

# Detailed Contents

<i>Foreword</i>	vii
<i>Acknowledgements</i>	ix
<i>Summary Contents</i>	xi
<i>Abbreviations</i>	xxi
<i>Table of Cases</i>	xxiii
United Nations Jurisdiction	xxiii
Regional Jurisdictions	xxiii
National Jurisdictions	xxiv
<i>Table of Instruments</i>	xxvii
United Nations Jurisdiction	xxvii
International Treaties	xxvii
Regional Jurisdictions	xxxix
National Jurisdictions	xxxix
<b>1 Introduction</b>	<b>1</b>
I. Lack of Access to Water	2
A. Inequalities in Access	3
B. Impact on Health and Human Development	5
II. The Question of Prioritisation	6
III. The Emergence of the Human Right to Water	8
IV. Scope and Outline of the Book	11
<b>2 Background: Water Availability and Competing Demands</b>	<b>16</b>
I. Water Availability and Quality	17
A. Physical Water Availability	17
i. Assessing per capita water availability: the TARWR index	18
ii. Shortcomings of the TARWR index	19
iii. Water availability for basic personal and domestic needs	20
B. Human Impacts	20
i. Population growth	20
ii. Urbanisation	21
iii. Increasing demand	22
iv. Water pollution	24
v. Climate change	25
C. Conclusion	26
II. Competing Water Demands – A Challenge for Allocation	27

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
B.	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.	Conclusion: A Question of Prioritisation	35
<b>3</b>	<b>Legal Foundations of the Human Right to Water</b>	<b>37</b>
I.	Human 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
B.	Provisions of the Civil Covenant	49
j.	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?	60
i.	Convention on the Elimination of All Forms of Discrimination against Women	60
ii.	Convention on the Rights of the Child	61
iii.	Geneva Conventions	62
E.	Conclusion in Regard to Human Rights Treaties	64
II.	Customary International Law	65
A.	The Significance of Customary Human Rights Law	65
B.	State Practice and <i>Opinio Iuris</i>	66
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
i.	Universal Declaration of Human Rights	71
1.	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.	General Principles	97
IV.	Conclusion	98
<b>4</b>	<b>Legal Characteristics of the Human Right to Water</b>	<b>100</b>
I.	Legal Nature of the Right to Water	100
A.	Alleged Focus on Positive Interventions	102
B.	Alleged Lack of Precision	104
C.	Alleged Lack of Judicial Enforceability	105
D.	Conclusion	106
II.	Obligations Arising from the Right to Water	107
A.	The Tripartite Typology	107
i.	Obligation to respect	108
ii.	Obligation to protect	108
iii.	Obligation to fulfil	110

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. Normative Content of the Right to Water	125
A. Availability	126
i. Kinds of water uses covered by the right to water	126
1. Water for sanitation?	127
2. Water for irrigation?	129
ii. Quantity of water guaranteed	131
B. Safety and Acceptability	134
C. Accessibility	135
D. Affordability	137
E. Summary	139
IV. Conclusion	140
<b>5 Human Rights Implications for Water Allocation</b>	<b>141</b>
I. Introductory Remarks	141
A. Current Trends in Water Allocation	142
i. Influential declarations on water policy	142
ii. Illustrative examples from domestic legislation	144
iii. Conclusion	147
B. A Human Rights Perspective	148
i. The issue of prioritisation in General Comment No 15	148
ii. The issue of prioritisation in the Report of the High Commissioner	149
iii. Need for a detailed analysis of human rights implications	150
II. Framework for Prioritisation	150
A. Levels of Realisation of Human Rights	151
B. The Broader Picture: Realisation of All Human Rights to the Greatest Possible Extent Using All Available Resources	154
i. Alternatives for realisation	154
ii. Direct access required?	155
iii. Quantity of water required	155
III. Different Water Uses and Their Link to Human Rights	155
A. Personal and Domestic Use	157

i.	Link to the human right to water	157
ii.	Relevance at different levels	157
iii.	Considerations in the balancing process	157
B.	Water 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.	Water for Production of Clothing	168
i.	Link to the right to clothing as a component of the right to an adequate standard of living	169
ii.	Relevance at different levels	169
iii.	Considerations in the balancing process	170
D.	Water 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.	Water for Power Generation	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.	Water as a Means of Personal Transportation	184
G.	Productive 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
H.	Water 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.	Indigenous Water Uses	190
i.	Link to indigenous rights	191
ii.	Relevance at different levels	195
iii.	Considerations in the balancing process	196

J. Recreational Uses of Water	196
K. Water for Preserving and Protecting Ecosystems	196
L. Right to Development?	201
M. Cutting Across all Water Uses: Non-discrimination	202
N. Summary: 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. Conclusion: Priorities in Water Allocation	207
<b>6 Benefits of Understanding Water as a Human Right</b>	<b>212</b>
I. General Benefits of the Human Rights Framework	214
A. Reaching Beyond and Beneath the Millennium Development Goals	215
B. The Concept of Rights-holders and Duty-bearers	217
C. The Human Rights Principles of Participation, Non-discrimination and Accountability	218
i. Participation	219
ii. Non-discrimination and attention to marginalised and vulnerable groups and individuals	221
iii. Accountability	224
D. Conclusion	228
II. Possibility of Judicial Enforcement	229
A. Justiciability of the Human Right to Water	230
i. Alleged lack of capacity	232
ii. Alleged lack of legitimacy	232
iii. Alleged vagueness of legal provisions on the human right to water	236
iv. Conclusion	237
B. Enforcement 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

iii. Conclusion	254
C. Enforcement at the International Level	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 Rights 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 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
<b>7 Conclusion and Outlook</b>	275
<b>Bibliography</b>	287
<b>United Nations Documents</b>	314
Conference Reports	314
General Assembly	315
Economic and Social Council	316
Commission on Human Rights	316
Human Rights Council	317
Sub-Commission on the Promotion and Protection of Human Rights	319
Human Rights Committee	320
Committee on Economic, Social and Cultural Rights	320
Committee on the Rights of the Child	321
Other Bodies	322
<b>Miscellaneous Documents</b>	322
<i>Index</i>	325