to the state party at the time of the act or omission'.¹⁹³ Wewerinke-Singh is highly enthusiastic about the case and argues that the Committee's reasoning as regards jurisdiction 'not only breaks new ground but also does so in a way that is replicable and scalable' highlighting the Committee's reliance on the jurisprudence of the Inter American Court of Human Rights.¹⁹⁴ Skelton similarly argues that the views of the Committee in the case at hand expanded the limits of extraterritorial jurisdiction and pushed the boundaries due to its reliance on the jurisprudence of the Inter-American Court and the impact the decision has on extraterritorial jurisdiction.¹⁹⁵

3.3.4. Manifestly Ill-founded or not sufficiently substantiated

In addition to the common grounds of admissibility discussed above, the OPIC also indicates that communications would be deemed inadmissible if they are 'manifestly ill-founded' or 'not sufficiently substantiated'.¹⁹⁶ These rules which are also found within the Rules of Procedure of the Committee¹⁹⁷ are not elaborated further in the text. Thus, there is a need to go to the jurisprudence.

The Committee has in various decisions ruled cases inadmissible on the ground of being either manifestly ill-founded or not sufficiently substantiated. A communication has been deemed manifestly ill-founded in cases where the applicant did not present any convincing argument leading the committee to believe the claims.¹⁹⁸ This was the case in the Committees' decisions in a little over 15% of the cases deemed inadmissible by the Committee from 2014 to 2023.¹⁹⁹ The Committee deems cases 'not sufficiently substantiated' when the arguments presented are not weak to the level of 'manifestly ill-founded' but are still not adequately demonstrated to qualify for prima facie admissibility.²⁰⁰ The Committee ruled the cases inadmissible on this ground in more than double the percentage of cases (over 35% of cases) as compared to the ground of 'manifest ill founded'.²⁰¹

¹⁹¹ Sacchi vs. Argentina at Supra note 140, para. 10.4.

¹⁹² Id, Para. 10.7.

¹⁹³ Ibid.

¹⁹⁴ Wewerinke-Singh, M., 2021 at Supra note 178.

¹⁹⁵ Skelton, A., 2023 at Supra note 190, 624.

¹⁹⁶ OPIC, Article 7 (6).

¹⁹⁷ CRC, Rules of Procedure under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, CRC/C/158, Rule 16 (3) (h), (2021).

¹⁹⁸ Doek, J., "Individual Communications submitted under the Optional Protocol to the CRC on a Communications Procedure and Admissibility", *Leiden Children's Rights Observatory Papers* 2022 (2), 34 – 38.

¹⁹⁹ See [Jurisprudence Database \(ohchr.org\)](https://www.ohchr.org/Jurisprudence-Database)

²⁰⁰ Ibid.

²⁰¹ [Jurisprudence Database \(ohchr.org\)](https://www.ohchr.org/Jurisprudence-Database)

3.3.5. Other Grounds

The other grounds of inadmissibility applicable to individual communications under the OPIC are anonymity of communication,²⁰² abuse of right of submission,²⁰³ incompatibility with provisions of the treaty,²⁰⁴ the same matter being examined under another procedure of international investigation or settlement (pendency)²⁰⁵ and same matter previously examined under another procedure of international investigation or settlement (res judicata)²⁰⁶ and facts of the case occurring prior to entry into force of the OPIC (rationae temporis).²⁰⁷ Most of these grounds are quite clear. It is however worth clarifying that so far the ground of incompatibility with the provisions of the CRC has been used by the Committee mainly in cases where the alleged rights violations are those of an adult's and not the child's while the ground of abuse of right of submission has rarely been used.²⁰⁸ These grounds of admissibility are not the focus of this thesis as there is not much distinction with them and those under the ACERWC as will be discussed in the next Chapter.

3.4. Conclusion

In this Chapter, the admissibility rules and jurisprudence of the international human rights communication procedures in general and more specifically the admissibility rules and jurisprudence of the Committee. An assessment of the international human rights admissibility procedures and rules reveals that the admissibility rules of the communication procedures of the major human rights treaty bodies are quite similar. The differences rather lie in the nuance and exceptions to the admissibility rules. The major admissibility rules are: standing, exhaustion of domestic remedies, non-anonymity, in line with right of submission, compatibility with provisions, non-pendency, res judicata and rationae temporis.

The Committee's communication procedure has quite similar admissibility rules and procedure to the other international treaty body communication procedures with the exception of the 'manifestly ill-founded' and 'insufficient substantiation rule. This has led to criticism from scholars for not containing innovative rules especially considering the special situation of children and advancement of the right of access to justice of children. This was especially the case with regard to the strict interpretation of exhaustion of domestic remedies and exclusion of collective complaints in standing much like the international framework. However, its interpretation of the rule of jurisdiction or extra territorial jurisdiction has been lauded in this regard. In the next Chapter, the communication procedure of the ACERWC will be similarly assessed.

²⁰² OPIC, Article 7 (a).

²⁰³ See OPIC, Article 7 (c); Committee on the Rights of the Child, D.K.N. vs. Spain, CRC/C/80/D/15/2017, 2019.

²⁰⁴ See OPIC, Article 7 (c); Committee on the Rights of the Child, A.D. vs. Spain, CRC/C/80/D/14/2017, 2019.

²⁰⁵ See OPIC, Article 7 (d); Committee on the Right of the Child, E.P. and F.P. vs. Denmark, CRC/C/82/D/33/2017, 2019.

²⁰⁶ See OPIC, Article 7 (d); Committee on the Rights of the Child, X vs. Finland, CRC/C/81/D/6/2016; Committee on the Rights of the Child, Z.H. and A.H. vs. Denmark, CRC/C/82/D/32/2017, 2019.

²⁰⁷ See OPIC, Article 7 (g); Committee on the Rights of the Child, A.H.A vs. Spain, CRC/C/D/1/2014, (2014); Committee on the Rights of the Child, S.C.S vs. France, CRC/C/77/D/10/2017, 2018; Committee on the Rights of the Child, J.A. and E.A. vs. Switzerland, CRC/C/85/D/53/2018, 2020.

²⁰⁸ See Doek, J., 2022 at Supra note 167, 20 – 21.

Chapter IV

Communication Procedure under the ACERWC

4.1. Background

The ACRWC is the only regional child rights focused human rights instrument in the world.²⁰⁹ It complements the CRC and includes additional elements that are relevant to the African context.²¹⁰ It was adopted by the African Union in 1990 and entered into force in 1999.²¹¹ The ACRWC has been ratified by most of the countries in the African continent.²¹²

As mentioned in the first chapter, ACRWC establishes a treaty body termed the 'ACERWC'.²¹³ This Committee has the power to monitor the implementation of the Charter²¹⁴ and is among others tasked with reviewing state parties' reports on the Charter.²¹⁵ The ACERWC also has the power to receive Communications as per the ACRWC.²¹⁶

However, the ACRWC only provides for the rules of standing and other miscellaneous rules on the receipt of communications and does not go beyond that.²¹⁷ This meant that the Committee needed some form of rules of procedure in order to actually receive and decide on communications. Unfortunately, these rules of procedure were not adopted by the Committee until 2006.²¹⁸ The absence of a procedure along with the requirement of communications being submitted in both English and French and delays in communication resulted in the first communication submitted to the Committee in 2005 not being concluded by the Committee until 5 years later.²¹⁹

Currently, the Committee decides on cases on the basis of its Guidelines on consideration of Communications revised as recently as 2020.²²⁰ These guidelines constitute of 24 sections and

²⁰⁹ Mezmur, B. & Kahbila, B., "Follow-up as a 'choice-less choice': towards improving the implementation of decisions on communications of the African Children's Committee", *African Human Rights Yearbook* 2018 (2), 201.

²¹⁰ Lloyd, A., "Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the Gauntlet", *International Journal of Children's Rights* 2002 (10), 180.

