FOREWORD

Before the adoption of the UN Convention on the Rights of the Child, ‘children’s rights’ were viewed as a quest for charity. Children were often considered to be the property of their parents. They were viewed and treated as ‘mini-human beings’.

The CRC, adopted in 1989, is the first binding global instrument with a specific focus on a wide range of rights for children. It was ratified by 100 States within two years of its adoption, making it the most quickly ratified human rights instrument in the world. It took less than ten months to enter into force. More importantly, the Convention is also the most widely ratified human rights instrument with 196 States parties. The opportunity to look back into the drafting history of the Convention is very timely and should be welcomed. In recent years, especially with the rise of populism, doubts on the relevance of multilateralism, and the general pushback on the human rights agenda, State Parties often refer to the travaux préparatoires of the Convention and its Optional Protocols to argue the case why they do or do not have a specific obligation.

Fast forward 30 years, the popularity of the CRC, as manifested in its near universal ratification, suggests a high level of normative consensus among the various nations of the world on the idea and content of children’s rights as human rights. However, there is still considerable divergence of opinion about the nature of the relevant rights, their foundation and practical implications, their content and scope, and, increasingly, the locus of the duties and responsibilities that correlate with the rights. The competing rights and duties of parents, children and the State continue to create disharmony, which, ultimately, can prejudice the rights of children. These issues, and more, are covered in this Commentary.

There is a long list of strengths that this Commentary displays. I would be remiss if I do not highlight three peculiar aspects.

First, this Commentary covers a number of emerging issues that have implications on the understanding and implementation of the rights of the child that were not that pronounced 30 years ago – such as climate change, the advancement of technology, digital/social media, and the role of the private sector – factors that have further complicated the application of the Convention and its Optional Protocols.
Second, after all, the implementation of the Convention is inextricably linked to the extent to which States ratify and implement the three Optional Protocols. For example, currently, with 45 State Parties, and around 100 communications registered, it would be no exaggeration to state that there is hardly any serious academic book on children’s rights that can afford to completely ignore the Optional Protocol on a communications procedure. The references made to regional human/child rights systems further aid the completeness of the Commentary.

Third, the effort to understand the obligations under the Convention is informed, among others, by the work/jurisprudence of the UN Committee on the Rights of the Child (CRC Committee), which is the body of 18 independent experts that monitors compliance with the CRC. The Commentary does not take such jurisprudence as a given, and interrogates it critically, and highlights shortcomings where appropriate. For example, the Commentary does not shy away from engaging with more recent and contentious issues such as deconstructing the four ‘general principles’ and the need for consistent language and a clear theory around it. And while it is not necessarily the objective of this book to reach conclusions regarding the ‘true’ meaning of words and phrases in the substantive articles of the CRC and its Optional Protocols, a concrete attempt is made, in line with the rules of interpretation in international law, and at times based on the jurisprudence from the CRC Committee, to provide a reasonable construction of substantive provisions.

The different types of challenges that State Parties face in the implementation of the Convention and its Optional Protocols are often dependent on a number of factors. These factors include human and financial resources; social stability; how early the Convention has been ratified by a State and internalised; the presence and effectiveness of comprehensive laws on children’s rights; the extent to which harmful practices are embedded in society; geographical location, including topography (for instance, sparsely populated State parties, small island States, effects of exposure to climate change, etc.); and at times, the type of government arrangement, such as federal or unitary, especially in relation to co-ordination.

At the heart of addressing these challenges should be a solid understanding of the provisions of the Convention and its Optional Protocols by decision makers, advocates, academics, bureaucrats, service providers, practitioners and children alike. After all, for the Convention and its Optional Protocols to achieve their potential to create a world that is fit for children, they should be scrutinized, interrogated, understood and implemented. At times, we need to question the solutions. Reading this Commentary, I cannot help but ponder over the words of James Baldwin that ‘[n]ot everything that is faced can be changed, but nothing can be changed until it is faced’. This Commentary helps
us face our reality on the understanding and implementation of the Convention and its Optional Protocols, and it constitutes a stimulating and useful resource. It will no doubt contribute its meaningful part in this endeavor.

Benyam Dawit Mezmur  
Member (and former chairperson) of the UN Committee on the Rights of the Child  
Member (and former chairperson) of the African Committee of Experts on the Rights and Welfare of the Child  
Associate Professor of Law  
Dullah Omar Institute for Constitutional Law, Governance and Human Rights  
University of the Western Cape, South Africa