

Centre for Environmental Rights

Advancing environmental rights in South Africa using the law

Framework Document for the establishment of a Centre for
Environmental Rights in South Africa, based in the Western Cape
April 2009

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1. Executive Summary

Despite the entrenched environmental right in the South African Constitution and a comprehensive suite of relatively progressive environmental legislation, civil society has become increasingly concerned about the rapid increase in the degradation of the environment and the increasingly unsustainable use of natural resources in South Africa. In broad terms, this is due to development pressure on infrastructure and natural resources, coupled with weak government capacity to implement and enforce environmental legislation. In addition, civil society's ability to hold government and industry to their obligations under environmental legislation is hampered by complex environmental legislation and processes, coupled with a lack of access to funding and legal advice.

In January 2009, the Wildlife and Environment Society of South Africa (WESSA), assisted by key partners in the conservation and environmental justice sectors, obtained funding from the World Wildlife Foundation (WWF) Table Mountain Fund to do the preparatory consultation and planning for the establishment of a new institution (initially called an Environmental Law Centre) intended to give legal support to environmental non-government organisations (NGOs) and community-based organisations (CBOs). This new institution would initially be set up in the Western Cape, both because of its strong NGO and CBO community as well as the presence of important biodiversity resources.

Through wide stakeholder consultation, this new institution has now become known as the **Centre for Environmental Rights**, with the stated mission of **Advancing Environmental Rights in South Africa Using the Law**. These environmental rights are both the entrenched environmental right in the South African Constitution, as well as the broad range of substantive and procedural environmental rights in South African environmental legislation.

Pursuant to stakeholder consultation and workshops and through a questionnaire, the Centre will have three broad programmes of work:

1. **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 advice on rights and remedies available in terms of environmental law; pre-litigious assertion of rights, negotiation and dispute resolution; and institution of legal proceedings through:
 - a. referral to appropriately experienced legal practitioners;
 - b. formal legal representation (upon registration as a law clinic with the Law Society); and/or
 - c. intervention as an *amicus curiae* (friend of the court).
2. **Promoting Participation:** A programme focused on assisting NGOs and CBOs in effective participation in:

- a. environmental licensing and other decision-making processes, particularly environmental impact assessment processes; and
 - b. reporting cases of non-compliance and supporting authorities in effective corrective action.
3. **Spread the word:** 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). The Centre will prioritise training and capacity-building within the NGO sector through an internship programme.

The Centre will be an independent Section 21 company (incorporated association not for gain) with an independent board of directors, a registered public benefit organisation under South African tax legislation, and a registered non-profit organisation. The Centre will initially be based in the Western Cape, with potential future expansion of its mandate.

Throughout, the Centre will form strong partnerships with a range of institutions, including academic and training institutions, professional associations and other non-profit legal organisations, both locally and internationally.

The proposed Centre for Environmental Rights has the strong and vocal support of a wide range of environmental NGOs and CBOs across the country, from conservation organisations to environmental justice organisations. The Centre has enjoyed media coverage even prior to being established.

2. Background

Section 24 of the Constitution of the Republic of South Africa, 1996 guarantees the right of every person:

- (a) *to an environment that is not harmful to their health or well-being; and*
- (b) *to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -*
 - (i) *prevent pollution and ecological degradation;*
 - (ii) *promote conservation; and*
 - (iii) *secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.*

This right purports to be realised through a suite of environmental legislation, most notably the National Environmental Management Act, 1998 (NEMA) and various other specific statutes.

Despite this, as at 2009, environmental rights are under more pressure than ever before. The reasons for this are extensive and complex, but include unprecedented pressures on natural resources and infrastructure due to rapid economic development, coupled with limited government capacity to implement and enforce environmental legislation effectively.

In addition, particularly over the past 10 years, civil society in South Africa has not been able to assert itself adequately to ensure balance in the design and implementation of an effective environmental management system. This limited civil society capacity in the environmental sector can primarily be ascribed to complex environmental legislation and processes, coupled with a lack of access to funding and legal advice. Most notably, civil society has not used the legal mechanisms provided to it in the Constitution and environmental legislation to ensure that all roleplayers, including government and industry, are held accountable for their decisions and actions in relation to the environment.

For all of these reasons, unsustainable development and natural resource use, unwise natural resource management and environmental injustice have become the norm rather than the exception in South Africa.

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.

The proposed Centre for Environmental Rights is designed to address these problems through its proposed mission, namely **Advancing Environmental Rights in South Africa Using the Law**.

3. Establishment of the Project

For some years (for as long as the past decade), various key role players in the environmental sector have contemplated the possibility of setting up an independent legal centre or legal advice bureau that would:

- empower civil society to participate in the development of new environmental legislation and in environmental planning decisions, to ensure implementation of and compliance with environmental legislation, and to seek redress in the face of poor environmental decision-making processes and overtly unlawful activities;
- challenge existing and proposed environmental legislation that does not promote the right to a healthy environment, as entrenched in the Bill of Rights; and
- raise awareness and understanding of local, provincial and national environmental rights and legislation, thereby promoting environmentally sustainable development.

In January 2009, the Wildlife and Environment Society of South Africa (WESSA), with assistance and input from other partners in the environmental conservation and environmental justice sectors, obtained funding from the WWF's Table Mountain Fund to do the preparatory work for the establishment of an independent Environmental Law Centre or

Centre for Environmental Rights for the Western Cape. The intention was that the model identified for implementation in the Western Cape may serve as a blueprint for replication in centres throughout South Africa as required.

A project steering committee was constituted to oversee this process, consisting of:

- Andy Gubb, WESSA National and project executant;
- Onno Huyser, WWF's Table Mountain Fund;
- Louis de Villiers, WESSA Western Cape;
- Mark Botha, Botanical Society of South Africa (BotSoc);
- Richard Summers/Justine Sweet, Environmental Law Association (ELA);
- Stephen Law, Environmental Monitoring Group (Environmental Monitoring Group).

Angela Andrews from the Legal Resources Centre acts as advisor to the Steering Committee.

Melissa Fourie, an environmental law, policy and strategy consultant, has been appointed to undertake the consultation, preparation and fundraising required to establish the first Environmental Law Centre or Centre for Environmental Rights in South Africa, in the Western Cape.

4. Consultation

Although the concept of an Environmental Law Centre or Centre for Environmental Rights has been discussed at a number of consultation opportunities over the past four years, the Steering Committee resolved to revive and renew that consultation process in support of this newly funded project. This consultation process, in the form of bilateral meetings and three regional workshops in the Western Cape, as well as meetings with potential future partners in the northern provinces, KwaZulu-Natal and the Eastern Cape, started in January 2009.

On 10 February 2009, a Consultation Document on an Environmental Law Centre for the Western Cape was circulated to stakeholders. This document was prepared so as to provide a context and structure for the Consultative Workshops and meetings scheduled for late February 2009, and was based on local and international research (including a report prepared by the Canadian Institute for Environmental Law and Policy in 2006 during early discussions on this project), and inputs received to date. Version 2 of the Consultation Document was released on 17 February 2009, and reflects the wide inputs received until 17 February 2009.

The following workshops and meetings were held:

- 13 February 2009: Workshop in Langebaan for West Coast stakeholders;
- 17 February 2009: Workshop in Cape Town for Cape Peninsula stakeholders;
- 23 February 2009: Meeting in Johannesburg with Gauteng and national stakeholders;
- 24 February 2009: Meeting in Durban with KwaZulu-Natal stakeholders;

- 25 February 2009: Meeting in Port Elizabeth with Eastern Cape stakeholders;
- 26 February 2009: Workshop in George with Southern Cape and Klein Karoo stakeholders.

A full list of workshops, workshop participants and meetings is attached as Annexure 1. Written comments received are also listed in Annexure 1.

Consultation on this project continues.

5. Needs Analysis

To confirm the problem statement and the nature and scope of the need that the Centre should address, stakeholders' comments and inputs were recorded both through the consultation process as well as through the completion of a Questionnaire (results reflected below).

In consultation, stakeholders highlighted the following problems:

- A general breakdown in environmental governance. In particular, stakeholders felt that environmental management has been structurally undermined and reduced to a licensing process.
- A lack of participation by interested and affected parties, particularly disadvantaged communities, despite demands for participation by government and operators.

"There is a public perception that 'nothing can be done' and that the development will proceed despite efforts to prevent it. This leads to public apathy. It becomes difficult to keep on motivating people to comment time and again if there seems little chance of success and developers use this to wear down opposition by returning again and again to proposals."

- Geoff Neden, Glencairn Action Group

- A lack of knowledge on both environmental law substance and procedure.
- A lack of funds for participation, legal representation and litigation.
- Limited or no access to legal professionals, scientific professionals and economists to assist in exercising environmental rights and participating effectively in environmental decision-making processes.
- The absence of a platform for engagement between community and industry, and community and government
- Generally low levels of debate on environmental management and sustainable resource management
- The absence of an environmental watchdog
- A general trend towards more pressure from, and less oversight by, the State
- Low levels of capacity and expertise amongst government officials managing the environmental management system

- A strong sense that financial and political interests in industry and government are driving environmental decision-making
- To some degree, a sense of alienation from the legal process, partly as a result of unsuccessful environmental public interest litigation and adverse costs orders. The adverse costs order in the *Biowatch* case¹ was repeatedly mentioned by stakeholders as a reason to avoid environmental public interest litigation.

“Our experience must be typical of what happens everywhere. Completely coincidentally you hear about a plan that can harm the environment. If the proposal is made by the state or a parastatal, you don’t know if you can achieve much as an individual. You don’t know where to start, you don’t know environmental law and process, and you don’t know how to inform and mobilise others. Secretly you hope that someone else will have the courage to try to mount a protest. Most people give up even before the process starts.”

- Mareo Bekker, Red Vleesbaai Aksiegroep

In the first Consultation Document, a list of potential functions was set out and Western Cape stakeholders² requested to rank these functions in order of important to their organisations in a Questionnaire. The results so far are as follows (functions ranked in order of which stakeholders ranked them as “crucial”):

Function	Crucial function	Useful function	Function of limited use	Useless function
Supporting NGOs and CBOs in initiating litigation	24	4	3	1
Acting as repository of environmental legal information	20	9	2	
Maintaining networks of civil society	20	8	4	

¹ In the case of *Trustees for the time being of the Biowatch Trust v Registrar Genetic Resources and Others* (CCT80/08), the non-profit organisation Biowatch appealed to the Constitutional Court to set aside previous decisions in lower courts that ordered Biowatch to pay the costs of the Department of Agriculture and Monsanto South Africa Pty Ltd, despite having been substantively successful in its application for access to information pertaining to certain authorisations relating to genetically modified organisms. The Constitutional Court heard the matter in February 2009 and judgement was reserved.

