

TABLE OF CONTENTS

Acknowledgements	xix
Table of abbreviations	xx
Text of the Convention on the Rights of the Child	xxi
Introduction	1
 PART ONE	
The Convention on the Rights of the Child: An Overview	
Drafting history	13
Contents	21
Direct application	27
Horizontal effects.....	31
Limitations.....	33
Committee on the Rights of the Child	41
Final provisions	44
 PART TWO	
Part I of the Convention on the Rights of the Child (Articles 1–41): A Commentary	
Article 1: Definition of the child	51
1. Text	51
2. Function of Article 1	51
3. Definition of the child under the ICCPR and the ICESCR.....	52
4. The beginning of childhood	53

5. The end of childhood	57
Article 2: Non-discrimination	67
1. Text	67
2. Function of Article 2	68
3. States parties' basic obligation	68
4. Principle of non-discrimination	71
4.1 Significance	71
4.2 Independent guarantee against discrimination	72
4.3 Definition of discrimination	72
4.4 Children born out of wedlock	75
4.5 Views of the Committee on the Rights of the Child on implementation	77
Article 3: Best interests of the child	85
1. Text	85
2. Best interests of the child	86
2.1 Significance	86
2.2 Other international provisions	86
2.3 Criticism	88
2.4 Implementation	90
3. Well-being of the child	93
4. Appropriate standards for institutions, services and facilities responsible for the care or protection of children	94
Article 4: General measures of implementation	100
1. Text	100
2. Function of Article 4	100
3. Related international human rights provisions	101
4. Drafting history	101
5. States parties' general obligation	102
6. International co-operation	109
Article 5: Parental guidance	115
1. Text	115
2. Function of Article 5	115
3. Drafting history	116
4. Implementation	119
Article 6: The right to life, survival and development	125
1. Text	125
2. The right to life	125
3. Survival and development	130

4. The right to life of the unborn child	133
Article 7: Name and nationality	143
1. Text	143
2. General introduction	143
3. Name and registration of birth	144
4. Nationality	146
4.1 Related international human rights provisions	146
4.2 State obligations	149
5. The right to know and be cared for by one's parents	153
Article 8: Preservation of identity	159
1. Text	159
2. Drafting history	159
3. Related international human rights provisions	162
4. "Identity"	162
5. State obligations	164
Article 9: Separation from parents	169
1. Text	169
2. General introduction	170
3. Non-separation from parents	171
4. Opportunity to participate in proceedings	174
5. Maintenance of personal relations and direct contacts between children and parents who are separated	176
6. Separations resulting from any action initiated by the State	178
Article 10: Family reunification	183
1. Text	183
2. General introduction	184
3. Related international human rights provisions	185
4. Family reunification	191
5. Maintenance of contact between children and parents who reside in different States	194
Article 11: Illicit transfer and non-return	203
1. Text	203
2. Relation to Article 35 of the CRC	203
3. Drafting history	203
4. State obligations	207

Article 12: Respect for the views of the child.....	213
1. Text	213
2. Significance	213
3. Drafting history.....	214
4. Other international provisions	218
5. Respect for the views of the child.....	220
6. The right to be heard	223
Article 13: Freedom of expression	231
1. Text	231
2. Related international human rights provisions	231
3. Background.....	232
4. State obligations.....	233
Article 14: Freedom of thought, conscience and religion	243
1. Text	243
2. Related international human rights provisions	243
3. Related provisions in the CRC.....	245
4. State obligations.....	246
Article 15: Freedom of association and peaceful assembly.....	257
1. Text	257
2. Related international human rights provisions	257
3. Background.....	258
4. State obligations.....	259
Article 16: Protection of privacy	269
1. Text	269
2. Related international human rights provisions	269
3. Background.....	270
4. State obligations.....	271
Article 17: Access to appropriate information	283
1. Text	283
2. Related international human rights provisions	284
3. Drafting history.....	285
4. State obligations.....	287
5. Discussion day “The Child and the Media” of the Committee on the Rights of the Child	288
Article 18: Parental responsibilities.....	294
1. Text	294
2. General introduction	295

3. Parental responsibilities	296
3.1 The principle that both parents have common responsibilities for the upbringing and development of the child.....	296
3.2 Primary responsibility for the upbringing and development of the child	301
4. Family assistance	305
5. Services for children of working parents	309
Article 19: Abuse and neglect	318
1. Text	318
2. Related international human rights provisions	318
3. "Abuse and neglect"	320
4. Protective measures of implementation	322
Article 20: Children deprived of their family environment	330
1. Text	330
2. Related international human rights provisions	330
3. International principles of good adoption and foster placement practice	332
4. "Children deprived of their family environment"	333
5. The right to special protection and assistance	335
Article 21: Adoption	341
1. Text	341
2. General introduction	342
3. Related international human rights provisions	343
4. International principles of good adoption practice.....	344
5. "States Parties that recognize and/or permit the system of adoption"	346
6. Best interests of the child.....	347
7. Authorization and permissibility of adoption.....	347
8. Intercountry adoption as a subsidiary means of child's care	350
9. Equivalent standards for national and intercountry adoption.....	351
10. Improper financial gain in intercountry adoption	353
11. Conclusion of international conventions on intercountry adoption.....	354
Article 22: Refugee children	361
1. Text	361