²¹¹ See [Overview Of The African Charter On The Rights And Welfare Of The Child | ACERWC - African Committee of Experts on the Rights and Welfare of the Child](#)

²¹² Ibid.

²¹³ ACRWC, Article 32.

²¹⁴ ACRWC, Article 42 (b).

²¹⁵ ACRWC, Article 43.

²¹⁶ ACRWC, Article 44.

²¹⁷ ACRWC, Article 44

²¹⁸ Sloth-Nielson, J., "Children's Rights Litigation in the African Region: Lessons from the Communications Procedure Under the ACRWC" in Liefwaard, T. & Doek, J. (eds.), *Litigating the Rights of the Child: The UN Convention on the Rights of the Child in Domestic and International Jurisprudence* (2015), 254.

²¹⁹ Ibid.

²²⁰ Sloth-Nielson, J., "Remedies for Child Rights Violations in African Human Rights Systems", *De Jure Law Journal* 2023, 626.

provide for detailed rules/ guidelines commencing from the receipt of communications to follow up on implementation of decisions.²²¹

The ACERWC has received 24 communications so far.²²² Out of these communications, seven of them have been finalized and two have been amicably settled while five communications were deemed inadmissible. Additionally, eight communications are still pending at the Committee.

4.2. Admissibility Rules and Jurisprudence of the African Regional Human Rights Bodies

In addition to the ACERWC, there are also other regional human rights organs that are found within the African Union and Sub-regional systems. These constitute of both quasi-judicial mechanisms such as the African Commission on Human and Peoples' Rights and regional judicial mechanisms such as the African Court on Human and People's Rights as well as the sub-regional judicial mechanisms with human rights decisions such as the Southern African Development Community (SADC) Tribunal, the East African Court of Justice and the Economic Community of West African States (ECOWAS) Court of Justice.²²³ These organs have their very own procedural rules to guide the admittance of communications or cases.

For the purpose of this thesis, the focus (beyond the ACERWC) will be on the quasi-judicial mechanism i.e. the African Commission on Human and People's Rights. Analyzing the admissibility rules and jurisprudence of this Commission is relevant to the discussion on the ACERWC as the admissibility rules and criteria of the ACERWC are said to be drawn from the jurisprudence of the Commission.²²⁴

To commence, the Commission was established by the African Charter on Human and People's Rights (ACHPR) adopted in 1981 (entered into force in 1986).²²⁵ Unlike some of the international treaty bodies communication mechanisms, the Commission is authorized to receive communications from both state parties and other applicants within the ACHPR itself and not a separate Protocol.²²⁶ The focus of the discussion in this section will be on communications from other parties.

As regards communications received from other parties, the following procedures must be fulfilled. These procedures are: indication of author, compatibility with the ACHPR and the AU Charter, use of acceptable language (not disparaging or insulting language), not based exclusively on news via mass media, exhaustion of local remedies, submission within a reasonable time upon exhaustion of domestic remedies, and *res judicata*.²²⁷ These procedural rules have been elaborated by the

²²¹ ACERWC, *Revised Guidelines for Consideration of Communications and Monitoring Implementation of Decisions by the African Committee of Experts on the Rights and Welfare of the Child* (herein after, Revised Guidelines), (2020).

²²² See [Communications | ACERWC - African Committee of Experts on the Rights and Welfare of the Child](#)

²²³ Rodriguez, J., "The African Regional Human and People's Rights System: 40 Years of Progress and Challenges", *Brazilian Journal of International Law* 2021 (18) 3.

²²⁴ Sloth-Nielson, J., 2015 at Supra note 218, 256.

²²⁵ ACHPR, Article 30.

²²⁶ See ACHPR, Article 47 & 55.

²²⁷ ACHPR, Article 56.

Commission in its Rules of Procedure²²⁸ as well as its jurisprudence. The admissibility rules of standing and exhaustion of local remedies will be discussed below.

4.2.1. Standing

The standing requirement of the Commission in the receipt of communications has not been clarified either by the ACHPR or the rules of procedure. However, the current rules of procedure do indicate that the communication must, in cases where the victim is not the complainant, include the name of the victim along with sufficient proof that such victim consents to being represented or justification if such proof cannot be obtained.²²⁹

The above does not seem to mean that submission of communications is limited to victims and their representatives. This can be seen from the Commission's guidelines²³⁰ and jurisprudence. The Commission's guidelines for the submission of communications indicate that anyone including individuals, group of individuals or NGOs can present communications to the Commission without need for relation with the victim in any way.²³¹ This can also be seen from the various cases received by the Commission.²³²

4.2.2. Exhaustion of Local/ domestic Remedies

The Commission will only accept a communication if local remedies have been exhausted by the complainant.²³³ Bulto highlights that the Commission has laid down some reasons for adopting the rule of exhaustion of domestic remedies.²³⁴ These are the following. First of all, the basic premise the rule has is that the state may have prevented or remedied the violations if it was aware of them.²³⁵ So, the rule is meant to ensure that the state has the opportunity to prevent or remedy the violations. Secondly, local remedies are assumed to be more cost-effective and speedy.²³⁶ Thirdly, the rule allows the particular state to protect its reputation.²³⁷ Fourthly, the rule ensures that the principle of subsidiarity of international law to national is respected.²³⁸ Fifthly, it also ensures that national and international

²²⁸ African Commission on Human and People's Rights, *Rules of Procedure of the African Commission on Human and People's Rights*, (Herein after – the Rules of Procedure), (2020).

²²⁹ Rules of Procedure, Rule 115 (2) (e).

²³⁰ African Commission on Human and People's Rights, *Guidelines for the Submission of Communications*, Information Sheet No. 2.

²³¹ Id, 5.

²³² See for instance Egyptian Initiative for Personal Rights and Interrights vs. Arab Republic of Egypt, 334/06, (2011); Open Society Justice Initiative vs. Cote D'Ivoire, 318/06, (2015).

²³³ ACHPR, Article 56 (5).

²³⁴ Bulto, T., "Exception as Norm: The Local Remedies Rule in the Context of Socio-Economic Rights in the African Human Rights System", *International Journal of Human Rights* 2012 (16(4)), 561 - 562.

²³⁵ Id, 561.

²³⁶ Ibid.

²³⁷ Id, 562.

²³⁸ Ibid.

jurisdictions remain complementary.²³⁹ Finally, the rule is also meant to avoid possibility of the international or regional body becoming a forum of first instance.²⁴⁰

The rule of exhaustion of domestic remedies is not without its exception. According to the ACHPR, the requirement of exhaustion of local remedies can be dispensed by the Commission if it is 'obvious that this procedure is unduly prolonged'.²⁴¹ This provides for an exception on the basis of the timeframe.

Other exceptions from the rule of exhaustion of domestic remedies have emerged in the Commission's jurisprudence. In *Jawara vs. the Gambia*, the Commission highlighted 3 major criteria that must be taken into account in the determination of exhaustion of local remedies, 'remedies must be available, effective and efficient'.²⁴² The Commission goes on to clarify the meanings of these elements.²⁴³ 'Availability' concerns the absence of obstacles or the fact that a person can attempt to gain the remedy without impediment.²⁴⁴ The Commission argues that this cannot be the case if the '*jurisdiction of the courts has been ousted*' by legislation that cannot be challenged.²⁴⁵ This would also be the case if the complainant cannot submit their case to the courts due to fear for their life.²⁴⁶ In clarifying the other elements, the Commission highlights that effectiveness refers to the possibility of success upon pursuance of a remedy while sufficiency refers to the remedy's capability to actually address or redress the issue at hand.²⁴⁷

Furthermore, the Commission has also dispensed of the rule of exhaustion of domestic remedies in cases where the state's awareness of the rights violations was either obvious or proven.²⁴⁸ This was the case in *Free Legal Assistance Group and others vs. Democratic Republic of Congo (then Zaire)* and the *Social and Economic Rights Action Center and the Center for Economic and Social Rights vs. Nigeria*.²⁴⁹

Similarly, the Commission does not require the exhaustion of domestic remedies in cases of serious or massive violations.²⁵⁰ This exception is applicable when the violations occur in a 'vast and varied scope and reflect the general situation of the state'.²⁵¹ This was the case in the *Free Legal Assistance Group and Others vs. Zaire* and later in *Dr Curtis Francis Doebbler vs. Sudan*. In the first case, the existence of the widespread arrest, detentions, extrajudicial executions, unfair trials and others was

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ ACHPR, Article 56(5).

