

## ENHANCING TEACHING ENVIRONMENTAL LAW AT THE UNIVERSITY OF DAR ES SALAAM

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### **Abstract**

As the oldest law training faculty in East Africa, the School of Law has shaped the laws and judicial systems in the East African region. Therefore it has to take lead in the legal training of major courses that are responsible for social-economic in the region and promote the EAC integration. One of the courses in which the School of Law has taken the lead is Environmental Law. Environmental law has emerged since the 1970s as a widely embraced component of the undergraduate law curriculum in many countries. It is also a specific focus within numerous postgraduate legal studies and research programs. As a result, it has become a part of mainstream legal education. Environmental law is critical in promoting sustainable development and therefore the School of Law, University of Dar es salaam as the oldest legal training institution has the responsibility to contribute to the promotion of sustainable development by emphasizing how the teaching of environmental law is undertaken. This paper explores reasons for strengthening teaching environmental law at the SoL UDSM. It explains what, why, and how to teach Environmental Law in Law Schools, the Status and trends of teaching Environmental Law at the University of Dar es salaam, School of Law, points out some constraints to teaching and research in environmental law and provides recommendations on how

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teaching Environmental Law can be strengthened at the institution.

**Keywords:** *East Africa, Environmental Law, School of Law, Sustainable Development, Tanzania*

## 1.0. INTRODUCTION

Environmental law is a collective term encompassing aspects of the law that provide protection to the environment.<sup>1</sup> It is a set of regulatory regimes that contain environmental legal principles that focus on the management of specific natural resources, such as forests, water, wetlands, oil and gas, minerals, wildlife, or fisheries. It is a value-laden<sup>2</sup> discipline of law that involves a network of statutes, common law, international law, and customary laws that addresses the effects of human activity on the natural environment. In addition, environmental law works to regulate the use and management of natural resources as well as environmental social impact assessment.

Prior to the 1960s, environmental law did not exist as a discrete domestic and international legal category, it arose as a discipline of law in the 1960s in the major industrial economies due to the industrial revolution.<sup>3</sup> While many countries worldwide have since developed a set of environmental laws, their implementation is not yet effective. In recent years, environmental law has become a critical means of promoting sustainable development or sustainability. It is necessary to combat issues related to

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1 Conserve Energy Future (2020), "What is Environmental Law?" available at <<https://www.conserve-energyfuture.com/environmental-law-and-its-components.php>> accessed 24 March, 2022.

2 Bubna-Litic K, (2021), Bringing the 'heart' into environmental law teaching a Chapter in 'Teaching and Learning in Environmental Law Pedagogy, Methodology and Best Practice', Kennedy, A, Plessis A, Fowler R, Hamman E and Warnock C, The IUCN Academy of Environmental Law series p.35.

3 Tarlock, D. A. History of Environmental Law, Environmental Laws and Their Enforcement. Vol. 1. Encyclopedia of Life Support Systems. 2009, p. 13.

the environment and conservation of natural resources for instance global warming, climate change, greenhouse gas emissions, acid rain, hunting of endangered species, deforestation, depletion of natural resources, pollution of water, air, and soil. Thus it is central in protecting us humans as well as the different plants and animals in the greater ecosystem that they exist.<sup>4</sup> It ensures that individuals, governments, and corporations do not cause harm to the environment or its ecosystems.<sup>5</sup> Therefore all lawyers need to understand the scope and application of Environmental Law in the East African region.

The School of Law formerly the Faculty of Law is the oldest law training institution in East Africa has been influential in the development of jurisprudence in many disciplines of law in the region and therefore it has to take a lead in Environmental Law training which is one of the major disciplines that will drive social-economic in the East Africa region.<sup>6</sup> The School has to bring ‘the heart’ into environmental law teaching by training law students to be effective problem solvers capable of handling the most vexing environmental problems of today and knowledgeable in the law and its application.<sup>7</sup> This article explores why and how the School of Law at the University Dar es salaam should focus more on teaching Environmental Law. It is structured into six parts. Part I provides an introduction to the article, and Part II explains the nature of Environmental Law. Part III discusses what should be taught in Environmental law and why and how it should be taught in the Environmental Law Schools. Part IV focuses on the status and trends of teaching environmental at the School. Part V outlines some constraints

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4 Stilt. K (2022), “Rights of Nature, Rights of Animals” 134 *Harv. L. Rev. F.* 276 available <https://harvardlawreview.org/2021/03/rights-of-nature-rights-of-animals/> accessed on 23 March 2022.

5 McManus P, (2009), “Environmental Regulation” *International Encyclopedia of Human Geography*, Elsevier.

6 The East African Community region is endowed with various natural resources such as forests, water, wildlife, mountains, minerals and energy resources. The natural resources are the drivers of national and regional economic development.

7 Bubna-Litic K, *Supra* note 1.

to teaching environmental at the School and finally provides a conclusion and recommendations.