² 31 responses received from 32 organisations: Hout Bay & Llandudno Heritage Trust, West Coast Fossil Park, Lamberts Bay/Elands Bay Environmental Group, Southern Cape Herbarium, Baakens Valley Preservation Trust, Kromme Geelhout Conservancy, Guardians of the Garden Route, Overstrand Conservation Foundation, Maalgate Stigting, Red Vleesbaai Action Group, Noordhoek Environmental Action Group and the Noordhoek Conservancy, Plettenberg Bay Community Environment Forum, Glencairn Education & Environment Support Enthusiasts, Glencairn Action Group, Sharklife, Centre for Heritage and Archaeological Resource Management, Dana Bay Conservancy, Zandvlei Trust, Oceans Initiative, Southern Cape Land Committee Trust, Friends of Tygerberg Hills, WESSA Western Cape, Mountain Club of South Africa, Uitkamp Action Group, Helderberg Conservation Forum, Earthchild Project Eden, Far South Peninsula Community Forum, the Climate Action Partnership, the Nature’s Valley Trust, Constantia Kloof Conservancy and the Touw River Conservancy.

Function	Crucial function	Useful function	Function of limited use	Useless function
partners and professional associations				
Promoting a policy position through advocacy	20	5	6	
Acting as attorney of record for NGOs and CBOs in litigation	19	8	5	1
Providing general environmental legal advice	19	7	6	
Supporting and assisting with effective reporting of non-compliance	18	8	5	1
Commenting on legal aspects of draft policies and legislation	17	7	7	
Supporting and assisting with participation in licensing processes	15	10	5	
Litigating in its own name to set environmental law precedents (including as friend of the court)	15	7	3	3
Training and awareness-raising around environmental law and processes	14	14	5	
Conducting environmental legal research and analysis	13	8	9	4

Looking at these results in a different way, if functions are ranked in order of which stakeholders rated them as both “crucial” and “useful”:

Function	Total
Acting as repository of environmental legal information	29
Supporting NGOs and CBOs in initiating litigation	28
Maintaining networks of civil society partners and professional associations	28
Training and awareness-raising around environmental law and processes	28
Acting as attorney of record for NGOs and CBOs in litigation	27
Providing general environmental legal advice	26

Function	Total
Supporting and assisting with effective reporting of non-compliance	26
Promoting a policy position through advocacy	25
Supporting and assisting with participation in licensing processes	25
Commenting on legal aspects of draft policies and legislation	24
Litigating in its own name to set environmental law precedents (including as friend of the court)	22
Conducting environmental legal research and analysis	21

The rationale for the strong support for legal services to be provided by the Centre is expressed in some of the following written submissions received:

“... if this Centre (Centres, in due course) does nothing else besides taking the various government departments and levels of authority to task for not fulfilling their mandates, it would have done wonders.

From my experience, we can fiddle with objections to EIAs, and take developers to court, and in fact deal with all the small issues, but the basic problem is that the various levels of government are simply not fulfilling their mandates in terms of decision making, compliance and basically ensuring that the environmental rights enshrined in our Constitution are upheld. They make bad decisions... on a daily basis with no threat whatsoever of being held responsible. This needs to be changed or we are just talking and being laughed at by the politicians. This is reality.”

- Di Dold, Environmental Coordinator, WESSA KZN

“Although we do report non-compliance to our local relevant authority bodies, we have found that there is little or no follow up or feedback.”

- Julie Carlisle, Plettenberg Bay Community Environment Forum

Two stakeholders specifically mentioned the need for advice in relation to fending off threats of litigation by developers irked by the delay caused by opposition to a development:³

“We would especially appreciate help when landowners threaten litigation over liability for delays in development projects.”

- David Macdonald, Helderberg Conservation Forum

³ Since this document was first compiled, at least one other stakeholder reported receiving a threatening letter from a developer. In addition, a civil suit brought by a developer for R130 million against three individuals from the Rhenosterspruit Nature Conservancy in Gauteng, set down for hearing in the Pretoria High Court in April 2009, was postponed until March 2010.

“A common problem seems to be when a developer with deep pockets frightens off justified opposition by threatening expensive Court action. “

- Geoff Neden, Glencairn Action Group

6. Implementation Principles

Mission

Against the background of the needs articulated above, it is proposed that the Centre builds its mission around the realisation of the entrenched environmental right in the Constitution (see full text in the Background section). The reasons for this are as follows:

- The environmental right encompasses many if not all of the issues of concern to the Centre’s stakeholders – environmental quality and health, pollution and ecological degradation, conservation and ecologically sustainable development and use of natural resources.
- Focusing on this right also anchors the Centre’s mission in the highest law in the country, and by its existence reminds South Africa of this entrenched Constitutional right.
- Emphasising that the Centre “advances the realisation” of this right also focuses attention on the fact that the right has not yet been realised fully – in fact one might argue that the realisation of this environmental right is declining.
- However, “environmental rights” also encompasses the substantive and procedural rights in NEMA and the suite of national environmental legislation.
- The phrase “using the law” also highlights the prioritised use of legal tools by the Centre, as opposed to advocacy or capacity-building.

It is therefore proposed that the Centre adopts the following mission: **Advancing environmental rights using the law.**

Name

The Project started with the name “Environmental Law Centre”, and during the course of consultation other options have been considered.⁴ In line with the arguments in support of the Mission described above, the preferred name is **Centre for Environmental Rights.**

Vision

Prior to public consultation during February 2009, the project set very few parameters for the Centre, to ensure that the widest range of ideas and opinions could be aired. The few principles that were expressed were the following:

⁴ Other proposals included Centre for Environmental Law and Practice, Centre for the Protection of the Environment, Centre for a Healthy Environment, Centre for the Law and the Environment, Cape Environmental Law Centre, Environmental Law Resource Centre, Western Cape Environmental Watch, Environmental Defence Centre, Environment Cape Law (eCLAW) and Environmental Law Institute.

- that the Centre would be a shared initiative, not to be controlled by one NGO or CBO or a group of NGOs/CBOs;
- that the Centre would address the environmental law needs identified by civil society;
- that its work should benefit the environment, sustainable development/management of natural resources and environmental justice; that it would therefore take on a balance of cases dealing with pollution and waste, land use and development, biodiversity and conservation, water and energy;
- that it would be piloted in the Western Cape, while leaving open the door for expansion of its ambit to other parts of the country, as well as formal cooperation agreements with related initiatives.

These principles were broadly accepted by stakeholders. Below we set out some of the other general principles shared by stakeholders.

- the Centre must empower and capacitate NGOs and CBOs – the Centre must be the “brains”;
- the Centre must promote ownership of the legal system – citizens must feel like their rights are being attended to;
- the Centre must be a coordinating umbrella organisation;
- the Centre must have a strong voice – a “watchdog” function – it must be a warning to potential illegal activity. For this, the Centre must have a media presence and good branding;
- the Centre needs criteria to address the inherent conflict of protection of the environment versus access to natural resources;
- the Centre must be responsive to the needs of its clients, but also be proactive;
- the Centre must be alert to a change in thinking within authorities.

Access to the Centre

Managing access to the Centre proved to be an interesting issue during consultation.

The first set of questions posed to stakeholders was whether the Centre should take on all cases, or only take cases from individuals, CBOs or NGOs who did not have the resources to find assistance elsewhere? Should it accept cases on their environmental merits, even if it is brought to the Centre by a well-resourced individuals, NGO or CBO? Should it require better-resourced clients to pay for services?

Some of the comments included the following:

- The Centre needs a clear strategic focus, and have regard to where the environmental problems are most urgent.
- It is crucial to manage the demand for the Centre’s services through its Constitution and the tone and style of its approach.
- Access to Centre might have to be linked to a fee, and a means test applied.
- If an NGO does have capacity in the form of knowledge, financial resources and/or staff, the Centre must provide advice and encouragement only (and rather support those who do not have capacity).
- Clients should take ownership and raise money for cases – this builds social capital.

Should the Centre insist that all cases be referred by an NGO or CBO, as a filter? There were two views among stakeholders:

- The Centre should accept cases only through NGO/CBOs, who should act as a filter for cases. If necessary, a group can start a new NGO with advice from Centre, or approach an existing NGO to be the proponent of the case.
- The Centre must accept cases on their merits, against stated principles (including setting precedents – cases with long-term impacts). For this, the Centre should even proactively seek out cases. The client is the environment, not the person or organisation that brings the case to the Centre.

During consultation, several stakeholders pointed out that the Centre will inevitably have to manage the inherent conflict between protection of ecosystems and the need for development. This was expressed as follows in comments on a draft of this document:

I wonder if the CER needs to clarify how it will balance the needs of ecological and social/economic sustainability, while being an organisation that is a voice for ecosystems. ... [The proposal] suggests some potential clashes in intent as different components of sustainable development and associated outcomes will be dependent upon initial assumptions. For example, the term “natural resources” arguably includes assumptions about valuing ecological processes according to how they contribute to human well-being. The ethical requirements described as part of environmental justice may lead to morally and legally justifiable conclusions of the need to further degrade ecosystems.

Of course it is possible to counter such arguments, especially when viewing accumulated impacts and long-term needs; and indeed the very existence of the CER will help ensure such debates occur. My concern is that the proposal document on the one hand suggests the role of the CER will be to advocate for ecosystems, while on the other also seeking balanced outcomes. Can it have both an adversarial and inquisitorial role? I’m sure it can, but I wonder if that needs to be stated more clearly.

- *Stephen Knight-Lenihan, WESSA Border Kei*

Prioritisation of cases

Needless to say, the Centre’s strategic prioritisation of cases is of the utmost importance. Taking on too many or inappropriate cases, particularly in the Centre’s infancy, could radically undermine its reputation and resources. Many stakeholders emphasised this point. Some also argued that, at the outset, the Centre should “pick the low-hanging fruit” and take on cases that could be won easily. Ultimately everyone agreed that the Centre should take cases with maximum impact that could set a precedent for other cases, including cases outside of the Western Cape.

Throughout, there was strong support for the notion that the Centre should take on a spread of green (protection of biodiversity, ecosystems and conservation) and brown (land use, pollution and waste) cases. Because of the results of the Gap Analysis below, it also appears that the Centre may be the only institution that takes on cases that do not

necessarily have a strong social component. Clearly there needs to be a mechanism to ensure balance in case selection.

