UNIVERSITY OF DAR ES SALAAM

School of Law

ENVIRONMENTAL LAW COMPENDIUM



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UNIVERSITY OF DAR ES SALAAM
SCHOOL OF LAW

Environmental Law Compendium

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INTRODUCTION

This Compendium provides a collection of concise but detailed information and materials primarily targeted for the Environmental Law Course offered to undergraduate students in the Bachelor of Laws (LL.B.) Programme at the University of Dar es Salaam School of Law. The materials include court cases and statutes from a wide range of branches of environmental law from different jurisdictions in general and Tanzania in particular. It also provides references and additional information on environmental law principles, norms and rules that exist in various legal instruments at the national, regional and international levels.

Important decisions of courts of law at the national, regional and international levels that have expounded on the principles and norms are also provided. Scholarly works by renowned authorities, reports and studies on different aspects of environmental law have also been brought to the fore.

It is hoped that this Compendium will make it easier for the law students and researchers to have a clearer understanding of Environmental Law. This will enable them to easily trace leading precedents and authorities in the course of understanding the subject. Diligent students and researchers should be in a position to follow up on the list of references provided for by the authorities on the subjects and also the precedents referred to in cases that are cited in the Compendium. This would certainly provide them with a more comprehensive understanding of the issues raised or discussed. It will also be useful to follow up and keep abreast of developments on the laws and cases to have an update on any changes to the laws and court decisions in various jurisdictions.

COURSE SYNOPSIS AND OBJECTIVES

This is a one-semester compulsory course usually offered in the 2nd Semester during the Fourth Year of the LL.B. Programme. The general objective of this course is to equip law students with some knowledge on the legal concepts, theories, principles and practices governing environmental conservation and management issues at the national, regional and international levels.

At a more specific level, the course focuses on the development of the law in protecting and conserving the environment in the context of Tanzania. Students will be exposed to the analysis of common law principles, legislation and judicial decisions on environmental protection. The course is divided into 12 modules and focuses on the following thematic areas:

General Introduction: Students are introduced to the development and main sources and substance of environmental law. They are expected to acquire a comprehensive understanding of the genesis of environmental law and underlying theories/approaches in its development. They will be also exposed to the dynamics related to the environmental law and policy-making processes. Issues related to environmental management institutions and the inherent conflicts of reconciling environmental protection with developmental objectives in the light of diverge social, economic and cultural perspectives at the domestic and global levels will also be addressed.

Constitutional Perspectives: Students will be exposed to the development of the relationship between constitutional principles and environmental management.

*Policy Alternative*s: By studying alternative approaches to environmental protection policy, students will be introduced to skills to enable them to identify policy options and provide constructive guidance and critiques on policy choices in the context of developing countries.

Legislative Analysis: The present environmental law is mostly the product of legislation. Students will, therefore, have the opportunity to enhance their skills at statutory interpretation in the course of analysing environmental legislation.

Administrative Organs and Processes: Environmental legislation is implemented and enforced by a number of institutions and administrative agencies. This course seeks to inculcate into students a basic understanding of the environmental management structures, roles of different institutions and administrative processes and procedures that such organs apply in discharging their responsibilities.

Challenges and Way Forward: The course is intended to provide law students with analytical tools to enable them explain and devise solutions to the complex issues that give rise to challenges in efforts to address environmental problems at the global and national levels.

Grading: The course shall be administered in accordance with the University of Dar es Salaam and School of Law's Examination Regulations available in the University of Dar es Salaam Prospectus website: (https://www.udsm.ac.tz/web/index.php/prospectus) as amended from time to time.

Continuous Assessment during the duration of the course will be administered by way of rapid tests, take home assignments, timed tests and other types of course work as determined by the course instructors and in accordance with the applicable University Regulations.

MODULES

MODULE ONE: DEFINITION AND APPROACHES (THEORIES) TO ENVIRONMENTAL LAW

1.1 Introduction
1.2 Meaning, Scope of Environment and Environmental Law
1.3 Anthropocentrism
1.4 Biocentrism

Selected References

(a) Readings

Stone, C. D. (1972). Should Trees have Standing - Toward Legal Rights for Natural Objects. *Southern California Law Review*, 45, pp. 450-501.

European Union. (2021). *Can Nature Get it Right? A Study on Rights of Nature in the European Context*. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2021/689328/IPOL_STU(2021)689328_EN.pdf

Moore, T. R. (1974). Should Trees Have Standing? - Toward Legal Rights for Natural Objects *Legal Rights for Natural Objects, Florida State University Law Review*, *Vol. 2*, Issue 3, Article 12. *Book Review*. Available at: https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1753&context=lr.

Shutkin, W. A. *et al.* (1994). Environmental Justice and the Use of History. *Boston College Environmental Affairs Law Review, Vol. 22* | Issue 1, Article 2. Available at: http://lawdigitalcommons.bc.edu/ealr.

(b) Legislation

Environmental Management Act (EMA) – section 3 - (Interpretation): 'Environment' includes cultural resources. See also provisions on conducting Environmental Impact Assessment (EIA) under EMA – culture and social economic aspects to be considered.

Protection of Cultural Heritage: Tanzania: Antiquities Act of 1964 (Act No. 10 0f 1964) Cap. 550.

Zanzibar: Ancient Monuments Preservation Act (1948).

See similar laws of South Africa, Malawi, Zambia and Liberia
See generally laws on Protection of Cultural Heritage on UNESCO's website: https://en.unesco.org/cultnatlaws/list

(c) Cases
Yanner v. Eaton (1999), HCA 53 High Court of Australia (p. 102 Case 67 UNEP Compendium - Culture and traditional beliefs, clan claims traditional rights to use wildlife, collusion between custom and ownership of resources by State): https://www.ato.gov.au/law/view/document?Mode=type&TOC=%2205%3ACases%3AHigh%20Court%3A1999%3AYanner%20v.%20Eaton%20-%20 (7%20October%201999)%3A%230104%23Judgment%20by%20Callinan%20J%3B%22&DOCID=%22JUD%2F*1999*HCA53%2F00004%22.
Kotuku Parks Ltd. v. The Coast District Council Environment Court Decision No. A73/2000, New Zealand (p. 114 Case 78 UNEP Compendium - Culture and environment, protection of habitat for indigenous fauna). Summary available at:
https://niwa.co.nz/sites/niwa.co.nz/files/Court%20Case%20Summaries_Coastal%20Environment%20_Oct%202016.pdf.

Colombian Supreme Court Recognizes Rights of the Amazon River Ecosystem. Available at:
https://www.iucn.org/news/world-commission-environmental law/201804/colombian-supreme-court-recognizes-rights-amazon-river-ecosystem.

Challe, T. (2021). The Rights of Nature — Can an Ecosystem Bear Legal Rights? *Ecology*, Available at:
https://news.climate.columbia.edu/2021/04/22/rights-of-nature-lawsuits/.

When a river is a person: From Ecuador to New Zealand, Nature gets its day in court. *Conversation.* Published on June 19, 2017 8.00am SAST. Available at: https://theconversation.com/when-a-river-is-a-person-from-ecuador-to-new-zealand-nature-gets-its-day-in-court-79278.

