



## Organisation Profile

January 2010

### Background

South Africa has both a progressive Constitution that guarantees environmental rights and a suite of comprehensive environmental legislation that makes extensive provision for public participation in environmental policy and decision-making. South African civil society – through non-government organisations (NGOs), community-based organisations (CBOs) and members of the public – plays a crucial role in holding both government and industry to their obligations under environmental legislation through their participation in environmental decisions and advocacy, reporting of non-compliance and, occasionally, through legal challenges.

Despite this, civil society's ability to hold government and industry to account is being hampered by increasingly complex environmental legislation and procedures, coupled with limited access to funding and legal advice. This particularly adversely affects disadvantaged communities and the organisations that represent them. At the same time, civil society has become very concerned about the rate of environmental degradation and the increasingly unsustainable use of natural resources – particularly freshwater<sup>1</sup> - a particular concern against the backdrop of the pressing need for climate change mitigation and adaptation. This downward trend can be ascribed to development pressure on infrastructure and natural resources, coupled with limited government capacity to implement and enforce environmental legislation, particularly at provincial and local level.

The inability to realise environmental rights in South Africa has potentially disastrous consequences for the environment, the health and well-being of the citizens of South and southern Africa, and the country's security.

General problems to be addressed by the project include:

1. **Inappropriate environmental decision-making, leading to unsustainable and inappropriate use of natural resources:** Over time, environmental decision-making processes in South Africa have become complex and lengthy processes with a multitude of legal requirements and rules. Most of the target groups of this proposal have a limited understanding of their rights to public participation in the process and do not have access to the appropriate legal and scientific expertise, leading to procedural and substantive flaws in environmental decision-making occurring without consequence. This in turn, leads to decisions by authorities that do not promote sustainable development or the sustainable use of natural resources.
2. **Limited exercise of environmental rights, leading to unsustainable and inappropriate use of natural resources:** Few, if any, of the target groups assert their environmental rights in any meaningful way, which means that and decisions and environmental harm are not addressed or prevented. Although the primary reason for this is lack of resources, a lack of information plays a major role: in many instances, environmental rights can be asserted with minimum cost, or with assistance from organisations who provide free legal representation.

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<sup>1</sup> See, for example, "Ageing infrastructure a 'severe crisis', says Cesa president", *Engineering News* 9 June 2009, available at <http://www.engineeringnews.co.za/article/ageing-infrastructure-a-severe-national-crisis-says-cesa-president-2009-06-09>.

Also see "Despite strong water law, a crisis looms – lawyers warn", *Engineering News* 14 April 2009, available at <http://www.engineeringnews.co.za/article/despite-strong-water-law-a-crisis-looms-lawyers-warn-2009-04-14>.

3. **Lack of legal knowledge and resources, and lack of access to information:** Both the problems described above are caused directly by a lack of information on environmental laws and remedies available to CSOs, communities and members of the public. Lack of information, coupled with frustration with unjustifiable environmental decisions or lack of enforcement action, disempower and discourage citizens from engaging with and challenging environmental authorities to heeding environmental rights.

Some of the specific and urgent environmental problems identified by stakeholders include:

- the impacts of unsustainable mining on water resources and water quality and threatened ecosystems, particularly coal mining in Mpumalanga and gold mining on the West Rand, and the threat posed by the significant environmental damage caused by unsustainable mining to affected communities' health and well-being, livelihoods and prospects of accessing natural resources;
- intense development pressure on environmentally sensitive areas, such as the Eastern Cape coastal zone;
- generally inadequate enforcement response of authorities to violations of environmental laws; and
- structural obstacles to access to information that affect environmental governance;
- attempts to deter and threaten civil society participation in environmental governance, including actual and threatened civil litigation against environmental activists and civil society organisations.

In January 2009, a number of organisations, led by the Wildlife and Environment Society of South Africa (WESSA)<sup>2</sup> and supported by key partners in the legal, conservation and environmental justice sectors, obtained seed funding from the Table Mountain Fund of the World Wildlife Foundation (WWF)<sup>3</sup> to commence preparation for the establishment of a new, independent institution intended to provide legal support to NGOs and CBOs in the environmental and environmental justice sectors. A series of stakeholder workshops was held across the country, and support obtained from a wide range of NGOs and CBOs for the establishment of such a new institution.

## **Name and mission**

Through wide stakeholder consultation, the new institution conceived by stakeholders to provide legal and related support to environmental CSOs and communities has become known as the **Centre for Environmental Rights**, with the mission of **Advancing Environmental Rights in South Africa**. The environmental rights concerned include both the entrenched environmental right in s.24 of the South African Constitution, as well as the broad range of substantive and procedural environmental rights in South African environmental legislation.

## **Vision**

The Centre's vision is to facilitate civil society participation in environmental governance that is stronger, more streamlined, better legally and scientifically equipped.