2. General introduction	362
3. "Refugee children"	362
4. Appropriate protection and assistance	366
5. Co-operation	369
Article 23: Disabled children	376
1. Text	376
2. General introduction	377
3. United Nations Declarations	378
4. Related international human rights provisions	381
5. "Disabled children"	382
6. The right to enjoy a full and decent life	382
7. Protection against discrimination	384
8. The right to special care and assistance	385
9. International exchange of information	389
Article 24: Health and health services	396
1. Text	397
2. Related provisions in the CRC	398
3. Related international human rights provisions	399
4. World Health Organization	399
5. World Summit for Children	400
6. Nature of State obligations	401
7. Access to health care services	403
8. Facilities for the treatment of illness and the rehabilitation of health	404
9. Infant and child mortality	405
10. Medical assistance and health care	405
11. Disease and malnutrition	409
12. Pre-natal and post-natal health care	411
13. Health education	412
14. Preventive health care, guidance for parents and family planning	413
15. Traditional practices	414
16. International co-operation	419
17. Medical or scientific experimentation or treatment	420
18. HIV infection and AIDS	425
Article 25: Periodic review of placement	436
1. Text	436
2. Related provisions in the CRC	436
3. Drafting history	437

4. Related international human rights provisions	438
5. State obligations	439
Article 26: Social security	445
1. Text	445
2. Related international human rights provisions	445
3. State obligations	446
Article 27: Standard of living	453
1. Text	453
2. Related international human rights provisions	454
3. United Nations action	455
4. Standard of living	457
5. Assistance to parents or others caring for the child	459
6. Recovery of maintenance for the child	464
Article 28: Education, including vocational training and guidance	471
1. Text	471
2. General introduction	472
3. Related international human rights provisions	474
4. Nature of State obligations	475
5. Primary education	477
6. Secondary education	480
7. Higher education	482
8. Educational and vocational information and guidance	483
9. School attendance and drop-out rates	484
10. Equal opportunity	485
11. Humane school discipline	488
12. International co-operation	493
Article 29: Aims of education	504
1. Text	504
2. General introduction	505
3. Aims of education	505
3.1 Related international human rights provisions	505
3.2 Nature of State obligations	509
3.3 Background	510
4. Liberty of individuals to establish and direct educational institutions	516

Article 30: Children belonging to a minority or an indigenous group	531
1. Text	531
2. Other international provisions	531
3. Comparison with Article 27 of the ICCPR	535
3.1 Relation to other rights set forth in the CRC	536
3.2 Definitions of ethnic, religious and linguistic minorities, and persons of indigenous origin	537
3.3 State obligations	540
Article 31: Leisure, recreation and cultural activities	546
1. Text	546
2. General introduction	546
3. Nature of State obligations	547
4. Rest and leisure	548
5. Play and recreation	550
6. Cultural life and the arts	551
Article 32: Economic exploitation	558
1. Text	558
2. Related provisions in the CRC	559
3. Related international human rights provisions	559
4. State obligations	562
5. Discussion day "Protection of the child against economic exploitation" of the Committee on the Rights of the Child	573
Article 33: Drug abuse	580
1. Text	580
2. Related provisions in the CRC	580
3. Related international human rights provisions	581
4. United Nations action	581
5. Drafting history	583
6. State obligations	584
Article 34: Sexual exploitation and sexual abuse	588
1. Text	588
2. Related provisions in the CRC	588
3. Related international human rights provisions	589
4. State obligations	592
5. Draft optional protocol to the CRC on the sale of children, child prostitution and child pornography	595

Article 35: Sale, trafficking and abduction	598
1. Text	598
2. Related provisions in the CRC	598
3. Related international human rights provisions	599
4. State obligations	602
5. Draft optional protocol to the CRC on the sale of children, child prostitution and child pornography	605
Article 36: Other forms of exploitation	609
1. Text	609
2. Related provisions in the CRC	609
3. Related international human rights provisions	610
4. Drafting history	612
5. State obligations	614
Article 37: The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; the sentencing of children, with particular reference to the prohibition of capital punishment and life imprisonment; children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings	619
1. Text	619
2. General introduction	620
3. Torture and other cruel, inhuman or degrading treatment or punishment	621
4. Capital punishment	626
5. Life imprisonment	627
6. Deprivation of liberty	629
7. Children deprived of their liberty	633
Article 38: Children in armed conflicts	645
1. Text	645
2. General introduction	646
3. Other international provisions	647
4. Rules of international humanitarian law relevant to the child	650
5. Direct participation in hostilities and recruitment	652
6. Protection of the civilian population	656
7. Draft optional protocol to the CRC on involvement of children in armed conflicts	658

Article 39: Physical and psychological recovery and social reintegration of the child	666
1. Text	666
2. Comparison with other international human rights provisions	666
3. Personal scope of application	668
4. State obligations	670
Article 40: The administration of juvenile justice	674
1. Text	674
2. Related international human rights provisions	676
3. General introduction to Article 40	682
4. <i>Nullum crimen sine lege</i>	683
5. Minimum guarantees for the child alleged as or accused of having infringed the penal law	686
5.1 Presumption of innocence	686
5.2 Prompt notification of the charge; preparation and presentation of the defence	687
5.3 Prompt trial; rights of defence; presence of parents or legal guardians	691
5.4 Prohibition of self-incrimination; examination of witnesses	693
5.5 Appeal	695
5.6 Free assistance of an interpreter	696
5.7 Privacy	697
6. Establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law	699
7. Alternatives to institutional care	702
Article 41: Savings clause	712
1. Text	712
2. Function of Article 41	712
3. Background	713
4. Comparison with other savings clauses	714
Concluding remarks	719

Appendix I: Draft Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	723
Appendix II: Draft Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflicts.....	733
Appendix III: African Charter on the Rights and Welfare of the Child	739
Selected bibliography	759
Index	773