Kestler-D'Amours, J. (2021). This river in Canada is now a 'legal person' - Indigenous communities are leading worldwide push to recognise legal,

'personhood' rights of rivers, lakes and mountains. *Aljazeera News*. Published on 3 Apr 2021. Available at: https://www.aljazeera.com/news/2021/4/3/this-river-in-canada-now-legal-person.

Tanasescu, M. (2017). Rivers Get Human Rights: They Can Sue to Protect Themselves in New Zealand and Ecuador, rivers with legal aspects of "personhood" open up new environmental battles. *Conversation* (on June 19, 2017). Available at: https://www.scientificamerican.com/article/rivers-get-human-rights-they-can-sue-to-protect-themselves/.

MODULE TWO: GENESIS OF TRADITIONAL ENVIRONMENTAL LAW

2.1 Introduction
2.2 From the Primitive Mode of Production
2.3 Traditional/Indigenous Knowledge Systems of Environmental Conservation and Management - History to Present

Selected References

(a) Readings

Schimmöller, S. (2020). *Paving the Way for Rights of Nature in Germany: Lessons Learnt from Legal Reform in New Zealand and Ecuador*. Cambridge: Cambridge University Press. Available at: https://www.cambridge.org/core/journals/transnational-environmental-law/article/abs/paving-the-way-for-rights-of-nature-in-germany-lessons-learnt-from-legal-reform-in-new-zealand-and-ecuador/A55B2FD515951F6325A27277F7E33412.

Majamba, H. (1999). *Indigenous Knowledge Systems and Wildlife Management: A Framework for Legislation and Policies for Sub-Saharan Africa*. Ph.D. Thesis, Northeastern University, Boston. EAF Section, University of Dar es Salaam Library & Staff Library, University of Dar es Salaam School of Law.

Negi, C. S. (2005). Religion and Biodiversity Conservation: Not a Mere Analogy, *The International Journal of Biodiversity Science and Management*, 1:2, 85-96, DOI: 10.1080/17451590509618083. Available at: https://doi.org/10.1080/17451590509618083.

Chunhabunyatip, P., *et al.* (2018). Influence of Indigenous Spiritual Beliefs on Natural Resource Management and Ecological Conservation in Thailand. *Sustainability, 10,* 2842, doi:10.3390/su10082842. Available at: www.mdpi.com/journal/sustainability (see also the rich references on indigenous knowledge systems of conservation of natural and environmental resources in this work).

(b) Legislation

See laws on Protection of Cultural Heritage on UNESCO's website:

https://en.unesco.org/cultnatlaws/list.

(c) Cases

Amnesty International. (2013). India: Landmark Supreme Court ruling a great victory for indigenous rights. Available at: https://www.amnesty.org/en/latest/news/2013/04/india-landmark-supreme -court-ruling-great-victory-indigenous-rights/.

Bibas, B. (2019). Indigenous People are Winning Court Battles. *Justiceinfo.Net*, 3. Available at: https://www.justiceinfo.net/en/43118-indigenous-people-are-winning-court-battles.html

The Supreme Court declared this week that all Bangladesh's rivers had the legal status of living entities, a move aimed at protecting them from growing pollution, encroachments and illegal dredging: See Chandran, R. (2021). Fears of evictions as Bangladesh gives rivers legal rights. Available at: https://www.reuters.com/article/us-bangladesh-landrights-rivers-idUSKCN1TZ1ZR (23rd April 2021).

MODULE THREE: GENESIS OF MODERN ENVIRONMENTAL LAW

3.1 Introduction
3.2 Evolution and Development

Selected References

(a) Readings

Weiss, E. B. (2011). *The Evolution of International Environmental Law*. Georgetown University Law Center. Available at: https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2684&context=facpub

Blodgett, M. S., *et al.* (2008). A Primer on International Environmental Law: Sustainability as a Principle of International Law and Custom. *ILSA Journal of International & Comparative Law, Vol. 15:1*. Available at: https://core.ac.uk/download/pdf/80035535.pdf.

Bodansky, D.*, et al.* (eds). (2008). *The Oxford Handbook of International Environmental Law*. Oxford: Oxford University Press. Available at: https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199552153.001.0001/oxfordhb-9780199552153-e-2?print=pdf

Leary, D., *et al.* (eds). (2010). *The Future of International Environmental Law*. Tokyo:UN University Press. Available at: https://archive.unu.edu/unupress/sample-chapters/Future Of Intl EnvironmentalLaw.pdf.

UNEP Training Manual on Environmental Law. (undated). Available at https://wedocs.unep.org/bitstream/handle/20.500.11822/20599/UNEP_Training_Manual_Int_Env_Law.pdf?sequence=1.

IUCN. (1994). *Environmental Protection in Islam*, (2nd Edition). Available at: https://www.iucn.org/sites/dev/files/import/downloads/eplp_020reven.pdf.

UNEP. (undated). *Religion and Environmental Protection.* Available at: https://www.unep.org/about-un-environment-programme/faith-earth-initiative/religions-and-environmental-protection.

Negi, C. S. (2005). Religion and Biodiversity Conservation: Not a Mere Analogy. *The International Journal of Biodiversity Science and Management*, 1:2, 85-96, DOI: 10.1080/17451590509618083 To link to this article: Available at:https://doi.org/10.1080/17451590509618083

Chunhabunyatip, P., *et al.* (2018). Influence of Indigenous Spiritual Beliefs on Natural Resource Management and Ecological Conservation in Thailand. *Sustainability, 10,* 2842: doi:10.3390/su10082842. Available at: www.mdpi.com/journal/sustainability (see also the rich References on indigenous knowledge systems of conservation of natural and environmental resources in this work).

Vinuales, J. E. (2008). *The Contribution of the International Court of Justice to the Development of International Environmental Law: A Contemporary Assessment.* Available at: https://www.corteidh.or.cr/tablas/R22141.pdf.
Kiss, A. (1998). The International Court of Justice and the Protection of the Environment. *11 HAGUE Y.B. INT'L L.* 1, 1-13.

Kiss, A., *et al.* (2004). *International Environmental Law. UNEP. (*Available at the UDSM Library*).*

(b) Legislation
United Nations. (1945). Charter of the United Nations. *1 UNTS XVI.* Available at: https://www.refworld.org/docid/3ae6b3930.htm.

United Nations, Statute of the International Court of Justice, 1946. 3 Bevans 1179, 59 Stat 1055, TS No 993, 3 Bevans 1179, 59 Stat 1055, TS No 993
Available at: https://www.refworld.org/docid/3deb4b9c0.html.

(c) Cases
Corfu Channel Case, United Kingdom of Great Britain and Northern Ireland v. People's Republic of Albania. Available at:

https://leap.unep.org/countries/al/national-case-law/corfu-channel-case-united-kingdom-great-britain-and-northern-ireland.

Kasikili/Sedudu (Bots. v. Namib.), 1999 I.C.J. 1045, 1153 (Dec. 13).

Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation Owed by the Republic of Nicaragua to The Republic of Costa Rica.

Pulp Mills on the River Uruguay (Arg. v. Uru.), Request for Indication of Provisional Measures Order, 2006 I.C.J. 113, 48 (July 13), Available at: https://www.cambridge.org/core/journals/international-legal-materials/article/abs/international-court-of-justice-pulp-mills-on-the-river-uruguay-argentina-v-uruguay/9E91F3E6CF756649D66AEDA4117ABDF1.

