

# Contents

<i>Table of Cases</i>	xv
<i>Table of Legislation</i>	xxxvii
<i>List of Contributors</i>	li
<b>1. Setting the Scene</b>	1
<i>Anna Lawson and Lisa Waddington</i>	
1. Introduction	1
2. Comparative International Law	1
3. Disability Rights Law	5
4. Methodology	7
5. Disability-related Terminology	11
6. Structure of the Book	12
<b>2. Argentina</b>	13
<i>Ana Laura Aiello</i>	
1. Introduction	13
2. The Incorporation of International (Human Rights) Treaties by the Argentinian Legal System	13
3. The Incorporation of the CRPD into Argentinian Law	15
4. How Argentinian Courts and the INADI Have Been Using the CRPD: Interpretative Methods	18
5. Interpretations of the CRPD by Argentinian Courts and the INADI	40
6. Conclusion	50
<b>3. Australia</b>	51
<i>Lisa Waddington</i>	
1. Introduction	51
2. International Human Rights Treaties and Their Incorporation into the Australian Legal System	51
3. The CRPD Under Australian Law: Incorporation and Legal Status	57
4. Use of the CRPD by Australian Courts	61
5. Analysis of the Interpretation of the CRPD by Australian Courts	78
6. Conclusion	88
<b>4. Council of Europe</b>	89
<i>Oliver Lewis</i>	
1. Introduction	89
2. The Council of Europe and International Law	91
3. How Council of Europe Adjunctive Bodies use the CRPD	95

4. Analysis of the European Court of Human Rights' Interpretation of the CRPD	106
5. Conclusion	125
<b>5. The European Union</b>	<b>131</b>
<i>Lisa Waddington</i>	
1. Introduction	131
2. The European Union and International Agreements	132
3. The Incorporation of the CRPD into EU Law	134
4. Use of the CRPD by the Court of Justice of the European Union	138
5. Analysis of the Interpretation of the CRPD by the Court of Justice of the European Union	150
6. Conclusion	152
<b>6. Germany</b>	<b>153</b>
<i>Valentin Aichele</i>	
1. Introduction	153
2. The Legal Framework	154
3. Homing in on the CRPD: National History and Legal Status	157
4. The CRPD in German Courts: First Study by the German Institute for Human Rights, 2009–14	159
5. The Use of the CRPD by German Federal Courts, 2009–16	160
6. The Courts' Interpretation of CRPD Articles	168
7. Summary and Conclusion	176
Annex	181
<b>7. India</b>	<b>186</b>
<i>Shreya Atrey</i>	
1. Introduction	186
2. The Indian Legal System and Its Position in International Law	186
3. India and the CRPD	189
4. Indian Judicial Discourse on the CRPD	191
5. Implications of Judicial Engagement with the CRPD	211
6. Conclusion	218
<b>8. Ireland</b>	<b>220</b>
<i>Eilíonóir Flynn</i>	
1. Introduction	220
2. International Human Rights Treaties and Their Incorporation into the Irish Legal System	220
3. Legal Status of the CRPD in Irish Law	224
4. Irish Courts' Interpretation of the CRPD	228
5. Analysis of the Interpretation of the CRPD by Domestic Courts	237
6. Conclusion	243