One stakeholder⁵ set out possible criteria as follows:

Include if:

1. the issue has significant positive administrative, technical and/or content implications if resolved favourably
2. the desired outcome sets a useful precedent of general application upholding a specific environmental right (irrespective of whether outcome is likely or not - quantum/scope of support should be determined by likelihood of positive outcome)
3. its successful conclusion would set a precedent upholding the rights of environmental whistleblowers, litigation in the public good, and/or insulation from liability for costs of actions pursued in the public good
4. the action helps define the "public good" or environment rights as defensibly and unambiguously as possible

Exclude if:

1. the issue or action is primarily a micro or local issue without broader replicability or impact
2. issue is about subjective interpretations of issues (e.g. noise pollution, view shed impact) that are easily arguable from different value systems

In consultation, stakeholders also mentioned key national or regional environmental priorities to be included as criteria. In comments on a draft of this document, a stakeholder⁶ argued that the above proposed criteria should be complemented by "clear environmental criteria that relate[s] to ecological sustainability priorities identified through (for example) the national state of the environment report and updates, or something similar.

"For example, does the legal action:

- clarify climate change obligations (mitigation)?
- contribute to minimising exposure to the impacts of climate change (adaptation)?
- address key ecological sustainability issues such as water quantity and quality, wetland enhancement and management, soil erosion/nutrient value and biodiversity decline (indigenous and/or functional)?
- address these issues in key geographical locations? E.g. areas currently drought-prone and predicted to be more so."

⁵ Mark Botha, Botanical Society

⁶ Stephen Knight-Lenihan, WESSA Border-Kei

Other considerations mentioned by stakeholders included the following factors:⁷

- estimated cost involved, and availability of funding;
- whether the Centre and/or the NGO/CBO who brought the case to the Centre has the human resources to take on the case;
- whether other organisations are better placed to take on a particular case;
- whether sufficient research data was available to support the case;
- whether good media exposure/profile will ensue.

Another stakeholder⁸ quoted Advocate George Bizo's rule of thumb on case selection at the LRC, namely that the particular injustice (in this case to the environment) must be clear – a case should “scream out for a remedy”. (Note, however, that the LRC also has a more formal case prioritisation policy.)

At least one stakeholder pointed out that how the Centre deals with cases that are *not* selected is also of great importance, and begged that the NGO/CBO be provided with guidance on other options available. Thus the approach for support should not be rejected without an alternative option being suggested.

It is proposed that determination of those Case Prioritisation Criteria be referred to a Reference Group to be convened for determination. In addition, it is worth considering determining annual or biannual priorities for the Centre, to ensure that particularly pressing environmental issues are addressed (assuming that appropriate cases can be found). See the section entitled **Next Steps** below.

Independent or housed within an existing institution?

Many stakeholders raised fears of domination of the Centre by stronger NGOs, and the independence and representative governance of the Centre were highlighted repeatedly. This issue will be dealt with in more detail under **Corporate Structure and Regulatory Requirements** below.

At the start of the project, the Steering Committee requested that the possibility of the Centre being housed within another existing institution be considered. Such housing could have many benefits for the Centre: from synergy and cooperation with an appropriate existing institution, to a possible significant cost-saving in relation to shared infrastructure and basic office amenities (e.g. security, internet access, access to library). On the other hand, housing the Centre could threaten the independence and autonomy of the Centre, as well as impact detrimentally on its work through association with its host.

Preliminary discussions with various potential homes for the Centre are described below.

Legal Resources Centre (LRC)

Although no formal approach has yet been made to the Legal Resources Centre (LRC) management, at least one stakeholder wondered whether the LRC – as the most well-known institution for legal intervention in environmental matters - would not make an appropriate home for the Centre.

⁷ Andy Gubb, WESSA

⁸ Adrian Pole, Adrian Pole Attorneys

Upside	Downside
Through its environmental justice programme, LRC has built a reputation and credibility in the environmental sector in relation to litigation and advocacy, in particular	LRC has a strong environmental and social justice focus, which may exclude some of the more ecosystem-based cases the Centre would take on
LRC will be able to provide access to legal resources, including in particular its attorneys and advocates	LRC is a national organisation, and it would be more difficult to justify a Western Cape pilot within that structure
	Within the LRC, the Centre will be subject to decisions and policies of the LRC Board and Management

Lawyers for Human Rights (LHR)

A formal response is still awaited from LHR.

Upside	Downside
LHR has a strong reputation on human rights matters in generally, both in relation to advocacy and litigation	LHR has a strong environmental and social justice focus – specifically targeting marginalised people, which may exclude some of the more ecosystem-based cases the Centre would take on.
LHR will be able to provide access to legal resources, including in particular its attorneys and advocates	LHR is a national organisation, and it would be more difficult to justify a Western Cape pilot within that structure. Its Stellenbosch office is fairly small, and the environmental rights programme is anchored in its Gauteng office.
Existing Law Clinic registration with the Cape Law Society	Within LHR, the Centre will be subject to decisions and policies of the LHR Board and Management

University of the Western Cape (UWC) Law Faculty

Discussions were held with the University of the Western Cape (UWC)'s Law Faculty (with whom this possibility had previously been discussed in some detail, prior to the start of the current project). UWC has the benefit of having access to poorer communities, which would assist the Centre in its objective of raising awareness of environmental rights amongst disadvantaged communities who are often the victims of environmental injustice. UWC's Law Faculty would also be able to give the Centre access to legal resources.

Discussion indicated, however, that the key focus of the Centre was essentially at conflict with what was required by UWC. More specifically, the primary focus of a Centre housed at UWC would have to be research, publications and training; this focus is emphasized by the

fact that UWC would require such a Centre to be headed by a UWC academic with professorial status.

University of Cape Town’s Law Clinic⁹

Discussions have also been held with the Law Faculty of the University of Cape Town (UCT), particularly the Institute of Marine and Environmental Law and the UCT Law Clinic, who had already obtained in principle approval from the Law Faculty to establish an Environmental Law Clinic prior to the start of the current project. The idea for an environmental law clinic stemmed from “unanimous recognition by the participants that there was an urgent public need for free legal advice and assistance on environmental issues, and that the University of Cape Town could play a valuable role in helping to meet that need.”

Principle support of the UCT Law Faculty Management Committee was therefore obtained (subject to further discussions) for setting up an Environmental Law Clinic within the existing structure of the UCT Law Clinic, with a similar status to the Refugee Rights Project within the Law Clinic. This Clinic “should initially provide legal advice and write opinions, rather than engage in the more intensive activity of environmental litigation, but it could develop an expanded role in the future if sufficient resources became available.” In addition, “students studying Environmental Law at undergraduate and postgraduate levels should be offered the opportunity to work in the Environmental Law Clinic under the supervision of an attorney. It was recognised that a full-time attorney would be needed, and this post would require funding, so that the possibility of sourcing some external funding would need to be seriously explored.”

Upside	Downside
Centre will benefit from the status and legitimacy of the university, particularly for funding purposes	Centre will inherit existing perceptions about the University
Existing management support , and a precedent in the Refugee Rights Project	Possible limitations on the Centre taking strong political positions
Can have its own coordinator for training and litigation (i.e. does not have to be an academic), and share administrative support of Law Clinic	
Centre will have access to students who will soon also have to do community service, as well as access to existing programmes like Streetlaw – this is great for building capacity among students	
University is more independent from government and industry than other institutions, and can also ensure that no single NGO/CBO dominates the Centre.	The University is not completely independent, in that increasingly staff do work for the private sector and government, and/or are sponsored by large corporates

⁹ Information from emails received from Prof John Gibson, Head: Institute for Marine and Environmental Law, UCT (IMEL) and discussions with Prof Gibson, Prof Jan Glazewski and Alexander Paterson from IMEL, Beverley Bird and Matilda Smith from the UCT Law Clinic and Maria Hauck and Rachel Wynberg from UCT’s Environmental Evaluation Unit.

The Centre can have an advisory board	The advisory board will not have decision-making powers
Access to infrastructure and services like internet access, probably at a cheaper rate than through ordinary commercial arrangements	Exact contribution by the Centre to the University is a matter for negotiation, but there appears to be a cost recovery element for most income, and “the amount involved would normally reflect the actual costs incurred”
The Centre will benefit from existing financial and auditing systems	The Centre will be subject to university rules and systems for human resources and financial systems, and the effectiveness of those systems will affect the Centre. The centre will not be able to have separate bank accounts

Stakeholder views

During consultation, stakeholders expressed strong support for the independence of the Centre, and few stakeholders supported it being housed within another institution.¹⁰ Some suggested housing it within another NGO, even just for office space, but immediate problems arose in relation to the use of particular NGOs’ facilities. Stakeholders argued that:

- The Centre must “not be under the umbrella of any other institution” to avoid conflicts of interest (for interest, at least one stakeholder cited an example of a development dispute between NGOs and a university).
- If housed with another institution, the Centre will be linked to the host organisation by association, which could cause problems with perception of the Centre.
- An independent institution could facilitate a federal structure in association with similar Centres elsewhere in the country.

Many stakeholders expressed concern about the cost associated with hosting the Centre at a university, as well as university requirements around research and publication. Many stakeholders expressed the need for action by the Centre, and not research. A few also raised the possibility that potential clients of the Centre may be intimidated to go to universities.

For interest, this view was supported by the current and past directors of the Cape Town-based Women’s Legal Centre (WLC), who felt that their independence was invaluable to the work of the WLC. They argue that their independence allows them to determine their own policies, their own strategic focus, and removed restrictions on fundraising.

It is important to note that UCT’s suggestion of placing the Centre within the Law Clinic does free it up from some of the normal management, research, training and publication requirements (as required by UWC). UCT also advises that:

¹⁰ In comments on a draft of this document, the Constantia Hills Residents’ Association noted that “[i]t would be most rewarding to hear that you have established the Centre away from other institutions for the reasons which you have mentioned – objectivity, not being “guilty by association” should the partner be involved in anything which would go against the principles of the Centre.”

“For administrative purposes, units are part of one of the three departments in the UCT Law Faculty, but in practice they enjoy a high degree of independence, and more onerous reporting requirements tend to be imposed by the funding bodies rather than the university.”¹¹

Conclusion

On balance, it appears that the practical benefits of starting the Centre within the programmes of another institution may be outweighed by the combination of some of the draw-backs of such an association and the strong stakeholder opposition to such a proposal. Nonetheless, a formal query has been posed to both LRC and LHR to ensure that all factors have been considered.

Since this document was compiled in March 2009, some consensus has developed around the approach that the Centre should first make every effort to establish itself as an independent institution. Should this prove to be unfeasible, particularly due to funding constraints, these discussions regarding potential housing of the Centre as a programme within an existing institution should be re-opened.

Also note that the Centre will in any event pursue formal cooperation agreements with all these institutions to ensure that all synergies are properly harnessed.

7. Gap analysis

Consultation in and outside the Western Cape provided a broad overview of existing services accessible by environmental NGOs and CBOs throughout the country, set out below. This analysis is not a complete list of all initiatives, but a good indication of the gap in services to environmental NGOs and CBOs that currently exist, having regard to the needs analysis described below.

The analysis below is organised into three sections, broadly coinciding with the three programmes proposed for the Centre below.