MODULE FOUR: COMMON LAW PRINCIPLES AND DEVELOPMENT OF ENVIRONMENTAL LAW

4.1 Introduction
4.2 Negligence
4.3 Duty of Care
4.4 Nuisance
4.5 Strict Liability
4.6 Criminal Law
4.7 Administrative Law

Selected References

(a) Readings

Morris, A., *et al.* (2008). Symposium: Common Law Environmental Protection. *Case Western Reserve Law Review, Vol. 58,* Issue 3. Available at: https://scholarlycommons.law.case.edu/caselrev/vol58/iss3/ (See also other important articles on this Module on the same website).

Stuart, B. (2008). The Common Law and the Environment in the Courts, 58 *Case W. Rsrv. L. Rev.* 621. Available at: https://scholarlycommons.law.case.edu/caselrev/vol58/iss3/5

(b) Legislation

Constitution of the United Republic of Tanzania, Cap. 2
Environmental Management Act, Cap. 191.

Sector Laws (Forest, Water, Wildlife, Land, Mining, Oil and Gas, etc.) and Ancillary Laws (Local Government Laws).

(c) Cases

UNEP Compendium of Summaries of Judicial Decisions in Environment Related Cases, Vol. 1-3 *(available at the UDSM Library).*

Nuisance – *The Village of Wilsonville v. SCA Services, Inc.* Supreme Court of Illinois 1981 – Chemical Waste Disposal Case No. 31 UNEP Compendium.

Duty of Care/Negligence – *Ryan v. Great Lakes Council* (1999) – Federal Court of Australia – good case (No.69).

Compensation – *Merlin et al. v. British Nuclear Fuels* (1990) 2 QB 557 (Case No. 58).

Strict Liability – *Environmental Agency v. BrockOBD* (1988) (Case no. 54) = *Rylands v. Fletcher* and *MC Metha v. Union of India.*

Certiorari – *Environmental Foundation v. Ratnasiri* (1996) Court of Appeal Sri-Lanka.

Natural Justice: *Worimi Local Aboriginal Land Council v. Minister for Lands et al.*, Land and Environment Court of New South Wales, 1991) Australia.

Judicial Review: *R. v. the Secretary of State for the Environment ex.parte Green peace Ltd.*

Felix Mavika et al. v. Dar es Salaam City Council and Ilala Municipal Council. Civil Case No. 316 of 2000, High Court, DSM. (Injunction - Solid waste disposal).

Sandhu Construction Co. v. Peter Shayo [1984] T.L.R 127 CA – Nuisance in the form of noise and dust – applicant had sought damages.

Festo Balegele and 749 others v. DCC Civil Cause No. 90 of 1991 – (Case No. 20) Injunction/Nuisance.

Damages – *Kenya Ports Authority v. EAP&L Co. Ltd.* Court of Appeal (Kenya) 1981 (Case No. 18).

Environmental Crime – *Stephen Thiongo Karanja v. R*, Crim. (1984) Kenya (Case No. 19).

Nuisance, Injunction - *Byabazaire v. Mukwano Industries* [2002] 2 EA 353 High Court, Uganda.

MODULE FIVE: SOURCE OF ENVIRONMENTAL LAW

5.1 MEAs - Treaties and Conventions/Protocols/COPs etc.
5.2 Customary International Environmental Law
5.3 Protocols/Declarations
5.4 ICJ Judgments/Rulings
5.5 National Laws (Principle/Subsidiary)
5.6 National Judicial Precedents/Court Cases
5.7 Customary/Islamic Law
5.8 Indigenous/Traditional Knowledge Systems
5.9 Environmental Litigation – Public Interest Litigation/*Locus Standi* and Strategic Law Suits Against Public Participation (SLAPP)

Selected References

(a) Readings

Majamba, H. I. (2001). Environmental Rights Jurisprudence in Tanzania: A Review of Judicial Precedents. *Lesotho Law Journal*, *Vol. 14,* 2001-2004, No. 2.

Mapunda, B. T. (2003). Treaty Making and Incorporation in Tanzania. *Eastern Africa Law Review, Vols. 28-30*.

LEAT and Policy Forum. (2012). *Environmental Rights, Protection and Management in Tanzania Justification for their Inclusion in the Would-Be New Constitution*. Available at: https://constitutionnet.org/sites/default/files/environmentalrights.pdf.

Pierre-Marie, D., *et al* (2018). Customary International Law and the Environment. *C-EENRG Working Papers and Cambridge University*. Available at: https://www.ceenrg.landecon.cam.ac.uk/system/files/documents/CEENRG_WP_19_CustomaryInternationalLawandtheEnvironment.pdf.

Krämer, L. (1996). Public Interest Litigation in Environmental Matters before European Courts. *Journal of Environmental Law* V*ol. 8,* No. 1 (1996), pp. 1-18.

Faure, M. G., *et al.* (2010). Effectiveness of Environmental Public Interest Litigation in India: Determining the Key Variables. *Fordham Environmental Law Review, Vol. 21*, Noumber 2, Article 3. Available at:

https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1668&context=elr.

Murombo, T., *et al.* (2011). *Slapp Suits: An Emerging Obstacle to Public Interest Environmental Liigation in South Africa.* Available at: https://cer.org.za/wp-content/uploads/2011/10/SLAPP-Suits-public-interest-litigation-in-South-Africa-SAJHR-2011.pdf.

Nyeko, O. (2020). Public Interest Litigation under Threat in Tanzania. *Human Rights Watch*. Available at: https://www.hrw.org/news/2020/06/18/public-interest-litigation-under-threat-tanzania.

United Nations Information Portal on MEAs: https://www.informea.org/en

UNEP. (2006). Manual on Compliance with and Enforcement of MEAs. Available at: https://search1.me/search?q=UNEP%2C+%282006%29.+Manual+on+Compliance+with+and+Enforcement+of+MEAs+#gsc.tab=0&gsc.q=UNEP%2C%20(2006).%20Manual%20on%20Compliance%20with%20and%20Enforcement%20of%20MEAs%20&gsc.page=1

UNEP. (Undated). Compliance Mechanism under Selected MEAs. Available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/7507/-Compliance%20Mechanisms%20under%20selected%20Multilateral%20Environmental%20Agreements-2007761.pdf.

MEAs and the African Union. Available at: https://au.int/en/meas.

MEAs and the East African Community. Available at: https://www.eac.int/environment/multilateral-environmental-agreements.

International Environmental Agreements (IEA/MEAs) Data Base. Available at: https://iea.uoregon.edu/.

UNEP. (2017). *MEAs – Negotiator's Handbook*. Available at https://unfccc.int/resource/docs/publications/negotiators_handbook.pdf.

IUCN. (1994). Environmental Protection in Islam, *(2nd Edition).* Available at: https://www.iucn.org/sites/dev/files/import/downloads/eplp_020reven.pdf

(b) Legislation
Vienna Convention on the Law of Treaties, (1969). United Nations, Treaty Series, Vol. 1155, p. 331

(c) Cases
Festo Balegele and 794 Others v. Dar es Salaam City Council, High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Cause, No. 90 of 1991. Available at: https://leap.unep.org/countries/tz/national-case-law/festo-balegele-and-794-others-v-dar-es-salaam-city-council.