²⁴² African Commission on Human and People's Rights, *Sir Dawda K. Jawara vs. The Gambia*, Communication No. 147/95 – 149/96, para. 31 (2000).

²⁴³ Id, para. 32.

²⁴⁴ Ibid.

²⁴⁵ Id, para. 34.

²⁴⁶ Id, para. 35.

²⁴⁷ Ibid.

²⁴⁸ Bulto, 2012 at Supra note 234, 561.

²⁴⁹ Ibid.

²⁵⁰ Id, 565.

²⁵¹ Ibid.

said to qualify as serious and massive violations and served as an exception to the rule of exhaustion of domestic remedies.²⁵²

4.2.3. Jurisdiction

The ACHPR does not have a provision on the jurisdiction or a provision limiting obligation of state parties to their own territories or jurisdictions.²⁵³ As such, there have been different views among scholars as to whether extra territorial obligations can originate from the charter.²⁵⁴ Some scholars such as Anyangwe and Viljoen have argued that the obligation of the states within the ACHPR is limited to their own territory as a rule.²⁵⁵ On the other hand, Bulto argues that these arguments lack a basis as there is no wording in the charter that supports this. In furthering his argument, he cites the jurisprudence of the ICESCR and the American Declaration on the Rights and Duties of Man in which the instruments have been found to have extraterritorial application despite lacking an explicit provision.²⁵⁶

4.3. Admissibility Rules and Jurisprudence of the ACERWC

As mentioned earlier, the admissibility rules of the ACERWC were largely derived from the African Commission on Human and People's Rights. As such, the ACERWC's admissibility rules on communications are quite similar to that of the African Commission on Human and People's Rights. The admissibility rules of the ACERWC are: compatibility with the ACRWC and the AU's Charter, use of acceptable language (not disparaging or insulting language), not based exclusively on news via mass media, exhaustion of local remedies, submission within a reasonable time upon exhaustion of domestic remedies, non-pendency, and res-judicata. The focus within this section will be on the admissibility rules of standing, exhaustion of domestic remedies and jurisdiction.

4.3.1. Standing

The rules of standing of the ACERWC are quite similar to the African Commission on Human and People's Rights in that they are quite broad and extensive. However, they are stated in a much clearer manner than that of the Commission. According to the ACRWC and the Revised Guidelines, any individual or group of natural or legal persons, state parties to the ACRWC, intergovernmental or NGOs, specialized organ or agencies of the AU and the UN, and National Human Right Institutions might bring a communication to the ACERWC.²⁵⁷ The only requirement regarding the intergovernmental or non-governmental organisations mentioned is the requirement of recognition in member states of the AU, the AU, state parties of the ACRWC, the UN or the specialized organs of AU or UN.²⁵⁸ This is why the ACERWC has received various cases by NGOs focusing on human rights. In fact, two of the most famous cases received by the ACERWC: Institute for Human Rights and Democracy in Africa and the Open Society Justice Initiative vs. Kenya (the so-called 'Nubian

²⁵² Ibid.

²⁵³ ACHPR.

²⁵⁴ Bulto, T., "Patching the Legal Black Hole: The Extraterritorial Reach of States' Human Rights Duties in the African Human Rights System", *South African Journal on Human Rights* 2011 (27(2)), 257-259.

²⁵⁵ Ibid.

²⁵⁶ Id, 258.

²⁵⁷ See ACRWC, Article 44; Revised Guidelines, Section I (i).

²⁵⁸ See Revised Guidelines, Section I (i) (c).

Case') and Centre for Human Rights and La Recontre Africaine pour la Defence des Droits de l'Homme vs the Senegal (the so-called Tallibe Case) were submitted by NGOs.

So, it is not only alleged victims or people appointed by the victims that can bring cases. It should also be noted that the mentioning of the name of a victim when they are not the complainants only seems to be required 'where possible'.²⁵⁹ In cases where there is an identified victim though, the ACERWC does require consent from the child victim unless bringing of the communication is proven to be done in the 'supreme interest of the child'.²⁶⁰ In this case and if possible, the child victim is to be informed of this communication if such child is able to express their opinion.²⁶¹ So far, there have been no cases rendered inadmissible by the ACERWC on the basis of standing either due to the party or lack of consent.²⁶²

4.3.2. Exhaustion of Domestic remedies

Similar to the Commission, the ACREWC and other international or regional communication procedures, the ACERWC has an exhaustion of local/ domestic remedies admissibility requirement. However, this rule is not without exceptions. Perhaps on the basis of the jurisprudence of the Commission, the Revised Guidelines indicate the following exceptions. These are: unavailability of the local remedies, inaccessibility of the local remedies, the existence of an unduly prolonged procedure or the existence of an ineffective procedure.²⁶³ The ACERWC has interpreted the rule of exhaustion of domestic remedies in a quite flexible manner. This can be seen in the following cases.

In the case of the Institute for Human Rights and Democracy in Africa and the Open Society Justice Initiative vs. Kenya (Children of Nubian Descent Case), the Committee decided that the absence of a judgment on the case at the High Court despite being pending for 6 years qualified as unduly and unreasonably prolonged and qualified as an exception to the rule of exhaustion.²⁶⁴ The Committee also argued that the leaving of children in a legal limbo for the fulfillment of formalistic legal procedures is not in the best interests of children.²⁶⁵ In making its decision in this case, the Committee relied on both its Guidelines and the jurisprudence of the Commission discussed above. The ACERWC's reliance on the jurisprudence of the Commission has been lauded by scholars including Sloth-Nielson,²⁶⁶ and Nyarko and Ekefre²⁶⁷ as it creates and enhances coherence and harmonization of the African regional human rights system.

Similarly, in Centre for Human Rights and La Recontre Africaine pour la Defence des Droits de l'Homme vs the Senegal (The Talibes Case), the Committee identified the existence of a large number of potential victims of violations of human rights as an exception to the rule of exhaustion of local

²⁵⁹ Revised Guidelines, Section II (3) (i) (b).

²⁶⁰ Revised Guidelines, Section I (iii).

²⁶¹ Ibid.

²⁶² See [Communications | ACERWC - African Committee of Experts on the Rights and Welfare of the Child](#)

²⁶³ Revised Guidelines, Section IX (1) (i) (d).

²⁶⁴ See ACERWC, *Institute for Human Rights and Democracy in Africa and the Open Society Justice Initiative (on behalf of Children of Nubian Descent in Kenya) vs. Government of Kenya*, Com/002/2009, para. 34 (2011).

²⁶⁵ Id, para. 29.

²⁶⁶ Sloth-Nielson, J., 2015 at Supra note 218, 260.

²⁶⁷ Nyarko, M. and Ekefre, H., "Recent Advances in Children's Rights in the African Human Rights System", *The Law and Practice of International Courts and Tribunals* 2016 (15), 389.

remedies.²⁶⁸ In the case at hand, there were an estimated 100,000 potential victims to the case which the ACERWC argued that exhaustion of domestic remedies for each of the cases would be impractical and even virtually impossible.²⁶⁹ This decision was similar to the Nubian case in that the ACERWC again relied on the jurisprudence of the Commission.