## **2.0. THE NATURE OF ENVIRONMENTAL LAW**

### **2.1. The Concept of Environmental Law**

The term environment has been derived from the French word “*Environia*” which means to surround. It refers to both abiotic (physical or non-living) and biotic (living) environments.<sup>8</sup> It can also be divided into two other types such as (c) Physical and (d) biotic environment.<sup>9</sup> In modern terms, the environment includes the physical surroundings that are common to all of us including air, space, waters, land, plants, and life.<sup>10</sup>

The term environmental law is a combination of the words environment and law. It is the ensemble of norms, including common or civil law principles, statutes, treaties, and administrative regulations designed to ensure or facilitate the rational management of natural resources and human intervention in the management of such resources for sustainable development.<sup>11</sup> In specific terms, it is the branch of law that comprises of principles, policies, directives, and regulations enacted and enforced by local, national, or international entities to regulate human treatment of the nonhuman world.<sup>12</sup> It is a complex branch of law because it involves multiple jurisdictional levels. It encompasses the common law essentially judge-made law inherited from Britain and modified over time, for example negligence law and strict liability as well as legislation passed by

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8 Mondal P, Meaning, Definition, and Components of Environment

<https://www.yourarticlelibrary.com/environment/meaning-definition-and-components-of-environment/6157> accessed 20 February 2022.

9 Ibid.

10 Encyclopedia Britannica, “Environment” <https://www.britannica.com/science/environment> accessed February 2022.

11 Okidi C.O (1988), Reflections On Teaching And Research On Environmental Law in African universities Vol. 18 (1988), pp. 128-144.

12 <https://www.britannica.com/topic/environmental-law> (Accessed October 2023)

Parliament, subsidiary legislation, and local governments. Customary law is also used to govern and regulate land, forests, water, and wetlands use.

Environmental Law is central to protecting humans as well as the different plants and animals in the greater ecosystem that we exist in. It ensures that individuals, governments, and cooperates do not cause harm to the environment or its ecosystems. Therefore, it provides continuous tracking of progress in taking action to improve the environment and also helps to inform and promote accelerated action. It can be used to catalyze support to address the identified capacity gaps at the national, regional, and global levels.

## **2.2. Environmental Law Management Concepts**

There are two major concepts for environmental management that express the scope and types of regulatory tools to be applied in environmental law. The first one is preservation which refers to regulatory or management measures taken to ensure that selected natural resources or infrastructure such as unique biological formations, fragile ecosystems, endangered or threatened species, representative or unique or cultural sites are set aside restrictively utilized or left alone so as to maintain their characteristics in a manner unaffected by human activities to the fullest extent possible.<sup>13</sup> Preservation also applies to the maintenance of the quality of natural resources, such as air, water, animal health, or biological diversity.<sup>14</sup>

The second is conservation which means using renewable resources sustainably and to avoid waste of non-renewables.<sup>15</sup> In other words,

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13 Okidi C.O, Concept Structure And Function Of Environmental Law, A Paper Presentation To A Symposium for Professors in Environmental Law in African Universities Merica Hotel, Nakuru, Kenya 29th September to 2nd October 2004.

14 Ibid.

15 Ibid.

conservation usually refers to components of fisheries, land, etc. which are renewable and should be used in such a way as to protect the threshold of sustainability.<sup>16</sup> Biologists and resource economists operationalized the idea of conservation by coining the principle of maximum or optimum sustainable yield to determine the point which is not to be exceeded by utilization.<sup>17</sup> For non-renewable resources such as minerals, petroleum and oil, the meaning of conservation is to utilize the resources as to avoid waste and thus protect the interest of future generations to every extent possible.<sup>18</sup> Thus conservation provides the conceptual foundation for sustainable utilization of the environment and its components so as to ensure sustainable development.<sup>19</sup> If we are to find a fundamental justification for environmental law, it is to ensure that the development interest the present generation are realized without jeopardizing those of future generations. Promotion of the Principle of intergenerational equity which recognizes and protects the future generations' right to enjoy at least the same capacity of economic and ecological resources that present generations enjoy is therefore fundamental to environmental law.<sup>20</sup>

### **2.3. Components of Environmental Law**

Environmental law regulations can extend to cover housing, transportation, food and water management as well. There is not one aspect of life that is not covered by environmental law as it recognizes the interrelation of all areas of economy and community on a person's health state.

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16 Ibid.

17 Ibid.

18 Ibid.

19 Ibid.

20 OECD, (1997), Glossary of Environment Statistics, Studies in Methods, Series F, No. 67, United Nations, New York.

The following are the major components regulated by Environmental Law:

(a) *Resource Sustainability*

The natural resources include forests, wetlands, minerals, fossil fuels, biomass, water and land. Environmental Law is relevant to regulate resources<sup>21</sup> from extraction, through processing and consumption, to the point of reuse or discarding at the end of life.<sup>22</sup>

(b) *Waste Management*

One of the major areas addressed by environmental law initiatives is waste management.<sup>23</sup> Ensuring proper sanitation and solid waste management is important for provision of potable water, shelter and food, energy, transport and communications as essential to society and to the economy as a whole.<sup>24</sup> If not properly dealt with, waste poses a threat to public health and the environment. This can take the form of helping to build or upgrade waste management systems to make sure that waste is not polluting groundwater or causing the spread of disease. It can also take the form of managing radioactive waste materials. In areas of the world where industrialization is changing traditional community living, there may also have to be education programs done that demonstrate public health hygiene.