Charan Lal Sahu et al. v. Union of India AIR 1990 SC 1480. Available at: https://indiankanoon.org/doc/299215/.

United Nations Information Portal on Court Cases on MEAs. Available at: https://www.informea.org/en/search?f%5B0%5D=type%3Acourt_decision&f%5B1%5D=type%3Alegislation.

Selected Environmental Litigation Cases from India. Available at: https://legaldesire.com/15-landmark-judgments-on-environmental-protection/.

Selected Environmental Litigation Cases from New Zealand. Available at: https://niwa.co.nz/sites/niwa.co.nz/files/Court%20Case%20Summaries_Coastal%20Environment%20_Oct%202016.pdf.

Merriam, D. H., *et al.* (1993). Identifying and Beating a Strategic Law Suit against Public Participation. *Duke Environmental Law and Policy Forum. 3:17*. Available at: https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1214&context=delpf.

MODULE SIX: ENVIRONMENTAL LAW PRINCIPLES

6.1 Introduction
6.2 Sustainable Development
6.3 Precautionary Principle/Prevention Principle
6.4 Polluter Pays Principle
6.5 Public Trust Doctrine
6.6 Access to Information & Public Participation
6.7 Sovereignty over Natural Resources
6.8 Intergenerational Principle/Equity
6.9 Intra-generational Principle/Equity
6.10 Integration Principle
6.11 Protection of Cultural and Natural Heritage
6.12 Ecological Integrity
6.13 Common but Differentiated Responsibilities
6.14 Access and Benefit Sharing of Resources

Selected References

(a) Readings

Majamba, H. I. (2014). Public Trust Doctrine: Emerging Trends in Combating Illegal Ivory Trade in Tanzania. *Eastern Africa Law Review*, Issue No. 2, Vol. 41.

Trouwborst, A. (2009). Prevention, Precaution, Logic and Law: The Relationship between the Precautionary Principle and the Preventive Principles in International Law and Associated Questions. *Erasmus Law Review* [Volume 02 Issue 02, 2009]: http://www.erasmuslawreview.nl/tijdschrift/ELR/2009/2/ELR_2210-2671_2009_002_002_002.pdf

Tumushabe, G. N. (2001). The Precautionary Principle, Biotechnology & Environmental Litigation: Complexities in Litigation, New and Emerging Environmental Problems. *ACODE Policy Research Series,* No.3.

Bernard, W. (1992). Science, International Environmental Regulation and the Precautionary Principle: Setting Standards and Defining Terms. *NYU Env. L.J. Vol. 1*.
Agora. (1990). What Obligation Does Our Generation Owe to the Next? An Approach to Global Responsibility 84, *AM J.I.L 191*.

Nanda & Ris. (1976). The Public Trust Doctrine: A Viable Approach to International Environmental Protection 5. *Ecol. L. Q.*

Gundling, L., (1990). Our Responsibility to Future Generations 84. *Am. J. Int'IL.* 190-212.

D'Amato, A. (1990). What Obligations does our Generation Owe to the Next? An Approach to Global Environmental Responsibility. Do we Owe a Duty to Future Generations to Preserve the Global Environment? *84 Am.J. Int'l L.* 190-212.

IUCN. (2007). Guidelines for Applying the Precautionary Principle to Biodiversity Conservation and Natural Resource Management. As approved by the 67th meeting of the IUCN Council, 14-16 May 2007. Available at: https://www.iucn.org/sites/dev/files/import/downloads/ln250507_ppguidelines.pdf.

Max Valverde Soto. (1996). General Principles of International Environmental Law. *ILSA Journal of Int'l & Comparative Law Vol. 3*, 193. Available at: https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1069&context=ilsajournal.

ELR India Update. (2012). Environmental Law Principles in India. *Environmental Law Institute, Vol. 3,* Issue 3, in partnership with Kochhar & Co. Available at: https://www.elr.info/sites/default/files/filespdf/india_update_2013_01_vol3_issue3_web.pdf.

(b) Legislation

The Natural Wealth and Resources (Permanent Sovereignty) Act, No. 5 of 2017.

Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act of 2017.
Environmental Management Act, Cap. 191.

Wealth and Resources
Contracts (Review and Re- negotiation of Unconscionable
Terms) Regulations, 2020 GN 157 31/01/2020.

General Assembly Resolution 1803 (XVII) on the "Permanent Sovereignty over Natural Resources" adopted on 14 December 1962.

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, opened for signature 25 June 1998, 2161 UNTS 447 (entered the force 30 October 2001) (Aarhus Convention).

(c) Cases
Peter K. Waweru v. Republic [2006] eKLR (Environmental Law Principles)
Yamungu Kaburu Moshi v. Republic (Criminal Appeal No. 56 of 2017, High Court of Tanzania at Dar es Salaam, (Unreported) – Wildlife is natural heritage and must be conserved. Court has a duty to protect natural resources and environment of Tanzania.
Tenende S/O Budotela and Salamba S/O Ntinginya v. The Attorney General, Civil Appeal No. 27 of 2011, Court of Appeal of Tanzania, (Unreported) – Protection of forest (cited in *Yamungu Kaburu Moshi v R*).

M.C. Metha v. Kamal Nath., et al. (1977), 1 SCC 388 (India) [Public trust doctrine] - Government leases riparian forestland to private co. for comm. Purposes with a hotel along river bank. Petitioner argues that hotel is interfering with natural flow of river. That gov. has committed breach of trust - gov. held liable) (Reported in the UNEP/UNDP et al Compendium of Judicial Decisions on Matter Related to Environmental Law – National Decisions Vol. 1).

Oposa v. Factoran, GR No. 101083 (1983) Philippines, (Intergenerational equity/*Locus standi* - whether minor had cause of action to prevent degradation of forests for themselves, for other generations and to those to come). Held:

Yes. (Reported in the UNEP/UNDP et al Compendium of Judicial Decisions on Matter Related to Environmental Law – National Decisions Vol. 1).

Vellore Citizens Welfare Forum v. Union of India, PIL 981- 97, India (p. 68 Case 41 UNEP Compendium - Pollution, polluter pays principle, precautionary principle).

R v. Secretary of State for Trade and Industry, Ex parte Duddridge: JEL Vol. 7, No. 2, 224 (UK)
(p. 51 Case 51 UNEP Compendium - precautionary principle).

Indian Council for Enviro-Legal Action v. Union of India, et al. (1996), 3, SCC 212 (Reported in the UNEP/UNDP et al Compendium of Judicial Decisions on Matter Related to Environmental Law – National Decisions Vol. 1) – [polluter pays principle].

Paul K. Nzangu v. Mbiti Ndili, High Court of Kenya at Machakos, Civil Appeal No. 8 of 1991 (p. 36 Case 14 UNEP Compendium - polluter pays principle).

R. v. North Yorkshire County Council, ex parte Brown, et al. 1999 1 All ER 969. House of Lords, (UK) (p. 93 Case 60 UNEP Compendium - Sustainable Development, town and country planning).

Contact Energy Ltd. v. Waikato Regional Council, Environment Court Decision No. A04/2000, New Zealand (p. 116 Case 80 UNEP Compendium - sustainable development, EIA).