Legal interventions¹²

Legal Resources Centre (LRC)

The LRC is probably the institution best known in the environment sector for its work in environmental justice matters, particularly through advocacy and litigation. It is an accredited Law Clinic, and has undertaken environmental cases for the past 15 years. The

¹¹ emails from Prof John Gibson, Head: Institute for Marine and Environmental Law, UCT.

¹² In recent months, there have been various attempts to pull together institutions with legal capacity in relation to mining matters, particularly in Gauteng, Limpopo and Mpumalanga. For example, in February 2009, NGOs Jubilee and Action Aid convened a seminar in Gauteng with various NGOs (including Federation for a Sustainable Environment, EMG and the Water Caucus), CALS, LRC, the SAHRC and the Freedom of Speech Institute “to address and find legal remedies for the escalating hostilities within mining communities because of alleged human rights violations. ... The testimonies of mining communities of the destruction of their land, their homes, graves and dewatering and pollution of groundwater were heard. This 2 day seminar focused more on the protection of people, particularly the indigent than upon the protection of landscapes and plant and animal species” - email from Mariette Liefferink from FSE, 11 February 2009

objective of its Environmental Programme is to equip South Africa's civil society to participate effectively in environmental governance in order to protect the environmental rights enshrined in the Constitution by providing improved legal representation and technical support for environmental organisations as well as vulnerable and marginalised communities.

The LRC seeks creative and effective solutions by using a range of strategies, including impact litigation, law reform, participation in partnerships and development processes, education and networking within South Africa, the African continent and at the international level.

The Programme works in the following broad areas:

- Air quality and water quality in priority areas where air and water quality is compromised
- Mining related environmental problems
- The EIA process for proposed new nuclear power plants
- Protecting procedural rights in the EIA process in a number of individual cases
- Medical waste management
- Large industrial processes impacting on the surrounding environment
- The right to information on genetically modified organisms.

In addition to litigation, the LRC has also contributed to the law reform process by making submissions on amendments to legislation and proposed new legislation. The LRC has also engaged in advocacy to assist those affected to address environmental injustice, degradation of the environment and inequitable and unsustainable natural resource utilisation.

www.lrc.org.za

Lawyers for Human Rights (LHR) Environmental Rights Project

Lawyers for Human Rights is a non-governmental, non-profit organisation whose vision is to be:

- a leading, effective human rights and constitutional watchdog and advocate,
- an international force in the development and delivery of human rights, with a primary focus in Africa,
- a primary contributor to clear strategic policy on the delivery of socio-economic rights for the disadvantaged.

To this end, LHR strives to promote awareness, protection and enforcement of legal and human rights through the creation of a human rights culture.

The Environmental Rights Project (ERP) is a newly established project at Lawyers for Human Rights. The project focuses on matters concerning the environmental rights of marginalised people in South Africa. The project, which is based at LHR's Pretoria office, complements existing environmental organisations and draws on their extensive experience and expertise while providing professional litigation and advocacy services.

South Africa has a comprehensive legal framework for effective environmental governance. However, the actual implementation of the legislation is lagging. Also, an often overseen aspect of improved environmental management is the undertaking to ensure that the environmental rights of people are protected in the process. The ERP responds to these needs by putting pressure on government to implement existing systems for environmental management within the broader framework of human rights and democratic accountability.

The main goals of the project are:

- To promote constitutionally grounded environmental jurisprudence
- To enforce the environmental rights of marginalised groups in South Africa
- To ensure adequate implementation of environmental legislation

The project has three focuses. First, it focuses on the disproportionate negative environmental burdens experienced by marginalised groups and seeks to protect the environmental rights of these groups by engaging impoverished communities in both rural and urban areas against environmental degradation in their immediate surroundings. Second, it focuses in the relationship between environmental rights and socio-economic rights and seeks to ensure fair and equitable access and control over natural resources as well as just and equal ownership and utilization of land. Third, it focuses on the relationship between environmental rights and procedural rights such as the right to freedom of association, access to information, just administration and access to courts and seeks to relate these rights to adequate implementation and enforcement of environmental legislation.

<http://www.lhr.org.za/programme/environmental-rights-project/information>

Wits Centre for Applied Legal Studies (CALs)

At a meeting in Johannesburg on 23 February 2009, representatives from Wits Law Faculty advised that they were seeking closer collaboration between the Wits Law School, Law Clinic and CALs on environmental law matters.

CALs is an independent organisation committed to promoting democracy, justice, equality and peace in South Africa and addressing and undoing our country's legacy of oppression and discrimination through the realisation of human rights for all South Africans under a just constitutional and legal order by:

- undertaking rigorous research, writing, analysis and briefings
- teaching and providing public education and training
- the collection and dissemination of information and publications; and
- legal advice and litigation, participation in policy formulation, law reform, dispute resolution and institutional development and coordination.

CALs is probably best known for its strategic litigation in relation to social and economic rights, basic services, gender and labour matters, often acting as *amicus curiae*. CALs is one of the amici in the *Biowatch* case before the Constitutional Court.¹³

<http://web.wits.ac.za/Academic/Centres/CALS/>

¹³ See note 1 above.

Endangered Wildlife Trust Law and Policy Working Group

The Endangered Wildlife Trust (EWT) is a non-governmental, non-profit, citizen organisation dedicated to conserving the diversity of species in southern Africa. The EWT is dedicated to conserving threatened species and ecosystems in Southern Africa to the benefit of all people.

The EWT achieves its conservation goals through specialist, thematic Working Groups, designed to maximise effectiveness in the field and enhance the development of skills and capacity. Out of all of the organisations listed in this section, EWT is the only one with an exclusive environmental focus.

The Law and Policy Working Group (L&PWG) of the EWT aims to be a centre of excellence and to assist in the development and utilisation of environmental law and policy in Southern Africa. The L&PWG strives to become a unifying body through which the expertise of the EWT and its partners, representative of various sectors, can be harnessed and consolidated to meet the challenges facing biodiversity protection as well as environmental legal protection in the broader sense.

The L&PWG currently consists of two permanent staff members, a steering committee and a forum representing priority stakeholders. In order to achieve the above objective the L&PWG engages in a range of programme activities – some are existing activities, and others are still under development.

The L&PWG engages in advocacy and proactive engagement by commenting on draft legislation and engaging with government. It also proposes extending this work by participating in policy development, proposing amendments to existing legislation and promote the drafting of new legislation and engaging at Parliamentary level.

The L&PWG's legal services entail the following:

- Promoting the development of case law (proposed activity)
- Assisting EWT WGs/Core with general and environmental legal issues (ongoing activity), providing strategic legal advice to third parties on environmental legal matters (new activity) and facilitating and referral to external partners/ practitioners (ongoing activity)
- Supportive/collaborative function: Coordinating EWT involvement as Interested and Affected Party (ongoing activity) and supporting institutions (gov/ other) in regard to environmental law & science (new activity)

In relation to litigation, the L&PWG provides assistance to government and third parties, and proposes undertaking strategic litigation (instituting action and/or providing specialist knowledge in existing cases), making *amicus curiae* submissions and doing private prosecutions.

The L&PWG already has a Compliance and Enforcement programme involving the following: developing Sentencing Guidelines for Magistrates, activities aimed at strengthening compliance and enforcement of South Africa's environmental legislation, networking with relevant enforcement officials, monitoring the status of compliance and enforcement and

follow-up compliance action, providing recourse to civil society for concerns/complaints of environmental non-compliance, increasing enforcement capacity through targeted training for relevant stakeholders, strengthening enforcement of continued non-compliance, and research, analysis and communication of successful enforcement action.

www.ewt.org.za

UCT's planned Environmental Law Clinic

The UCT Law Faculty's plan to incorporate an environmental law clinic in their existing general Law Clinic is described in more detail elsewhere in this document. However, in essence, this clinic will provide free legal advice and assistance on environmental issues to indigent individuals and organisations. The clinic "should initially provide legal advice and write opinions, rather than engage in the more intensive activity of environmental litigation, but it could develop an expanded role in the future if sufficient resources became available".¹⁴

<http://www.uct.ac.za/faculties/law/research/lawclinic/>

Wits Law Clinic and Law Faculty

Like UCT's Law Clinic, the Wits Law Clinic provides legal assistance to indigent individuals and organisations. Provided funding becomes available, there is support for the establishment of an environmental law clinic within the Wits Law Clinic which will simultaneously train undergraduate students.

Wits Law Faculty has advised that, from 2010, they will be presenting a new LLM course on public advocacy litigation; the students from this course could contribute to key environmental law cases. During 2009, masters' students registered for the course "Introduction to Environmental and Sustainable Development Law" are working on a number of environmental legal issues in a service learning arrangement with Lawyers for Human Rights and the Federation for a Sustainable Environment. The current projects relate to the issues of water quality, illegal mining and acid mine drainage on the West and Far West Rand. The aim is for students to produce a piece of work on which they will be assessed for the course and which will simultaneously be of value to the partner organization. Two to three projects of this nature can be accommodated every year.

South African Human Rights Commission

The SAHRC is a national institution established to entrench constitutional democracy through the promotion and protection of human rights (including environmental rights) by:

- Addressing human rights violations and seeking effective redress for such violations
- Monitoring and assessing the observance of human rights
- Raising awareness of human rights issues
- Educating and training on human rights

Section 184 of the Constitution provides that the Human Rights Commission must do the following:

(1) (a) promote respect for human rights and a culture of human rights;

¹⁴ Email from Prof John Gibson from UCT's Institute for Marine and Environmental Law, 2 February 2009

- (b) promote the protection, development and attainment of human rights and
(c) monitor and assess the observance of human rights in the republic”
(2) “The Human Rights Commission has the powers, as regulated by national
legislation, necessary to perform its functions, including the power –
(a) to investigate and to report on the observance of human rights;
(b) to take steps to secure appropriate redress where human rights have been
violated.....”*

The SAHRC has a Legal Department with the strategic objective of protecting human rights by investigating individual and systemic human rights violations by:

- investigating individual and systemic complaints of human rights violations; and
- providing appropriate redress and resolve disputes regarding human rights violations.

On 8-12 June 2009, the SAHRC will hold public hearings on "The Millennium Development Goals and the realisation of economic and social rights in South Africa"; the hearing on environment, water and food will be held on 8 June 2009. The SAHRC has called for written submissions covering the period from April 2006 to March 2009 from government, the public and interested parties by 12 May 2009.

www.sahrc.org.za

The Public Protector

The office of Public Protector has a Constitutional mandate and empowering legislation (the Public Protector Act 23 of 1994) to investigate matters and to protect the public against matters such as maladministration in connection with the affairs of government, improper conduct by a person performing a public function, improper acts with respect to public money, improper or unlawful enrichment of a person performing a public function and an act or omission by a person performing a public function resulting in improper prejudice to another person.

www.publicprotector.org

Environmental Law Association (ELA)

The ELA operates as a non-profit organisation since 1991, and has as its members environmental law practitioners, environmental law students and academics, environmental consultants, government officials and lawyers generally. Relevant to the purpose of this section is the fact that many attorneys and advocates who specialise in environmental law and litigation are members of the ELA.

