

2011 ANNUAL REPORT



Centre for
Environmental Rights

Advancing Environmental Rights in South Africa

Incorporating the annual report of the Environmental Defence Fund 2011

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“THOSE OF US WHO UNDERSTAND THE
COMPLEX CONCEPT OF THE ENVIRONMENT
HAVE THE BURDEN TO ACT. WE MUST NOT TIRE.
WE MUST NOT GIVE UP. WE MUST PERSIST.”

- WANGARI MAATHAI, NOBEL PEACE PRIZE LAUREATE



MESSAGE FROM THE CHAIR - CENTRE FOR ENVIRONMENTAL RIGHTS AND THE ENVIRONMENTAL DEFENCE FUND

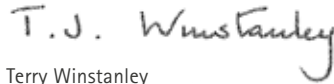
The control and ownership of natural resources, as with all other resources, have always been an intensely political issue - and as such, invariably set the weak and vulnerable against the strong and powerful. Increasing pressures of population and economic growth and aspirations have simply made these struggles more intense; and it is into this maelstrom that the Centre for Environmental Rights has thrown itself.

Like a young revolutionary, the Centre has quickly established itself as a national voice for environmental rights, publicly holding both government and industry to account for their impacts on the environment. It has also started to empower communities and community organisations that wish to right environmental injustices through legal advice and representation.

By contrast, the Environmental Defence Fund stands as a haven of calm. Its primary purpose is to raise funds and hold them secure - away from the hurly-burly of legal challenges, cost orders, and other threats - and to distribute them to the Centre and other causes that promote the realisation of our environmental rights.

There is still much to do and much to learn, but in a very short period we have established two effective organisations with skilled and stable Boards and a clear vision for the future of both the Centre for Environmental Rights and the Environmental Defence Fund.

We are proud to be associated with the Centre and the Fund.



Terry Winstanley
Chair of the Board
Centre for Environmental Rights



Stephen Law
Chair of the Board
Environmental Defence Fund



CENTRE FOR ENVIRONMENTAL RIGHTS - A CATALYST FOR A NEW ERA

THE CENTRE FOR ENVIRONMENTAL RIGHTS (CER) IS THE FIRST NON-PROFIT LAW CLINIC IN SOUTH AFRICA DEDICATED TO THE ADVANCEMENT OF ENVIRONMENTAL RIGHTS. IT WORKS BOTH AT GROUND LEVEL, ASSISTING COMMUNITIES AND ORGANISATIONS TO EXERCISE THEIR ENVIRONMENTAL RIGHTS, AS WELL AS AT A NATIONAL STRATEGIC LEVEL, WORKING TO ENSURE ENVIRONMENTAL GOVERNANCE THAT IS MORE TRANSPARENT, MORE ACCOUNTABLE, AND MORE COMPLIANT WITH THE LAW.

The establishment of the Centre was the result of several years of discussion within the environmental and environmental justice sectors regarding the need to build legal capacity in the sector. In 2009, this discussion developed into a collaborative project aimed at setting up an independent centre that would provide legal support to NGOs, communities and community organisations engaged with the protection of environmental rights. After 10 months of country-wide consultation and comprehensive research, the Centre for Environmental Rights was registered as a non-profit company, and started operating from small premises in Observatory, Cape Town in April 2010.

"IN ITS SHORT EXISTENCE THE CENTRE HAS HAD A MAJOR IMPACT IN DRAWING TOGETHER ENVIRONMENTAL ACTIVISTS OF ALL KINDS AND ESTABLISHING MEANINGFUL RESEARCH PARTNERSHIPS WITH ACADEMIC INSTITUTIONS."

- Prof. Tracy Humby, associate professor at the School of Law, University of Witwatersrand

South Africa has a progressive Constitution that guarantees environmental rights, and comprehensive environmental legislation that makes extensive provision for public participation in environmental policy and decision-making. Despite this, the rate of environmental degradation and the increasingly unsustainable use of natural resources is on the rise. This trend can be ascribed to development pressure on infrastructure and natural resources, coupled with limited government capacity to implement and enforce environmental legislation, particularly at provincial and local level.

In addition, civil society's ability to protect environmental rights and to hold government and industry to account is being hampered by a lack of understanding of how to use complex environmental legislation and procedures, coupled with limited access to funding and legal advice. This particularly adversely affects historically disadvantaged communities and the organisations that represent them.

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. Some of the specific and urgent environmental problems include:

- the impacts of unsustainable mining on water resources, water quality and threatened ecosystems, and the threat posed by the significant environmental damage caused by unsustainable mining to affected communities' health and well-being, livelihoods and prospects of accessing natural resources;
- intense development pressure on environmentally sensitive areas;
- inadequate enforcement response of authorities to violations of environmental laws;
- difficulty in accessing information required to exercise environmental rights;
- attempts to deter and threaten civil society participation in environmental governance, including actual and threatened civil litigation against environmental activists and civil society organisations.

