CONTENTS

labl	e of Casi	es	XX
Table of Statutes			XXIX
Acronyms			
Preface			LVIII
Ackr	owledgi	nents	LX
PAR	T 1 INT	RODUCING HUMAN RIGHTS	1
1	THE IN	ERNATIONAL BILL OF HUMAN RIGHTS	2
1.1	Introd	uction	3
1.2	Histor	y of the UDHR	4
	1.2.1	Developing Constraints on State Sovereignty	5
	1.2.2	The Charter of the UN	6
	1.2.3	The International Military Tribunal at Nuremberg	12
1.3	The U	DHR	13
	1.3.1	Drafting by the UN Commission on Human Rights	13
	1.3.2	The Final Draft of the UDHR	18
	1.3.3	The Text of the UDHR	20
	1.3.4	The Legal Status of the UDHR	22
1.4	The In	ternational Covenants	24
	1.4.1	The Debate over Categorising Rights	24
	1.4.2	Drafting the International Covenants	24
1.5	Conti	nuing Exposition of the International Bill of Rights	28
	1.5.1	Post-Colonialism and the Influence of Newly Independent States	28
	1.5.2	Emergence of Human Rights as a Mainstream Legal, Social	
		and Political Issue	30
2	CONCE	PTS OF 'HUMAN RIGHTS'	32
2.1	Introd	uction	33
2.2	Indivi	dual Rights	33
	2.2.1	Natural Law (not Natural Rights)	34
	2.2.2	Natural Rights	36
	2.2.3	Similar Traditions	39
	2.2.4	Natural Rights in Politics	40
	2.2.5	The Decline of Natural Rights	44
	2.2.6	The Significance of Natural Rights to the UDHR	47
	2.2.7	Common Law Rights	47

2.3	2.3 Social Rights			
	2.3.1	Private Property and Marxism	49	
	2.3.2	The Russian Revolution	50	
	2.3.3	Western Socialism	51	
2.4	Dignit	ry and Universality	52	
	2.4.1	Dignity	52	
	2.4.2	Universality	62	
2.5	Future	Challenges for the Idea of Human Rights	67	
PAF	RT 2 TH	E SUBSTANTIVE RIGHTS	71	
3	CIVIL A	ND POLITICAL RIGHTS	72	
3.1	Introd	uction	74	
3.2	The Su	bstantive Rights	74	
	3.2.1	The Right to Self-Determination: Article 1	74	
	3.2.2	The Right to Life: Article 6	76	
	3.2.3	Freedom from Torture and Cruel, Inhuman or Degrading		
		Treatment or Punishment: Article 7	80	
	3.2.4	Freedom from Slavery and Compulsory Labour: Article 8	82	
	3.2.5	Freedom from Arbitrary Arrest and Detention: Article 9	84	
	3.2.6	Right to Humane Treatment in Detention: Article 10	86	
	3.2.7	Freedom from Imprisonment for Debt: Article 11	87	
	3.2.8	Freedom of Movement: Article 12	88	
	3.2.9	Procedural Rights of Aliens: Article 13	90	
	3.2.10	Right to a Fair Trial and Related Rights in the Judicial System: Article 14	90	
	3.2.11	Prohibition on Retrospective Criminal Laws: Article 15	92	
	3.2.12	Right to Personal Standing Before the Law: Article 16	92	
		Right to Privacy: Article 17	93	
		Freedom of Thought, Conscience and Religion: Article 18	94	
		Freedom of Opinion and Expression: Article 19	96	
	3.2.16	Prohibition on Propaganda for War and Advocacy of National,		
		Racial or Religious Hatred: Article 20	100	
	3.2.17	Freedom of Assembly: Article 21	101	
	3.2.18	Freedom of Association: Article 22	102	
	3.2.19	Freedom to Marry and Found a Family and Protection		
		of the Family: Article 23	102	
	3.2.20	Protection of Children: Article 24	104	
		Right to Political Participation: Article 25	105	
		Freedom from Discrimination: Article 26	107	
	3.2.23	Minority Rights: Article 27	108	
3.3		of Obligations under the ICCPR	108	
	3.3.1	Immediate Nature of Obligations	108	