(b) *Food Production*

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21 For example the Environment Management Act, 2004 outlines principles for management, impact and risk assessment, prevention and control of pollution, waste management, environmental quality standards, public participation, compliance and enforcement. It also provides different enforcement actions for non-compliance with environmental requirements.

22 UNEP, "About Resource Efficiency" <https://www.unep.org>

23 The Environmental Management (Hazardous Waste Control and Management) Regulations, 2019 regulate waste management in Tanzania mainland.

24 Conserve Energy Future (2020), "What is Environmental Law?" available at

<<https://www.conserve-energy-future.com/environmental-law-and-its-components.php>> accessed 24 March, 2022.

Food production is another area covered by environmental law. Regulations concern everything from how the seed is harvested and prepared to what types of fertilizer and pesticides are used to nurture the crops to maturity.<sup>25</sup> They also examine processing, packaging, and storage facilities for food products to ensure that all ingredients are safe for human consumption, and that there is less risk of contamination or spoiled food. In some instances, environmental law may also address transportation needs for food as the infrastructure in some areas of the world may make it difficult to get adequate food supplies for the population.

*(c) Water Reserves*

Making sure that adequate drinking water, or potable water, is available to a community is another key issue with environmental law. Environmental law regulates creating reserves of water that can be adequately protected from contamination.<sup>26</sup> It regulates water for domestic and commercial use such as irrigation. Another aspect of water control is to make sure that proper drainage systems are in place.<sup>27</sup> This has to do with the health concerns that can be caused by standing water and how it can promote the presence of disease carried by mosquitoes that can breed in standing water. Sustainable Development Goal 6 emphasizes ensuring availability and sustainable management of water and sanitation for all, which” must be achieved by 2030. To achieve this

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25 The Food (Control of Quality) Act Cap 344 regulated quality of food in

Tanzania mainland. Tanzania Food, Drugs and Cosmetics Act, 2003. The Tanzania Food, Drugs and Cosmetics Act No.1 of 2003 provides for the efficient and comprehensive regulation and control of food, drugs, medical devices, cosmetics, herbal drugs and poisons, prohibited drugs and cosmetics. Under this Act, all importers, distributors, users and dealers in drugs and cosmetics are required to register with the regulating authority and apply for an import license when they want to import registered products.

26 Water Supply and Sanitation Act, 2009 provides for the sustainable management and adequate operation and transparent regulation of water supply and sanitation services,

27 Ibid.



environmental law study plays a vital role in increasing awareness and monitoring progress.

*(d) Pollution Control and Remediation*

Environmental law is concerned with the control of pollution on the one hand and the conservation of natural resources on the other hand.<sup>28</sup> It also has relevance to product design in the form of environmentally friendly materials, emission controls, and energy-efficient devices.

*(e) Flora and Fauna*

Flora and fauna must be protected as they have been under constant threat by human activity. Environmental law protects biodiversity or as a special means for protecting species deemed important for other reasons.<sup>29</sup> The need of the hour is to come up with new laws to protect endangered species from poachers, prohibition on killing or disruption of existing species and efforts to induce or support species recovery.

*(f) Extractives*

Environmental law also regulates the impact of extraction of natural resources from beneath the ground.<sup>30</sup> The extraction of oil and gas and minerals from the ground causes pollution in the air and water as chemicals come in contact with the environment. Mining also gets affected by various regulations regarding environmental impact of mining as well as the health and safety of miners.

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28 For example, the Water Resources Management Act, 2009 outlines the principles for water resources management, providing for the prevention and control of water pollution.

29 For example the Wildlife Conservation Act No. 5 of 2009 makes provision with respect to management and conservation of biodiversity and wildlife, i.e.any wild and indigenous animals and plants, and their constituent habitats and ecosystems found on or in land or water, and provides for establishment and management of protected areas in mainland Tanzania.

30 For example, the Petroleum Act 2015 require compliance with environmental principles during oil and gas exploration and production and the Mining Act 2010 regulates prospecting for minerals, mining, processing and dealing in minerals in Tanzania.

*(g) Emissions and Construction*

Environmental law also examines the condition and quality of housing and transportation in regards to its improvement and expansion.<sup>31</sup> In recent times, an example of how environmental law helped to change and shape building policies is the focus on removing lead and asbestos from the building. With transportation, it can become an issue of environmental law if a community is not served by public transportation or adequate infrastructure so they can reach the services and opportunities that exist around them. Also, the emissions regulations of transportation vehicles are also of concern.