The establishment and effective functioning of the CER provide a solid platform for stakeholders to engage and draw from the strength of coordinated action. The Centre aims to support the effectiveness of the work of our partner organisations by introducing a legal basis for on-going advocacy around environmental protection and sustainable development.

"FROM ITS RECENT INCEPTION THE CER HAS DRAWN A VERY CLEAR LINE IN THE SAND REGARDING CITIZENS' ENVIRONMENTAL RIGHTS."

- Prof. Jan Glazewski, professor in the Institute of Marine and Environmental Law at the University of Cape Town

MESSAGE FROM THE EXECUTIVE DIRECTOR - MELISSA FOURIE



“THE PURPOSE OF THE CENTRE FOR ENVIRONMENTAL RIGHTS IS TO USE THE LAW TO GIVE A VOICE TO OUR INHERENT SENSE OF ENVIRONMENTAL JUSTICE. IN DOING SO, THE CENTRE WILL START TO CHANGE THE BALANCE OF POWER, AND SEND A MESSAGE TO THE RICH AND POWERFUL THAT THE ENVIRONMENT, AND THE RIGHTS OF THOSE WHO DEPEND ON IT, WILL NOT GO UNDEFENDED.”

- MELISSA FOURIE, EXECUTIVE DIRECTOR, CER

SINCE ITS FORMAL ESTABLISHMENT IN APRIL 2010, THE CENTRE HAS ENJOYED ENORMOUS SUPPORT AND ENTHUSIASM FROM FUNDERS, COMMUNITIES, OTHER ORGANISATIONS AND THE MEDIA. I ASCRIBE THIS EXTRAORDINARY INTEREST IN THE CENTRE TO THE SIGNIFICANT NEED FOR AN ORGANISATION DEDICATED TO THE PROMOTION OF ENVIRONMENTAL RIGHTS AND THE LEGAL ASPECTS OF ENVIRONMENTAL GOVERNANCE. SEEING THE CENTRE THROUGH ITS LONG-AWAITED BIRTH AND EARLY YEARS HAS BEEN AN EXCEPTIONAL PRIVILEGE FOR ME.

I passionately believe that neither the democratic system nor the regulatory regime can operate optimally without a duly empowered civil society. To do that, civil society organisations, communities and individuals need to understand what rights and remedies they have in law. They need support and resources to be able to assert those rights and remedies, so as to make those whose actions and decisions affect the environment – private enterprises and governments – understand that all actions are being watched, and where those actions do not comply with the law, there will be consequences.

In our first two years, we have undertaken both case work – working with communities and organisations on the ground – as well as engaging in national legal advocacy for change. I believe that maintaining a balance between these two types of interventions is essential for our effectiveness and credibility.

PRIORITIES

In 2010-2011, in consultation with our stakeholders, we focused on three broad themes. The first and most important is the promotion of greater transparency in

environmental governance as a precondition for the realisation of environmental rights. Our work to date has revealed significant obstacles preventing civil society to access the most basic information about environmental



governance. Most worrying of these is a culture of secrecy among both authorities and private companies.

The second theme is using the law to counter threats to areas of environmental sensitivity and importance, particularly threats posed by a poorly regulated mining sector. The third is to provide support to communities and civil society organisations threatened by strategic litigation against public participation, or so-called "SLAPP suits".

CASE WORK

From the moment the Centre officially opened its doors in April 2010, it started working with communities, community organisations and non-government organisations on specific cases in relation to environmental governance, degradation and non-compliance. During this period, we have assisted communities and organisations in more than 20 cases. Some of these cases are showcased on pages 12 to 16.

The Centre also runs a monthly environmental rights clinic to advise communities and non-government organisations on particular problems, and to assist them to take remedial steps themselves.

In many of our cases we have started to effect change for our clients through strategic legal representation, focused on changing the power dynamic between our clients and the environment on the one hand, and both government departments and industry on the other. As the Centre grows, it will increasingly use the courts to protect our clients' environmental rights and to initiate the development of jurisprudence around environmental rights.