## **Corporate governance**

In October 2009, the Centre for Environmental Rights was incorporated as a s.21 company by the Registrar of Companies, established by eight founding members: WWF, WESSA, groundWork,<sup>4</sup> BirdLife South Africa,<sup>5</sup> Endangered Wildlife Trust,<sup>6</sup> Biowatch,<sup>7</sup> Wilderness Foundation<sup>8</sup> and Environmental Monitoring Group.<sup>9</sup> A board of directors, acting in their private capacities, was appointed by the members after a nomination process by stakeholders. They are:

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<sup>2</sup> [www.wessa.org.za](http://www.wessa.org.za)

<sup>3</sup> [www.wwf.org.za](http://www.wwf.org.za) and [www.tmf.org.za](http://www.tmf.org.za)

<sup>4</sup> [www.groundwork.org.za](http://www.groundwork.org.za)

<sup>5</sup> [www.birdlife.org.za](http://www.birdlife.org.za)

<sup>6</sup> [www.ewt.org.za](http://www.ewt.org.za)

<sup>7</sup> [www.biowatch.org.za](http://www.biowatch.org.za)

<sup>8</sup> [www.wildernessfoundation.org.za](http://www.wildernessfoundation.org.za)

<sup>9</sup> [www.emg.org.za](http://www.emg.org.za)

- Terry Winstanley (chair of the board), a senior environmental lawyer and Chair of Law Society of South Africa's Environmental Law Committee;
- Carolyn Ah Shene, lawyer and head of advocacy at BirdLife South Africa;
- Melissa Fourie, environmental lawyer and former Green Scorpions head;
- Stephen Law, environmental specialist and executive director of Environmental Monitoring Group;
- Louis Smith, a property and conservation lawyer; and
- Josie Eastwood, a litigation lawyer employed as senior specialist prosecutor in the Asset Forfeiture Unit of the National Prosecuting Authority.

The Centre for Environmental Rights was incorporated as a Section 21 company (a not for profit company) with registration number 2009/020736/08. The Centre has been registered as a non-profit organisation with the Department of Social Development with NPO reference number 075-863.

The Centre has also been registered with the South African Revenue Services as a public benefit organisation with PBO reference number 93003226, exempt from taxes and duties on receipts and accruals. Donations and bequests to the Centre are exempt from donations tax and estate duty, and donations are tax-deductible in the hands of the donors (subject to certain limitations).

### **Environmental Defence Fund**

To protect donor funding from the risks of potential claims arising from legal proceedings, funding for the Centre will be managed by the Environmental Defence Fund, a separate Section 21 company with an independent board of directors, currently awaiting registration. This company will also be registered as public benefit organisation under South African tax legislation (i.e. donations to the companies will be tax-deductible). The Environmental Defence Fund will donate funds to the Centre as and when required.

### **Programmes of Work and Projects**

Pursuant to stakeholder consultation through workshops and a questionnaire, and subject to funding, the Centre will have four broad programmes of work in its first three years of operation:

1. *Promoting Participation*: A programme focused on assisting NGOs and CBOs in effective participation in environmental licensing and other decision-making processes, particularly environmental impact assessment (EIA) processes. Projects include:
  - Support Materials: Assessment and distribution of existing support materials and preparation of Beginners' Guides to key licensing processes, including an EIA Regulations Companion Guideline and a Public Participation Guideline.
  - Advice: Advising NGOs, CBOs and members of the public who cannot access or afford other advice on effective participation in environmental decision-making processes.
  - Expert Panel: Building a Civil Society Environmental Expert Panel of scientists, engineers and economists who can assist environmental NGOs and CBOs.
  - Policy & Legislative Development: Legal input to authorities and/or Parliament into draft policy and legislation where required.
2. *Exercising Environmental Rights*: A programme of legal services available to environmental NGOs and CBOs to support the assertion of environmental rights in prioritised cases, including high quality legal advice on rights and remedies available in terms of environmental law; the pre-litigious assertion of rights, negotiation and dispute resolution; and effective and streamlined reporting of non-compliance to

competent authorities. In prioritised cases<sup>10</sup> (including precedent-setting cases), the Centre will also assist clients with the institution of legal proceedings as a last resort where all other options have been exhausted.

3. *Environmental Law Information Hub*: A knowledge management, information distribution and training programme focused on collating and making available environmental legal information and resources (a gap analysis has confirmed that no such central database of environmental legal resources currently exists). This includes:
  - **Setting Up the Hub**: creating a Virtual Environmental Law Library, made available to civil society through a website for the Centre at [www.cer.org.za](http://www.cer.org.za).
  - **Reaching Out**: a monthly digital and hardcopy flyer on the latest environmental law developments, and (in due course) training and awareness-raising on environmental rights.
4. *Internship Programme*: The Centre will prioritise training and capacity-building within the NGO sector through an internship programme, in partnerships with NGO stakeholders, professional associations, local universities and international institutions.