*(h) Chemical Safety*

Chemicals control has environmental, social, and economic benefits. Adequate regulation of chemicals is critical to implementing the SDGs at the national level and should therefore be part of national sustainable development strategies.<sup>32</sup> Sound chemicals management is therefore relevant for and provides measures that support, the implementation of all SDGs.<sup>33</sup>

### **3.0. TEACHING ENVIRONMENTAL LAW**

#### **3.1. What to teach in Environmental Law?**

Environmental law has seen remarkable growth in the past 30 years. It has matured greatly since the 1972 Stockholm Conference on the Human

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31 For example, the Urban Planning Act, 2007 Act provides for the orderly and sustainable development of land in urban areas.

32 For example, the Industrial and Consumer Chemicals (Management and Control) Act No.3 of 2003 provides for the management and control of the production, import, transportation, export, storage, dealing and disposal of chemicals and for matters connected therewith. This Act ensures that chemicals are handled properly in order to safeguard human health and protect the environment.

33 See IOMC brochure available at [http://www.who.int/iomc/chemicals\\_SDGs\\_interactive\\_Feb2018.pdf](http://www.who.int/iomc/chemicals_SDGs_interactive_Feb2018.pdf) accessed 10 February 2022.

Environment.<sup>34</sup> It was given a tremendous boost by the 1992 Rio de Janeiro UN Conference on Environment and Development (UNCED) or the ‘Earth Summit’.<sup>35</sup>

Environmental law has not been taught or seen as a ‘core’ legal subject, giving environmental law academics the freedom to teach the subject in many different ways.<sup>36</sup> This structural sidelining, however, belies important questions about how teaching environmental law relates to the core of legal learning.<sup>37</sup> Whereas there is no core of environmental law knowledge that every student should learn (although there are lots to learn), it is important to reflect on whether there are core legal concepts, reasoning processes, and skills that all environmental lawyers should have.<sup>38</sup> This issue is now particularly pertinent as the Law schools structure the LLB design the conventional structure of core legal subjects, so that existing assumption about how environmental law relates to the core of (undergraduate) legal learning.<sup>39</sup>

Thinking about the relationship between environmental law and the core of legal learning depends on one’s view of what that core is, and, fundamentally, on what a law school is for. The debate over the latter question is long-standing, with William Twining identifying struggles between ‘academic’ and ‘professional’ models of law schools, reflecting diverging ambitions to pursue liberal arts education or to lay the

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34 Robinson N.A (2011), *Reflecting on Rio: environmental law in the coming decades* a Chapter in J Benidickson et al *Environmental Law and Sustainability After Rio*, Edward Elgar, Publishing, UK p.9.

35 Ibid.

36 Scotford E and Vaughan S, (2018), *Environmental law and the core of legal learning: framing the future of environmental lawyer*, available at <https://blog.oup.com/2018/10/environmental-law-core-legal-learning/> accessed 13 April 2022.

37 Ibid.

38 Ibid.

39 Ibid.

foundations for entry into the legal profession, respectively.<sup>40</sup> This debate is caricatured by fixed understandings of the structure of law degrees in East African Universities. A preset list of subjects and skills in learning these conventional, fixed ‘core’ subjects (public law, criminal law, etc.). While using these knowledge blocks is one approach to teaching, I suggest that the core of legal learning is more fundamental, less functional, and less structural: the core essentially concerns key legal concepts and skilled approaches to legal reasoning.

Thinking about the core of legal learning in this way has two implications for teaching environmental law. First, it explains why the relationship between environmental law and standard ‘core’ legal subjects can be fraught. A review of the curriculum in the East African Law School show that most law courses with an environmental law component are offered as an optional subject, usually in third year or fourth year. Environmental law dominantly being an option suggests that it is an ‘extra’ to the core of legal learning, a ‘nice to have’ for students if they care about the environment and can forgo other subjects often perceived as more relevant for their future careers.

Teaching environmental law often entails difficult pedagogical and disciplinary decisions in imparting legal skills on the regulation of the environment.<sup>41</sup> Is it assumed that environmental law students have learned or assimilated enough foundational legal knowledge that we can expect them to ‘apply’ this or move beyond this in learning about law that relates to environmental problems?<sup>42</sup> Is it necessary to explore interesting facets of environmental law – examining new regimes or complex legal questions in a range of legal areas – safe in the knowledge that students understand basic legal doctrines, procedures and frames of

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40 Ibid.

41 Scotford E and Steven Vaughane S, *supra* note 36.

42 Ibid.

analysis? The students need to struggle to connect their foundational legal knowledge to environmental problems and connect through teaching choices that stray from ‘core’ legal concepts and skills.

The second reason for thinking differently is about environmental law and the core. There is need to acknowledge that imparting, testing and critiquing core legal concepts and legal reasoning processes when teaching environmental law.<sup>43</sup> With that acknowledgment comes a responsibility to reflect on our choices as environmental law teachers, and potential opportunities. The question is how much to teach basic legal doctrines and concepts in environmental law? What are those concepts? Where does this foundational teaching fit in the syllabus of an optional course? Might there is need to restructure some parts of legal degrees to teach key legal concepts and reasoning more explicitly through the framework of environmental problems?

