

# TABLE OF CONTENTS

## PREFACE

DAVID ARCHARD .....	v
INTRODUCTION .....	1
 <i>PART I.</i>	
PARTICIPATION OF CHILDREN – GENERAL OBSERVATIONS .....	7
 CHAPTER 1.	
PARTICIPATION RIGHTS IN THE UN CONVENTION ON THE RIGHTS	
OF THE CHILD	
FIONA ANG, EVA BERGHMANS, MARIE DELPLACE, VALENTINA STAELENS, CAROLINE VANDRESSE and MIEKE VERHEYDE .....	9
1. Introduction .....	9
2. Article 12 CRC .....	11
2.1. Rights holder .....	12
2.2. Object .....	14
2.2.1. The right to express views freely in all matters affecting the child .....	14
2.2.2. The right of the child to have his or her views being given due weight in accordance with his or her age and maturity ..	18
2.2.3. The right to be heard in any judicial and administrative proceedings affecting the child, in a manner consistent with the procedural rules of national law .....	19
2.3. State obligations .....	20
Summarised .....	25

Table of Contents

<b>CHAPTER 2.</b>	
<b>REFLECTIONS ON THE CONCEPT OF PARTICIPATION</b>	
LIEVE CATTRIJSE and DR. ISABELLE DELENS-RAVIER .....	27
1. Introduction .....	27
2. Another vision of children .....	27
2.1. The pedagogy of Korczak: respect for children in education .....	27
2.2. The pedagogy of Korczak and the CRC .....	29
3. Interpretation of the concept .....	31
4. Towards a ‘culture’ of participation .....	35
<b>CHAPTER 3.</b>	
<b>TRANSCENDING DISCIPLINES: LEGAL PROFESSIONALS’ VIEWS ON PARTICIPATION</b>	
FIONA ANG, EVA BERGHMANS, LIEVE CATTRIJSE, DR. ISABELLE DELENS- RAVIER, MARIE DELPLACE, VALENTINA STAELENS, CAROLINE VANDRESSE and MIEKE VERHEYDE .....	39
1. Introduction .....	39
2. The concept of participation .....	39
3. How to put participation into practice .....	42
3.1. External factor .....	42
3.2. Child-related factors .....	42
3.3. Adult-related factors .....	45
3.4. Factors related to the adult-child relationship .....	47
Concluding remarks .....	48
<b>PART II.</b>	
<b>PARTICIPATION IN DIFFERENT FIELDS</b> .....	
	51
<b>CHAPTER 1.</b>	
<b>PARTICIPATION RIGHTS OF CHILDREN AND INTERNATIONAL CRIMINAL LAW</b>	
TINY VANDEWIELE .....	53
Introduction .....	53
1. International criminal law and the children’s rights movement: general remarks .....	54

2. Increased attention for the participation of children in international criminal proceedings .....	55
2.1. Participation rights of children and international criminal law: general remarks .....	56
2.2. Participation of children in international criminal proceedings .....	58
2.2.1. ICTY and ICTR: participation of children in the proceedings not regulated .....	58
2.2.2. ICC and SCSL: participation of children in the proceedings regulated .....	58
3. Child offenders: no international criminal responsibility? .....	60
3.1. Child soldiers, participation and international criminal law: general remarks .....	61
3.2. International criminal responsibility of children? .....	64
3.2.1. Unlimited jurisdiction of ICTY and ICTR .....	64
3.2.2. The ICC has no jurisdiction over children .....	65
3.2.3. Child Soldiers in Sierra Leone can be brought before the SCSL .....	66
Conclusion .....	68

**CHAPTER 2.****PARTICIPATION OF ASYLUM-SEEKING AND REFUGEE CHILDREN**

EVA BERGHMANS .....	71
Introduction .....	71
1. The Convention on the Rights of the Child .....	73
2. The Committee on the Rights of the Child .....	75
3. The United Nations High Commissioner for Refugees (UNHCR) .....	78
4. The United Nations Children's Fund (UNICEF) .....	82
Conclusion .....	85

**CHAPTER 3.****PARTICIPATION IN THE JUVENILE JUSTICE SYSTEM**

CAROLINE VANDRESSE .....	87
Introduction .....	87
1. The right to participation of juveniles within the context of extra judicial procedures .....	88
1.1. Article 12 of the CRC .....	89
1.1.1. Components and limits of Article 12 of the CRC .....	89

Table of Contents

1.1.2. The conditions for the application of Article 12 of the CRC: children capable of forming their own views .....	89
1.2. Articles 37 and 40 of the CRC .....	90
1.2.1. General points .....	90
1.2.2. The consent of the juvenile within the context of the process of treating matters out of court .....	91
2. Participation and consent within the context of juvenile justice .....	92
2.1. Negotiated justice .....	93
2.1.1. Notions .....	93
a. Imposed justice .....	93
b. Participative justice .....	94
c. Consensual justice .....	94
d. Negotiated justice .....	94
2.1.2. Historical approach .....	95
a. From negotiation to the criminal trial .....	95
b. The law crisis .....	96
c. The alternatives for a post-modern law .....	97
2.2. Law on youth protection, development of participation of juveniles and respect for guarantees .....	98
2.2.1. Process of treating matters out of court .....	99
a. Abandonment of the right of access to a court: general remarks .....	99
b. Conditions of abandonment .....	101
c. A particular intervening party: the Public Prosecutor ...	101
2.2.2. Negotiated and contractual justice .....	104
Conclusion .....	106

**CHAPTER 4.**  
**PARTICIPATION AND PROTECTION OF CHILDREN AGAINST  
SUBSTANCE ABUSE AND TRAFFICKING AND PRODUCTION  
BY CHILDREN**