<b>9. Italy</b>	245
<i>Delia Ferri</i>	
1. Introduction	245
2. International Treaties and Their Incorporation into the Italian Legal System	246
3. The CRPD Under Italian Law: Its Ratification and Incorporation	251
4. Use of the CRPD by Italian Courts	258
5. Analysis of the Interpretation of the CRPD	282
6. Concluding Remarks	284
<b>10. Kenya</b>	286
<i>Elizabeth Kamundia</i>	
1. Introduction	286
2. International Human Rights Treaties and Their Incorporation into the Kenyan Legal System	286
3. The CRPD Under Kenyan Law: Incorporation and Legal Status	296
4. Use of the CRPD by Kenyan Courts	300
5. Analysis of the Interpretation of the CRPD by Kenyan Courts	310
6. Conclusion	312
<b>11. Mexico</b>	314
<i>Matthew S Smith and Michael Ashley Stein</i>	
1. Introduction	314
2. International Human Rights Treaties and Their Effect in Mexican Law	315
3. Mexico as a Party to the CRPD	318
4. Use of the CRPD by Mexican Courts	320
5. Interpretation of the CRPD by Mexico's Supreme Court	329
6. Conclusion	350
<b>12. Russia</b>	352
<i>Dmitri Bartenev and Ekaterina Evdokimova</i>	
1. Introduction	352
2. Overview of the Russian Judicial System and Status of International Obligations in the Russian Legal System	353
3. Legislative Implementation of the CRPD in Russia	360
4. Use of the CRPD by Russian Courts	363
5. Interpretation of the CRPD by Russian Courts	370
6. Conclusion	383
<b>13. Spain</b>	385
<i>Ignacio Campoy Cervera</i>	
1. Introduction	385

2. International Human Rights Treaties and Their Effect in Spanish Law	385
3. The CRPD in the Spanish Legal System: Incorporation and Legal Status	387
4. Use of the CRPD by Courts in Spain	391
5. Interpretation of the CRPD by Spanish Courts	400
6. Conclusion	415
<b>14. United Kingdom</b>	417
<i>Anna Lawson and Lucy Series</i>	
1. Introduction	417
2. International Human Rights Treaties and Their Effect in United Kingdom Law	418
3. The United Kingdom as a Party to the CRPD	424
4. Use of the CRPD by United Kingdom Courts	426
5. Interpretation of the CRPD by United Kingdom Courts	452
6. Conclusion	461
Annex	463
<b>15. Interpreting the Convention on the Rights of Persons with Disabilities in Domestic Courts</b>	466
<i>Anna Lawson and Lisa Waddington</i>	
1. Introduction	466
2. Domestic Interpretations of Specific CRPD Provisions	467
3. Towards Interpretive Convergence?	526
4. Conclusion	535
<b>16. The Domestication of the Convention on the Rights of Persons with Disabilities: Domestic Legal Status of the CRPD and Relevance for Court Judgments</b>	538
<i>Lisa Waddington</i>	
1. Introduction	538
2. Direct Effect	540
3. Indirect Interpretative Effect	546
4. The CRPD Acquiring Legal Status Through Another International Treaty: European Union Law and the European Convention on Human Rights	550
5. No Domestic Legal Status	553
6. Conclusion	554
<b>17. Uses of the Convention on the Rights of Persons with Disabilities in Domestic Courts</b>	556
<i>Anna Lawson</i>	
1. Introduction	556
2. Use of the CRPD to Invalidate or Overturn Inconsistent National or Regional Legislation	558

3. Use of the CRPD to Overturn or Radically Reinterpret Previous Jurisprudence or Legal Doctrine	559
4. Use of the CRPD to 'Fill Gaps' in Domestic Law	561
5. Use of the CRPD to Resolve Ambiguities in Domestic Law	563
6. Use of the CRPD to Bolster or Support Other Authorities	565
7. Affirmatory Use of the CRPD	567
8. Use of the CRPD as a Check on Executive or Public Body Decision-making	570
9. Conclusion	573
<b>18. The Role of the Judiciary and Its Relationship to the Convention on the Rights of Persons with Disabilities</b>	<b>576</b>
<i>Lisa Waddington</i>	
1. Introduction	576
2. The Relationship of the Judiciary with the CRPD	577
3. What is Prompting Courts to Refer to the CRPD?	587
4. Conclusion	593
<b>19. Human Rights Theory and Comparative International Law Scholarship</b>	<b>594</b>
<i>Christopher McCrudden</i>	
1. Introduction	594
2. Comparative International Law and Domestic Courts' Engagement with International Human Rights	596
3. Implications for Human Rights Theory	600
4. Towards a Theory of Human Rights Law Consistent with Practice?	604
5. Conclusion	608
<i>Index</i>	609