At a minimum, it can be argued that environmental law is ideally placed for students to develop certain ‘core’ skills of legal reasoning.<sup>44</sup> In particular, it is a subject in which we can promote students to have intellectual versatility in their legal reasoning, seeing and framing issues through different legal lenses – doctrinal, regulatory, philosophical, and so on.<sup>45</sup> It is not a subject in which one can pretend that only one approach to law is right, and it requires flexible and critical legal thinking. This is not to say that anything goes into teaching environmental law but that robust, carefully chosen, and self-conscious analytical legal reasoning is required. Developing these skills is a core aspect of legal learning. There is nothing necessarily niche or of the ‘fringe’ about environmental law in the classroom.

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43 Ibid.

44 Ibid.

45 Ibid.

It is important to frame, phrase, and organize environmental law classes by defining the approach to the subject for future environmental lawyers and future citizens, and also expressing a (usually unarticulated) view on the role played by a law school.<sup>46</sup> The time is ripe to reflect on the skills, approaches, and visions for environmental law that we impart to our students, and how these relate to the core of legal learning. There need to identify the ‘core’ functions that an environmental law education might serve, and how our teaching meets these, or doesn’t, or can’t.

### **3.2. Why teaching Environmental Law is Important?**

Environmental law touches on practically every part of society.<sup>47</sup> It seeks to protect human health, manage natural resources and sustain the biosphere.<sup>48</sup> This is frequently done, among other ways, through laws that set standards for environmental planning, wildlife, plant, mineral resources, land use management, and other activities that can affect the air, water, and soil.

Environmental laws play a huge part in protecting humans, animals, resources, and habitats.<sup>49</sup> Without these laws, there would be no regulations concerning pollution, contamination, hunting, or even response to disasters and the government would not be able to punish those who treat the environment poorly.

Given the wide range of human activities that can impact on the environment, environmental law utilizes a range of the laws.<sup>50</sup> These include tax law (which can provide incentives or disincentives) to criminal law (which punishes individuals or corporate bodies for actions

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46 Ibid.

47 Kakuru K and Ssekyana, (2009), Handbook On Environmental Law in Uganda, Green Watch p.1.

48 Ibid.

49 Conserve Energy Future, *supra* note 1.

50 Kakuru & Ssekyana *supra* note 48.

that can harm human health or the environment), corporate law (which increasingly recognizes the need to respect environmental priorities), administrative law (setting the ground rules as to how government agencies make and implement decisions) and torts which cover environmental torts.<sup>51</sup> As such, environmental law becomes as much a perspective, as anybody of law.

The functions of Environmental law have been identified to include the following<sup>52</sup>:

- a) To establish regulatory structures for environmental management, including regulatory agencies and specialist courts and tribunals;
- b) To empower regulators to manage environmental and social impacts using plans, policies, standards, licenses, and incentives;
- c) To require persons proposing environmentally significant activities to seek permission from regulators;
- d) To enable members of the public to take part in strategic planning and project evaluation;
- e) To require activities of environmental significance to be assessed before permission can be granted;
- f) To provide administrative, civil, and criminal sanctions for non-compliance with the law;
- g) To allow the legality of decisions of regulators to be challenged by members of the public; and
- h) To allow the merits of certain decisions of regulators to be challenged by members of the public.

Environmental law practitioners, in addition to understanding the law, need to understand the position of all of the relevant stakeholders.

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51 Ibid.

52 Environmental Defenders (2022), "What are the functions of environmental law in NSW?"

<<https://www.edo.org.au/publication/what-are-the-functions-of-environmental-law-in-nsw/>> accessed on 10 April 2022.

### **3.3. How to teach Environmental Law**

As noted earlier, environmental law in most law schools is typically offered as an upper-level elective. Environmental law as a multidisciplinary discipline can be taught in different ways. The first one is the traditional lecturing method of teaching. This method is the most convenient and commonest method of teaching. This method mainly focuses on cognitive objectives with the main emphasis of this strategy being the presentation of the content. The teachers plan and control the teaching-learning process. Since this is a teacher-centered method so it provides very little scope for student activity, and the student plays a passive role in the method. Using this method the Environmental Law Lecturers introduce to students a massive and ever-changing body of legal knowledge and precedent and indoctrinates them into the thought process so central to the legal profession through the analysis of appellate opinions. The method is useful because it teaches foundational issues such as standing and nuisance, as well as the historical common law grounding of modern statutory and case environmental law.

The second one is cross-disciplinary integrated seminars that would involve law and non-law students to introduce them to environmental law issues through unifying themes organized around such features as geography, a genus, or an ecosystem. The seminars enable environmental law lectures to engage and involve colleagues from other disciplines such as forestry, biology, engineering, business, and philosophy at their Universities. It will also help students to understand varied interests and aspects surrounding the resource, geographical region, or ecosystem.

