Detailed Contents

vord	Vii
owledgements	ix
nary Contents	xi
eviations	xxi
of Cases	xxiii
nited Nations Jurisdiction	xxiii
egional Jurisdictions	xxiii
ational Jurisdictions	xxiv
of Instruments	xxvii
nited Nations Jurisdiction	xxvii
ternational Treaties	xxvii
egional Jurisdictions	xxxi
ntional Jurisdictions	xxxii
ntroduction	1
Lack of Access to Water	
A. Inequalities in Access	2
B. Impact on Health and Ruman Development	5
1	6
	8
Scope and Outline of the Book	11
ckground: Water Availability and Competing Demands	16
	17
	17
the TARWR index	18
ii. Shortcomings of the TARWR index	19
domestic needs	20
B. Human Impacts	20
	20
ii. Urbanisation	21
iii. Increasing demand	22
e e e e e e e e e e e e e e e e e e e	24
v. Climate change	25
C. Conclusion	26
Competing Water Demands – A Challenge for Allocation	27
t	invitations of Cases nited Nations Jurisdiction gional Jurisdictions of Instruments nited Nations Jurisdiction of Instruments nited Nations Jurisdiction remational Treaties gional Jurisdictions of Instruments nited Nations Jurisdiction remational Treaties gional Jurisdictions ntroduction Lack of Access to Water A. Inequalities in Access B. Impact on Health and Tuman Development The Question of Prioritisation The Emergence of the Human Right to Water Scope and Outline of the Book ckground: Water Availability and Competing Demands Water Availability and Quality A. Physical Water Availability i. Assessing per capita water availability: the TARWR index ii. Shortcomings of the TARWR index iii. Water availability for basic personal and domestic needs B. Human Impacts i. Population growth ii. Urbanisation iii. Increasing demand iv. Water pollution v. Climate change C. Conclusion

		A.	Water Uses by Sector	27
			i. Agricultural water use	28
			ii. Industrial water use	29
			iii. Domestic water use	30
			iv. Ecosystems' reliance on water	30
		В.	Competing Demands	31
			i. Competition between cities and agriculture	31
			ii. Large-scale industrial use	32
			iii. Impact of water pollution	33
			iv. Neglect of ecosystems	34
			v. Neglect of basic human needs	34
	III.	Co	nclusion: A Question of Prioritisation	35
3	Leg	al F	oundations of the Human Right to Water	37
	I.		man Rights Treaties	38
		A.	Provisions of the Social Covenant	38
			i. Significance of General Comment No 15 issued by	
			the Committee on Economic, Social and Cultural	
			Rights	38
			ii. Deriving the right to water from other rights	
			acknowledged in the Social Covenant	41
			1. Right to an adequate standard of living –	
			Article 11(1) of the Social Covenant	41
			2. Right to food - Article 11(1) and (2) of the Social	
			Covenant	45
			3. Right to housing – Article 11(1) of the Social	
			Covenant	47
			4. Right to health – Article 12 of the Social Covenant	47
		В.	Provisions of the Civil Covenant	49
			i. General considerations	49
			ii. The right to life – Article 6 of the Civil Covenant	50
		C.	Other Provisions	55
			i. Conventions with a limited scope <i>ratione personae</i>	55
			1. Convention on the Elimination of All Forms of	
			Discrimination against Women	55
			2. Convention on the Rights of the Child	55
			3. Convention on the Rights of Persons with	
			Disabilities	56
			ii. Conventions with a limited scope <i>ratione loci</i>	56
			1. African human rights instruments	56
			2. Arab human rights instruments	57
			3. American human rights instruments	57
			4. European human rights instruments	57
			iii. Humanitarian law	-58