LEGAL ADVOCACY

In the past 18 months the Centre has engaged in a number of high-level, collaborative, strategic interventions where we could get the most effective, most far-reaching outcome. These include leading the following initiatives:

- development and coordination of a civil society legal strategy to promote environmental compliance, transparency and accountability in mining;
- legal advocacy around setting aside certain geographical areas of particular biodiversity and hydrological value from commercial prospecting and mining;
- legal advocacy around slow industry and government response to the threat of acid mine drainage, including representations to Parliament;
- advocacy around the exclusion of civil society organisations from a review of mining legislation, and preparing civil society inputs into this review;
- coordinating civil society inputs into review of a problematic provision in environmental legislation that allows violators to rectify illegal activities without adequate punitive consequences;
- legal advocacy to change the culture of secrecy around environmental governance in both industry and government, including challenging (in collaboration with the Open Democracy Advice Centre) 30 prominent mining companies to voluntarily make all environmental permits available on their websites;
- promotion of improved compliance and enforcement of environmental legislation, and support for civil society organisations' efforts to pursue criminal liability of violators of environmental laws;

- engaging with the Johannesburg Securities Exchange regarding the inclusion of persistent violators of environmental laws in their Socially Responsible Investment Index; and
- bringing together government and civil society stakeholders to design a strategy to improve the regulation of virgin land conversions.

GOVERNANCE AND ORGANISATIONAL CULTURE

In the first 18 months of the Centre's existence we have established principles of governance and organisational culture. The Centre has a board of directors who take an active interest in the Centre's work, and who place great emphasis on their responsibilities. The Centre has adopted policies crucial for its governance, including a financial policy, an employment equity policy and case selection criteria. The Centre is also slowly expanding its team of professionals, mindful of the importance of employing people with the right skills and passion for the work we do.

COMMUNICATION

The Centre has a vibrant website at www.cer.org.za with almost 400 subscribers, many of whom engage with the Centre through comments posted on the website. The website contains updated information about the Centre's work, and is the home of our virtual environmental law library. We also maintain a Facebook page with environmental law news and links, and provide a Twitter feed on current events in environmental law, including cases being argued in court, or important announcements by authorities.

EXPANDING CAPACITY THROUGH PARTNERSHIPS

Since its inception, the Centre has maintained strong and productive partnerships with NGOs and civil society organisations both in the environment and environmental justice sector as well as in the larger legal fraternity and academia. Through these invaluable partnerships, the Centre has access to an astounding amount of expertise to assist it in its work. Within the legal fraternity, the Centre liaises with the attorneys' profession through the Law Society and the Environmental Law Association. It also maintains a relationship with the universities of Cape Town, Witwatersrand, Pretoria, Northwest and KwaZulu-Natal. In addition, the Centre has convened the first Civil Society Environmental Expert Panel, a panel of independent

natural and social science experts who advise the Centre and its clients for free or at a reduced rate.

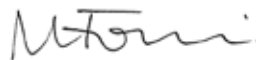
WHAT LIES AHEAD?

From 2012, with the support of our funders, we plan:

- to continue our work on access to information to promote greater transparency in environmental governance to continue our work on access to information to promote greater transparency in environmental governance, particularly advocating for greater voluntary disclosure by both authorities and private enterprises;
- to continue legal representation of and support for communities whose environmental and land rights are being threatened through non-compliant and poorly regulated mining activities;
- to launch a cross-cutting programme on water governance, consisting of strategic legal interventions to counter threats to our freshwater resources, in partnership with a number of environmental and water NGOs;
- to launch a new industrial pollution project to assist three of our partner environmental justice organisations who work on pollution, waste and industrial land use challenges, and
- to launch a cross-cutting project aimed at enhancing the protection of threatened and endangered wildlife, in partnership with a number of conservation NGOs.

CONCLUSION

We thank our funders for their financial support to date, and particularly for their faith in us as a new organisation. We continue to work to increase long-term funding to expand our all-important human resource capacity. I would also like to thank our boards of directors for their many volunteer hours, and the team at the Centre for Environmental Rights for their passion and commitment.



Melissa Fourie
Executive Director
Centre for Environmental Rights

“THE PROTECTION OF ENVIRONMENTAL RIGHTS WILL NOT ONLY DEPEND ON THE DILIGENCE OF PUBLIC OFFICIALS, BUT ON THE EXISTENCE OF A LIVELY CIVIL SOCIETY WILLING TO LITIGATE IN THE PUBLIC INTEREST.”

- CONSTITUTIONAL COURT JUDGE ALBIE SACHS, AT THE LAUNCH OF THE CER, AUGUST 2010



WHAT WE DO

THE CENTRE FOR ENVIRONMENTAL RIGHTS HAS FOUR BROAD PROGRAMMES OF WORK

PROGRAMME 1

PROMOTING PARTICIPATION, AIMED AT FACILITATING EFFECTIVE CIVIL SOCIETY PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING

PROGRAMME 2

EXERCISING ENVIRONMENTAL RIGHTS, AIMED AT PROVIDING LEGAL ADVICE AND REPRESENTATION FOR THE EXERCISING OF ENVIRONMENTAL RIGHTS

PROGRAMME 3

ENVIRONMENTAL LAW INFORMATION HUB, AIMED AT PROVIDING INFORMATION TO CIVIL SOCIETY AND COMMUNITIES ABOUT ENVIRONMENTAL RIGHTS

PROGRAMME 4

CAPACITY BUILDING, TRAINING AND SUPPORT OF INTERNS AND STAFF FROM OUR PARTNER ORGANISATIONS

To date, the Centre has prioritised the following themes that cut across all four programmes of work, and are implemented through our work with a number of legal, environmental and environmental justice NGOs, communities and community organisations:

- ✔ **environmental compliance, transparency and accountability in the mining sector;**
- ✔ **transparency in environmental governance** through greater access to information, and
- ✔ **threats to public participation**, including through threatened and actual strategic litigation against public participation (SLAPP suits).

