

CONTENTS

<i>List of abbreviations</i>	xiv
<i>Foreword</i>	xvii
<i>Table of cases</i>	xx
<i>Table of legislation</i>	xxix
Introduction: Three decades of children's rights law	1
CRC Preamble	44
Article 1: Scope of application	48
Article 2: Non-discrimination	52
Article 3: Best interests of the child	59
Article 4: General obligation	74
Article 5: Appropriate direction and guidance consistent with the child's evolving capacities	80
Article 6: The right to life, survival and development	88
Article 7: Name and nationality	100
Article 8: Preservation of identity	108
Article 9: Separation from parents	112
Article 10: Family reunification	124
Article 11: Illicit transfer and non-return of children	134
Article 12: The views of the child	143
Article 13: Freedom of expression	160
Article 14: Freedom of thought, conscience and religion	167
Article 15: Freedom of association and peaceful assembly	174
Article 16: The right to privacy	184
Article 17: Access to appropriate information through media	194
Article 18: Common responsibilities of parents for the upbringing and development of the child	203
Article 19: Protection from all forms of violence	209
Article 20: Children deprived of their family environment	222
Article 21: Adoption	228
Article 22: Asylum seeking and refugee children	236
Article 23: Children with disabilities	247
Article 24: Right to health	254
Article 25: Periodic review of placement	274
Article 26: Social security	276
Article 27: Adequate standard of living	281
Article 28: Right to education	288
Article 29: Aims of education	299
Article 30: Rights of children from minorities and indigenous origin	303
Article 31: Rest, leisure and play	312
Article 32: Protection from economic exploitation	320
Article 33: Protection from drugs	327
Article 34: Protection from sexual exploitation and abuse	334
Article 35: Prevention of abduction, sale and trafficking	343
Article 36: Protection against all other forms of exploitation	352

CONTENTS

Article 37: Deprivation of liberty, prohibition of torture, degrading and inhuman treatment and of capital punishment and life imprisonment	355
Article 38: Children in armed conflict	369
Article 39: Recovery and reintegration of child victims	376
Article 40: Children's rights in justice systems	383
Article 41: Respect for higher standards	397
Article 42: Dissemination	399
Article 43: The Committee on the Rights of the Child	404
Article 44: Reporting procedure	409
Article 45: Implementation and international cooperation	413
Articles 46–54: Final clauses: signature, ratification, accession, entry into force, amendments, reservations, denunciations	417
Optional Protocol on the Involvement of Children in Armed Conflict (OPAC)	424
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography	437
Optional Protocol on a Communications Procedure (OPIC)	456
<i>Index</i>	483

EXTENDED TABLE OF CONTENTS

<i>List of abbreviations</i>	xiv
<i>Foreword</i>	xvii
<i>Table of cases</i>	xx
<i>Table of legislation</i>	xxix
Introduction: Three decades of children's rights law	
A. ORIGINS OF THE CRC	1.04
B. A LEGAL PERSPECTIVE ON THE CRC AND ITS OPTIONAL PROTOCOLS	1.10
1. A multi-tiered approach	1.20
2. Children's rights as human rights	1.25
3. Situating the CRC in international law	1.34
C. REALISATION OF CHILDREN'S RIGHTS AND THE IMPLEMENTATION OF THE CRC	1.38
D. NEW ISSUES AND AMBIGUITIES	1.52
1. New issues and gaps	1.52
2. Ambiguities: limitations and derogations	1.54
E. CONTEXTUALISATION: CHILDREN'S RIGHTS BEYOND THE LEGAL FIELD	1.58
F. OUR APPROACH	1.70
CRC Preamble	
Article 1: Scope of application	
A. NO MINIMUM AGE	1.02
B. UPPER AGE LIMIT	1.05
C. DIFFERENTIATION	1.09
D. CHILDHOOD	1.11
Article 2: Non-discrimination	
A. PERSONAL SCOPE OF APPLICATION	2.03
B. ACCESSORY RIGHT	2.07
C. DEFINITION AND TYPES OF DISCRIMINATION	2.09
D. PROHIBITED GROUNDS	2.12
E. OBLIGATIONS	2.17
F. VULNERABILITY	2.19
Article 3: Best interests of the child	
A. A PRIMARY CONSIDERATION IN ALL ACTIONS	3.05
1. Defining best interests	3.09
2. Assessing and determining children's best interests	3.12
3. Balancing different interests	3.17
B. PROTECTION AND CARE	3.23
C. APPROPRIATE STANDARDS FOR CARE AND PROTECTION	3.25
D. BALANCING CRC RIGHTS AND PRINCIPLES	3.27
Article 4: General obligation	
A. APPROPRIATE MEASURES	4.02
B. ECONOMIC, SOCIAL AND CULTURAL RIGHTS	4.05
C. SPATIAL SCOPE OF OBLIGATIONS	4.09
D. IMPLEMENTATION	4.12