The ACERWC's consideration of the barriers and denial of access to justice faced in cases of prolongation of decision making in cases and understanding of the impracticality of exhaustion of domestic remedies in cases of large number of victims has been lauded by Nyarko and Ekefre for its flexibility and conformity with the best interests of the child.²⁷⁰

However, it is to be noted that all the cases rendered inadmissible by this Committee related to the issue of non-exhaustion of domestic remedies.²⁷¹

4.3.3. Jurisdiction

Similar to the ACHPR, the ACERWC does not have provisions that explicitly mention jurisdiction or territory as regards the obligation of states. As such, a parallel could cautiously be drawn from Bulto's argument as regards African Commission suggesting that extraterritorial obligation of states under the ACERWC is similarly possible.²⁷² However, as Anyangwe and Viljoen have argued one could argue that obligation of states under the ACERWC is similarly limited to their territory as a rule.²⁷³

4.4. Conclusion

In this Chapter, the admissibility rules and jurisprudence of the two major communication procedures in the African continent were discussed. The first section assessed the admissibility rules and jurisprudence of the African Commission on Human and People's Rights. The major admissibility rules of the Commission are: non-anonymity, compatibility with the ACHPR and the AU Charter, use of acceptable language, not based exclusively on news via mass media, exhaustion of local remedies, submission within a reasonable time upon exhaustion of domestic remedies, and *res judicata*. In addition to the explicit indication of the admissibility rules in the ACHPR, the Commission has also elaborated upon and developed an extensive jurisprudence on the interpretation of the admissibility rules. In doing so, it has adopted a flexible form of interpretation to lessen the barriers to access to justice.

In the second part of the chapter, the admissibility rules of the ACERWC were discussed. As highlighted in the chapter, both the written admissibility rules and the jurisprudence of the ACERWC was derived from and heavily relies on the rules and jurisprudence of the African Commission on Human and People's Rights. This has been lauded by various scholars as it ensures coherence within the African regional system. In addition, as the African Commission's jurisprudence on admissibility

²⁶⁸ See ACERWC, *Centre for Human Rights (University of Pretoria) and La Recontre Africaine pour la Defence des Droits de l'Homme vs the Government of Senegal vs. Government of Senegal*, No. 003/Com/001/2012, para. 21 (2012).

²⁶⁹ *Id.*, para. 23.

²⁷⁰ M. Nyarko & H. Ekefre, *Recent Advances in Children's Rights in the African Human Rights System: A Review of the Decision in the African Committee of Experts on the Rights and Welfare of the Child in the Talibes Case*, 15 *The Law and Practice of International Courts and Tribunals*, 388 – 389 (2016).

²⁷¹ See [Communications | ACERWC - African Committee of Experts on the Rights and Welfare of the Child](#)

²⁷² See Section 4.2.3, see also Bulto, T., 2011 at *Supra* note 254.

²⁷³ *Ibid.*

was already rather flexible, the added principle of the best interest of the child as a primary consideration has led to quite flexible admissibility rules and interpretation of such rules. This can be said to lessen the barrier to accessing the Communication procedure at the ACERWC and enhance access to justice of children in Africa. In the upcoming Chapter, the admissibility rules of the ACERWC and the Committee will be comparatively analyzed in light of children's right to access to justice.

Chapter V

Comparative Analysis of Admissibility under the OPIC and the ACERWC in Light of Children's Right to Access to Justice

5.1. Introduction

The admissibility requirements of the communication procedures of the ACERWC and the Committee on the Rights of the Child have been discussed in the previous chapters. In this chapter, a comparative analysis of the admissibility rules and case law of the two communication procedures will be conducted in light of children's right to access to justice to determine the extent to which the communication procedure under OPIC promotes children's right to access to justice and children's rights as a whole in comparison with the ACERWC.

Prior to commencing to the comparative analysis of the admissibility rules of the ACERWC and the Committee on the Rights of the Child, there is a need to provide a more general comparison of the two communication procedures.

As already highlighted, the communication procedure of the Committee is not embedded in the parent document and is rather part of an optional protocol.²⁷⁴ On the other hand, the communication procedure of the ACERWC forms part of the main convention or in other words is an in built communication procedure.²⁷⁵

The main implication of the existence or absence of a communication procedure as part of the main convention relates to number of state parties to the main convention bound by the communication requirement. Here, we can see that although the CRC has 196 state parties,²⁷⁶ the parties that allow communications are a little over a quarter with 53 state parties.²⁷⁷ On the other hand, all the state parties to the ACRWC are bound by the communication procedure as it is embedded in the Charter. The ACERWC upheld this rule even against a state party that had raised a reservation against provisions related to the communication procedure. This was the case in *Sohaib Emad vs. Egypt*.²⁷⁸ In this case, the primary issue brought to the attention of the Committee by Egypt was the fact that the country had made reservations to Article 44 and 45 of the ACRWC²⁷⁹ which provide for the communication procedure under the charter. However, the ACERWC held that the provisions form among the core rationales for the creation of the ACRWC making such a reservation incompatible with the object and purpose of the ACRWC and went on to entertain the case.²⁸⁰ This would of course not be possible in the case of the communication procedure of the Committee on the Rights of the Child.

The ACERWC's position in this regard emphasizes the importance placed by the ACERWC and the ACRWC on children's access to justice as a whole and more specifically at the regional level.

²⁷⁴ See CRC and OPIC.

²⁷⁵ See ACRWC.

²⁷⁶ [Committee on the Rights of the Child | OHCHR](#)

²⁷⁷ [UNTC](#)

²⁷⁸ ACERWC, *Sohaib Emad (rep. Advocate Dalia Lotfy and Samar Emad) vs. Government of the Arab Republic of Egypt*, No. 008/Com/002/2016, (2017).

²⁷⁹ *Id*, para. 2.

²⁸⁰ *Ibid*.

Additionally, the embedding of the communication procedure as part of the parent document rather than optional document furthers equal right to access to justice to all children in state parties in the case of the ACRWC. However, in the case of the CRC and state parties to the CRC, children's access to justice at the international level is not the same depending on ratification or non-ratification of the Optional Protocol.

However, despite the above discussion as well as ACERWC communication procedure establishment more than a decade earlier than the OPIC, one noteworthy matter is the fact that the ACERWC has received around 10% of the number of cases received by the OPIC. This in effect means that the Committee has served as a forum of access to justice for much more complaints and perhaps aided the advancement of the right of access to children and the rights of children as a whole further as compared to the ACERWC.

5.2. Similarities and Distinctions in the Admissibility Rules and Jurisprudence of the two Committees in Light of Children's Access to Justice

The admissibility rules of the Committee on the Rights of the Child and the ACERWC are quite similar. Both require compatibility with their Conventions, non-pendency, *res judicata*, exhaustion of domestic remedies among others. However, they also display various differences in either rules of admissibility or the interpretation of such rule. The major distinctions in admissibility rules or interpretation of such rules among the two Committees relate to the standing rule and interpretation of exhaustion of domestic remedies. As will be discussed in this chapter, the distinction as related to the first rule lies in the written rules themselves while the distinction in the second admissibility rule is more about the differences in the interpretation of the rules.

5.2.1. Standing

As discussed in Chapter III, the OPIC much like the admissibility rules of the other international communication procedures discussed in the Chapter does not allow for collective complaints and there is a need to identify a particular victim. On the other hand, as discussed in Chapter IV of this thesis, the ACERWC explicitly allows for complaints to be brought by individuals, groups or NGOs without needing to identify a particular victim and allows for collective complaint.

This is a significant difference for the following reasons. First of all, the strict rule of standing of is an obstacle to children's access to justice as it may prevent the bringing of more systemic issues to the Committee. Secondly, perhaps as related to the first matter, cases where victims cannot be identified or it is difficult to identify victims cannot be brought before the Committee on the Rights of the Child while it would be possible before the ACERWC.