	D.	Significance of Treaties beyond their Limited Scope? i. Convention on the Elimination of All Forms of	60
		Discrimination against Women	60
		ii. Convention on the Rights of the Child	61
		iii. Geneva Conventions	62
	E.		64
II.		stomary International Law	65
11.		The Significance of Customary Human Rights Law	65
	В.	State Practice and <i>Opinio Iuris</i>	66
	ъ.	i. Focus on actual behaviour	68
		ii. Focus on official statements	69
		iii. Combination of both elements	69
		iv. Conclusion	70
	C.	Analysis of Statements on the Right to Water	71
	٠.	i. Universal Declaration of Human Rights	71
		The Universal Declaration of Human Rights as	
		a reflection of customary human rights law?	72
		2. Selected human rights as customary law?	74
		3. Economic, social and cultural rights as	
		customary law?	75
		ii. Other General Assembly resolutions	76
		iii. Resolutions by the Commission on Human Rights	
		and the Human Rights Council	79
		iv. Political declarations and statements of recognition	81
		v. Documents issued by other UN bodies	88
		vi. Provisions in national constitutions	90
		vii. Recognition in treaties	93
		viii. Significance of the Berlin Rules of the International	
		Law Association	93
	D.	Conclusion in Regard to Customary Law	95
III.		neral Principles	97
IV.		nclusion	98
Ι	-1 C	have stavistics of the Harmon Dight to Western	100
		· · · · · · · · · · · · · · · · · · ·	100
I.			100 102
		8	102 104
	C.	O	$104 \\ 105$
			$105 \\ 106$
II.			$100 \\ 107$
11.			107
	л.		107
		0 1	108
		O I	110
		m. Obligation to runn	110

4

		B.	Non-discrimination	112
		C.	Obligations to Progressive Realisation and Core	
			Obligations	115
			i. Principle of progressive realisation	115
			ii. Minimum core approach	117
			1. Rationale of the approach	118
			2. Inability to realise the minimum core	122
			3. Criticism of the minimum core approach	122
			iii. Conclusion	125
	III.	No	ormative Content of the Right to Water	125
			Availability	126
			i. Kinds of water uses covered by the right to water	126
			1. Water for sanitation?	127
				129
			ii. Quantity of water guaranteed	131
		В.	Safety and Acceptability	134
			Accessibility	135
			Affordability	137
		E.	Summary	139
	IV.		ii. Quantity of water guaranteed Safety and Acceptability Accessibility Affordability Summary Inclusion	140
5	Ц	man	Rights Implications for Water Allocation	141
3	I.		roductory Remarks	141
	1.		Current Trends in Water Allocation	142
		л.	i. Influential declarations on water policy	142
			ii. Illustrative examples from domestic legislation	144
			iii. Conclusion	147
		В.	A Human Rights Perspective	148
		ъ.	i. The issue of prioritisation in General Comment	140
			No 15	148
			ii. The issue of prioritisation in the Report of the High	140
			Commissioner	140
				149
			7	150
	II.	Enc	implications amework for Prioritisation	150 150
	11.			150
		_	Levels of Realisation of Human Rights The Broader Picture Poolisation of All Human Pichts	131
		В.	The Broader Picture: Realisation of All Human Rights	
			to the Greatest Possible Extent Using All Available	15/
			Resources	154
			i. Alternatives for realisation	154
			ii. Direct access required?	155
	TTT	D.,	iii. Quantity of water required	155
	III.		fferent Water Uses and Their Link to Human Rights	155
		Α.	Personal and Domestic Use	157