The ELA endeavors to:

- Promote for the benefit of the public, generally, the enhancement and conservation of the environment in South Africa and in particular to promote among ELA members and the public matters relating to the development, teaching, application and practice of environmental law in South Africa;
- Encourage collaboration between all those interested and concerned with environmental law in South Africa;

- Collate and disseminate information relating to developments in the field of environmental law;
- Identify, review, advise and comment on issues of environmental law and its application;
- Create opportunities for ELA members to network at national and regional levels; and
- Raise and distribute funds for the purpose of carrying out the said objectives.

At its Annual Conference on 29-30 May 2009 in Gauteng, the ELA plans a conference session on “Judicial development over the past decade” that includes presentations on environmental public interest litigation. This will provide an opportunity to get a better overview of ongoing environmental public interest litigation in various parts of the country, including litigation conducted by private practitioners.

www.elasa.org.za

Conclusion

From the analysis above it appears that a number of key national institutions – including those outside the environmental sector - are recognising the need for expanding existing social and economic rights programmes to include environmental rights. Most of those institutions are strongly focused on socio-environmental matters and environmental justice, assisting disadvantaged and marginalised communities.

The existence or development of the initiatives described above does not mean that there is limited scope for the Centre’s proposed work. On the contrary, the fact that these initiatives exist or are being planned in organisations that are not primarily focused on the environment is a strong indicator of the extent to which the unsustainable management of resources and environmental injustice have started to affect people. It does also mean, however, that – with the possible exception of EWT – no organisation is currently focusing on environmental matters in which there is no or a less direct social component.

Support for participation in licensing processes

Institution	Description
Legal Resources Centre www.lrc.org.za	LRC’s Environmental Justice Programme includes the goals of effective and constructive participation in EIA processes concerning the activities of potentially harmful industries and activities (including incinerators); greater participation in regional air quality planning to address the incremental and cumulative effects of multi-source pollution on the ambient air quality and human health; and greater participation in water resource management processes to ensure sustainability of the resource and planning processes in the interest of equitable access to this scarce resource.
UCT’s Environmental Evaluation Unit http://www.eeu.uct.ac.za/core-	The EEU does research, consulting, training and outreach. Their core areas of expertise are in Integrated Environmental Planning, Management and Assessment, Integrated Coastal and

<u>activities</u> http://www.eeu.uct.ac.za/thematic-areas/public-participation	Small-scale Fisheries Management, Biodiversity Commercialisation, Fair Trade and Social Justice, and Public Participation.
Wits Law School http://web.wits.ac.za/Academic/CLM/Law/home.htm	Proposed linking research projects to the promotion of participation in environmental decision-making. One focus area will be environmental democracy, concentrating on the right to academic freedom and freedom of scientific research, exposure of SLAPP suits and highlighting other instances of intimidation of persons wishing to participate in environmental decision-making.
Private attorneys	Private attorneys who practise environmental law usually provide legal advice and representation to the various parties to licensing applications. This work is usually done for a fee.

Conclusion

Other than the work done by the LRC, there is no existing institution in South Africa that provides support to NGOs and CBOs in their participation in licensing applications as a matter of course, without charge.

Information Management

Institution	Description
Jutastat www.jutastat.co.za/	Publisher Juta & Co provide paid online access to South African statutes, case law and other key legal resources. It is not specifically focused on environmental law.
LexisNexis www.lexisnexis.co.za	LexisNexis provides a wide range of digital services, including access to South African statutes, case law and other legal resources. It is a paid service.
Sabinet www.sabinet.co.za	Sabinet offers SA Parliamentary and legislative full-text information, covering the full spectrum from parliamentary information and bill tracking to national and provincial gazettes, as well as Provincial legislation and South African statutes. Access to Acts, amended Acts with rules, regulations and forms are also available. Sabinet is the only online service that provides access to Government Gazettes and Notices, in searchable form. Sabinet is a paid service, but also hosts a Full Open Access Journal Collection consisting of 44 South African journals.
The Southern African Legal Information Institute (SAFLII) www.saflii.org.za	SAFLII collects and publishes legal materials from southern and eastern Africa for free online access. Includes court judgements and case law. SAFLII has a broad focus, not on environmental law.

LegalBrief Environmental www.legalbrief.co.za	LegalBrief issues weekly environmental law updates, mainly consisting of newspaper clippings. It is a paid service.
Polity www.polity.org	Polity issues free weekly updates on new legislation, draft legislation and case law, including on environmental law
Wits Law School www.envirolawsa.blogspot.com	A free blog entitled 'EnviroLaw SA' has been started as a resource for environmentally conscious citizens and environmental NGOs. The blog will feature commentary on new and existing policies, laws, cases and reports as well as commentary on topical environmental issues. The service is free and interactive. In a few months a website incorporating the blog should be established. The website will be capable of carrying more information.

Conclusion

Although there are various different legal databases available, there is currently no central, specialised database of environmental legal resources: statutes, regulations, government notices, case law, training materials and other resources. In addition, most of the information services are paid services not available to NGOs and CBOs without subscription. The Wits EnviroLaw SA blog will assist a great deal with keeping NGOs and CBOs up to date on developments, though it requires those organisations to visit the blog.

Training and Awareness-Raising

Note that this is not intended to be a full review of all environmental law training presented across the country; this section focuses on training presented in the Western Cape, with the addition of Wits Law Faculty because of their intention to present certain courses on a subsidised basis to civil society.

Institution	Description
Endangered Wildlife Trust www.ewt.org.za	EWT's training programme (NGO, civil society, government, private sector) includes facilitation of training upon request, or training based on clear need e.g. training for staff on the EIA legislation. EWT has also developed a number of toolkits, including the EIA Toolkit and the Mining and Environment Toolkit (under development)
UCT Environmental Evaluation Unit http://www.eeu.uct.ac.za/core-activities/training-capacity-building-archive	Has presented a wide range of short courses on environmental management and sustainable development. They also have a number of training and capacity-building programmes.
UCT Law Faculty http://www.uct.ac.za/faculties/law/	Presents a range of undergraduate and postgraduate courses on environmental law.

UWC Law Faculty

<http://www.uwc.ac.za/>

Presents a range of undergraduate and postgraduate courses on environmental law.

Wits Law School

<http://web.wits.ac.za/Academic/CLM/Law/home.htm>

Already presents a range of undergraduate and postgraduate courses on environmental law. Proposes presenting subsidised, customised environmental law courses for civil society. One course of this nature can be presented in the second half of this year based on a need defined by the NGO community.

Private attorneys

Private attorneys who practise environmental law often present training courses on environmental law to their clients, sometimes for free, and sometimes for a fee. Indications from the ELA are that attorneys generally would not allow representatives of NGOs and CBOs to attend such courses for free.¹⁵

Conclusion

Although there are many academic courses on environmental law available in the Western Cape and elsewhere, there appears to be little opportunity for NGOs and CBOs to procure such training for free. The opportunity for the NGO community created by the Wits Law School is the only one of its kind.

8. Governance, corporate structure and regulatory requirements

Governance

As mentioned above, many stakeholders expressed support for a sound governance structure for the Centre to ensure its principled implementation. This is also why many stakeholders did not like the idea of housing the Centre in another institution, since such an arrangement did not allow for an independent board. This is obviously also crucial for a non-profit organisation that will hopefully secure donor funding.

The composition of the board or boards for the Centre will be referred to the Reference Group (see **Next Steps** below).

Corporate structure

With regard to choosing a particular corporate structure, there are advantages and disadvantages to both trusts and Section 21 companies. Generally speaking, it is quicker and easier to set up and register a trust, and a trust has fewer statutory obligations. On the other hand, a Section 21 company probably notionally enjoys more credibility, primarily because donors and the corporate world at large are more comfortable with the structure.

¹⁵ email from Richard Summers, Chair: ELA, 11 March 2009.

Below is a comparison between the two structures:¹⁶

	Trust	Section 21 company
Board	Has a Board of Trustees, with similar powers and duties as the directors of a company	Has a Board of Directors, with similar powers and duties as the trustees of a trust
Legislation	Trust Property Control Act, 1988	Companies Act, 1973 (soon to be replaced by the Companies Act, 2009)
Legal personality	No independent legal personality – acts through its trustees, e.g. trustees sue and get sued in their capacity. However, trustees are not personally liable for trust debts unless s/he has been grossly negligent or committed fraud	Has independent legal personality, e.g. the company sues and gets sued
Registration	Notary public attests trust deed, then register with Master of High Court	Name must be approved by Registrar of Companies. Need memorandum and articles of association, registered with Registrar of Companies Registration takes 2-4 months PBO registration more onerous
Ongoing regulatory requirements	Must notify Master if any of the trustees change	Company must appoint auditors, registered address, and changes must be reported to Registrar Company must keep registers, minutes, financial & accounting records in prescribed form Directors' names must be on all documents Company must have an annual general meeting
Flexibility	Flexible, more suited for smaller organisations	Less flexible, best suited for large organisations
Public disclosure requirements	Limited public disclosure required – no need for auditor or audited financial statements (unless required by trust deed)	Substantial public disclosure required, including auditor and audited financial statements
Other		Format more familiar to business world, greater perceived credibility

¹⁶ With thanks to the LRC Information Series No. 1 “Legal Structures commonly used by Non-Profit Organisations”

On consideration, the Project Steering Committee has resolved that a Section 21 company or companies is the preferred corporate structure for the Centre, primarily for reasons of accountability, transparency and credibility.

Following the example of the Women’s Legal Centre, it is proposed that the Centre registers two corporate entities: one to be the operational entity, and one to be the funding entity:

1. The **operating entity** (the Centre) will employ staff, conclude agreements with implementing partners, buy office furniture, potentially register as a Law Clinic and/or institute legal proceedings.
2. All donor funding will be paid into the **funding entity**, where it will be protected from claims against the Centre (as in the case of a costs order against the Centre). This is particularly important since the Centre will do a broad range of work, some of which is far removed from litigation. The funding entity will then from time to time donate funds to the Centre, as required, but the Centre will have no vested right against the funding entity. For the purpose of this document, this entity is called the Environmental Legal Defence Fund (see also **The need for an environmental litigation fund** under **Programme 1** below).