EXTENDED TABLE OF CONTENTS

Article 5: Appropriate direction and guidance consistent with the child's evolving capacities	
A. BACKGROUND	5.03
B. STATE OBLIGATIONS	5.05
C. CHANGING ROLE OF PARENTS AND OTHER CAREGIVERS	5.08
D. CAPACITY OF THE CHILD	5.11
E. BEYOND THE LAW	5.15
Article 6: The right to life, survival and development	
A. OBLIGATIONS	6.04
B. KEY QUESTIONS	6.08
C. CONTEMPORARY DEBATES	6.16
1. Beginning of childhood	6.16
2. Impact of private actors	6.19
Article 7: Name and nationality	
A. BIRTH REGISTRATION	7.03
B. NAME	7.08
C. NATIONALITY AND AVOIDANCE OF STATELESSNESS	7.11
D. RIGHT TO KNOW ONE'S PARENTS AND TO BE CARED FOR BY THEM	7.15
Article 8: Preservation of identity	
Article 9: Separation from parents	
A. PROTECTION OF FAMILY UNITY	9.02
B. A UNIQUE PROVISION?	9.05
C. STATE OBLIGATIONS	9.09
D. BEYOND THE LAW	9.22
Article 10: Family reunification	
A. POSITIVE, HUMANE AND EXPEDITIOUS TREATMENT OF APPLICATIONS	10.02
B. RIGHT TO LEAVE A COUNTRY AND TO RETURN	10.05
C. UNACCOMPANIED OR SEPARATED CHILDREN	10.07
Article 11: Illicit transfer and non-return of children	
A. PARENTAL ABDUCTION	11.02
B. CONCLUDE OR ACCEDE TO INTERNATIONAL AGREEMENTS	11.03
C. ADDITIONAL STANDARDS AND THEIR INTERPRETATION	11.05
D. OTHER MEASURES TO COMBAT ILLICIT TRANSFER AND NON-RETURN ABROAD	11.11
E. CHANGING REALITIES	11.13
Article 12: The views of the child	
A. THE RIGHT TO EXPRESS VIEWS	12.05
1. Positive obligation	12.05
2. The capacity of forming one's views	12.06
3. Free expression of one's views	12.09
4. Which matters affect the child?	12.14
B. THE OBLIGATION TO GIVE DUE WEIGHT TO THE CHILD'S VIEWS	12.17
C. THE SPECIFIC CASE OF OFFICIAL PROCEEDINGS	12.24
1. Ways of hearing the child	12.27
2. Fair proceedings	12.29
3. The concept of 'participation'	12.30
Article 13: Freedom of expression	
A. OBLIGATIONS	13.02
B. SPECIFIC ISSUES	13.07
1. Freedom rights	13.07
2. Limitations	13.10
C. BEYOND THE LAW	13.12

Article 14: Freedom of thought, conscience and religion	
A. OBLIGATIONS	14.02
B. KEY ISSUES	14.03
1. Freedom of thought, conscience and religion	14.03
2. Limitations	14.06
3. A contested freedom: rights and duties of parents	14.09
C. CRITICAL PERSPECTIVES	14.15
Article 15: Freedom of association and peaceful assembly	
A. SUBSTANTIVE CLARIFICATIONS	15.05
B. STATE OBLIGATIONS	15.09
C. ASSOCIATION RIGHTS OF WORKING CHILDREN IN TRADE UNIONS	15.14
D. BEYOND THE LAW	15.17
Article 16: The right to privacy	
A. SCOPE	16.05
B. STATE OBLIGATIONS	16.08
C. CONFLICTS BETWEEN CHILDREN'S RIGHTS AND PARENTS' INTERESTS	16.14
D. CHILDREN'S PRIVACY ONLINE	16.16
Article 17: Access to appropriate information through media	
A. OBLIGATIONS	17.02
B. KEY ISSUES	17.09
C. OPPORTUNITIES AND RISKS OF MASS MEDIA	17.11
D. NEW OBLIGATIONS IN THE DIGITAL AGE	17.15
Article 18: Common responsibilities of parents for the upbringing and development of the child	
A. COMMON RESPONSIBILITIES	18.02
B. STATE DEFERENCE	18.03
C. STATE ASSISTANCE	18.05
D. CHILDREN OF WORKING PARENTS	18.08
E. CRITICAL OBSERVATIONS	18.10
Article 19: Protection from all forms of violence	
A. OBLIGATIONS	19.02
1. Definition of violence	19.04
2. Children in the care of primary or proxy caregivers	19.07
3. Measures of protection	19.09
B. KEY ISSUES	19.14
1. An unequivocal prohibition	19.14
2. Prohibition of corporal punishment	19.15
C. CONTEMPORARY DEBATES	19.25
Article 20: Children deprived of their family environment	
A. NECESSITY OF ALTERNATIVE CARE	20.05
B. SUITABILITY OF ALTERNATIVE CARE (1)	20.07
C. SUITABILITY OF ALTERNATIVE CARE (2): FORMS OF ALTERNATIVE CARE	20.12
D. SUITABILITY OF ALTERNATIVE CARE (3): NO UNDUE DISRUPTION IN THE LIFE OF THE CHILD	20.17
E. BEYOND THE LAW	20.18
Article 21: Adoption	
A. CONDITIONS	21.02
B. INTER-COUNTRY ADOPTION	21.04
C. SUBSIDIARITY CONFLICTS	21.05
D. BEST INTERESTS OF THE CHILD	21.10
E. ADOPTION TREATIES	21.11
F. BEYOND THE LAW	21.13