0	• •
Contents	XV11
Comments	~ V II

	i.	Link to the human right to water	157
	ii.	Relevance at different levels	157
	iii.	Considerations in the balancing process	157
В.		ter for Food Production	158
	i.	Link to the human right to food	159
	ii.	Relevance at different levels	160
		1. Survival level	160
		2. Core level	161
		3. Level of full realisation	161
	iii.	Considerations in the balancing process	163
		1. No general reliance on direct access to water	
		for food production	163
		2. Specific situation of those relying on subsistence	
		agriculture	164
		3. Potential for water saving	167
		4. Summary	168
C.	Wa	ter for Production of Clothing	168
	i.	Link to the right to clothing as a compenent of the	
		right to an adequate standard of living	169
	ii.	Relevance at different levels	169
	iii.	Considerations in the balancing process	170
D.		ter for Sanitation	170
	i.	Link to the human right to sanitation	173
	ii.	Relevance at different levels	179
	iii.	Considerations in the balancing process	179
E.	Wa	ter for Power Ceneration	180
	i.	Access to energy services as part of the right to an	
		adequate standard of living?	181
	ii.	Relevance at different levels	183
	iii.	Considerations in the balancing process	184
F.	Wa	ter as a Means of Personal Transportation	184
G.	Pro	oductive Uses of Water	185
	i.	Link to the human right to work	185
	ii.	Relevance at different levels	186
	iii.	Considerations in the balancing process	187
Н.	Wa	ter for Cultural and Religious Practices	188
	i.	Link to the human right to take part in cultural life	
		and the freedom of religion	188
	ii.	Relevance at different levels	189
	iii.	Considerations in the balancing process	190
I.	Ind	ligenous Water Uses	190
	i.	Link to indigenous rights	191
	ii.	Relevance at different levels	195
	iii.	Considerations in the balancing process	196

		J.	Rec	creational Uses of Water	196
				ter for Preserving and Protecting Ecosystems	196
				ht to Development?	201
			_	tting Across all Water Uses: Non-discrimination	202
				nmary: Priorities at Different Levels	202
			i.	Survival level	204
			ii.	Core level	205
			iii.	Level of full realisation of human rights	205
			iv.	Level beyond human rights guarantees	207
	IV.	Co	nclu	sion: Priorities in Water Allocation	207
6	Ben	efits	s of 1	Understanding Water as a Human Right	212
	I.			l Benefits of the Human Rights Framework	214
		A.	Rea	aching Beyond and Beneath the Millennium	
				velopment Goals	215
		В.	The	e Concept of Rights-holders and Duty-bearers	217
		C.	The	e Human Rights Principles of Participation,	
			No	n-discrimination and Accountability	218
			i.	Participation	219
			ii.	Non-discrimination and attention to marginalised	
				and vulnerable groups and individuals	221
			iii.	Accountability	224
				nclusion	228
	II.			lity of Judicial Enforcement	229
		A.	Just	ticiability of the Human Right to Water	230
			i.	Q · · · · · · · · · · · · · · · · · · ·	232
			ii.		232
			iii.	Alleged vagueness of legal provisions on the human	
)	right to water	236
				Conclusion	237
		В.	Enf	forcement in National Courts	237
			i.	Invoking international human rights law in	
				national courts	238
				1. Relationship between international law and	
				national law	238
				2. Direct applicability	239
				3. Conclusion	242
			ii.	Reliance on national guarantees of the right to water	242
				1. Obligations to respect	244
				2. Obligations to protect	245
				3. Obligations to fulfil	247
				a. South African reasonableness review	248
				b. The minimum core in the courts	250
				c. Concluding remarks on obligations to fulfil	254

Conte	ents xix
iii. Conclusion C. Enforcement at the International Level	254 256
 i. Instruments assessing general human rights compliance 	257
1. Reporting procedures	257
2. Procedures for responding to human rights	
violations	259
3. Special Procedures	260
4. Universal periodic review by the Human Right	
Council	263
ii. (Individual) complaint mechanisms	265
1. Optional Protocol to the Social Covenant on an	
Individual Complaint Mechanism	265
2. Other complaint mechanisms in the area of economic, social and cultural rights	267
3. Individual complaints in the context of	207
procedures aiming at the protection of civil	
and political rights	269
4. Confidential complaint procedure	270
5. Individual complaints to Special Procedures	271
iii Conclusion	271
III. Conclusion	272
III. Conclusion 7 Conclusion and Outlook Bibliography United Nations Documents Conference Reports General Assembly Economic and Social Council	275
Bibliography	287
United Nations Documents	314
Conference Reports	314
General Assembly	315
Economic and Social Council	316
Commission n. Human Rights	316
Human Rights Council	317
Sub-Commission on the Promotion and Protection of Humar	
Rights	319
Human Rights Committee	320
Committee on Economic, Social and Cultural Rights	320
Committee on the Rights of the Child	321
Other Bodies Misseller seve Passer ente	322
Miscellaneous Documents	322

325

Index