	3.3.2	Duties to Respect, Protect and Ensure Human Rights	109
	3.3.3	Limitations and Derogations	112
3.4	Optio:	nal Protocols	117
3.5	Concl	usion and Issues	118
4	ECONO	MIC, SOCIAL AND CULTURAL RIGHTS	119
4.1	Introd	uction	120
	4.1.1	From Theory to Practice	120
4.2	The Su	ibstantive Rights	122
	4.2.1	Overview of the ICESCR	122
	4.2.2	0 1 /	123
	4.2.3	The Right to Work: Articles 6, 7 and 8	124
	4.2.4	The Right to Social Security: Article 9	124
	4.2.5	The Right to Protection and Assistance for the Family	
		and the Prohibition of Child Labour: Article 10	126
	4.2.6	The Right to an Adequate Standard of Living: Article 11	127
	4.2.7	The Right to Health: Article 12	134
	4.2.8	The Right to Education: Articles 13 and 14	136
	4.2.9	The Right to Take Part in Cultural Life: Article 15	137
4.3	Natur	e of Obligations	139
	4.3.1	Tripartite Typology of Obligations	139
	4.3.2	Obligation 'To Take Steps By All Appropriate Means'	140
	4.3.3	Progressive Realisation	143
	4.3.4	Maximum of Available Resources	145
	4.3.5	Minimum Core Obligations	147
	4.3.6	Limitations to and Derogations from the ICESCR	152
4.4	Optio	nal Protocol	155
	4.4.1	Jurisdictional Limits Imposed on Complainants	157
4.5			
	Social	and Cultural Rights	158
	4.5.1	South Africa	160
	4.5.2	India	162
4.6	Concl	usion and Issues	166
PAR	T 3 TH	E INTERNATIONAL HUMAN RIGHTS FRAMEWORK	167
5	INTERI	NATIONAL LAW	168
5.1	The N	fature of International Law	169
	5.1.1	International Law as the Law Between States	169
	5.1.2	International Law as a Horizontal Legal System	171
	5.1.3	Enforcement of International Law	172

7.2.3

Overview of the Treaties

233

7.3	The Treaty Bodies		237	
	7.3.1	Treaty Bodies' Purpose	238	
	7.3.2	Membership	239	
	7.3.3	Procedures	242	
	7.3.4	State Reports	242	
	7.3.5	Concluding Comments and Observations	247	
	7.3.6	General Comments and Recommendations	249	
	7.3.7	Inter-state Communications	249	
	7.3.8	Individual Communications	250	
	7.3.9	Treaty Body Reform	252	
7.4	The Ro	ole of NGOS	256	
	7.4.1	Overview	256	
	7.4.2	History	259	
	7.4.3	UN Relations with NGOs	260	
	7.4.4	Permanent Observer Status	264	
	7.4.5	Criticisms	264	
7.5	Conclu	ision and Issues	267	
8	REGIONAL MECHANISMS 2			
8.1	Overvi	ew of Regional Systems	271	
8.2	Europe			
	8.2.1	The Council of Europe	272	
	8.2.2	The Convention for the Protection of Human Rights		
		and Fundamental Freedoms	273	
	8.2.3	The European Court of Human Rights	274	
	8.2.4	The European Social Charter	278	
8.3	The Ar	nericas	279	
	8.3.1	The Organization of American States	279	
	8.3.2	The American Declaration of the Rights and Duties of Man	279	
	8.3.3	The American Convention on Human Rights	280	
	8.3.4	The Inter-American Commission of Human Rights	281	
	8.3.5	The Inter-American Court of Human Rights	282	
	8.3.6	The Legacy of Military Dictatorships	283	
8.4	Africa		283	
	8.4.1	The African Union	284	
	8.4.2	The African Charter on Human and Peoples' Rights	284	
	8.4.3	The Children's Charter and the Women's Protocol	286	
	8.4.4	The African Commission on Human and Peoples' Rights	287	
	8.4.5	The African Commission Complaints Procedures	287	
	8.4.6	Periodic State Reporting to the African Commission	288	
	8.4.7	The African Court on Human and Peoples' Rights	289	
	8.4.8	The African Court of Justice and Human and People's Rights	289	