The above can be seen from some of the major cases brought to the ACERWC. In the Institute for Human Rights and Democracy in Africa (IHRDA) and the Open Society Justice Initiative (OSJ) vs. Kenya also known as the Nubian Children Case is quite noteworthy in this regard. In this case, the IHRDA and OSJ were able to bring a case on behalf of all Nubian children in Kenya rather than having to identify a particular Nubian child or group of Nubian children. This would not be possible at the Committee of the Rights of the Child as the rules of admissibility require particular or specific victims to be selected and identified on one hand and as bringing of cases is only possible for representatives who have received consent from these particular identified victims.

Similarly, the Centre for Human Rights and La Recontre Africaine pour la Defence des Droits de l'Homme vs the Senegal better known as the Talibes Case presented at the ACERWC would have also been quite difficult to bring to the Committee on the Rights of the Child. As highlighted as regards the discussion of exhaustion of domestic remedies of the ACERWC, the case involved more than

100,000 Talibe children. So, this case would have faced similar difficulties as the Nubian children case if it were to be brought to the Committee on the Rights of the Child instead of the ACERWC.

On the other hand, as discussed in Chapter III, the standing rules of the OPIC have resulted in various cases being brought as regards similar issues with the cases against Spain on age assessment and unaccompanied minors being a prime example.

As can be seen from the above, due to its flexible standing rules, the ACERWC allows for bringing of cases that would not have been possible under the Committee on the Right of the Child's communication procedure. This in effect makes the ACERWC more accessible furthering the right to access to justice of children.

5.2.2. Exhaustion of Domestic Remedies

Both committees along with other international and regional human rights communications have exhaustion of domestic remedies as a basic rule. The differences among these two procedures mainly lie in the differences in the exceptions and the interpretation of these exceptions.

As previously discussed, the Committee under OPIC sets the rule of exhaustion of domestic remedies aside exceptionally in cases where the procedure is unreasonable prolonged, unlikely to bring effective relief,²⁸¹ or where there is no objective prospect of success. Due to its strict interpretation of the rule of exhaustion of remedies, the Committee on the Rights of the Child has been said to have adopted a more restrictive interpretation of the rule of exhaustion of domestic remedies as compared to the ACERWC.²⁸²

On the other hand, the ACERWC has a more extensive list of exceptions to the rule of exhaustion of domestic remedies which are unavailability of local remedies, inaccessibility of local remedies, existence of unduly prolonged procedure, existence of an ineffective procedure,²⁸³ as well as the existence of a large number of potential victims. As discussed in Chapter IV, the interpretation of the rule of exhaustion of domestic remedies as well as its exception is derived from and is largely similar to that of the African Commission on Human and People's Rights which utilizes a flexible interpretation. The ACERWC's interpretation of the rule of exhaustion of domestic remedies has been lauded by various scholars including Sloth-Nielson²⁸⁴, Nyarko and Ekefre²⁸⁵.

From the discussion above, it can be seen that the exception of existence of a large number of potential victims is an exception that is unique to the ACERWC's jurisprudence and is not to be found in the Committee's jurisprudence communication procedure. If this exception was available to the Committee on the Rights of the Child level, the Sachi et al vs. Argentina case discussed in this thesis might have perhaps had a different outcome. This may be the case as one can imagine that it could be proved that climate change could have an impact on a large number of potential victims.

²⁸¹ OPIC, Article 7 (e).

²⁸² Kilkelly, U., "Children's Rights to Access Justice at the International Level: Challenge and Opportunity", in Pare, M., Bruning, M., Moreau, T., Siffrein-Blanc, C. (eds.), *Children's Access to Justice. A Critical Assessment*, (Intersentia, 2022), 151.

²⁸³ Revised Guidelines, Section IX (1) (i) (d).

²⁸⁴ Sloth-Nielson, J., 2015 at Supra note 183, 260.

²⁸⁵ Nyarko, M. and Ekefre, H., "Recent Advances in Children's Rights in the African Human Rights System", *The Law and Practice of International Courts and Tribunals* 2016 (15), 389.

One can note a difference in the iteration of the exceptions under these two communication procedures as well as the existence of more grounds of exception to the rule of exhaustion of domestic remedies. Overall, the interpretation of the rule of exhaustion of domestic remedies seems to be more flexible under the ACERWC system as compared to the OPIC which makes it more accessible and contributes to advancing the right of access to justice of children.

5.4. Conclusion

In this Chapter, the admissibility rules of the Committee on the Rights of the Child and the ACERWC were comparatively analyzed in light of the right of access to justice for children. In the first part of this chapter, the general distinctions between the two communication procedures were discussed. The major differences in this regard were the fact that ACERWC's communication procedure is embedded in the parent document while the Committee on the Right of the Child's communication procedure is a part of an optional protocol and the large difference in the number of cases received with the ACERWC having received around 10% of the number of cases received by the Committee on the Rights of the Child. The ACERWC's embedment of the communication procedure in the main document could be said to show the significance placed on the right of access to justice of children at the ACERWC level compared to the Committee on the Rights of the Child. However, the limited number of cases at the ACERWC makes it difficult to make such a conclusion.

The second part of the chapter compared the admissibility rules and jurisprudence of the ACERWC and the Committee on the Rights of the Child with a focus on the admissibility rule of standing and exhaustion of domestic remedies. In general, it was discovered that the two Committees have a lot of similarities as regards admissibility rules. However, there are exceptions mainly as regards the rule of standing and exhaustion of domestic remedies. The standing or locus standi rule of the two Committees is different in the written text itself and it can be seen that while the ACERWC allows collective complaints, the Committee on the Rights of the Child does not allow such complaints. On the other hand, the difference in the rule of exhaustion of remedies is mainly related to the interpretation of the rules. It can be seen that the ACERWC provides for more grounds of exceptions to the rule of exhaustion of domestic remedies and seems to interpret the grounds a bit more flexibly. On the other hand, the Committee on the Rights of the Child comparatively has a stricter interpretation of the rule of exhaustion of domestic remedies and their exception. The flexibility of the rule of standing and exhaustion of domestic remedies at the ACERWC makes it more accessible and might perhaps advance children's right to access to justice.

Chapter VI

Conclusion and Recommendations

6.1. Conclusion

As the Committee recognized in General Comment No.5, rights cannot have meaning without the existence of effective remedies.²⁸⁶ In order to ensure children's access to justice, there must be conducive and child friendly procedure in place. With this in mind, the research conducted in this thesis comparatively analyzed the admissibility rules and jurisprudence of the communication procedures of the Committee on the Rights of the Child and the ACERWC respectively, in light of access to justice for children. This was done in order to answer the central research question of this thesis "To what extent does the OPIC Communication Procedure promote children's right to access to justice and children's rights as a whole in comparison with the ACERWC's Communication Procedure?". In order to answer this large question, the thesis set out to assess to the right to access to justice of children, the admissibility rules and jurisprudence of the two Committees, the distinctions in the admissibility rules of the two committees and finally the implication if any of any such distinction on the right to access to justice of children and the advancement of children's rights as a whole.

In general, it was discovered that the two Committees have a lot of similarities as regards admissibility rules. However, there are exceptions mainly as regards the rule of standing and the interpretation of the rule and exceptions to the rule of exhaustion of domestic remedies.