The third one is one is experiential learning which places students in the roles in which they experience, either first hand or as a close observer, the practice of law to guide their learning. Students learn professional knowledge, doctrine, patterns of reasoning, skills, and the exercise of



judgment, all “in the role.” Experiential learning can be applied in two ways: (a) case studies and simulations which allow the environmental law teachers to set the pace of the interaction in a way that is not possible in real-client situations and to establish fact patterns and experiences closely tailored to a specific learning objective or set of objectives. For example, a case study or simulation can be constructed to help students learn substantive law, through engagement in context, or to develop a very specific skill in a somewhat “safer” environment than a live clinic might provide. (b) Clinics allow the students to bring their talents to bear on behalf of real clients, on real matters, while under the direct supervision of School Law members. In-house clinics may be established to work with an established law firm.

The fourth one is Externship/Internship Programs which enables students to obtain practical experience in environmental law outside of the law schools. Through placements at law firms, government institutions, international organizations, and Non-Governmental Organisations the environmental law students may gain practical experience.

#### **4.0. THE STATUS AND TRENDS OF TEACHING ENVIRONMENTAL LAW AT SCHOOL OF LAW**

##### **4.1. The Current Status of teaching Environmental Law at the School of Law**

The University of Dar-es-Salaam School of Law is the oldest law training institution in East Africa that was established in October 1961, three months before independence, to cater to the new emerging independent states of East Africa, comprising Kenya, Uganda, Tanganyika, and Zanzibar. By its establishing Instrument, the School was affiliated with the University of London awarding degrees from that University through

external programs.<sup>53</sup> The establishment of the School on the eve of independence provided an opportunity for the creation, innovation, and introduction into the syllabus of local case materials, which were sensitive to the aspirations of the newly independent states of East Africa, despite its attachment to the University of London.

At inception, the mission of the School was to provide the newly independent states of East Africa with indigenous skilled lawyers in the shortest time possible to work in the government and public service.

Currently, the School offers both undergraduate and postgraduate programs. All these programs intended to introduce and ground our students to the basics of legal knowledge. Environmental law is offered as a core course for LLB fourth year students<sup>54</sup> and as an elective for the LLM program and other Masters programs offered at the School.<sup>55</sup> It is taught alongside such related courses as cultural property and antiquities law, natural resources law, regulatory law, and law of the sea.<sup>56</sup>

#### **4.2. Strengthening teaching Environmental Law at the School of Law**

The East African Community is endowed with various natural resources such as forests, water, wildlife, mountains, minerals, and energy resources. Natural resources are the drivers of national and regional economic development. The objective of the environment and natural resources management sector is to promote sustainable use and management of natural resources and promote adaptation to climate change.

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53 Okidi C.O (2011) Combating Climate Change in Uganda a Chapter in J Benidickson et al Environmental Law and Sustainability After Rio, Edward Elgar, Publishing, UK p.31.

54 University of Dar Es Salam, Undergraduate Prospectus 2020/2021. Dar es Salaam University Press.

55 Ibid.

56 Ibid.

The School of Law was established 60 years ago and the oldest law training institution in East Africa has to take the lead in teaching Environmental Law which is one of the major disciplines that will drive social-economic in the region and promote EAC integration.

*(a) Why strengthen teaching Environmental Law?*

There are two reasons why it is fundamental to strengthen the teaching of environmental at the University of Dar es Salaam, School of Law (SoL). The first one is that the Secretariat of EAC is based in Arusha in the United Republic of Tanzania. The Secretariat is critical in promoting sustainable development process indicators that can urgently provide the required legislative or policy options, aimed at improved inter-agency cooperation both in government and the private sector in environmental governance in the EAC region. Further, Arusha has an enviable reputation in the promotion of international law in Africa.<sup>57</sup> Arusha has been instrumental in hosting several international courts and legal establishments. The African Court on Human and People's Rights, an institution created by the African Union to promote human rights protection across the continent, is also based in Arusha. Moreover, the city is the venue for the African Institute of International Law, an independent research and educational center supported by both the African Union and the United Nations. The School of Law needs to strengthen the teaching of International environmental law as a branch of public international law so as to build capacity for the international law institutions that are based in Arusha.

The second is that in the EAC Partner States there are several transboundary projects that require capacity in the negotiation of EAC partners States of Multilateral Environmental Agreements and resolve

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<sup>57</sup> Between 1994 and 2015, it served as the venue for the International Criminal Tribunal for Rwanda meant to try persons involved in serious human rights abuses in the Rwandan genocide of 1994. Upon conclusion of the court's work, its successor (the International Residual Mechanism for Criminal Tribunals) established a branch in Arusha.

transboundary environmental disputes. For example, the United Republic of Tanzania and Uganda have signed an oil pipeline project agreement for the construction of a 1,440 km crude oil pipeline from Uganda's Albertine region to the Tanzanian seaport of Tanga.<sup>58</sup> The other projects include Conserving Natural Capital and Enhancing Collaborative Management of Transboundary Resources in East Africa (CONNECT) is a project which aims to strengthen the conservation and management of natural resources shared by East African countries including wildlife and landscapes popularly referred to as transboundary natural resource and the LVBC has been implementing Mara River Basin Transboundary Water for Biodiversity and Human Health (in the Mara River Basin Project (TWBHH-MRB) in Mara river Basin. The School of Law can develop capacity for lawyers in capacity building for negotiation, implementation and resolving disputes on transboundary projects. It can also develop capacity for environmental negotiation skills resources management.