Auc*kland City Council & Tranzrail Ltd v. the Auckland Regional Council*, Decision No. A28/99
(p.118 Case 82 UNEP Compendium - sustainable development).

Rajendra Parajuli et al. v. Shree Distillery Pvt. Ltd. et al., Writ No. 3259, 1996. Supreme Court of Nepal (p. 71 Case 43 UNEP Compendium - Pollution of water & by industry, public interest petition, sustainable development - good case!).

National Audubon Society v. Department of Water & Power of the City of Los Angeles, Supreme Court of California (658 P 2d 709) February 17, 1983 (p. 57 Case 32 UNEP Compendium - public trust doctrine).

Yogi Narahari Nath et al. v. Honorable Prime Minister Girija Prasad Kiorala et al 33 NLR 1955, Supreme Court of Nepal (p. 69 Case 42 UNEP Compendium - public trust doctrine, antiquities law).

R. v. Secretary of State for the Environment ex parte Billson, (1998) 2 All ER 587 (UK) (p. 96 Case 63 UNEP Compendium - public trust doctrine).

MODULE SEVEN: SOURCES OF ENVIRONMENTAL LAW IN TANZANIA

7.1 Introduction
7.2 Constitution
7.3 MEAs - Treaty Adoption
7.4 Framework Environmental Law (EMA)
7.5 Sector Legislation (Principal and Subsidiary)
7.6 Case Law – Environmental Litigation
7.7 Indigenous Rules/Customs/Traditions

Selected References

(a) Readings

Morris, C. K. K. (2019). *Analysis of the Implementation of the United Nations Framework Convention on Climate Change in Mainland Tanzania*, Ph.D. Thesis, University of Dar es Salaam School of Law.

Majamba, H. I. (2012). Decentralization of Natural Resources Management: Reflections on the Constitution of the United Republic of Tanzania. *Orient Journal of Law and Social Sciences.*

Longopa, E. E. (2015). Legal Dimension on Protection of Outstanding Universal Value Properties in Tanzania: A Dilemma for Development Activities in the Selous Game Reserve. *East Africa Law Review, Vol. 42*, No. 2. Available at: https://journals.udsm.ac.tz/index.php/ealr/article/view/1711

Majamba, H. I. (2003). Implementation and Enforcement of the Convention on International Trade in Endangered Species of Fauna and Flora in Tanzania. (Combined Issue Vol. 28-30, *Eastern African Law Review, Journal of Law and Development*, Faculty of Law, University of Dar es Salaam).

Majamba, H. I. (2004). Implementing the Ramsar Convention in Tanzania: Salient Features of Legislation and Policies for the Management and Conservation of Wetlands, (Vol. 1 *Eastern African Law Journal*, Faculty of Law, University of Nairobi).

Majamba, H. I. (2001). Environmental Rights Jurisprudence in Tanzania: A Review of Judicial Precedents. *Lesotho Law Journal, Vol. 14*, No. 2.

Majamba, H. I. (2003). An Appraisal of the Legal Framework for the Management and Conservation of Tanzania's Wetlands. (Vol. 15 1ssue No. *1 Uongozi Journal of Management Development,* Mzumbe University).

Majamba, H. I. (2006). Integrating Local Communities in the Policy and Legislative Framework for Wildlife Conservation and Management in Tanzania. *Uongozi Journal of Management and Development Dynamics Vol. 18,* Issue No. 2.

Majamba, H. I. (2012). An Appraisal of Tanzania's Legislative Framework on Environment in the Context of REDD+ Safeguards. *Recht in Afrika: Law in Africa*, Issue No. 2.

Mapunda, B. T. (2003). Treaty Making and Incorporation in Tanzania. *Eastern Africa Law Review,* Vols. 28-30.

LEAT & Policy Forum. (2012). *Environmental Rights, Protection and Management in Tanzania Justification for their Inclusion in the Would-Be New Constitution*. Available at: https://constitutionnet.org/sites/default/files/environmentalrights.pdf.

Pallangyo, D. M. (2017). Environmental Law in Tanzania: How Far Have We Gone? *Law Environment and Development Journal (LEAD), Vol. 3/1*. Available at: https://lead-journal.org/content/07026.pdf.

United Republic of Tanzania. (2022). *National Environmental Master Plan for Strategic Interventions (2022-2032). Available at:* https://www.vpo.go.tz/publications/enviromental-documents.

Slobodian, L., *et al.* (2016). Wildlife Cases in Tanzania Courts. *IUCN Environmental Law Programme, Bonn.* Available at: http://www2.ecolex.org/server2neu.php/libcat/docs/LI/MON-090958.pdf.

Mara J. G. (2011). Strangers in Their Own Land: Maasai and Wildlife Conservation in Northern Tanzania. *Conservation & Society,* Vol. 9, No. 1, pp. 65-79. Published by: Ashoka Trust for Research in Ecology and the Environment and Wolters Kluwer India Pvt. Ltd. Stable URL. Available at: https://www.jstor.org/stable/26393126 and https://www.jstor.org/stable/pdf/26393126.pdf.

(b) Policies

National Environment Policy (Tanzania), 2021.

Sector Laws

(c) Legislation

Constitution of the United Republic of Tanzania, 1977 Cap. 2 [R.E. 2002].

Articles of the Union between Tanganyika & Zanzibar. Available at: https://hssrc.tamisemi.go.tz/storage/app/uploads/public/5ac/0fa/fa9/5ac0fafa9b565857972304.pdf.

Union of Tanganyika and Zanzibar Act, No. 22 of 1964. Available at: https://www.tanzania.go.tz/egov_uploads/documents/The_Union_of_Tanganyika_and_Zanzibar_Act,_22-1964.pdf.

Environmental Management Act, Cap. 191 [R.E. 2002].

Sector Laws – Land, Forest, Wildlife Conservation, Water, Agriculture etc.

Ancillary Laws: Local Government District Authorities Laws.

Wildlife Conservation (Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Implementation) GN. No. 382. Published on 3/08/2018. Available at: https://www.informea.org/sites/default/files/legislation/GN%20%20CITES%20REGULATIONS%20%20%20GN%20No.%20382%20%20%20of%202018.pdf.

(c) Cases

Moses Msokwa v. Water Board for Lake Rukwa Bassin, et al., Civil Case No. 2 of 2022, High Court of Tanzania at Sumbawanga: (Conservation of water bodies in Tanzania).

Andrew Mahundo, Damian Nyaranda, Joachim Zephania, et al. vs The Permanent Secretary, Ministry of Natural Resources, et al., (Land Case 35 of 2013) [2018] TZHCLandD 45: Unlawful Residence in Pugu Forest Reserve (National). Available at: https://media.tanzlii.org/files/judgments/tzhclandd/2018/45/2018-tzhclandd-45_0.pdf.

Anthony Mseke, et al. v. The Chief Executive, National Environment and Management Council of Tanzania, et al. Land Case No. 151 of 2012, High Court of Tanzania (Land Division) at Dar es Salaam. Available at: https://media.tanzlii.org/files/judgments/tzhclandd/2018/3/2018-tzhclandd-3_2.pdf. Held: Construction on mangrove land illegal.