EXTENDED TABLE OF CONTENTS

Article 22: Asylum seeking and refugee children	
A. OBLIGATIONS	22.02
B. KEY ISSUES	22.07
1. Definition of a refugee	22.07
2. <i>Non-refoulement</i>	22.10
3. Content of protection and assistance	22.11
Article 23: Children with disabilities	
A. OBLIGATIONS	23.04
B. DOMESTIC IMPLEMENTATION	23.07
C. DE-INSTITUTIONALISATION	23.09
D. INCLUSIVE EDUCATION	23.11
E. SPECIAL PROTECTION MEASURES	23.12
Article 24: Right to health	
A. OBLIGATIONS	24.02
1. Progressive realisation	24.07
2. Retrogressive measures	24.10
3. Minimum core obligations	24.11
4. International cooperation	24.13
5. Special issues of concern	24.15
B. CONTEMPORARY DEBATES	24.37
1. Medical consent	24.37
2. Obligations of private actors	24.41
Article 25: Periodic review of placement	
A. REGULAR REVIEW	25.04
Article 26: Social security	
A. MEANING AND SCOPE OF THE RIGHT	26.01
B. OBLIGATIONS	26.05
C. ADDED VALUE OF ART. 26 CRC	26.10
Article 27: Adequate standard of living	
A. OBLIGATIONS	27.03
B. RIGHT TO HOUSING	27.06
C. RIGHT TO FOOD	27.07
D. RIGHT TO WATER	27.11
E. POVERTY	27.13
Article 28: Right to education	
A. OBLIGATIONS	28.03
B. POSITIVE DISCIPLINE	28.09
C. INCLUSIVE EDUCATION FOR CHILDREN WITH DISABILITIES	28.13
D. INCLUSION OF ROMA CHILDREN	28.17
E. EXEMPTIONS	28.20
F. ACCESS TO EDUCATION FOR UNDOCUMENTED MIGRANT CHILDREN	28.21
G. INTERNATIONAL COOPERATION	28.23
Article 29: Aims of education	
A. FIVE AIM OF EDUCATION	29.02
B. OBLIGATIONS	29.06
C. FREEDOM TO ESTABLISH AND DIRECT EDUCATIONAL INSTITUTIONS	29.09
Article 30: Rights of children from minorities and indigenous origin	
A. OBLIGATIONS	30.03
B. KEY ISSUES	30.06
1. Indigenous children's rights	30.06
2. Balancing of interests	30.08