### **Environmental Rights Pilot Projects**

In collaboration with a wide range of NGOs and academic institutions across the country, and following a call for proposals from stakeholders, the Centre has started the development of three broad Environmental Rights Pilot Projects, focused on legal and advocacy interventions in what stakeholders identified as the most urgent environmental problems facing South Africa today:

- A national networking, advocacy and intervention strategy for sustainable mining (including components on Mpumalanga coal mining, acid mine drainage from the Witwatersrand gold mines, small-scale mining in the Western Cape, and the development of a national networking, advocacy and intervention strategy focused on civil society participation in the implementation of mining legislation).<sup>11</sup>
- Environmental governance affecting the Eastern Cape coastal zone.<sup>12</sup>
- Environmental public participation, freedom of expression and access to information (including the use of PAIA to access environmental information and so-called “SLAPP suits” – strategic litigation against public participation).<sup>13</sup>

These Environmental Rights Pilot Projects are focused on using the law to realise and promote environmental rights, preferably enhanced by interdisciplinary inputs, are designed to be implemented collaboratively by more than one institution, and to develop long-term, precedent-setting and sustainable solutions that involve the relevant authorities. The Pilot Projects traverse all four of the Centre’s Programmes of Work.

### **Staffing**

In order to ensure maximum efficiency and limited bureaucracy, the Centre will open its doors as a lean operation staffed by high quality professionals. In its first three years of operation, the Centre will be led by an Executive Director (position already fully funded), supported by a Senior Attorney (to lead Programme 2) and a Participation Expert (to lead Programme 1). These professionals will be supported by interns from South Africa and abroad under the Centre’s Internship Programme (Programme 4).

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<sup>10</sup> The Centre’s Implementation and Business Plan contains a set of criteria developed by an expert reference group in consultation with stakeholders for the prioritisation of cases.

<sup>11</sup> Partners in this project include Endangered Wildlife Trust (EWT), Wits Law School and Centre for Applied Legal Studies (CALs), Lawyers for Human Rights (LHR), the Ermelo Business Association, Action Committee and Crisis Committee, Earthlife Africa Johannesburg’s (ELA Jhb) Acid Mine Drainage Working Group, Federation for a Sustainable Environment (FSE), WWF and Table Mountain Fund, the Cape West Coast Biosphere Reserve and WESSA.

<sup>12</sup> The Centre’s partner in this project is the Centre for Social Accountability at Rhodes University.

<sup>13</sup> Partners in this project include Wits Law School and CALs, the Freedom of Expression Institute (FXI), Lawyers for Human Rights, groundWork and WESSA.

## Partnerships

In addition to its relationships with its stakeholder environmental NGOs and CBOs (and a well-developed partnership with the Northern Environmental Rights Forum, a coalition of civil society organisations in Gauteng, Mpumalanga, Limpopo and Northwest), the Centre will form strong partnerships with a range of institutions:

- academic and training institutions, including the University of Cape Town's Centre for Marine and Environmental Law, Law Clinic and Environmental Evaluation Unit, the University of the Western Cape's Law Faculty and the University of the Witwatersrand's Law Faculty, Law Clinic and Centre for Applied Legal Studies;
- professional or practitioners' associations, including the Cape Law Society, the Environmental Law Association, IAIA-South Africa (who has made a financial contribution to the Centre) and the new Environmental Assessment Practitioners' Association of South Africa to be formed;
- other non-profit legal organisations, including the Legal Resources Centre, Lawyers for Human Rights, the Endangered Wildlife Trust's Law & Policy Group and the Freedom of Expression Institute (already partners in the Environmental Rights Pilot Projects described above);
- statutory bodies, including the South African Human Rights Commission, the Environmental Management Inspectorate and other environment authorities; and
- international institutions, including the Canadian Institute for Environmental Law and Policy.

## Support

During the pre-establishment consultation process, the Centre received formal letters of support from 24 NGOs and CBOs, 6 academic institutions/research units across the country, and the South African Human Rights Commission. Stakeholders, who provided detailed input into the design of the Centre and its Programmes of Work, have expressed strong support for the current Programmes of Work.

The mere planning of the Centre has raised the interest of the media, and two newspaper articles have already been published on the Centre, and one national radio interview have already been broadcast:

- "Environmental law project will give citizens clout" - *Sunday Argus*, 8 March 2009
- "New project to fight environmental decline" - *Cape Times*, 26 May 2009
- Insert on Ekoforum - Radio Sonder Grense, 24 August 2009

## Website

The Centre's website is currently under construction, and can be visited at [www.cer.org.za](http://www.cer.org.za).

## Premises

The Centre plans to open premises in Cape Town after April 2010.

## Funding

The Centre has already secured core funding from WWF's Table Mountain Fund, and the Board continues to raise funds for the projects to be undertaken by the Centre in the first three years. More information, including a comprehensive Framework Document as well as an Implementation and Business Plan (including a three-year budget) available from Melissa Fourie at [mfourie@cer.org.za](mailto:mfourie@cer.org.za).