Imani Mbugi v. Songea Municipal Council, Civil Appeal No. 168 of 2020, Court of Appeal of Tanzania at Iringa: Construction on waterway – EMA and Water Laws, Town and Country Planning Laws: https://media.tanzlii.org/files/judgments/tzca/2022/241/2022-tzca-241.pdf.

Yamungu Kaburu Moshi v. Republic, Criminal Appeal No. 56 of 2017, High Court of Tanzania at Dar es Salaam, (Unreported) – wildlife is natural heritage and must be conserved. Court has a duty to protect natural resources and environment of Tanzania. Available at: https://tanzlii.org/tz/judgment/high-court-tanzania/2018/85.

Tenende S/O Budotela and Salamba S/O Ntinginya v. The Attorney General, Civil Appeal No. 27 of 2011, Court of Appeal of Tanzania, (Unreported) – Protection of forest (cited in *Yamungu Kaburu Moshi v. R*).

Festo Balegele, et al. v. Dar es Salaam City Council, Misc. Civil Cause No. 90 of 1991 (locus standi - (Reported in the UNEP/UNDP, *et al.* Compendium of Judicial Decisions on Matter Related to Environmental Law – National Decisions Vol. 1).

Felix Joseph Mavikam et al. v. Dar es Salaam City Council, Civil Case No. 316/2000 High Court. Tanzania at Dar es Salaam,

Balonzi v. Trustees of CCM [1996] TLR 203 – *locus standi.*

Joseph Kessy, et al. v. Dar es Salaam City Council, Civ. Case No. 299 of 1988, High Court of Tanzania at Dar es Salaam, [right to life = right to healthy env.].

Slobodian, L, *et al.* (2016). Wildlife Cases in Tanzania Courts. *IUCN Environmental Law Programme.* Available at: https://portals.iucn.org/library/node/46989.

MODULE EIGHT: DIGEST OF ENVIRONMENTAL FRAME WORK LAW/MAINLAND TANZANIA (EMA)

8.1 Introduction – Sanctity of EMA – s. 232
8.2 Cross Referencing of Provisions with Sector and Other Laws
8.3 Enforcement of EMA by Citizens (*Locus Standi* (PIL)/Right to Life)
8.4 Institutional/Administrative Arrangement
8.5 Planning
8.6 Reflection of Environmental Law Principles
8.7 Reflection of MEAs
8.8 Environmental Impact Assessment (EIA) and Other Assessments
8.9 Compliance and Enforcement of EMA & Penalties

Selected References

(a) Readings

National Environmental Management Council (NEMC). (2005). *EIA Training Manual in Tanzania,* (Revised Version 4).

(b) Legislation

- Environmental Management Act, 2004.
- Environmental Impact Assessment and Audit Regulations, 2018.
- Wildlife Conservation (Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Implementation) GN. No. 382. Published on 3/08/2018. Available at: https://www.informea.org/sites/default/files/legislation/GN%20%20CITES%20REGULATIONS%20%20%20GN%20No.%20382%20%20%20of%202018.pdf.
- Basic Rights and Duties Enforcement Act, Cap. 3 via Written Laws (Miscellaneous Amendments), No. 3 of 2020, GN. 6 of 2020, PART III, sections 6 & 7 removes *locus standi!* Including in environmental litigation.
- The Environmental Management (EIA and Audit) Regulations, 2005. GN. No. 349/2004.
- The Environmental Management (EIA and Audit) Regulations, (Amendment) Regulations, 2018. GN. No. 474 of 2018.
- The Environmental Management (Fees & Charges) Amendment Regulations, 2018. GN. No. 167 of 2018.

- Environmental (Regulation of Environmental Experts) Regulations, 2005, GN. No. 348 of 2005.
- UN, Convention on Environmental Impact Assessment in Transboundary Context, 1991 (ESPOO Convention) UNTS Volume Number, 1989 (p.309)

(c) Cases

Fuel Retailers Association of Southern Africa v. Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province, et al., Constitutional Court of South Africa, Case CCT 67/06, 7 June 20071.

Silvermine Valley Coalition v. Sybrand Van Der Spuy Boerderye, et al., 2002 (1), SA 478 (C) 2002 (1), SA, p. 478

Sterlite Industries (India) Ltd. v. Union of India (2013 AIR SCW 3231), the Supreme Court – (Judicial review – EIA).

MODULE NINE: OVERVIEW OF ENVIRONMENTAL LAW IN ZANZIBAR

9.1 Introduction – Sanctity of ZEMA
9.2 Cross Referencing of Provisions with Sector et al Laws.
9.3 Enforcement of ZEMA by Citizens (*Locus Standi* (PIL)/Right to Life)
9.4 Institutional/Administrative Arrangement
9.5 Planning
9.6 Environmental Law Principles
9.7 MEAs
9.8 Environmental Impact Assessment (EIA) and *et al* Assessments
9.9 Compliance, Enforcement and Penalties (ZEMA)

Selected References

(a) Readings

Majamba, H. I. (2020). New Horizons in Protecting Zanzibar's Environment: an Examination of the Environmental Management Act, 2015. *The African Review, Volume 46,* Issue 2, 383-398. Available at: https://brill.com/view/journals/tare/46/2/article-p383_7.xml?language=en).

IUCN. (2020). Worldwide Catalogue of Case Studies on Aquaculture and Marine Conservation, No. 1: Zanzibar. *IUCN - Gland*, Switzerland. Available at: https://www.iucn.org/sites/dev/files/content/documents/zanzibar_case_study_2020.pdf.

Onkalo, P. J., *et al.* (2011). Zanzibar: Sustaining the Environment at the Confluence of Cultures. *FIG Working Week 2011 Bridging the Gap between Cultures Marrakech*, Morocco, 18-22, Available at: https://www.fig.net/resources/proceedings/fig_proceedings/fig2011/papers/ts06c/ts06c_onkalo_sulaiman_5051.pdf.

Grimsditch, G., *et al.* (2009). Coral Reef Resilience Assessment of the Pemba Channel Conservation Area, Tanzania. Gland, Switzerland. *IUCN*. 40. Available at:

https://www.iucn.org/sites/dev/files/import/downloads/pemba_report__
_final.pdf.

Department of Environment Institute of Marine Sciences Sub-Commission for Forestry, Sub-Commission for Fisheries Integrated Planning Unit (Undated). "Towards Integrated Management and Sustainable Development of Zanzibar's Coast: Initial Findings for an Action Strategy in the Chwaka Bay-Paje Area". Available at: https://www.crc.uri.edu/download/ZAN_0056.pdf.

Levine, A. (2010). Local Responses to Marine Conservation in Zanzibar, Tanzania. *Journal of International Wildlife Law and Policy, Vol. 7*, Issue 3-4. Available at:
https://www.tandfonline.com/doi/abs/10.1080/13880290490883241.

(b) Policies
Environment Policy of Zanzibar, 2013. Available at:
http://zema.go.tz/library/publications/.

Zanzibar Forest Policy, 1999. Available at:
http://www.tzonline.org/pdf/nationalforestrypolicyforzanzibar.pdf.

Zanzibar Water Policy 2004.
(c) Legislation
Constitution

Zanzibar Environmental Management Act, No. 3 of 2015
http://zema.go.tz/library/publications/.

Zanzibar: Ancient Monuments Preservation Act (1948).

Water Act No.4 of 2006.

Land Tenure Act 1992.

