International human rights law has only recently concerned itself with water. Instead, international water law has regulated the use of shared rivers, and only states *qua* states could claim rights and bear duties towards each other. International human rights law has focused on its principal mission of taming the powers of a state acting territorially.

Takele Soboka Bulto challenges the established analytic boundaries of international water law and international human rights law. By demonstrating the potential complementarity between the two legal regimes and the ensuing utility of regime coordination for the establishment of the human right to water and its extraterritorial application, he also shows that human rights law and the international law of watercourses can apply in tandem with the purpose of protecting non-national non-residents in Africa and beyond.

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THE EXTRATERRITORIAL APPLICATION OF THE HUMAN RIGHT TO WATER IN AFRICA

TAKELE SOBOKA BULTO
To my late father, Soboka Bulto Dori
To my mother, Disso Itissa Kelbessa
I can never thank you enough for your endless love, selfless support and relentless encouragement. Thank you for keeping the faith when I needed it most.
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PREFACE AND ACKNOWLEDGMENTS

Since it was declared as a human right in the General Comment of the Committee on Economic, Social and Cultural Rights (CESCR) in 2002, the human right to water has been a favourite subject of academic controversy. Much of the debate has been about whether the right exists as such, and, if so, whether it exists as an auxiliary right or as an autonomous, self-standing entitlement. This debate arises from the absence of an explicit reference in the texts of the main human rights treaties to the right to water. The CESCR found the right in the implicit terms of related rights. This purposive approach to ‘reading-in’ the right has been endorsed by the African human rights monitoring and adjudicatory body, the African Commission on Human and Peoples’ Rights, a conclusion that is supported in the present study.

This book joins the debate (albeit mainly from the perspective of the African human rights system) but, more importantly, goes ahead of the current controversy and analyses the immediate implementation problems triggered by the declaration of the right, given the shared nature of scarce water resources in regions such as Africa. Unlike or beyond the necessities of implementing other socio-economic rights, the human right to water often depends primarily on a uniquely international resource for its realisation. Of the fifty-four African states, fifty-one are dependent for drinking and sanitation water on international rivers that are shared between two to ten co-riparian states. An action or omission relating to a shared river in one state thus has a direct impact on the fate of the human right to water in co-riparian states. Unless riparian states are held to account for their (in)actions that produce extraterritorial effects, some co-riparian states would be unable to realise the human right to water within their territories. Thus, the declaration of the human right to water would be an empty gesture for the right-holders unless the relevant legal regime provides for ways to hold foreign states accountable for their acts or omissions that cause the violation of the human right to water abroad.

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The book thus analyses the extraterritorial scope of the right to water, relevant state duties and attendant remedies. The central question of the book is whether states owe extraterritorial obligations directly to individual and group right-holders in a co-riparian state’s territory for the realisation of their human right to water. After analysing the corpus of relevant international and regional human rights treaties, the rules and principles of international water law and related case law (which may be relied upon as ‘inspirational sources’ of the African Charter on Human and Peoples’ Rights), the book answers this question in the affirmative.

It is argued that, while the extraterritorial duties to respect and protect the human right to water have firm legal bases in the international human rights regime, the duty to fulfil – a crucial guarantee in water-scarce regions such as Africa – needs to be sought in international water law. The book therefore calls for ‘humanising’ international water law, and pinpoints textual bases in the 1997 Convention on International Watercourses and related customary rules for such an approach.

The book is a revised version of my doctoral thesis, undertaken at the Melbourne Law School, University of Melbourne, under the supervision of Professor Carolyn Evans and Associate Professor Jacqueline Peel. My principal debt of gratitude therefore goes to Professors Evans and Peel for their invaluable guidance, tireless advice, insightful, incisive and very timely comments and frank and constructive criticisms on the various drafts of the then Ph.D thesis. I am especially grateful to Professor Carolyn for the considerable kindness she has shown to me and for treating me as family during my Ph.D years at Melbourne and beyond.

This study would have been impossible without the generous financial assistance of the University of Melbourne and the Melbourne Law School, whose joint scholarship helped cover the cost of my studies and my living expenses.

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Last, but by no means least, I have been greatly supported by the love and encouragement of my family. Emebet Tura took the family responsibility off my shoulders so I could focus on my research. My sons, Lubebas and Sena, have been pleasant distractions. Thank you for learning to sleep early to ensure my sanity; and for waking up early with hearty smiles as if you knew just how much I needed them. All three were ready to suffer quietly along with me as I scribbled these pages. A million thanks.

*Takele Soboka Bulto*
*Canberra*
*April 2013*
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