VALENTINA STAELENS .....	109
Introduction .....	109
1. Article 12 of the CRC and drug abuse by children .....	110
2. Analysis of strategies of implementation of participatory rights in the light of drug abuse by children .....	113
3. Analysis of some specific aspects of participation in the field of substance abuse .....	116

3.1. Participation of children in the development, implementation and evaluation of national and international drug abuse prevention policies .....	116
3.2. The use of peer-to-peer strategies for drug abuse prevention .....	118
Conclusion .....	121

**CHAPTER 5.**  
**THE IMPLEMENTATION OF PARTICIPATION RIGHTS IN THE FIELD OF FLEMISH CHILD MENTAL HEALTH**

FIONA ANG .....	123
Introduction .....	123
1. Child mental health in Flanders, Belgium .....	124
2. Belgian and Flemish implementation of participation rights in child mental health .....	127
2.1. General observations: participation rights in Belgium .....	127
2.2. Participation rights in Belgian and Flemish legislation relating to children with a psychiatric disability .....	128
2.2.1. Medical treatment matters .....	130
2.2.2. Assistance and voluntary commitment matters .....	134
Extra-judicial way .....	134
Judicial way .....	135
2.2.3. Compulsory commitment matters .....	136
3. Emancipatory character of participation rights for children with a psychiatric disability .....	138
Conclusion .....	140

**CHAPTER 6.**  
**YOUTH PARTICIPATION, HELP AND PROTECTION**

DR. ISABELLE DELENS-RAVIER .....	141
Introduction .....	141
1. The concept of participation in the texts organising youth aid and the social reaction to juvenile delinquency in the French Community .....	141
1.1. Youth aid .....	142
1.2. Social reaction to juvenile delinquency .....	143
1.3. The philosophy of the texts .....	145
2. A specific research methodology .....	147
2.1. Some historical elements .....	148

Table of Contents

2.2. The concept of collaborative research .....	149
3. Contribution of research to the help and protection of youth .....	151
3.1. Methodology .....	152
3.2. The point of view of parents and families .....	154
3.3. The point of view of the child .....	157
4. Concluding remarks .....	159

**CHAPTER 7.**

**PARTICIPATION IN ADOPTION**

MARIE DELPLACE ..... 163

Introduction .....	163
1. Legal grounds for participation in adoption and corresponding State obligations in the CRC .....	164
1.1. Article 21 of the CRC: the adoption article .....	164
1.2. The CRC's 'cluster of participation rights' .....	165
1.2.1. Article 12 of the CRC .....	165
1.2.2. Article 17 of the CRC .....	167
1.2.3. Article 7 and 8 of the CRC .....	167
1.3. State obligations concerning the right of the child to participate in adoption .....	168
2. Implementation of legal provisions on participation of children in adoption .....	169
2.1. Considering the opinion of the adoptee during the adoption process .....	169
2.1.1. The right of the child to be informed prior to giving an opinion .....	169
2.1.2. How to let the child participate during the adoption .....	172
2.2. The right of the adopted child to information on his or her origins ..	173
3. The emancipatory character of participation rights for the adoptee .....	179
Conclusion .....	179

**CHAPTER 8.**

**PARTICIPATION AT SCHOOL**

MIEKE VERHEYDE ..... 181

Introduction .....	181
1. The importance of participation in education .....	181
2. The international legal basis for participation in education .....	184

2.1.	The right to participate in education under the CRC .....	184
2.2.	Obligations regarding participation in education under the CRC .....	190
3.	Practical implementation of participation in education .....	191
3.1.	Mechanisms within the school context .....	191
3.2.	Mechanisms outside the school context .....	194
4.	Emancipatory nature of the CRC's provisions regarding participation in education .....	195
	Conclusion .....	198

## CHAPTER 9.

### PARTICIPATION AND HUMAN RIGHTS EDUCATION: A GORDIAN KNOT?

LIEVE CATTRIJSSSE .....	199
Introduction .....	199
1. What is human rights education? .....	200
1.1. Human rights education: origin and evolutions in international law .....	200
1.1.1. The first seeds .....	201
1.1.2. The 1974 UNESCO Recommendation .....	202
1.1.3. The nineties .....	203
a. The Montreal Declaration .....	204
b. The Vienna Declaration and Programme of Action .....	205
1.1.4. The UN Decade for Human Rights Education .....	206
1.1.5. To summarise .....	208
1.2. Human rights education: conceptions of non-state actors .....	208
1.2.1. Different actors, different angles .....	209
1.2.2. Content and process of human rights educators .....	210
1.2.3. The learning settings .....	212
1.2.4. The target groups .....	213
1.2.5. To summarise .....	214
2. Human rights education: related concepts and their premises .....	214
2.1. Participation as the cornerstone in human rights education .....	215
2.1.1. Participation as the cornerstone in human rights education .....	215
2.1.2. Participation in between autonomy and care .....	216
2.1.3. Participation in between individual and collectivity .....	218
2.2. Democracy and democratic citizenship as the final goals of human rights education .....	221
2.2.1. Democracy: the end or endless? .....	221
2.2.2. Citizenship: more than the entitlement of rights .....	223

Table of Contents

2.2.3. Democracy and universality: the letter or the spirit of law? ..	223
2.3. Empowerment: fashion and rhetoric? .....	224
2.3.1. Empowerment education or human rights education? .....	224
2.3.2. Empowerment is at the same time disempowerment .....	226
3. Conclusions .....	227
3.1. Human rights education as continuous dialogue .....	227
3.2. Human rights as ethical frame of reference .....	228
 CONCLUSION .....	231
1. What is participation? .....	231
2. Why do we need participation? .....	232
3. How can child participation be realised? .....	234
4. Recommendations .....	237
 LITERATURE .....	239