8.5	The A	rab Region	290
	8.5.1	The Arab Charter on Human Rights	290
	8.5.2	The Arab Human Rights Committee	292
	8.5.3	The Arab Court of Human Rights	292
8.6	The A	sia-Pacific Region	294
	8.6.1	The Asian Reluctance About Rights?	294
	8.6.2	The ASEAN Intergovernmental Commission	
		on Human Rights	296
	8.6.3	The ASEAN Human Rights Declaration	297
8.7	Conc	usion and Issues	298
9	THE AL	ISTRALIAN POSITION	299
9.1	Introd	luction	301
9.2	Treaty	Ratification in Australia	301
	9.2.1	Constitutional Power	301
	9.2.2	Parliamentary Process	302
	9.2.3	Human Right Treaties Binding on Australia	302
	9.2.4	Australia's Declarations and Reservations	303
9.3	Austra	alia's Human Rights Laws	305
	9.3.1	Constitutional 'Rights'	305
	9.3.2	Teoh: A 'Legitimate Expectation' of Human Rights	
		Conformity	305
	9.3.3	Federal Enactment of Human Rights Treaty Obligations	306
	9.3.4	State and Territory Human Rights Laws	312
	9.3.5	Anti-Discrimination Laws	315
9.4	Austra	ılian Human Rights Mechanisms	316
	9.4.1	National Action Plan	316
	9.4.2	Australian Human Rights Commission	316
	9.4.3	Other Federal Human Rights Agencies	319
	9.4.4	State and Territory Human Rights Agencies	319
	9.4.5	Legislation Scrutiny Committees	319
	9.4.6	Statutory Interpretation by the Courts	321
	9.4.7	Common Law Development by the Courts	322
9.5	Austra	lia's Performance Under Its Human Rights Treaty Obligations	323
	9.5.1	Reporting to the Universal Periodic Review	323
	9.5.2	Human Rights Treaty Reporting	324
	9.5.3	Visits Under Thematic Mandates	328
	9.5.4	Treaty Body Communications	328
	9.5.5	Reluctance to Engage with the International Human	
		Rights System	330
9.6	Conch	usion and Issues	331

PAR	T 4 FOCUS ISSUES IN HUMAN RIGHTS	333
10	HUMAN RIGHTS IN ARMED CONFLICT	334
10.1	Introduction	335
	10.1.1 Humanitarian Intervention	335
	10.1.2 Emergence of the Responsibility to Protect	336
	10.1.3 Conclusions on the Responsibility to Protect	338
10.2	International Humanitarian Law	339
	10.2.1 Development of International Humanitarian Law	339
	10.2.2 Application of International Human Rights Law in Times	
	of Armed Conflict	345
10.3	Criminal Law as a Human Rights Enforcement Tool	347
	10.3.1 The Nature of International Criminal Law	347
	10.3.2 The Main Categories of International Crimes	350
	10.3.3 International Criminal Law as Catharsis	353
10.4	Nuremberg and Tokyo Tribunals	355
	10.4.1 Nuremberg	355
	10.4.2 Tokyo	357
10.5	Ad Hoc Criminal Tribunals	358
	10.5.1 The Former Yugoslavia	358
	10.5.2 Rwanda	361
	10.5.3 Hybrid Courts and Tribunals	362
	International Criminal Court	363
10.7	Conclusion and Issues	366
11	TERRORISM, COUNTER-TERRORISM AND THE IMPACT ON HUMAN RIGHTS	368
11.1	Introduction	369
11.2	Defining Terrorism	369
	11.2.1 Drafting an International Law Definition	370
	11.2.2 International Conventions and Protocols on Terrorism	371
	11.2.3 Draft Comprehensive Convention on International Terrorism	373
	11.2.4 UN Security Council Resolution 1373	374
	11.2.5 UN Security Council Resolution 1566	375
	11.2.6 Defining Terrorism Via Customary International Law	376
11.3	Case study: Drafting a Definition of Terrorism in Australian Law	378
	11.3.1 A 'Terrorist Act'	379
	11.3.2 Case Law in Australia	380
11.4	Human Rights and (Counter) Terrorism	382
	11.4.1 Setting the Context: Rights and Security	382
	11.4.2 The Flexibility of International Human Rights Law	383
	11.4.3 Impact on Rights	385
11.5	Conclusion and Issues	394