The standing or locus standi rule of the two Committees is different in the written text itself and it can be seen that while the ACERWC allows collective complaints, the Committee on the Rights of the Child does not allow such complaints. The OPIC much like the admissibility rules of the other international communication procedures discussed in the Chapter does not allow for collective complaints and there is a need to identify a particular victim. On the other hand, as discussed in Chapter IV of this thesis, the ACERWC explicitly allows for complaints to be brought by individuals, groups or NGOs without needing to identify a particular victim and allows for collective complaint. This is a significant difference for the following reasons. First of all, the strict rule of standing of is an obstacle to children's access to justice as it may prevent the bringing of more systemic issues to the Committee. Secondly, perhaps as related to the first matter, cases where victims cannot be identified or it is difficult to identify victims cannot be brought before the Committee on the Rights of the Child while it would be possible before the ACERWC.

The broad standing rule adopted by the ACERWC is inspired by the similar rule under the African Commission on Human and People's Rights much like all its other admissibility rules and interpretation. Similarly, the Committee's rule of standing is similar to and is based on the standing rule of the broader treaty body system in the UN. And, it is to be noted that there is no international treaty body communication mechanism that allows for collective complaints.

Moving to the difference in the rule of exhaustion of remedies, the distinction in this admissibility procedure is mainly related to the interpretation of the rules. It can be seen that the ACERWC provides for more grounds of exceptions to the rule of exhaustion of domestic remedies and seems to interpret the grounds a bit more flexibly. As previously discussed, the Committee under OPIC sets the rule of exhaustion of domestic remedies aside exceptionally in cases where the procedure is

²⁸⁶ Committee on the Rights of the Child, *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child*, para. 24 (2003).

unreasonable prolonged, unlikely to bring effective relief, or where there is no objective prospect of success. On the other hand, the ACERWC has a more extensive list of exceptions to the rule of exhaustion of domestic remedies which are unavailability of local remedies, inaccessibility of local remedies, existence of unduly prolonged procedure, existence of an ineffective procedure, as well as the existence of a large number of potential victims. Due to its strict interpretation of the rule of exhaustion of remedies, the Committee has been said to have adopted a more restrictive interpretation of the rule of exhaustion of domestic remedies as compared to the ACERWC.

Similar to the standing rule, the interpretation of the rule of exhaustion of domestic remedies as well as its exception is derived from and is largely similar to that of the African Commission on Human and People's Rights which utilizes a flexible interpretation. On the other hand, the Committee comparatively has a stricter interpretation of the rule of exhaustion of domestic remedies and their exception. The flexibility of the rule of standing and exhaustion of domestic remedies at the ACERWC makes it more accessible and might perhaps advance children's right to access to justice. However, as discussed, various scholars raise a concern regarding flexible rules of exhaustion of domestic remedy perhaps leading to the Committee becoming a first instance court. This could in addition to heavily increasing the case load of the Committee lead to undermining the authority of the Committee as well as risk demotivating states from ratifying the OPIC. So, the concerns of the Committee and supporters of the Committee's strict interpretation of the rule of exhaustion of domestic remedies are not without any merit. However, there is a need to balance those concerns with the special position of children and the need to remove obstacles to access to justice for children.

Unlike its mainly strict interpretation as regards the rule of exhaustion of domestic remedies, the Committee has interpreted the rule of jurisdiction flexibly and allowed for extraterritorial obligations as can be seen from the case of *Sacchi et al vs. Argentina* and *L.H et al. and AF vs. France*. The Committee's interpretation in these cases not only took into account existing jurisprudence but also went beyond that which does show the Committee's efforts in this regard. The ACERWC system has yet to deal with such cases. So, it is not currently possible to determine if there would be a similar outcome in the system. However, the ACERWC could take note of the Committee's jurisprudence in this regard.

In conclusion, the comparative analysis of the admissibility procedures of the communication procedures of the Committee on the Rights of the Child and the ACERWC in light of children's right to access to justice and advancement of the rights of children as a whole led to the following findings. The Committee's Communication procedure has a more restrictive admissibility framework as compared to its regional counterpart especially regarding its rule of standing and interpretation of the rule of exhaustion of domestic remedies. However, it is quite progressive when it comes to the interpretation of the admissibility rule of jurisdiction. The ACERWC has inspired by its African counterpart the African Commission on Human and People's Rights developed broad standing rules and less stringent interpretation of the rule of exhaustion of domestic remedies that has led to the admissibility of cases that would not have been able to be brought under the Committee's admissibility procedure. In this way, the ACERWC Communication Procedure could have been said to promote the right to access to justice of children better than that of the Communication Procedure of the Committee on the Right of the Child. However, the question is not that simple as on the ground, the ACERWC has received less than 10% the number of cases received by the Committee on the Rights of the Child making one question the practical impact of the distinction. On the other hand, despite the limited number of cases the ACERWC has handled so far, the fact that collective complaints are permitted has allowed the fulfillment of the right to access to justice of a large number of children on the ground including the Talibes case (which included around 100,000 Talibe children) and the Nubian children case in just a number of cases.

6.2. Recommendations

6.2.1. To the Committee on the Rights of the Child

On the basis of the comparative analysis conducted in this thesis and the conclusion above, the following recommendations can be made. First of all, the Committee on the Rights of the Child needs to re-assess and provide for more flexible interpretation of the admissibility rule of exhaustion of domestic remedies in the receipt of communication procedures taking into account the unique position of children in domestic justice systems to further advance the right to access to justice of children. In the case of the admissibility rule of standing, there is a need an amendment of the admissibility rules themselves to allow for collective complaints. The Committee should also clearly clarify the elements of the right to access to justice for children as a whole and including at the international level in its upcoming General Comment.

6.2.2. To the ACERWC

The ACERWC needs to create awareness of and promote its communication procedure in the African continent as well as empower children and NGOs to present cases before it more frequently. The ACERWC should also work to strengthen its communication procedure system and ensure that cases are dealt with in an expedient manner. There is also a need to clearly and more explicitly indicate and clarify the elements of the right to access to justice of children in the ACRWC.

6.2.3. To other stakeholders

NGOs, academia and other stakeholders should reignite the advocacy for the amendment of the standing admissibility rule of the OPIC to allow for collective complaints. Furthermore, there is a need for such stakeholders to bring cases and advocate for a more flexible interpretation of the rules of standing and exhaustion of domestic remedies by the Committee.

Coming to the African level, NGOs and other stakeholders need to be much more proactive in the submission of communications to the ACERWC. Such stakeholders also need to advocate for a more efficient ACERWC.

Bibliography

International and Regional Legal Frameworks

- African Charter on Human and People's Rights
- African Charter on the Rights and Welfare of the Child
- American Convention on Human Rights
- Charter of Fundamental Rights of the European Union
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on Migrant Workers and their Families
- Convention on the Elimination of All forms of Discrimination Against Women
- Convention on the Elimination of Racial Discrimination
- Convention on the Rights of Persons with Disabilities
- Convention on the Rights of the Child
- European Convention on Human Rights
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
- Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
- Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa
- Universal Declaration of Human Rights

General Comments, Concluding Observations and Other UN Documents

- ACERWC, *General Comment 5 on State Party Obligations under ACRWC (Article 1) and Systems Strengthening for Child Protection*, 19 (2018).
- ACERWC, [Outcome Statement: Day of the African Child 2020 | African Union \(au.int\)](#) (2020)
- African Commission on Human and People's Rights, *Guidelines for the Submission of Communications*, Information Sheet No. 2.
- African Commission on Human and People's Rights, *Rules of Procedure of the African Commission on Human and People's Rights*, (Herein after – the Rules of Procedure), (2020).
- Committee on the Rights of the Child, [Concept Note: General Comment on Children's Rights to Access to Justice and Effective Remedies](#), (2024).
- Committee on the Rights of the Child, Concluding Observations on the Combined Third to Sixth Periodic Reports of South Africa, CRC/C/ZAF/CO/3-6, para. 11 (2024);
- Committee on the Rights of the Child, Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the Russian Federation, CRC/C/RUS/CO/6-7, para. 11 (2024);
- Committee on the Rights of the Child, Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Lithuania, CRC/C/LTU/CO/5-6, para. 14 (2024);
- Committee on the Rights of the Child, Concluding Observations on the Combined Fifth and Sixth Periodic Reports of the Congo, CRC/C/COG/CO/5-6, para. 11 (2024);
- Committee on the Rights of the Child, Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Bulgaria, CRC/C/BGR/CO/6-7, para. 11 (2024);
- Committee on the Rights of the Child, Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Togo, CRC/C/TGO/CO/5-6, para. 12 (2023);
- Committee on the Rights of the Child, Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/6-7, para. 17 (2023);
- Committee on the Rights of the Child, Concluding Observations on the Sixth Periodic Report of the Dominican Republic, CRC/C/DOM/CO/6, para. 13 (2003).
- Committee on the Rights of the Child, *General Comment No. 5 on General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, para. 6)*, para. 24 (2003)

