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CONCEPTUALISING, REALISING AND ENFORCING A HUMAN RIGHT TO WATER FOR UGANDA: COMPARATIVE PERSPECTIVES

ABSTRACT

International law is increasingly recognising a right to water. As with other socio-economic rights in international law, enjoyment of this right depends on its translation within domestic constitutional and legal systems. This dissertation concerns itself with the enjoyment of the right to water in Uganda, where it is not currently explicitly ensconced in the Constitution. The dissertation supports the findings of previous research showing that, where the understanding of a right to water as conceptualised within international law has been ensconced within the domestic legal framework; there is better translation of the right in domestic legislation and executive policy. This, it is advanced, is even more so when the right is made justiciable and is deliberated upon and enforced by the courts. This is illustrated through a desk study of the right to water in different legal systems. After unpacking the content and implications of the right in international law, the dissertation looks at the implicit manner in which the right is recognised in the Ugandan Constitution, links this to the extent to which it has been translated in legislation and executive policy and contemplates the possibilities of enhancing such translation through adjudication. By way of comparison, the dissertation then conducts similar analyses of the protection of the right in India (where, like in Uganda, it is also only indirectly ensconced in the Constitution but where, unlike in Uganda, it has been elaborated indirectly through adjudication) and in South Africa (where the Constitution guarantees a fully justiciable right to water and where the courts have adjudicated upon this right). The dissertation finds that constitutional protection of a justiciable right to water appears to provide the most appropriate springboard for its elaboration, translation and ultimate enjoyment. Constitutional protection legitimizes citizens' claims to enjoy the right, facilitates dialogue with the institutions of state over access to water, shapes water struggles and provides the most effective counterweight to the forces of neo-liberalism engrained within legislation, policy and water service delivery models. In the context of current constitutional reforms, the dissertation thus proposes that Uganda adopts a model in terms of which a justiciable right to water is explicitly entrenched in the Constitution and both directly and indirectly enforced by the courts.