

# CONTENTS

<i>Acknowledgments</i> .....	v
<i>Dedication</i> .....	ix
<i>Acronyms</i> .....	xv
Chapter 1.	
General Introduction .....	1
1.1. Human Rights beyond Divide .....	1
1.2. Research Questions .....	9
1.3. Objectives of the Research .....	10
1.4. Research Methodology .....	15
1.5. The Structure of the Research .....	16
PART ONE. THE CONCEPTIONS AND THEORIES OF HUMAN RIGHTS.....	
Chapter 2.	23
The Conceptions of Human Rights .....	25
2.1. Introduction .....	25
2.2. The Hierarchical Conception.....	26
2.3. The Dichotomised Conception .....	34
2.4. The Triadic Conception .....	38
2.4.1. The Implications of the Triadic Conception .....	42
a) On the Negative-Positive Freedom .....	42
b) On the Negative-Positive Right .....	44
2.5. Conclusion .....	45
Chapter 3.	
Theories of Human Rights in Brief .....	49
3.1. Introduction .....	49
3.2. Traditional Theories .....	52
3.2.1. Autonomy-based Theories .....	53
a) Natural Law and Natural Rights .....	53
b) Liberal-Individualism .....	55
c) The Principle of Autonomy .....	56

3.2.2. Collective Interest-based Theories .....	60
3.3. Discourse Theory.....	61
3.3.1. Introduction.....	61
3.3.2. Justification of Human Rights through Discourse Rules .....	65
3.3.3. Assessment.....	70
3.4. Human Rights as a Social Idea .....	73
3.4.1. Definition, Nature and Implications .....	74
3.4.2. Social Relations as Moral Relations .....	79
3.4.3. The Social Function of Human Rights.....	82
3.5. Conclusion .....	85
<b>Chapter 4.</b>	
<b>Human Dignity.....</b>	<b>87</b>
4.1. Introduction .....	87
4.2. Dignity as Rank and Status .....	90
4.3. Dignity as Inherent Value of Humanity.....	96
4.3.1. In Kant's moral theory .....	97
4.3.2 An alternative perspective .....	104
4.4. The Principle of Human Dignity.....	113
4.5. The Inflorescence of the Principle.....	116
4.6. The Relational Nature of the Principle and Its Implications.....	121
4.7. Its Normative Functions in Practice.....	128
4.7.1. As a Foundational Norm .....	129
4.7.2. As a Regulative Norm.....	138
4.7.3. As an Absolute Human Right .....	139
4.8. Conclusion .....	141
<b>PART TWO. THE LEGAL OBLIGATIONS OF THE STATE UNDER ESC RIGHTS IN THE LIGHT OF INTERNATIONAL ESC RIGHTS JURISPRUDENCE .....</b>	<b>145</b>
<b>A Brief Introduction to Part Two .....</b>	<b>147</b>
<b>Chapter 5.</b>	
<b>Participation .....</b>	<b>155</b>
5.1. Introduction .....	155
5.2. The Conception of Participation.....	155
5.3. Jurisprudence .....	157
5.3.1. IACtHR.....	157
5.3.2. AfCoHPR .....	165

5.3.3. ECSR .....	174
5.3.4. ECtHR.....	179
5.3.5. UNHRS.....	183
5.4. Concluding Summary.....	189
 Chapter 6.	
Access to Justice.....	191
6.1. Introduction .....	191
6.2. The Right to Access to Justice for ESC Rights?.....	191
6.3. Jurisprudence .....	194
6.3.1. The Obligation to Guarantee the Right to Access to Justice.....	194
6.3.2. Basic Elements of the Right to Access to Justice.....	199
a) The right to a fair hearing.....	199
i) Simple, Clear and Objective Procedural Framework ...	201
ii) Fair and Equal Process .....	204
iii) The Right to Legal Counsel (Legal Aid) .....	207
iv) Transparent and Public Process.....	209
b) Competent, Impartial and Independent Organ .....	210
c) Promptness .....	212
d) Suitable and Adequate Remedy.....	214
e) Prompt and Effective Compliance .....	219
6.4. Concluding Summary.....	221
 Chapter 7.	
Accountability.....	223
7.1. Introduction .....	223
7.2. The Conception of Accountability .....	224
7.3. Jurisprudence .....	228
7.3.1. Accountability for Acts of State Agents.....	230
7.3.2. Accountability for Acts of Entities with Functional Relationship with the State .....	232
7.3.3. Accountability for Acts of Private Parties.....	234
7.4. Concluding Summary.....	238
 Chapter 8.	
Dignified Life.....	239
8.1. Introduction .....	239
8.2. The Conception of Dignified Life .....	239
8.3. Jurisprudence .....	244
8.3.1. IACtHR.....	244

Contents

8.3.2. AfCoHPR .....	247
8.3.3. ECSR .....	249
8.3.4. ECtHR.....	251
8.3.5. UNHRS.....	254
8.4. Concluding Summary.....	258
 <b>Chapter 9.</b>	
Equality, Non-Discrimination and the Protection of Vulnerable Persons ..	259
9.1. Introduction .....	259
9.2. The Conception of Equality and Non-Discrimination .....	260
9.3. Implications for the Protection of Vulnerable Persons .....	264
9.4. Jurisprudence .....	267
9.4.1. IACtHR.....	267
9.4.2. AfCoHPR .....	271
9.4.3. ECSR .....	277
9.4.4. ECtHR.....	282
9.4.5. UNHRS.....	288
9.5. Concluding Summary.....	293
 <b>Chapter 10.</b>	
General Summary and Conclusions .....	295
10.1. General Summary .....	295
10.2. Concluding Remarks.....	305
 <i>Bibliography .....</i>	
<i>Samenvatting .....</i>	309
<i>Curriculum Vitae.....</i>	337
	349