Forest Resources Management and Conservation Act 1996.

The Zanzibar Disaster Risk Reduction and Management Act 2015.

Ban on Plastic Carry Bags Regulations of 2018, http://zema.go.tz/library/publications/.

Disposal of Unfit and Condemned Products Regulations, 2019. (L.N. 103/2019) http://zema.go.tz/library/publications/.

The EIA (Procedures) Regulations, 2002.

(d) Cases

Palm Beach Inn Ltd v. Commission for Tourism, Walid Fikirini and the Minister for Tourism, High Court of Zanzibar at Vuga, Civil Application No. 30 of 1994.

SMZ v. Ali Ramadhani Abdalla, District Court of Zanzibar at Mwera, Criminal Case No. 145/2001 (Unreported) – (sand mining without permit c/s Environmental Management Act, 1996 – guilty; fine of 200, 000/= or six-month imprisonment).

MODULE TEN: OVERVIEW OF ENVIRONMENTAL LAW IN EAST AFRICA

10.1 Introduction
10.2 Kenya
10.3 Uganda
10.4 Burundi
10.5 Rwanda
10.6 South Sudan
10.7 Democratic Republic of Congo

Selected References

(a) Readings

Majamba, H. I., & Longopa, E. (2018). Implementing the East African Community Legislative Framework on Management of Environment and Natural Resources. *The African Review, Vol. 45,* No. 2. Special Issue: Regional Economic Communities in Africa: Critical Issues and Perspectives. Available at: https://tar.udsm.ac.tz/index.php/ar/article/view/2361).

Kimani, N. (2010). Participatory Aspirations of Environmental Governance in East Africa. *LEAD, Vol. 6/2.*

Mbote, K. & Odote, P. (2009). Courts as Champions of Sustainable Development: Lessons from East Africa. *Sustainable Development Law and Policy,* 31-38, 83-84.

Kenya:

Akech, M. J. M. (2006). Land, the Environment and the Courts in Kenya. *Department of International Development and Kenya Law Reports,* Nairobi.

Mbote, K. (2001). The Making of a Framework Environmental Law for Kenya. *ACT-UNEP*, Nairobi.

Mbote, K. (2005). Towards Greater Access to Justice in Environmental Disputes in Kenya. *LERC*, Nairobi.

Constitution of Kenya, 2010.
Environmental Management and Coordination Act, 1999.

Isaiah Luyara Odando, et al. v. National Management Environmental Authority, et al., County Government of Nairobi, *et al.* (Interested Parties) [2021] eKLR.
Constitutional Protection of Env Case:
http://kenyalaw.org/caselaw/cases/view/217772/

Peter K. Waweru v. Republic [2006] eKLR (Environmental Law Principles).
Kenya Ports Authority v. E.A Power and Lighting Ltd. Civil Case No. 41/1981 – Court of Appeal (Kenya) – (p. 41 Case 18 UNEP Compendium – damage caused by pollution).

Wangari Maathai v. Kenya Times Media Trust (High Court of Kenya, Nairobi) 1989 – (UNEP Compendium) – *locus standi* (Reported in the UNEP/UNDP et al Compendium of Judicial Decisions on Matter Related to Environmental Law – National Decisions Vol. 1).

Abkikadir Sheikh Hassan, and 4 Others v. The Kenya Wildlife Services, (Kenya Wildlife Conservation and Management Act, 1976) UNEP/UNPD Compendium of Judicial Decisions Vol. 1, 1998 p. 298.
Paul, K. Nzangu v. Mbiti Ndili, High Court of Kenya at Machakos, Civil Appeal No. 8 of 1991 (p. 36 Case 14 UNEP Compendium - polluter pays principle).
Rogers Muema Nzioka & 2 Others v. Tiomin Kenya Ltd. Civil Case No. 97 of 2001, Kenya (EIA p. 38 UNEP Compendium).
Kinyua Njuguna v. Karui Muthuita, High Court of Kenya at Nairobi, Civil Case No. 1897/1980 - Environmental standards of customary law. (p. 35 Case 13 UNEP Compendium.
Amina Said Abdalla & 2 Others v. County Government of Kilifi & 2 Others, [2017] eKLR (Prevention Principle).

Uganda

Kasimbazi, E, *et al.* (2010). Environmental Law in Uganda. *Kluwer Law International*, the Netherlands.
Schwarte, C. (2008). Access to Environmental Information in Uganda. *FIELD*, London.

NEMA. (2004). Guide to Environmental Law in Uganda: A Case Book, Vol. 1, Kampala
National Environment Act, 1995 (Cap. 153, Law of Uganda).

Akello, C. E. (2007). Environmental Regulation in Uganda: Success and Challenges, *3/1 LEAD*, p. 20.

UNEP, (2009). Uganda Case Book and Handbook on Environmental Law. Available at: (www.unep.org/onlinemanual/Enforcement/instFramework/Training Activities/Reserve/tabid/1094/Default.aspx.

Twinomugisha, B. K. (2007). Some Reflections on Judicial Protection of the Right to a Clean and Healthy Environment in Uganda, 3/3. *Law and Development Law Journal (LEAD),* p. 244. Available at: http://www.lead-journal.org/07244.pdf.

DPP (Uganda). (2015). Role of DPP in Environmental Law. Available at: www.dpp.go.ug/perspectives_role.php.

National Forestry Authority v. Kiwanuka, (Civil Appeal 5 of 2009), [2012] UGSC 13 (20 December 2012), Supreme Court of Uganda – Protection of Forest Reserve.

Byabazaire v. Mukwano Industries, [2002] 2 EA 353 High Court, Uganda (Air pollution, stds of air omission and *locus standi*).

National Association of Professional Environmentalists v. AES Nile Power Ltd. Misc. Case No. 268 of 1999, Uganda (EIA p. 45 UNEP Compendium).

Rwanda

Articles 49 – 51 (Environment and Culture).
Rwanda Environmental Management Authority – www.rema.gov.rw.
UNEP, Rwanda State of the Environment and Outlook (www.unep.org/pdf/rwanda_outlook.pdf).

Organic Law for Environment.

Burundi

USAID. (2010). Burundi Environmental Threats and Assessment.
Republic of Burundi. (2006). National Biosafety Framework in Burundi.

(b) Legislation
Treaty Establishing the East African Community, 1999.

EAC Protocol on Environment and Natural Resources. (2016). (Signed by Kenya, Uganda and Tanzania – not ratified by Tanzania as of 2022). https://www.eac.int/environment/natural-resources-management/protocol-on-environment-and-natural-resource-management.

(c) Cases
East African Court of Justice (EACJ).

Reference No. 35 of 2020. The Environment Shield Limited *et al* v. The A.G. of the Republic of Uganda.

Reference No. 39 of 2020. Center for Food and Adequate Living Rights (CEFROHT) *et al* v. AG of the Republic of Uganda, *et al.*

Reference No. 9 of 2010. African Network for Animal Welfare (ANAW) v. AG of the United Republic of Tanzania.