C. CONTEMPORARY DEBATES	30.10
Article 31: Rest, leisure and play	
A. OBLIGATIONS	31.02
B. KEY ISSUES	31.07
C. CONTEMPORARY DEBATES	31.19
Article 32: Protection from economic exploitation	
A. OBLIGATIONS	32.02
1. Minimum age requirements	32.04
2. Worst forms of child labour	32.07
B. CONTEMPORARY DEBATES	32.11
Article 33: Protection from drugs	
A. OBLIGATIONS	33.02
1. Protection of children at higher risk	33.05
2. Protection from economic exploitation	33.07
3. Taking all appropriate measures	33.10
Article 34: Protection from sexual exploitation and abuse	
A. OBLIGATIONS	34.03
1. Protection	34.05
2. Prevention	34.10
B. CONTEMPORARY DEBATES	34.14
Article 35: Prevention of abduction, sale and trafficking	
A. OBLIGATIONS	35.02
1. Terminology	35.04
2. Prevention	35.09
3. Child-sensitive procedures	35.12
B. CONTEMPORARY DEBATES	35.14
1. Conflict and humanitarian crises	35.14
2. Surrogacy	35.15
Article 36: Protection against all other forms of exploitation	
A. OBLIGATIONS	36.02
B. CONTEMPORARY DEBATE	36.04
Article 37: Deprivation of liberty, prohibition of torture, degrading and inhuman treatment and of capital punishment and life imprisonment	
A. DEPRIVATION OF LIBERTY	37.02
B. OBLIGATIONS	37.03
1. General obligations	37.06
2. Specific obligations related to the prohibition of various forms of ill-treatment in detention: art. 37(a)	37.08
3. Specific obligations related to deprivation of liberty: art. 37(b-d)	37.13
C. CONTEMPORARY DEBATES	37.24
Article 38: Children in armed conflict	
A. OBLIGATIONS	38.02
B. KEY ISSUES	38.04
1. Age thresholds	38.04
2. Interface between art. 38 and international humanitarian law	38.05
3. International armed conflicts	38.07
4. Non-international armed conflicts	38.08
5. Customary law	38.09
C. BEYOND THE LAW	38.11
Article 39: Recovery and reintegration of child victims	
A. OBLIGATIONS	39.02

EXTENDED TABLE OF CONTENTS

B. KEY ISSUES	39.12
1. Tensions around prosecutorial justice and reintegration	39.12
2. Terminological debates: victim versus survivor	39.13
Article 40: Children's rights in justice systems	
A. OBLIGATIONS	40.04
1. Treatment with dignity and respect: art. 40.1	40.04
2. Procedural guarantees: art. 40.2	40.08
3. Specificities of the juvenile justice system: art. 40.3	40.18
4. Alternatives to institutional care: art. 40.4	40.24
B. PREVENTION	40.27
Article 41: Respect for higher standards	
Article 42: Dissemination	
Article 43: The Committee on the Rights of the Child	
A. COMPOSITION	43.03
B. ELECTIONS	43.04
C. REQUIREMENTS	43.07
D. FUNCTIONING	43.09
Article 44: Reporting procedure	
A. REPORTING GUIDELINES	44.02
B. SOURCES OF INFORMATION	44.05
C. DISCUSSION OF THE REPORT	44.06
Article 45: Implementation and international cooperation	
Articles 46–54: Final clauses: signature, ratification, accession, entry into force, amendments, reservations, denunciations	
A. CONSENT TO BE BOUND	46–54.02
B. RESERVATIONS	46–54.05
1. General reservations regime	46–54.06
2. CRC Committee	46–54.07
C. DENUNCIATION	46–54.10
Optional Protocol on the Involvement of Children in Armed Conflict (OPAC)	
A. COMPULSORY PARTICIPATION AND RECRUITMENT IN HOSTILITIES	OPAC.04
B. VOLUNTARY RECRUITMENT INTO ARMED FORCES	OPAC.07
C. RECRUITMENT AND USE BY ARMED GROUPS	OPAC.12
D. IMPLEMENTATION, PREVENTION AND REHABILITATION	OPAC.14
E. INTERNATIONAL COOPERATION	OPAC.15
F. REPORTING	OPAC.17
G. GENERAL PRINCIPLES AND STANDARD CLAUSES	OPAC.18
H. CRITICAL REFLECTIONS	OPAC.19
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography	
A. KEY LEGAL QUESTIONS	OPSC.03
1. Terminology	OPSC.05
2. Criminalisation/penalisation	OPSC.07
3. Jurisdiction	OPSC.10
4. Judicial cooperation	OPSC.11
5. Protection of child victims	OPSC.15
6. Prevention	OPSC.16
7. Procedural provisions	OPSC.17

Optional Protocol on a Communications Procedure (OPIC)

A. PREAMBLE	OPIC.04
B. GENERAL CONDITIONS	OPIC.06
C. INDIVIDUAL COMPLAINTS	OPIC.11
D. INTERIM MEASURES	OPIC.14
E. ADMISSIBILITY	OPIC.16
F. CONSIDERATION OF THE COMMUNICATION	OPIC.19
G. GOOD OFFICES	OPIC.20
H. CONSIDERATION OF THE MERITS	OPIC.21
I. FOLLOW-UP	OPIC.22
J. ECONOMIC, SOCIAL AND CULTURAL RIGHTS	OPIC.24
K. INTER-STATE COMPLAINTS	OPIC.26
L. INQUIRY PROCEDURE	OPIC.28
M. INTERNATIONAL ASSISTANCE AND COOPERATION	OPIC.30
N. DISSEMINATION AND INFORMATION	OPIC.31
O. EVALUATION	OPIC.34

Index

483