- Committee on the Rights of the Child, *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child*, para. 24 (2003)
- CRC, Rules of Procedure under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, CRC/C/158, Rule 16 (3) (h), (2021)
- Human Rights Committee (HRC), General Comment No. 31 on the Nature of the General Legal Obligation Imposed on State Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, para. 8 (2004).
- Human Rights Council (HRC), “Resolution on Rights of the Child: Access to Justice for Children”, A/HRC/RES/25/6, (2014).
- Human Rights Council (HRC), “Right to Access to Justice under Article 13 of the Convention on the Rights of Persons with Disabilities”, Annual Report of the Office of the United Nations High Commissioner for Human Rights, para. 13 (2017).
- Human Rights Council, “Report of the Open-Ended Working Group on an Optional Protocol to the Convention on the Rights of the Child to Provide a Communications Procedure”, A/HRC/17/36, para. 48 (2011).
- Revised Guidelines, Section I (i) (c)
- Sustainable Development Goals
- UN High Commissioner for Human Rights (OHCHR), Access to Justice for Children: Report of the United Nations High Commissioner for Human Rights, A/HRC/25/35, para. 4 (2013).

Cases

- ACERWC, *Centre for Human Rights (University of Pretoria) and La Recontre Africaine pour la Defense des Droits de l'Homme vs the Government of Senegal vs. Government of Senegal*, No. 003/Com/001/2012, para. 21 (2012).
- ACERWC, *Institute for Human Rights and Democracy in Africa and the Open Society Justice Initiative (on behalf of Children of Nubian Descent in Kenya) vs. Government of Kenya*, Com/002/2009, para. 34 (2011).
- ACERWC, *Sohaib Emad (rep. Advocate Dalia Lotfy and Samar Emad) vs. Government of the Arab Republic of Egypt*, No. 008/Com/002/2016, (2017).
- African Commission on Human and People’s Rights, *Curtis Francis Doebbler vs. Sudan* 236/00, (2003).
- African Commission on Human and People’s Rights, *Egyptian Initiative for Personal Rights and Interrights vs. Arab Republic of Egypt*, 334/06, (2011); *Open Society Justice Initiative vs. Cote D’Ivoire*, 318/06, (2015).
- African Commission on Human and People’s Rights, *Free Legal Assistance Group and others vs. Democratic Republic of Congo (then Zaire)*, 25/89, 47/90, 56/91, 100/93, (2000).
- African Commission on Human and People’s Rights, *Sir Dawda K. Jawara vs. The Gambia*, Communication No. 147/95 – 149/96, para. 31 (2000).
- African Commission on Human and People’s Rights, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights vs. Nigeria*, 155/1996, (2001).
- Committee on the Right of the Child, *E.P. and F.P. vs. Denmark*, CRC/C/82/D/33/2017, (2019).
- Committee on the Rights of the Child, *A.D. vs. Spain*, CRC/C/80/D/14/2017, (2019).
- Committee on the Rights of the Child, *A.H.A vs. Spain*, CRC/C/D/1/2014, (2014);
- Committee on the Rights of the Child, *Chiara Sacchi et al. vs. Argentina*, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, concerning Communication No. 104/2019, CRC/C/88/104/2019 (herein after *Sacchi vs. Argentina*), para. 10.17 (2021)
- Committee on the Rights of the Child, *D.C. vs. Germany*, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, concerning Communication No. 60/2018, CRC/C/83/60/2018, para. 6.5
- Committee on the Rights of the Child, *D.K.N. vs. Spain*, CRC/C/80/D/15/2017, (2019).
- Committee on the Rights of the Child, *J.A. and E.A. vs. Switzerland*, CRC/C/85/D/53/2018, (2020)
- Committee on the Rights of the Child, *L.H. et al. and A.F vs. France*, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure concerning Communications No. 79/2019 and No. 109/2019, CRC/C/85/79/2019 & CRC/C/85/D/109/2019, (2020)
- Committee on the Rights of the Child, *S.C.S vs. France*, CRC/C/77/D/10/2017, (2018);

- Committee on the Rights of the Child, X vs. Finland, CRC/C/81/D/6/2016; Committee on the Rights of the Child, Z.H. and A.H. vs. Denmark, CRC/C/82/D/32/2017, (2019).
- Human Rights Committee, A Group of Associations for the Defence of the Rights of Disabled and Handicapped Persons in Italy vs. Italy, 163/1984, (1984).
- Human Rights Committee, J.R.T and the W.G. Party vs. Canada, 104/1981, (1983).
- Human Rights Committee, Ominayak (Lubicon Lake Band) Vs. Canada, 167/1984, (1990).

Books and Articles

- African Child Policy Forum (ACPF), *Training Manual on Strategic Litigation and Individual Complaints Mechanisms for Children in Africa*, (ACPF, 2020).
- Ayeni, V., "The African Human Rights Architecture: Reflections on the Instruments and Mechanisms within the African Human Rights Systems", *Beijing Law Review* 2019 (10), 302-316.
- Bedner, A., "An Analytical Framework for Empirical Research on Access to Justice", *Law, Social Justice & Global Development Journal* (1), 1-29.
- Bekker, G., "The African Committee of Experts on the Rights and Welfare of the Child", in Ssenyonjo, M., *The African Regional Human Rights System: 30 Years after African Charter on Human and People's Rights*, (Martinus Nijhoff Publishers, 2012).
- Buck, T. & Wabwile, M., "The Potential and Promise of Communications Procedures under the Third Protocol to the Convention on the Rights of the Child", *International Human Rights Law Review* 2013 (2).
- Bulto, T., "Exception as Norm: The Local Remedies Rule in the Context of Socio-Economic Rights in the African Human Rights System", *International Journal of Human Rights* 2012 (16(4)), 555 -576.
- Bulto, T., "Patching the Legal Black Hole: The Extraterritorial Reach of States' Human Rights Duties in the African Human Rights System", *South African Journal on Human Rights* 2011 (27(2)), 249-278.
- Carletti, C., "The Third Optional to the Convention on the Rights of the Child: Preliminary Case Law Assessment for the Effective Promotion and Protection of Children's Rights", *Global Campus Human Rights Journal* 2020 (4), 114 – 134.
- Centre for Human Rights, *A Guide to the African Human Rights System*, (Pretoria University Law Press (PULP), 2017).
- Chigara, B., "Tentative Reflections on the African Charter on Human and People's Rights", in Ssenyonjo, M., *The African Regional Human Rights System: 30 Years after African Charter on Human and People's Rights*, (Martinus Nijhoff Publishers, 2012).
- Cremin, K., "What does Access to Justice Require? – Overcoming Barriers to Invoke the United Nations Convention on the Rights of Persons with Disabilities", *Frontiers of Law in China* 2016 (11(2)), 280-322.
- Doek, J., "Communications with the Committee on the Rights of the Child under the Optional Protocol to the CRC on a Communications Procedure and Admissibility: Report on the Decisions of the Committee on Admissibility: Summary and Comments", *Leiden Children's Rights Observatory Papers* 2020 (1).
- Doek, J., "Individual Communications submitted under the Optional Protocol to the CRC on a Communications Procedure and Admissibility", *Leiden Children's Rights Observatory Papers* 2022 (2).
- Enabulele, A., "Sailing Against the Tide: Exhaustion of Domestic Remedies and the ECOWAS Community Court of Justice", *Journal of African Law* 2012 (56(2)), 268-295.
- Etuvoata, A., "Towards Improved Compliance with Human Rights Decisions in the African Human Rights System: Enhancing the Role of Civil Society", *Human Rights Review* 2020 (21), 415-436.
- Ezennia, C., "Access to Justice Mechanisms for Individuals and Groups under the African Regional Human Rights System: An Appraisal", *African Journal of Legal Studies* 2015 (8), 115-144.
- Greenbaum, L., "Access to Justice for All: A Reality or Unfulfilled Expectations?", *De Jure Law Journal* 2020, 248-266.
- Jonas, O., *The Participation of Amici Curiae in the African in the African Human Rights System*, (University of Bristol PhD Thesis, 2018)
- Khiari, K., "Children's Access to and Participation in the Justice System in Light of National Characteristics", in Pare, M., Bruning, M., Moreau, T., Siffrein-Blanc, C. (eds.), *Children's Access to Justice. A Critical Assessment*, (Intersentia, 2022).
- Kilkelly, U., "Children's Rights to Access Justice at the International Level: Challenge and Opportunity", in Pare, M., Bruning, M., Moreau, T., Siffrein-Blanc, C. (eds.), *Children's Access to Justice. A Critical Assessment*, (Intersentia, 2022).