MODULE ELEVEN: EMERGING ISSUES IN ENVIRONMENTAL LAW

11.1 Introduction
11.2 Biosafety
11.3 Biofuels
11.4 Biopiracy
11.5 Climate Change
11.6 Energy
11.7 Explorations in Space
11.8 GMOs

Selected References

(a) Readings

Sarakikya, H., *et al.* (2015). Renewable Energy Policies and Practice in Tanzania: Their Contribution to Tanzania Economy and Poverty Alleviation. *International Journal of Energy and Power Engineering, Volume 4*, Issue 6, pp. 333-341, *Review Article* pp. 9-18.

Masaaka, R. (2014). GMO regulation in Tanzania: Stakeholder analysis on awareness, understanding, accessibility and compliance of GMO regulations Msc. thesis in Food Safety (Law) Wageningen University Research Centre, Netherlands. Available at: https://edepot.wur.nl/313028.

Debris Olavo de O. Bittencourt Neto. (2013). Preserving the Outer Space Environment: The "Precautionary Principle" Approach to Space Proceedings of the International Institute of Space Law 2013, International Institute of Space Law is published by Eleven International Publishing and made available to Boom uitgevers Den Haag. Available at: https://www.elevenjournals.com/tijdschrift/iisl/2013/4%20Legal%20Aspects%20of%20Space%20Debris%20Remediation/IISL_2013_056_004_001.pdf.

Leary, D., *et al.* (eds). (2010). The Future of International Environmental Law, United Nations University, 2010, UN University Press, Tokyo. Available at: https://archive.unu.edu/unupress/sample-chapters/FutureOfIntlEnvironmentalLaw.pdf.

Grantham Research Institute on Climate Change and the Environment. (2018). Climate Change Governance in Tanzania: Challenges and Opportunities. Available at: https://www.lse.ac.uk/granthaminstitute/publication/climate-change-governance-in-tanzania-challenges-and-opportunities/.

Resilience and Economic Inclusion Team, Irish Aid (2017). Tanzania Climate Change Report, 2016. Available at: https://www.irishaid.ie/media/irishaid/allwebsitemedia/30whatwedo/climatechange/Tanzania-Country-Climate-Action-Report-2016.pdf.

Norwegian Embassy in Dar es Salaam. (2022). *Clean Energy Transition in Tanzania: Powering Sustainable Development.* Available at: https://www.norway.no/contentassets/00c56b3642e5429fbc917d5fa42ff869/clean-energy-transition-in-tanzania-report.pdf

East African Newspaper, June 27 2019. Big win for activists as Kenyan court blocks coal plant. Available at: https://www.theeastafrican.co.ke/news/ea/Kenyan-coal-plant/4552908-5173288-22yx7dz/index.html.

Burianski, M. (2021). Climate Change Litigation in Africa: Current Status and Future Developments, Africa Focus. *Autumn*. Available at: https://www.whitecase.com/publications/insight/africa-focus-autumn-2021/climate-change-litigation-africa.

Randall, S. A. (2019). *Climate Change and the Voiceless: Protecting Future Generations, Wildlife, and Natural Resources*. Cambridge: Cambridge University Press *(Available at the UDSM Library).*

(b) Legislation

EUWRA Act, Cap. 414.

Environmental Management Act, 2014 Cap. 191.

Rural Energy Act, 2005.

National Irrigation Act, 5/2013.

Electricity Act, 10/2008.

I Policies
URT, National Energy Policy, 2015.

Environmental Policy, 2021.

Agricultural Policy, 2013.

Water Policy, 2002.

Irrigation Policy, 2019/2010.

(c) Cases
Mohamed Itarakwa Kochale et al v. Lake Turkana Wind Power Company Ltd., (2016) eKLR.

Peter Makau Musyoka, et al., v. Permanent Secretary, Ministry of Energy, et al., (2014) eKLR (Constitutional Petition 305 of 2012), 17th March 2014.

Water Resources Management Authority v. Kensalt Ltd., [2014] eKLR [ELC Civil Case 28 of 2013], (17th October 2014). Available at: https://africanlii.org/fr/environmental?f%5B0%5D=sm_vid_Tags%3AWater%20and%20coasts.

Earthlife Africa Johannesburg v. Minister for Environmental Affairs, et al., Case No. 65662/16 (201–) - Case premised on EIA, climate change and effect of coal-fired power plants in South Africa.

Climate Related Court Cases – Tanzania
Tenende s/o Budotela, et al., v. AG, Civil Appeal No. 27 of 2011 CAT Tanzania at Tabora
Government Order to Villages to Vacant Forest Reserve: No Customary Rights in Forest Reserves?

Kilimanjaro Plantation Ltd v. Nicolaus Ngowi Labour, Rev. No. 40 of 2020 – High Court of Tanzania at Moshi – employee refused to adjust to court hours in a farm/plantation – employer alleges that change of hour necessitated by climate change.

Andrew Mahundo, et al., v. Permanent Secretary, MNRT, High Court of Tanzania at DSM (Land Division) Land Case No. 35 of 2013.

Land in dispute located in Pugu Forest Reserve, court cited Tenende s/o Budotela et al – (CAT decision) by way of obiter at page 10 of the judgment, the Judge observed:

"…In conclusion, and in passing I, only need to observe as the Court of Appeal of Tanzania did in the above cited case that, forests must be protected by law to prevent environmental destruction, deforestation and drought which, if left unchecked, would endanger and threaten the survival of mankind, fauna, flora, birds, insects and other creatures and turn our country into a desert. For this reason, the courts of law would not support trespass into forests."

AMC Trade Finance (T) Ltd. v. Sanlaw General Insurance, Commercial Case No. 9 of 2019, High Court of Tanzania at DSM (Commercial Court Division) – case on insurance – extreme weather conditions not conducive for storage of containers due to extended stay at discharge Port.

Austack Alphonce Mushi v. Bank of Africa (T) Ltd., et al., Civil Appeal No. 373, Court of Appeal of Tanzania at Mbeya – Loan agreement – breach of contract - crop farming project could not proceed as scheduled/expected due to bad weather – client could not honor credit offered.

Justice Ntibandetse v. CRBD Bank, PLC Misc. Civil Case No. 17 of 2019 – High Court of Tanzania at Moshi – Loan agreement could not be executed due to unfavorable weather conditions – p. 8.

MODULE TWELVE: CONCLUSIONS AND WAY FORWARD

12.1 Introduction

Not all aspects of Environmental Law have been covered in depth in this Course. The Environmental Law is growing and changing rapidly – needing to catch up with event at the national and international levels on a frequent basis.

- Environmental Litigation will be intensified with SLAPP suits increasing as well.
- Climate Change, Migration and Refugees
- Pollution Expansion vis-à-vis Land Use Need (Food Security)
- Water Wars – effect of global warming
- Conflicts Trans Boundary Resources and Use of Shared Resources.

12.2 Way Forward

12.2.1 Career Paths/Advancement

1. Pursuit of Postgraduate Studies: Specialisation in Environmental Law & Natural Resources Management Law Courses.
2. Employment: Government, NGOs and International/Regional Organisations, Self - Establishment of CSOs, CBOs, NGOs.
3. Provision of Pro-Bono Services/Volunteers: Private, Government & Foreign Entities.
4. Counseling & Representing Local Communities in PIL.

Selected Reference

Koteen, B. (2013). *A Trail Guide to Careers in Environmental Law*. Massachusetts: Cambridge University Press. Available at: https://hls.harvard.edu/content/uploads/2008/07/full-working-draft.pdf.



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