*b) How to Strengthen Teaching Environmental Law at the School of Law*

Traditionally 'thinking like a lawyer' has embodied reasoning and rationality, leaving emotions out of the legal lexicon. Environmental law advisors and practitioners, in addition to understanding the law, need to understand the position of all the relevant stakeholders.

Teaching environmental law requires dealing with a complex combination of established common law principles about property rights in resources, early statutory frameworks dealing with land and resource dispositions, and contemporary regulatory schemes attempting to balance a range of values and interests related to the environment and resources. Foundational concepts of property must be taught alongside

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58 Uganda's President Yoweri Museveni signed on 11.04.2021 Sunday the East African Crude Oil Pipeline project agreement with his Tanzanian counterpart Samia Hassan Suluhu. <https://www.aa.com.tr/en/africa/uganda-tanzania-sign-oil-pipeline-project-agreement/2205408>.

principles of judicial review as statutory frameworks authorizing dispositions and governing extraction and use are characterized by ‘profound and pervasive discretion at every level of decision making’. Despite some overlap with the more recent development of courses in environmental law, natural resource law is still where lawyers and law students grapple directly with the rules about how resources are extracted for transformation into goods and services. Therefore teaching environmental law also necessitates the making of value judgments that can involve complex sociological, political, economic and cultural issues and can require an understanding of various legal systems and the meaning of law itself in different cultures. As environmental issues are often politically controversial and socially confronting, environmental lawyers also require well-developed argumentative legal skills alongside expertise that can range across various other disciplinary areas, together with both a broader and a deeper understanding of the ways in which society functions. Small-group methods, adequately designed and used on a regular basis, can allow for intensive discussion of the polycentric issues that are often brought up in environmental matters, at international, national and local levels. Environmental lawyers also need to be critically aware of the powerful forces that can manifest themselves when decisions are made concerning approvals for development activity.

In most legal systems, such decisions must take into account the environmental effects of proposed development as a matter of law. In such decision-making processes, there can be significant power imbalances between development proponents and members of the community who might wish to object to a development, or have it modified to reduce its environmental effects. Maxwell makes the point, In developing students’ critical awareness they ought to appreciate the relationship between law and politics in ensuring social cohesion in defending natural resources from abuse or over exploitation.

The School of Law further needs to develop environmental curriculum for lawyers and non-lawyers who are involved in the management environment and natural resources. The curriculum can cover specialized sectoral areas such as international trade and natural resources, forestry protection, mining, oil and gas resources, water, public health, and genetic resources including intellectual property, tourism, and energy. At best, such curricula would be inter-disciplinary to reflect the emerging trends in the field.

The teaching of environmental law can be integrated into other existing three undergraduate programs: Certificate in Law (CTL) and Bachelor of Arts in Law Enforcement (BALE). All these programs which introduce students to the basics of legal knowledge can cover various aspects of environmental law. At the postgraduate level, the School offers a Postgraduate Diploma in Law (PGDL), Specialized Postgraduate Diploma in Law (SPGDL, Master of Laws (LL. M), and Taught LL. M programs and Doctor of Philosophy degree. All these postgraduate programs can be integrated into environmental programs to ensure that the students get specialized knowledge.

Teaching environmental law can be done for a short period, rather than weekly across a whole semester. The on-campus session may be structured by individual teachers to arrange the time as they wish. This also has advantages, including the availability of large face-to-face time periods for more complex learning exercises. Furthermore, students must be taught not only the environmental laws, but also how they can be used. Both law and non-law students may be given chances to apply the law themselves, develop legal arguments, resolve disputes and assess future areas for law reform. This is one area where the mixed cohort classroom and intensive teaching periods can be particularly beneficial. Prior to exploring the specific context of environmental law learning, the

pedagogical literature related to teaching mixed cohorts, and in intensive modes, will be analyzed.

The School of Law houses the Center for the Study of Forced Migration (CSFM), the Legal Aid Committee (LAC), and the Tanzanian German Centre for Eastern African Legal Studies (TGCL). These provide opportunities for inter-departmental research in environmental law at the School of Law.

The School, through TGCL, has the best collection of human rights, constitutional law and regional integration law material in the country. It also harbors an up-to-date library specializing in the Law of the Sea and International Environmental Law. This Unit acts as a springboard for inter-disciplinary research and outreach programs in these fields.

Apart from teaching undergraduate, and graduate students and coordinating courses in the certificate of law, through the School of Law research platform, research on various issues of Environmental Law can be developed.

The possible areas for research and teaching the School of Law can cover include the following:

- a) African countries' Issues and needs in trade-environment discourse;
- b) Legal issues in transboundary natural resource management;
- c) Environmental Justice;
- a. Financial and technology transfer provisions in the interface between trade rules and environmental regulations;
- d) Extractives Industry Law in East Africa;
- e) Legal Aspects of Climate Change Adaptation;
- f) Law of the Sea;
- g) Legal issues in the privatization of natural resources;

- h) Legal issues in natural resources contracts negotiation and dispute resolution.