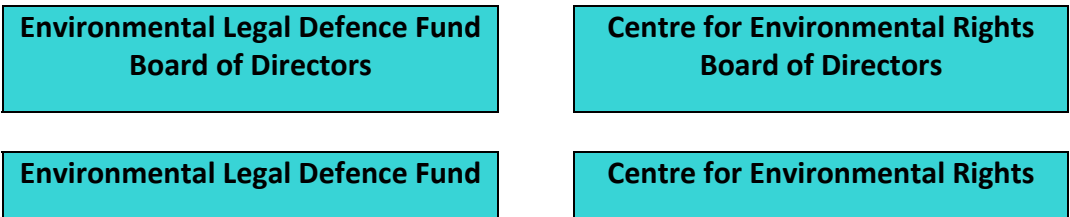
The tax consequences of this structuring are discussed below.

As public companies, the two entities will require seven founding members each, which should ideally be other non-profit organisations.

Registration as a Public Benefit Organisation

Regardless of the particular corporate body used (see **Trust or Section 21 company** below), it is essential that both entities:

- are registered as Public Benefit Organisations (PBO) in terms of Section 30 of the Income Tax Act. PBO status under the Income Tax Act means that receipts and accruals by those entities are exempt from income tax in terms of Section 10(1)(cN) of the Income Tax Act; and
- are registered under Section 18A of the Income Tax Act. This means donations to either entity will be tax deductible in the hands of donors. It also means that donations by both entities are exempt from donations tax in terms of Section 56(1)(h) of the Act, and bequests or accruals from the estates of deceased persons in favour of the entities are exempt from estate duty in terms of Section 4(h) of the Estate Duty Act. Note, however, that the idea is for all funding to be received by the funding entity and not the operational entity, which will normally only receive funding from the funding entity.



Registration as a Non-Profit Organisation

Registration as a Non-Profit Organisation (NPO) under the Nonprofit Organisations Act, 1997 with the Department of Social Development is voluntary. Registration as an NPO allows the Minister of Social Development to prescribe benefits or allowances for registration. It may therefore be helpful in future to register the Centre or the funding entity as an NPO. The LRC, for example, is registered as an NPO.¹⁷

Registration as a Law Clinic

Advice from the Cape Law Society¹⁸ has confirmed that, if the Centre is going to represent clients in legal proceedings, registration as a Law Clinic with the Law Society is all that will be required (i.e. not registration as a law firm, which requires a Fidelity Fund Certificate) in terms of Section 19 of the Rules of the Cape Law Society.

This is because the Centre will either be acting for indigent individuals, or for NGOs or CBOs who are likely to be donor-funded. However, even if the Centre were to require a contribution from a particular client, this would not change the Centre's status under Rule 19, because it would only accept such contributions to cover costs – the Centre will always be a non-profit organisation.

9. Programmes of Work

The proposed Programmes of Work set out below are based on the **Gap Analysis** described above, and stakeholder consultation. The projects that make up the Programmes of Work, plus prioritisation within those Programmes, will be developed in the Implementation and Business Plan for the Centre (see **Next Steps** below).

To ensure that it sets realistic objectives and manages expectations of stakeholders, the Centre will have to be shrewd in its planning. The first consideration is the availability of sufficient funding for a fixed period to allow the Centre to start operations. See **Funding Strategy** below. In particular, it may well be prudent to postpone registration as a Law Clinic until the Centre has been established and has managed to raise some funds for the Environmental Legal Defense Fund.

Although the numbering of the three programmes were not intended to indicate a prioritisation of programmes, a few stakeholders commented on the perceived prioritisation in a draft of this document, raising very important points about the interaction between Programme 1 and 2. An example is the following comment from the Overstrand Conservation Foundation:

My one concern is that, in the OCF's experience, litigation is a last resort option that should seldom need to be exercised if effective use is made of the public participation process. I'd

¹⁷ <http://www.lrc.org.za/nonprofit-status>

¹⁸ Emails from and a meeting with Caron Jeavon, Senior Legal Officer at the Cape Law Society, on 2 March 2009.

like to see the order of the programmes reversed to show building awareness first, then promoting participation then litigation to emphasise the potential for using the system to best advantage to get the right things to happen at the right stage of the concept-to-approval phases and leaving use of the litigation option as the tool to be used if all else fails. OCF experience has shown that there is a lot of scope to develop effective input into public participation processes in the Western Cape based upon the objectives, policies and strategies contained in the Western Cape Provincial Spatial Development Framework. If this framework is used, DEA&DP are immediately on the participant's side and work hard to enforce their policies. Several unsustainable development proposals have been stopped or significantly modified in the Overstrand as a result of the OCF using this approach and finding the support of DEA&DP.

So, I think the proposed centre needs to put a huge effort into building capacity in NGO's to work the issues at the public participation stages. The litigation stage is, of course, very important. But as a mechanism to be used if the public participation process has failed, or, to address issues that arise when there has no public participation process but there is some transgression of environmental law ... but even this could be addressed through working through law enforcement agencies ... if only we can get them to respond quickly enough.

- Rob Fryer, Manager, Overstrand Conservation Foundation

Another interesting point raised was the following:

Informal feedback I have had suggests that many (though obviously not all) environmental consultants and lawyers would welcome a more informed, active and even litigious public. Certainly in the case of EIAs there is a reliance on having public participation to ensure effective conditions are attached to a particular development. As I understand it, there is currently too little engagement to ensure this happens. Therefore, it is up to consultants in particular, and lawyers on occasion, to motivate clients to take greater action to avoid or mitigate against unwanted ecological impacts – with the attendant difficulties associated with that. They would like more opposition to help push clients.

- Stephen Knight-Lenihan, WESSA Border Kei

It is important for the Centre to get the correct strategic approach to this issue: whereas a successful court case, carefully chosen for its wider impact, can have a major positive impact on the implementation of and compliance with environmental legislation, there is much to be said for empowering NGOs and CBOs for effective participation in decision-making processes before disputes arise. In addition, while not shying away from difficult issues and particularly non-compliance with legislation, the Centre must endeavour to maintain respect and credibility with both government and industry. This, in turn, will strengthen interventions and assist the Centre's clients to avoid the costs of litigation.

Programme 1: Exercising Environmental Rights

Strategic focus

The strategic focus of this programme is **the provision of legal services available to environmental NGOs and CBOs to support the assertion of environmental rights in prioritised cases**, including high quality advice on rights and remedies available in terms of environmental law; pre-litigious assertion of rights, negotiation and dispute resolution; and institution of legal proceedings through:

1. **referral to appropriately experienced legal practitioners.** This includes the attorneys and advocates at the institutions described in the Gap Analysis above, and even private attorneys (some stakeholders specifically requested advice on identifying suitably experienced practitioners in a particular field, and to provide guidance on how to brief lawyers appropriately);
2. **formal legal representation** (upon registration as a law clinic with the Law Society); and/or
3. **legal proceedings in the Centre's own name**, either as an *amicus curiae* (friend of the court) in precedent-setting cases that impact on the environment, or where the Centre has legal standing.

During consultation, there was strong support for this function, particularly for support to NGOs and CBOs for instituting legal proceedings. Some stakeholders spoke about the Centre “having teeth”, while others pointed out the far-reaching positive impacts of a few carefully-selected court victories. Stakeholders argued that, if there is no litigation or threat of litigation, the Centre will not be taken seriously, and the inherent disparity of power with private operators and developers will continue. One stakeholder commented that NGOs and CBOs needed to do what has come to be unexpected.

However, some stakeholders also warned against getting involved in protracted litigation on the wrong cases, which could cost the Centre money (with particular reference to the *Biowatch* case) and resources, and not necessarily have the desired outcome for the environment, even if the case is successful. Others reported frustration with attorneys acting for NGOs and CBOs, who fail to explain legal options adequately to them before proceeding.¹⁹

Throughout, the need for quick reaction was emphasised – because of resource constraints, NGOs and CBOs were often slow to report non-compliance to the correct authority, or to take action in cases of bad decision-making.

Types of litigation

When it comes to legal proceedings, it is useful to consider what kinds of proceedings one can expect. Although this is surely not a complete list, typical proceedings would include:

- an application to review a decision by an authority;

¹⁹ In comments on a draft of this document, the Constantia Hills Residents' Association requested that “...where litigation is not an option, [the Centre] would suggest alternative action – thus acting like a mediator.”

- an application for a mandamus to force authorities to exercise legislative powers;
- an application for an interdict or mandamus against a private entity;
- an application for access to information; and
- private prosecution in terms of Section 33 of NEMA (noting that such prosecutions may not be conducted against organs of state).

Potential implementing partners

Potential implementing partners for this programme include individuals and institutions with experience in legal practice and litigation. They include:

- the LRC (ongoing discussion)
- LHR (ongoing discussion)
- EWT's environmental law clinic (ongoing discussion)
- the Human Rights Commission (ongoing discussion)
- Wits Centre for Applied Legal Studies (ongoing discussion)
- the Environmental Law Association, through its members (ongoing discussion)
- Environmental law firms or law firms with environmental law expertise
- Advocates with environmental law expertise

For those potential partners with whom discussions have already been initiated, the scope and nature of these partnerships must still be finalised.

The need for an Environmental Litigation Fund

Many stakeholders had reservations about relying on legal practitioners to do work for the Centre and/or its client *pro bono*. This is despite enforceable *pro bono* requirements in the Western Cape, where practitioners have to spend 24 hours per year on *pro bono* matters. Instead, stakeholders felt that a *pro bono* arrangement often did not incentivise the best service from attorneys and counsel, that practitioners were often not available to take cases *pro bono* and that 24 hours per year was in any event not sufficient for effective legal service on even a single matter.

Having said that, it is common in public interest litigation for legal practitioners (attorneys and counsel) to act essentially on contingency: no fees are charged unless and until a successful costs order is obtained. How common this will continue to be will to a large degree depend on the outcome of the *Biowatch* case, currently before the Constitutional Court.

Nonetheless, throughout consultation, stakeholders repeatedly mentioned the need for a separate, significant litigation fund for environmental cases.²⁰

²⁰ In comments on a draft of this document, Guardians of the Garden Route argued as follows: "Until now, citizens of SA and NGO's had to dig into their own pockets to take legal action against unscrupulous developers (which means they hardly ever did). One example: The public access via municipal steps to Noetzie beach was closed by Pezula developers and only re-opened after members of the public took legal action which some residents of Noetzie Conservancy paid many thousands of rands for. As interested and affected parties to an existing development in a sensitive area, we have received more than one threatening letter from the developer's attorneys, also known as Strategic Litigation against Public Participation (SLAPP letters). These also cost money to respond to."

“In my view, we have an excellent legal foundation, particularly legislative, to work from. The problem is not with the law or the legal system, but that the legal system is not always properly utilised. One should, for example, not attempt litigation with inexperienced or in-house lawyers, nor with a thin pocket. Therefore first priority is the founding of an Environmental Litigation Fund (ELF) of sufficient clout to tackle a range of developments, and probably managed by most of the very same persons engaged in any Centre that may be established.