12	CHILDREN		
12.1	Introduction	396	
	International Legal Framework: From the Declaration to the Convention	396	
	12.2.1 Declaration of Geneva	396	
	12.2.2 Declaration of the Rights of the Child	397	
	12.2.3 Convention on the Rights of the Child	397	
	12.2.4 Optional Protocols	406	
	12.2.5 Other Instruments and Developments	406	
12.3	Committee the Rights of the Child	410	
	12.3.1 Mandate and Reporting Procedures	410	
	12.3.2 New Communications Procedure	411	
12.4	Case Study: Children and Armed Conflict	411	
	12.4.1 Overview	411	
	12.4.2 Legal Framework	412	
	12.4.3 Accountability	415	
12.5	Conclusion and Issues	416	
13	CORPORATIONS	417	
13.1	Introduction	418	
13.2	The Role of Corporations in Society	418	
	Sources of Corporate Responsibilities and Standards for Human Rights	420	
	13.3.1 Universal Declaration of Human Rights and Corporations	420	
	13.3.2 Human Rights Treaties and Corporations	421	
	13.3.3 National Laws	423	
	13.3.4 International Institutional Initiatives	425	
	13.3.5 UN 'Protect, Respect, Remedy' Framework and the Guiding Principles	430	
13.4	Stakeholder Initiatives	431	
13.5	Human Rights Enforcement through Litigation in Tort	434	
	13.5.1 The US Approach: The Alien Tort Statute	434	
	13.5.2 Tort-Based Litigation Outside the US	437	
13.6	Human Rights Enforcement Through International Criminal Proceedings	439	
13.7	Conclusion and Issues	440	
14	INDIGENOUS PEOPLES	442	
14.1	Introduction	443	
	14.1.1 The Identity of Indigenous Peoples	443	
	14.1.2 Race Theory	445	
14.2	The International Framework	446	
	14.2.1 Recent History	446	
	14.2.2 Declaration on the Rights of Indigenous Peoples	447	
	14.2.3 International Convention on the Elimination of All Forms of Racial		
	Discrimination	449	

14.3	UN Mech	anisms	450
	14.3.1 Sp	ecial Rapporteur	450
	14.3.2 Ex	pert Mechanism on the Rights of Indigenous Peoples	451
	14.3.3 U	N Permanent Forum on Indigenous Issues	452
	14.3.4 U	N Voluntary Fund for Indigenous Populations	453
	14.3.5 In	ternational Decades of the World's Indigenous People	454
	14.3.6 W	orld Conference on Indigenous Peoples and its Outcomes	455
14.4	Regional N	Mechanisms	457
	14.4.1 Af	rica	45 7
	14.4.2 Th	ne Americas	458
	14.4.3 Th	ne Arctic	459
	14.4.4 As	xia	460
	14.4.5 Eu	rope	461
14.5	Current Is	sues	462
	14.5.1 Cl	imate Change	462
14.6	Conclusio	n and Issues	467
15	PEOPLE WIT	TH DISABILITIES	468
15.1	Introducti	on	469
	15.1.1 Th	ne Idea of Disability	469
15.2	The Intern	ational Framework	473
	15.2.1 To	owards a Treaty	473
	15.2.2 Th	ne International Convention on the Rights of Persons	
	wi	th Disabilities	476
15.3	Case Study	y: Accessibility and Reasonable Accommodation	480
15.4	The UN as	nd Disability	481
	15.4.1 Re	egional Activity	483
15.5	Domestic !	Laws	491
15.6	Conclusio	n and Issues	494
16	REFUGEES A	AND STATELESS PERSONS	495
16.1	Introducti	on	497
	16.1.1 Th	ne Idea of a 'Refugee'	49 7
	16.1.2 Re	efugees Are Not 'Illegal'	498
16.2	Internation	nal Arrangements for Refugees	499
	16.2.1 Th	ne Refugee Convention and Protocol	499
	16.2.2 Th	ne Office of United Nations High Commissioner	
	fo	r Refugees	501
	16.2.3 U	nited Nations Relief and Works Agency for Palestine Refugees	
	in	the Near East	501
	16.2.4 Re	egional Arrangements	502