## **5.0. CONSTRAINTS TO TEACHING AND RESEARCH IN ENVIRONMENTAL LAW AT SCHOOL OF LAW**

There are a number of constraints that may impede teaching in environmental law at the University of Dar es salaam, SoL.

### *(a) Lingering traditions of legal Practice*

Most of the lawyers in East Africa, as perhaps elsewhere, are still largely committed to the traditional disciplines of law. Environmental law is ordinarily perceived as an esoteric subject with limited public utility and offering no economic reward for practitioners. Since there are rarely cases before courts of law on environmental law requiring defense, counsel, the subject has very limited appeal for the traditional lawyer. This is in addition that few lawyers understand the subject in the broad sense explained above. The training of lawyers is narrow, often delineated, and isolated from policy or technical matters.

Therefore, most lawyers may not understand the field of environmental law beyond the related traditional areas such as the law of tort. That is to say, environmental law is often understood in the same pollution control. This is neither exciting nor promising quick money as would several other areas of law. As a consequence, the cadre of environmental law lecturers is still relatively small and interest is not building up fast enough.

### *(b) Environmental Law is not 'core'*

Environmental law is neither taught nor seen as a 'core' legal subject, giving the environmental law teachers freedom to teach the subject in many different ways. This structural sidelining, however, belies important questions about how teaching environmental law relates to the core of



legal learning. It is not my suggestion that there is a core of environmental law knowledge that every student should learn (although there are lots to learn), but that it is important to reflect on whether there are core legal concepts, reasoning processes and skills that all environmental lawyers should have.

(c) *Few Environmental Law Experts*

Environmental Law is relatively new and there exist a dearth of scholars in the EAC region and publications of notoriety that specialize in environmental law, it is uniquely difficult to attract experts during orientation to stimulate students to register for environmental law, an aspect of law misconstrued as science-based or unwarranted daunting highly academic complexity.

(d) *Limited publication and published works*

There is a very limited number of published works on environmental law available in the EAC region to provide the seeds of interest in the subject. To date, most of the research and publication on the subject have been done in South Africa, North America, and Europe. First, they have circulated quite a distance from the learning centers in Africa. Therefore, exposure to them, just to create awareness of the literature is difficult. Second, even where the contents of specific journals are known, the costs are prohibitive, given the economic capacity of most researchers and teachers. The ideal arrangement of subscription to selected scholarly journals on environmental law is, therefore, difficult to achieve. Thirdly, most of the publications originating from North America and Europe are oriented toward the traditional conceptions of environmental law and not including enough of management orientation.

(e) *Environmental Law is an inter-disciplinary course*

Environmental Law is characterized by great factual complexity, bringing into play inter-disciplinarity and the need to consider the relationship

between law and science, law and economics, and law and socio-cultural concerns. Accordingly, determining the purpose, scope and content of the subject can prove challenging.

*(f) Government policy orientations*

The policy inclination of the governments in East Africa constrains the popularity of environmental law in the universities. In general, most policymakers see environmental law as anti-investment because some do not appreciate the implications of sustainable development.

## **6.0. CONCLUSION AND RECOMMENDATIONS**

This article has examined the importance of teaching environmental law at the University of Dar es Salaam School of Law, the oldest law training institution in East Africa. Teaching environmental law promotes sustainable development through capacity building of judges, lawyers, policymakers and implementers, legislators, civil society, and other stakeholders. It ensures effective implementation of environmental law because it depends on capable, well-trained lawyers that understand issues relevant to the East African circumstances.

There are some constraints such as environmental law not neither being exciting nor promising quick money as an area of practice compared to other law disciplines such as commercial law, a limited number of experts and published works on environmental law available in the EAC region to provide the seeds of interest in the subject.

The above discussion on environmental law has identified some constraints. The following recommendations are proposed:

- a) The School of Law needs to update its curriculum to ensure that teaching Environmental Law is restructured so as to establish broadly-based multidisciplinary and internally coordinated program certificate, diploma, LLB, LLM, and PhD levels;

- b) The syllabus of Environmental Law should be expanded to cover emerging issues in the EAC region;
- c) Specialized Environmental Law programs can be integrated into the existing structures at the School as the Center for the Study of Forced Migration (CSFM), Legal Aid Committee (LAC), and the Tanzanian German Centre for Eastern African Legal Studies (TGCL). These will provide opportunities for inter-departmental research in Environmental at the School of law;
- d) Dedicate Special issues in the Eastern Africa Law Review on Environmental Law to promote excellence in scholarship in legal and policy aspects can be regularly published in the Eastern Africa Law Review. The issues can cover national, sub-regional, or comparative studies and provide thoughts or lessons to the African researchers, teachers, and policy-makers on the relevant themes.
- e) The School of Law should develop specialized Environmental Law training programs to be conducted in collaboration with the EAC Secretariat, the African Court on Human and People's Rights, and the African Institute of International Law so as to build capacity in the EAC region.