Whilst the sting of litigation is crucial and a first priority, the decision when to use that weapon should be made by a Forum including non-lawyers, such as an Environmental Resource Centre. Law is but one of the appropriate responses to the environmental challenge.”

- Johan van der Merwe, Chennells Albertyn

Programme 2: Promoting Participation

Strategic focus

The strategic focus of this second programme is **empowering NGOs and CBOs to participate effectively in the implementation of environmental legislation and environmental decision-making processes**, particularly environmental impact assessments (EIAs), strategic environmental assessments (SEAs), environmental management frameworks (EMFs) and risk assessments.

It is important to emphasise at the outset that the Centre cannot do this by supporting every NGO or CBO through every EIA process. The focus will rather be on capacitating NGOs and CBOs to do the necessary step-by-step participation themselves, only stepping in where legal intervention is required (subject to case criteria and the financial means of the NGO or CBO to engage private attorneys) (e.g. lodging appeals and enforcing compliance with conditions of environmental authorisations).

Importantly, the Centre’s contribution should primarily be a legal one – assisting its clients to ensure that all roleplayers are following legal requirements. An example of the type of intervention typically required is expressed in the following email addressed to the proposed Centre (reference to the particular case removed):

“We... write to ask whether any of you would be willing to assist us in our work on environmentally detrimental ... developments as these fall within the objections of the meeting you held. In particular, we require legal advice on a current amendment to the ROD... (deadline April 1) we believe provides a basis for legal challenge or interdict involving enforceable environmental rights and possibly legal precedents. ...our work is unfunded and of significant importance.

“We have created a paper trail in terms of our work in this area over the years and now require both legal advice, and possibly also legal intervention.

“All we immediately require is access to two or three hours of legal advice, particularly in terms of the NEMA and Constitution so that we focus on those areas most likely to succeed. We have reached a critical stage in the EIA process, with a new ROD amendment

... and an exemption for ... being sought on the basis of its small size. We have further ancillary problems with the ... who are not responding to various... concerns addressed to them last year. We were unable to challenge the previous ROD amendment as we did not have funding although we believe that it was seriously flawed process. However some of the conditions imposed by Min. Martinus Van Schalkwyk in the second ROD we believe may be to our advantage e.g. clause...

“We do not wish for legal professionals to labour under the voluminous information at our disposal, and wish to assure you that a significant amount of research has gone into our work. All we immediately require is access to expert legal advice, particularly in terms of the NEMA and Constitution.”

The Centre should therefore, over time:

- Provide general advice on engagement with environmental decision-making, particularly licensing processes
- Ensure the effective distribution of and access to existing guides to licensing processes, such as the Endangered Wildlife Trust’s Guide to the EIA Process and training programmes;
- Build a network of scientific professionals who can assist Centre clients with the preparation or interpretation of expert reports, at a reduced rate or for no charge
- Streamline reports of non-compliance to the right authorities, for example through a standard reporting format
- Where an NGO or CBO has no other recourse and it is a prioritised matter (priorities to be determined), assist with drafting of appeals against environmental authorisations
- Where an NGO or CBO has no other recourse and it is a prioritised matter (priorities to be determined) that now requires legal intervention, shift the matter over to Programme 3.
- Develop new guides, as required
- Collect and distribute case studies from South Africa and abroad
- Comment on and make submissions to Parliament on legal aspects of draft policies and legislation

Potential implementing partners

Potential implementing partners for this programme are those institutions with extensive experience in licensing processes, such as:

- the International Association for Impact Assessment (IAIA) South Africa branch (ongoing discussions). A specific option raised with IAIA-SA was the possibility of a funded secondment of a seasoned Environmental Assessment Practitioner to the Centre for a fixed period;
- UCT’s Environmental Evaluation Unit (ongoing discussions);
- NGOs with existing resources for Programme 2, such as WESSA, EWT and BotSoc; and
- in relation to the reporting of non-compliance, the Green and Blue Scorpions.

For those potential partners with whom discussions have already been initiated, the scope and nature of these partnerships must still be finalised.

Programme 3: Spread the word

Strategic focus

This programme is focused on **access to environmental legal knowledge resources**. It appears from the Gap Analysis above that, despite various initiatives, there is currently no easily accessible central repository of environmental law resources, from legislation to case law to training materials. In addition, existing free training for NGOs and CBOs on environmental legislation and processes is insignificant.

Thus the Centre should, over time:

- Build a database of key documents relating to environmental law: primary and subordinate legislation, reported and unreported judgements, success stories and case studies
- Make that database and source documents available on a high-quality public website
- Assess and unpack new environmental law developments (particularly lessons learned from recent cases) and distribute to clients
- Identify key legal gaps and disincentives that promote non-compliance or inadequate implementation of environmental legislation
- Assess all environmental law training tools available, and make appropriate tools available on the Centre's website
- Provide training on environmental law to NGOs and CBOs, and/or facilitate training by implementing partners
- Collaborate with implementing partners on outreach and awareness-raising programmes on environmental rights, particularly in disadvantaged communities

With regard to information management and communication from the Centre, stakeholders had the following to say:

- the Centre must be an Environmental Law Information Hub;
- the Centre must have a website that is simple and easy to access, but must also communicate on a regular basis, and have a helpline function;
- a regular email-based newsletter with links to the website would be most useful
- communication must not only be through the website or email – need hardcopy as well (including using local newspapers)
- plain language must be used, primarily in English, but also in Afrikaans and Xhosa
- Centre must manage information overload
- the Centre must provide guidance on a typical constitution for an NGO for purpose of litigation
- the Centre must provide guidance on registration as a non-profit organisation/public benefit organisation (note that the LRC has already developed a resource to this effect – available on their website at www.lrc.org.za)

Potential implementing partners

The most obvious potential implementing partners for this Programme are institutions that already collect and distribute environmental law information, or may do so in future. They include:

- Environmental Law Association (ongoing discussions)
- Cape Law Society's Environmental Law Committee
- University of the Western Cape Law Faculty (ongoing discussions)
- University of the Witwatersrand Law Faculty (ongoing discussions)
- Northwest University Centre for Environmental Management
- LegalBrief
- SAFLII
- Sabinet, Lexis Nexis or Jutastat
- Environmental law firms

For those potential partners with whom discussions have already been initiated, the scope and nature of these partnerships must still be finalised.

See also the section of this Framework Document entitled **Training and Capacity-building**, inter alia dealing with internships at the Centre. Note that, since this document was first compiled, this aspect has been elevated to a fourth Programme of Work, known as **Internships**.

Programme 4: Internships

Strategic focus

This programme is focused on **building environmental legal capacity** amongst university students, as well as amongst staff of environmental NGOs and CBOs. It is also designed to provide crucial administrative and legal support to the core staff of the Centre.

Having said that, interns have to be given proper attention by suitably qualified Centre staff, both to protect the Centre and to ensure that interns get value for their time in terms of a learning experience.

A number of options have been raised by stakeholders and potential implementation partners. All of these options could be funded on a project basis.

1. **An internship programme for staff members of NGOs and CBOs:** In such a programme, NGOs and CBOs would periodically be requested to nominate a staff member to do a fixed-period internship at the Centre in order to be exposed to networking with and training of NGO/CBO representatives and legal interventions in environmental cases.
2. **A funded internship programme through IAIA-SA:** IAIA-SA is currently formulating their own funded internship programme for qualified but inexperienced practitioners, and informal discussions have looked at whether the Centre could be one of the institutions housing such an intern or interns. This would be particularly useful for Programme 2.
3. **A community service programme for environmental law students at UCT:** At UCT, final year law students have to complete a compulsory 60 hours of community service. It has been proposed that some of these students – with environmental law

as an elective subject – spend their community service at the Centre. Obviously these are fairly inexperienced students, and 60 hours is less than 2 weeks' work. It is possible that the community service requirement will be extended to Master's students; these students will generally be more experienced and more specialised.

4. **An internship programme for environmental law students at UWC:** UWC has also proposed that some of their LLM students, MSc Env Management students and Geography students be given an opportunity to do an internship at the Centre, preferably as a compulsory component of their degrees.

Potential implementing partners

Potential implementing partners for this programme are local NGOs and CBOs who may wish to “second” staff members to the Centre for training purposes. Other implementing partners are the University of Cape Town and the University of the Western Cape's Law Faculties, and international institutions. IAIA-SA has also indicated interest in participating in this fourth programme.

10. Human Resources for the Centre

Many stakeholders have emphasised the need to find the right person to head up the Centre. Some of the required characteristics of such a leader identified have been that that person must be a qualified lawyer who is a strong, driven, passionate leader, with substantial networking capabilities.

Others have highlighted the need for adequate staff to provide proper advice and attention, as well as good administrative support (“critical mass”). Regard must also be given to considerations of institutionalisation and continuity.

Stakeholders have also emphasised the conditions precedent for securing the services of quality staff, namely competitive salaries and the location of the Centre in Cape Town (although it was also argued at the George workshop that locating the Centre away from Cape Town may be an attraction for certain types of candidates).²¹

Another stakeholder argued for a high quality pioneer group, and warned against growing the Centre too fast: allow the Centre to build a solid organisational culture and do internal capacity-building, also amongst board members.

Since the first draft of this document which set out an “ideal” organogram for the Centre's staff was circulated, the following approach has been formulated: To ensure maximum efficiency and limited bureaucracy, and to be financially feasible, the Centre must be a lean operation staffed by high quality professionals. In its first three years of operation, it is proposed that the Centre is be led by a full-time Director, supported by a full-time Senior

²¹ In comments on a draft of this document, the Dana Bay Conservancy expressly request that the venue be reconsidered. “I know all the know-how is in Cape Town but the environment (Marine and Fynbos) worth saving is in our area and under immediate threat from development and industry. ... Conservancies seem to be the only institutions in direct confrontation with these industrial giants at present. It would also make economical sense. Property and staff are cheaper in George/Mossel Bay than in Cape Town.”

Attorney and a full-time Participation Expert only. These professionals will be supported by interns from South Africa and abroad. This means a trimming down of the “ideal” position described in the first draft.

Staff positions

Centre Director

The Centre Director should be an experienced environmental lawyer and manager. The Director will be responsible for the following:

- providing strategic leadership for the Centre
- being the link between the Board and Centre management
- being the “public face” of the Centre, and be responsible for media relations
- financial management of the Centre
- support all four Programmes of Work

Senior Attorney

The Senior Attorney would be in charge of Programme 1, and therefore needs to be an environmental lawyer with solid litigation experience. Considering the prioritisation placed on legal advice and assistance with litigation by stakeholders, filling this position should probably not be delayed.

Participation Expert

The Participation Expert would be responsible for the implementation of Programme 2, and therefore has to be an EIA process expert, preferably with experience in other licensing. This position would best be filled by an experienced environmental assessment practitioner (EAP) good working knowledge of the law and a sensitivity to public participation/civil society.

