

# International Water Law

## August 3 – 5, 2015



The Implementation of International Water Law in a Domestic Context: Lessons  
from Uganda

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# Key Areas to cover



- ✦ International Water Law (LWL) major attributes
- ✦ Rationale for the implementation of IWL in a Domestic Context
- ✦ Setting the Ground: What needs to be in place
- ✦ Domestication Process(es) and the distinction between “Domestication”, “Implementation” and “Enforcement”
- ✦ Issues of “fragmentation” of IL, “Convergence and divergence” of IL/Harmonization and “sovereignty” issues

# General Introduction



- ✦ Implementation of IWL in a Domestic Context requires the domestication of IW Law standards in the municipal law
- ✦ Based on the International Practice, Customary International Law (CIL) and Municipal Law/Constitutions
- ✦ Parallelism or Dualism vs. Internationalism or Monism
- ✦ co-existence of 2 independent juridical orders vs. primacy of International Law

# Implementation of IWL in a Domestic Context

- ✦ Based on well known principles of IWL
- ✦ Based on the host countries municipal law
- ✦ Art. 123 of the Constitution (Uganda) on execution of treaties, conventions and agreements
- ✦ The Ratification of Treaties Act to operationalize Art. 123 above
- ✦ “Saving” Art. 287 on International agreements, treaties and conventions to which Uganda – 9<sup>th</sup> Oct. 1962 – was a party to shall continue (to be party to)



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- ✦ National Objectives and Directive Principles of State Policy, Directive No. XXVIII on foreign policy objectives
- ✦ Also captured in Section 106 of the National Environment Act, Cap. 153, on Conventions and Treaties on the Environment
- ✦ Uganda is signatory to several Conventions and Treaties which have a bearing on water and the environment generally
- ✦ Agenda 21 – Chapter 18: Protection of the Quality and Supply of Freshwater Resources:
- ✦ Art. 11 of the ICESCR on ...the right of everyone to an adequate standard of living for himself and his family...

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- ✦ Key Principles of IWL that need to be implemented in the Domestic context;
- ✦ As Birnie *at el* note “A sustainable supply of fresh water is not merely fundamental to environmental protection, biodiversity, and so on, but life itself...”
- ✦ The key principles of equitable and reasonable participation, obligation not to cause significant harm [ICJ in Gabcikovo-Nagymaros case of 1997], duty to cooperate in goodfaith, regular exchange of readily available data and information, planned measures, obligation to protect, preserve and manage the ecosystem, and settlement of disputes, etc
- ✦ From the Rules/Conventions and CIL
- ✦ Arts. 111 and 112 of the Treaty for the Establishment of the EAC

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- ✦ Treaty preliminaries: It should be in writing; it must be an agreement between entities with international personality; it must be governed by International law/rules; and it must create legal obligations
- ✦ Then the State Party will be bound to implement and enforce such a Treaty: through national (State) policies, Acts of Parliament (Principal) and subsidiary legislations
- ✦ See the National/ Water Policy, Land Policy, Environment Management Policy, the Water Act, NEA, Land Act, and their corresponding Regulations all aimed at ensuring the implementation of IWL among other factors

# Rationale for the Implementation of IWL in a Domestic Context

- ✦ It's a legal requirement and not mere "comity" or "courtesy"
- ✦ gender and water rights; issues of water quality and quantity; marginalized groups: women, children, PwDs, indigenous or minority groups, PLwHIV/AIDS, protection/conservation of nature, ecosystems, and biodiversity, water sources, lakes, wetlands, rivers, etc
- ✦ Climate Change/Global warming; key principles of allocation based on territorial sovereignty and integrity and equitable utilization; pollution control, etc



# The Role of Law in the Protection of Nature

- ✦ Codification and development of IL on Water protection: Quality and Quantity
- ✦ Millennium Development Goals (MDGs)
- ✦ Defining Water rights in the Domestic Context: scope and nature; rights to Groundwater; use of water rights; rights of allottees and subsequent purchasers [if any]; right to water quality (and quantity) (rationing of piped water in Uganda/Kampala by the NWSC due to acute shortages); determination of water rights
- ✦ From CIL, “hard” vs. “soft” law

# Dealing with Harmonization Issues

- ✦ In the 1997 UN Watercourse Convention:
- ✦ States may harmonization existing agreements to the provisions of the Convention;
- ✦ States may apply or adjust the provisions of the Convention depending on the situation (Arts. 1 – 4)
- ✦ Developments at the International, Regional levels?
- ✦ Need for harmonization

# The Role of the Government in the Ratification Process

- ✦ the State (Uganda) must ensure that the instrument of ratification, acceptance, or approval (of the Treaty) complies with certain international legal requirements
- ✦ the State must also do the expression of consent to be bound

# Domestication of Treaties



- ✦ Implementation (of a treaty) will not be effective unless the treaty has been domesticated by incorporation as a law by passing an Act of Parliament (domesticating the treaty). Once the state has ratified a treaty at the international level, it must give effect to the treaty domestically. This is the responsibility of the States
- ✦ Generally, there is no time limit within which a state is required to ratify a treaty which it has signed
- ✦ On ratification, Uganda becomes legally bound under the treaty at the International level



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- ✦ For dualist States such as Uganda, without translating international law into domestic law, it does not exist as law. Citizens cannot rely on the international law; judges cannot apply it (at least directly) and national laws that contradict it remain in force
- ✦ A ratified treaty must be laid before Parliament as soon as possible after ratification.

# Procedure of Ratification of Treaties in Uganda

- ✦ Inter-ministerial consultations
- ✦ Clearance Certificate from Attorney-General's Chambers on 'constitutionality' of the Treaty
- ✦ International Negotiations
- ✦ Reconvening of the Inter-ministerial consultations
- ✦ Ratification-upon receipt of the instruction from Cabinet or Parliament, the Minister of Foreign Affairs proceeds to draft, sign and deposit or exchange the instrument of ratification

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- ✦ Voting Threshold for consent to Ratify a Treaty in Uganda – treaties that can only be ratified by Parliament require a simple majority of Parliamentary members present and voting unless it is in relation to a treaty for which the Attorney General has certified that its implementation would require an amendment to the Constitution, Sec. 2 of the RTA.

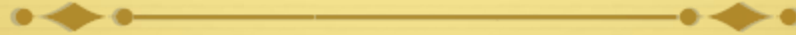
# Uganda in implementing IWL in the Domestic

## ◆◆ Context ◆◆

- ✦ IL vs. municipal law [claim for supremacy by each]
- ✦ Diplomacy and “posturing” by Uganda
- ✦ Good faith *pacta sunt servanda* rule
- ✦ Limited resources to meaningful engage in and implement IWL
- ✦ Limited capacity, human resource, etc
- ✦ Reluctant “Guards” in the Judiciary



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✦ Thanks for your Attention Ladies and Gentlemen!