An Ov	verview of Refugee Law	504
16.3.1	No 'Right to Asylum'	504
16.3.2	'First Country/Safe Third Country'	504
16.3.3	Right of Entry	505
	- · ·	506
16.3.5	The Recognised Grounds of Persecution	508
	•	511
16.3.7	Proving a Claim	512
16.3.8	'Extra-territorial Processing'	512
	· · · · · · · · · · · · · · · · · · ·	513
The H	uman Rights of Refugees	513
		514
16.4.2	Arbitrary Detention	514
16.4.3	Conditions of Detention	516
16.4.4	Non-refoulement Under Human Rights Treaties	517
16.4.5	The Situation of Children	517
Protec	ting Forced Migrants: People Who Are Not 'Refugees'	518
	· ·	518
		519
		521
	· •	522
16.5.5	Forced Migrants: Complementary Protection	523
16.5.6	Forced Migrants: Non-refoulement	524
Conclu	usion and Issues	524
WOMEN	l	526
Introd	uction	527
		528
		529
		531
		531
		533
		535
		536
		537
	<u> </u>	75,
	· · · · · · · · · · · · · · · · · · ·	538
_		538
		539
	· ·	541
		543
		545
	16.3.1 16.3.2 16.3.3 16.3.4 16.3.5 16.3.6 16.3.7 16.3.8 16.3.9 The H 16.4.1 16.4.2 16.4.3 16.4.4 16.5.5 16.5.6 Conclide WOMEN Introd A Fem 17.2.1 UN Be 17.3.1 17.3.2 17.3.3 Wome 17.3.1 17.3.2 17.5.3 17.5.1 17.5.2 17.5.3 17.5.4	An Overview of Refugee Law 16.3.1 No 'Right to Asylum' 16.3.2 'First Country/Safe Third Country' 16.3.3 Right of Entry 16.3.4 Non-refoulement 16.3.5 The Recognised Grounds of Persecution 16.3.6 A 'Well-Founded Fear of Persecution' 16.3.7 Proving a Claim 16.3.8 'Extra-territorial Processing' 16.3.9 Losing Refugee Status The Human Rights of Refugees 16.4.1 Geographic Scope of Human Rights Responsibility 16.4.2 Arbitrary Detention 16.4.3 Conditions of Detention 16.4.4 Non-refoulement Under Human Rights Treaties 16.4.5 The Situation of Children Protecting Forced Migrants: People Who Are Not 'Refugees' 16.5.1 'Economic' Refugees 16.5.2 'Environmental' or 'Climate' Refugees 16.5.3 Internally Displaced Persons 16.5.4 Forced Migrants: HounhCR Mandate 16.5.5 Forced Migrants: Complementary Protection 16.5.6 Forced Migrants: Non-refoulement Conclusion and Issues WOMEN Introduction A Feminist Framework 17.2.1 Four Stages of Feminism UN Bodies 17.3.1 Commission on the Status of Women 17.3.2 The International Women's Conferences 17.3.3 'UN Women' Women's Rights under Human Rights Treaties 17.4.1 Economic, Social and Cultural Rights Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) 17.5.1 The CEDAW Committee 17.5.2 Human Rights Particular to Women? 17.5.3 The Provisions of CEDAW 17.5.5 Into the Private Sphere

	17.5.6 CEDAW's Effect on States' Behaviour	546
	17.5.7 Individual Communications Under CEDAW	549
17.6	Conclusion and Issues	551
18	WORKERS	552
18.1	Introduction	553
18.2	The Relationship of Human Rights to Labour Rights	553
18.3	The International Labour Organization	556
	18.3.1 Formation and Goals	556
	18.3.2 ILO's Structure	557
	18.3.3 ILO Standards	558
	18.3.4 Monitoring Compliance with ILO Standards	568
18.4	Migrant Workers	570
18.5	Effectiveness of the ILO	573
18.6	Conclusion and Issues	575
19	EMERGING RIGHTS	576
19.1	Introduction	577
19.2	Sexual Orientation and Gender Identity Rights	578
	19.2.1 The Developing Jurisprudence	579
	19.2.2 Sexual Orientation and Gender Identity Rights Outside the UN	581
	19.2.3 The Human Rights Council Resolution and its Aftermath	583
	19.2.4 The Future	585
19.3	Environmental Rights	585
	19.3.1 The Relationship Between Human Rights and the Environment	586
	19.3.2 A Right to a Healthy Environment?	588
	19.3.3 Rights of the Environment?	593
	19.3.4 The Future	595
19.4	Extra-territorial Human Rights Obligations	595
	19.4.1 Responsibility for State Actions Outside Territory	595
19.5	Conclusion and Issues	600
Арре	endix	601
Inde		604