Prioritised positions

Most likely, however, the Centre would open its doors with core staff. At the outset, office management functions can be filled by existing staff, perhaps supported by interns (see below).

11. Relationship with other institutions

It is clear – and stakeholders agree – that the Centre has to be linked to similar and related institutions in as many ways as will add value to the Centre and its mission. The Centre should therefore from the outset build relationships with and keep tabs on what work is being done throughout South Africa that relates to its strategic focus. Where appropriate, formal partnerships should be concluded.

Institutions that should be considered for formal partnerships include (and some are already in discussion with this project):

Academic institutions

- University of the Western Cape Law Faculty
- University of Cape Town’s IMEL and Law Clinic

- University of the Witwatersrand Law Faculty, Law Clinic and Centre for Applied Legal Studies
- Northwest University's Centre for Environmental Management

Legal NGOs or NGOs with legal programmes

- Legal Resources Centre
- Lawyers for Human Rights
- Human Rights Commission
- Endangered Wildlife Trust

Professional organisations

- IAIA South Africa
- Environmental Law Association

International institutions

- IUCN's Academy of Environmental Law

12. Next steps

This Framework Document has been approved by the Project Steering Committee and its contents were open for stakeholder comment until **15 April 2009**. Comments received have been incorporated into this document.

Letters and emails of support have been received from the following institutions:

- the national office and various regional offices of the Wildlife and Environment Society of South Africa
- the Sustainable Energy and Climate Change Project
- BirdLife South Africa
- the West Coast Fossil Park
- the Cape Bird Club
- Zandvlei Trust
- Dana Bay Conservancy
- Gordon's Bay Ratepayers Association
- Kromme Geelhout Conservancy
- Misty Cliffs Conservation Village
- Touw River Conservancy
- Glencairn Action Group
- Vleesbaai Action Group
- Far South Peninsula Community Forum
- South Durban Community Environmental Alliance
- Wilderness and Lakes Environmental Action Forum
- Langebaan Action Group
- the Glencairn Education & Environmental Support Enthusiasts
- Walmer Estate Civic Association
- Noordhoek Conservancy
- Sedgfield Ratepayers Association

- South African Human Rights Commission

Letters of support have been promised by groundwork and the Community Coalition for Environmental Justice. Many other organisations have simply indicated their support.

Academic institutions and units that have provided letters of support are:

- University of Cape Town (UCT) Centre for Occupational and Environmental Health Research
- UCT Law Clinic
- University of KwaZulu-Natal Law Faculty
- University of the Witwatersrand School of Law and the Centre for Applied Legal Studies (CALS)

An **Expert Reference Group** is being constituted to consider, inter alia, the composition and constitution of the Board or Boards of Directors for the two entities, and the prioritisation criteria to be implemented by the Centre.

An **Implementation and Business Plan** will be prepared by 30 April 2009, particularly dealing with a roll-out plan and an estimated budget for the operation of the Centre for the first three years.

A **fundraising strategy** will be agreed with the Steering Committee and implementation commenced. Although it is a stated purpose of this project not to compete with its potential clients for funding, some stakeholders who see great benefit in the Centre's planned work for their own programmes have kindly shared their funder lists with this Project. Some of the other suggestions received from stakeholders for possible sources of funding (please continue to send those in) include:

- International donors, both governments and non-profit organisations
- The legal profession
- Large corporates
- Retired "Captains of Industry"
- Case-based fundraising for particular court cases
- Membership-based fundraising, following the Greenpeace model
- Lotto money
- World Bank Global Environmental Facility
- Government's Plastic Bag Levy fund

The first funding application for the Centre was submitted to the Open Society Foundation on 17 April 2009.

Annexure 1: Consultation during January/February 2009

Workshop attendance

Cape Town Workshop		17-Feb-09
Institution	Name	Based in
WESSA	Andy Gubb	National
WESSA	Louis de Villiers	Western Cape
WESSA	Patrick Dowling	Western Cape
WWF	Madoda Koti	Western Cape
EWT	Anique Greyling	Western Cape
Habitat Council and Cape Wetlands Trust	Marie Lou Roux	Western Cape
Botanical Society	Charl de Villiers	Western Cape
Noordhoek Environmental Action Group	Kathi Sales	Western Cape
Noordhoek Environmental Action Group	Cecil Whiteman	Western Cape
Noordhoek Conservancy	Rory Sales	Western Cape
Community Coalition for Environmental Justice (CCEJ)	Eugene Cairncross	Western Cape
Helderberg Conservation Forum	Gavin Smith	Western Cape
Friends of Silvermine	Sandy Barnes	Western Cape
Cape Flats Nature	Neliswa Sihawu	Western Cape
Cape Flats Nature	Shahieda Davids	Western Cape
Hout Bay & Llandudno Environment Conservation Group and WESSA Western Cape Regional Committee	Richard Timms	Western Cape
Hout Bay & Llandudno Heritage Trust	L.P. Macilie	Western Cape
IAIA Western Cape	Ruth Massey	Western Cape
GEESE (Glencairn Education & Environmental Support Enthusiasts)	Cilla Bromley	Western Cape
GEESE (Glencairn Education & Environmental Support Enthusiasts)	Rupert Bromley	Western Cape
Glencairn Action Group	Geoff Neden	Western Cape
Mountain Club of SA (Cape Town section) Environmental subcommittee	Sean Kets	Western Cape
Smith Ndlovu Summers	Heinrich Muller	Western Cape
	Bruce Campbell-Smith	Western Cape
Chris Fick & Associates	Maryka Vermaak	Western Cape
Maalgate Stigting	Lorraine Maritz	Western Cape
Ninham Shand	Franci Fresse	Western Cape
Jo MacRobert Attorney & Associates	Jo MacRobert	Western Cape
	Micha Lau	Western Cape
Envolve Consulting	Phil Snijman	Western Cape
Langebaan Workshop		13-Feb-09
Institution	Name	Based in

Langebaan Ratepayers Association	Jaco Kotze	West Coast
WESSA West Coast	Alan Carnegie	West Coast
West Coast Fossil Park	Pippa Haarhoff	West Coast
LEEG	James Duffus	West Coast
LEEG	Gerrit Burger	West Coast
	Mark Duckitt	West Coast

Joburg Meeting	23-Feb
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Institution	Name	Based in
TRAFFIC ESA	David Newton	Gauteng
Lawyers for Human Rights	Emma Algotsson	Gauteng
Lawyers for Human Rights	Jacob van Garderen	Gauteng
Human Rights Commission	Yuri Ramkissoo	Gauteng
Birdlife South Africa	Carolyn Ah Shene	Gauteng
Federation for a Sustainable Environment	Mariette Liefferink	Gauteng
WESSA	Karen Marx	Northern Areas
WESSA	Garth Barnes	Northern Areas
Wits Law Clinic	Tracy Humby	Gauteng
National Association of Conservancies of South Africa (NACSSA)	John Wesson	Gauteng (National)
EWT	Rynette Coetzee	Gauteng
EWT	Mike Watermeyer	Gauteng
EWT	Morne van der Linde	Gauteng
Wits Centre for Applied Legal Studies (CALs)	Carole Cooper	Gauteng
Wits Centre for Applied Legal Studies (CALs)	Raylene Keightley (Director)	Gauteng

Durban Meeting	24-Feb
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Institution	Name	Based in
WESSA KZN	Carolyn Schwegman	KZN
Athlone Park Civic Association/WESSA	Ted Holden	KZN
Amanzimtoti/Upper South Coast		
Anti-Toll Alliance/SDCEA Steering Committee		
SDCEA	Desmond D'Sa	KZN
LRC KZN	Willene Holness	KZN
Adrian Pole Attorneys	Adrian Pole	KZN
Timberwatch	Wally Menne	KZN
ELA KZN	Andrew Muir	KZN
Athlone Park Civic Association/WESSA	Ted Holden	KZN
Amanzimtoti/Upper South Coast		
Anti-Toll Alliance/SDCEA Steering Committee		

PE Meeting	25-Feb
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Institution	Name	Based in
WESSA	Morgan Griffiths	Western Eastern Province
Wilderness Foundation	Andrew Muir	Eastern Cape

George Workshop	26-Feb-09
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Institution	Name	Based in
Plettenberg Bay Community	Julie Carlisle	Southern Cape

Environment Forum		
Plettenberg Bay Community Environment Forum	Elbie Burger	Southern Cape
WESSA	Steve du Toit	Southern Cape
Sedgefield Ratepayers' & Voters' Association	Adv Ray Barrell	Southern Cape
Garden Route Environmental Education Network	Lorraine McGibbon	Southern Cape
Dana Bay Conservancy	Ilona Birch	Southern Cape
Midbrak Bewarea	Tina Bronkhorst	Southern Cape
Guardians of the Garden Route	Vivien Vibert	Southern Cape
Mossel Bay Environmental Partnership	Beverley Boer	Southern Cape
Earthchild Project - Eden	Michele Schubert	Southern Cape
Oceans Initiative	Johnathan Whelan	Southern Cape
Southern Cape Herbarium, Touw River Conservancy, Constantia	Yvette van Wijk	Southern Cape
Kloof Conservancy		
Dana Bay Conservancy	Tony Myles	Southern Cape

Other persons or organisations consulted

Institution	Name	Based in
Cape Bar	Advocate Theoniel Potgieter, Advocate Michelle O'Sullivan	Cape Town
Environmental Law Association	Richard Summers and Justine Sweet	Cape Town
Legal Resources Centre	Angela Andrews, Henk Smith, Anthea Billy, Mandi Mudarikwa, Naseema Fakir	Cape Town, Johannesburg
Women's Legal Centre	Jennifer Williams	Cape Town
Botanical Society	Mark Botha, Charl de Villiers	Cape Town
WWF-SA Table Mountain Fund	Onno Huyser	Cape Town
Environmental Monitoring Group	Stephen Law	Cape Town
UWC Law Faculty	Prof Tobias van Reenen	Cape Town
UCT Law Faculty	Sandy Paterson, John Gibson, Jan Glazewski,	Cape Town
UCT Law Clinic	Bev Bird, Matilda Smith	Cape Town
UCT Environmental Evaluation Unit	Maria Hauck, Rachel Wynberg	Cape Town
University of KZN	Prof Michael Kidd	Pietermaritzburg
IAIA-SA	Ruth Massey, Diane Erasmus	Cape Town
WESSA	Andy Gubb, Louis de Villiers	Cape Town
SAFCEI (South African Faith Communities Environment Institution)	Liz McDaid	Cape Town
Cape Law Society	Caron Jeavon	Cape Town
Cape Law Society Environmental Law Committee	Terry Winstanley	Cape Town
Groundwork	Bobby Peek and Gillian Addison	Pietermaritzburg
Community Coalition for Environmental Justice	Exco of CEJ	Cape Town