- Killander, M., "The African Commission on Human and People's Rights", in Ssenyonjo, M., *The African Regional Human Rights System: 30 Years after African Charter on Human and People's Rights*, (Martinus Nijhoff Publishers, 2012).
- Liefwaard, T., "A Decade of the Optional Protocol to the CRC on a Communications Procedure: Progress, Challenges and the Pathways Ahead for Children's Access to Justice", *International Journal of Children's Rights* 2024 (32(1)), 1-8.
- Liefwaard, T., "Access to Justice for Children Deprived of their Liberty", in *Protecting Children Against Torture in Detention: Global Solutions for a Global Problem*, (2017).
- Liefwaard, T., "Access to Justice for Children: Towards a Specific Research and Implementation Agenda", *International Journal of Children's Rights* 2019 (27(1)), 195-227.
- Liefwaard, T., "Children's Rights Remedies under International Human Rights Law: How to Secure Children's Rights Complaint Outcomes in Access to Justice?", *De Jure Law Journal* 2023, 486-504.
- Lindsey, J., *Reimagining the Court of Protection*, (Cambridge University Press, 2022).
- Martin, L., "Securing Access to Justice for Children", *Harvard Civil Rights-Civil Liberties Law Review* 2022 (57(2)), 615-656.
- Mentovich, A., Prescott, J.J., Rabinovich-Einy, O., "Legitimacy and Online Proceedings: Procedural Justice, Access to Justice, and the Role of Income", *Law and Society Review* 2023 (57), 189-213.
- Mezmur, B. & Kahbila, M., "Follow-up as a 'choice-less choice': towards improving the implementation of decisions on communications of the African Children's Committee", *African Human Rights Yearbook* 2018 (2), 200 – 221.
- Mezmur, B., "No Second Chance for First Impressions: The First Amicable Settlement under the African Children's Charter", *African Human Rights Law Journal* 2019 (19(1)), 62-84.
- Mezmur, B., and Kahbila, M., "Follow-Up as a 'Choice-Less Choice': Towards Improving the Implementation of Decisionson Communications of the African Children's Committee", *African Human Rights Yearbook* 2018 (2), 200-221.
- Nyarko, M. & Ekefre, H., "Recent Advances in Children's Rights in the African Human Rights System: A Review of the Decision in the African Committee of Experts on the Rights and Welfare of the Child in the Talibes Case", *The Law and Practice of International Courts and Tribunals* 2016 (15), 385 – 395.
- Nyarko, M. and Ekefre, H., "Recent Advances in Children's Rights in the African Human Rights System", *The Law and Practice of International Courts and Tribunals* 2016 (15), 385-395.
- OECD, Open Society Foundations, *Legal Needs Surveys and Access to Justice*, (OECD Publishing, 2019).
- Pare, M., Bruning, M., Moreau, T., Siffrein-Blanc, C., "Introduction: A Critical Review of Access to Justice for Children", in *Children's Access to Justice. A Critical Assessment*, (Intersentia, 2022).
- Rap, S., "Access to Justice and Child-Friendly Justice for Refugee and Migrant Children: International and European Legal Representatives", *Europe of Rights and Liberties* 2020, 277-292.
- Roberts, C., *Alternative Approaches to Human Rights*, (Cambridge University Press, 2022).
- Rodriguez, J., "The African Regional Human and People's Rights System: 40 Years of Progress and Challenges", *Brazilian Journal of International Law* 2021 (18(3)), 232-257.
- Schmahl, S., "F. Overview of the Individual Communications Procedure (Articles 5 to 11 of the Third Optional Protocol to the Convention on the Rights of the Child) in United Nations on the Rights of the Child: Article-by-Article Commentary" in (2021)
- Skelton, A., "Children's Rights to Access to Justice and Remedy: Recent Developments", *Youth Justice* 2024 (24(1)), 8-12.
- Skelton, A., 'Child Rights Jurisprudence without Borders Developments in Extraterritorial Jurisdiction', *De Jure Law Journal* 2023, 623.
- Skelton, A., "International Children's Rights Law: Complaints and Remedies", in U. Kilkelly, U. & Liefwaard, T. (ed.), *International Human Rights of Children*, (2019), 65 – 90.
- Sloth-Nielson, J. "Remedies for Child Rights Violations in African Human Rights Systems", *De Jure Law Journal* 2023, 625-645.
- Sloth-Nielson, J., "Children's Rights in Africa" in Ssenyonjo, M., *The African Regional Human Rights System: 30 Years after African Charter on Human and People's Rights*, (Martinus Nijhoff Publishers, 2012).
- Sloth-Nielson, J., "Children's Rights Litigation in the African Region: Lessons from the Communications Procedure Under the ACRWC", in Liefwaard, T. and Doek, J., (ed.), *Litigating the Rights of the Child: The UN Convention on the Rights of the Child in Domestic and International Jurisprudence*, (Springer, 2014).

- Sowe, G. and Bizimana, E., "Implementation of Human Rights Decisions in the African Human Rights System", in Murray, R. and Long, D. (eds.), *Research Handbook on Implementation of Human Rights in Practice*, (Edward Elgar Publishing, 2022).
- Ssenyonjo, M., "An Introduction to the Development of the African Regional Human Rights System: 30 Years After the Adoption of the African Charter on Human and People's Rights", in *The African Regional Human Rights System: 30 Years after African Charter on Human and People's Rights*, (Martinus Nijhoff Publishers, 2012).
- Ssenyonjo, M., "Strengthening the African Regional Human Rights System", in Ssenyonjo, M., *The African Regional Human Rights System: 30 Years after African Charter on Human and People's Rights*, (Martinus Nijhoff Publishers, 2012).
- Suedi, Y., "Litigating Climate Change before the Committee on the Rights of the Child in *Sacchi v Argentina et al.* Breaking New Ground?", *Nordic Journal of Human Rights* 2022 (40(4)), 549 – 567.
- Trindade, A., *The Access of Individuals to International Justice*, (Oxford University Press, 2011).
- Whalen-Bridge, H., "Understanding and Comparing Access to Justice", in Whalen-Bridge, H. (ed.), *The Role of Lawyers in Access to Justice: Asian and Comparative Perspectives* (Cambridge University Press, 2022).