The Centre has also commenced preparatory work on two new themes prioritised by our members, stakeholders and partner organisations, to be rolled out from 2012:

- ✔ **water governance:** strategic legal interventions to counter threats to our freshwater resources, and
- ✔ **wildlife defence:** using the law to enhance the protection of threatened and endangered wildlife.

PROGRAMME 1: PROMOTING PARTICIPATION

PROMOTING PARTICIPATION IS A PROGRAMME FOCUSED ON ASSISTING CIVIL SOCIETY ORGANISATIONS IN EFFECTIVE PARTICIPATION IN ENVIRONMENTAL GOVERNANCE. IN THIS PROGRAMME, THE CENTRE GIVES SUPPORT AND ADVICE ON PROBLEM CASES, PARTICULARLY LICENSING AND OTHER DECISION-MAKING PROCESSES, AND ENVIRONMENTAL IMPACT ASSESSMENT (EIA) PROCESSES. IT ALSO MAKES STRATEGIC SUBMISSIONS AT A NATIONAL LEVEL REGARDING ENVIRONMENTAL RULE AND DECISION-MAKING.

SEA VISTA

In 2010, the community of Sea Vista found themselves embroiled in an application for an environmental authorisation by parastatal Eskom for a new nuclear power station 11 km from their homes outside the small town of St Francis Bay in the Eastern Cape. The assessment of the impacts of a proposed nuclear power station is technically complex, politically fraught and procedurally challenging, and the community needed help to ensure that they were properly consulted in the application. In particular, they wanted reliable, independent information about how the proposed power station would affect their lives should authorisation be granted. They also wanted the process to be fair and inclusive, and to allow the residents of Sea Vista to read, hear and understand what is being proposed in their own languages (Xhosa and Afrikaans).

ACTION TAKEN

The Centre has assisted the community in their interactions with Eskom, the Department of Environmental Affairs and the environmental assessment practitioners appointed by Eskom to ensure that their rights are being respected. Due to the Centre's intervention, portions of the specialist studies that form part of the environmental impact report have been translated in Xhosa and Afrikaans, and an additional open day and public meeting have been held in Sea Vista. The Centre is also working to secure a meeting for the community with the National Nuclear Regulator regarding nuclear safety, which is of major concern to the residents, particularly since the disastrous effect of the 2011 earthquake and tsunami on the Daiichi nuclear power station in Fukushima, Japan.



ABOVE: The assessment of the impacts of a proposed nuclear power station is technically complex, politically fraught and procedurally challenging.

SHALE GAS EXPLORATION IN THE KAROO

In early 2011, South Africans became aware of applications for exploration rights for shale gas in the Karoo basin by energy giant Shell and two smaller energy companies. These companies propose using hydraulic fracturing (commonly known as fracking) to extract shale gas. Fracking has raised international controversy due to a range of environmental risks associated with this methodology, particularly risks posed to water resources.

In South Africa, the fracking applications, brought under the 2002 Mineral and Petroleum Resources Development Act (MPRDA), exposed many of

the weaknesses of the separate environmental regulation regime for the mining and exploration sectors - the legacy of many years of preferential regulatory treatment in the interest of economic development. In particular, the MPRDA does not require a full environmental impact assessment of the proposed process, but merely the preparation of an environmental management plan, to be completed within 120 days, without taking into account the vast 90 000m² area and the thousands of people affected directly and indirectly by the proposed exploration.

ACTION TAKEN

The Centre has focused on challenging the applicable legislative regime at a national level, as well as providing information and support to vulnerable communities affected by these exploration right applications. In April 2011, the Centre submitted a detailed motivation for an extension of the deadline for comments on the proposal to the Petroleum Agency of South Africa (PASA). In June 2011, in collaboration with partner organisation WESSA (Wildlife and Environment Society of South Africa), the Centre rolled out a series of community environmental rights workshops at 20 towns across the Karoo to provide information on environmental rights, and on the proposed exploration. The CER has provided feedback from these workshops to PASA and made an urgent recommendation for further consultation with marginalised communities.

Rodney van Rooyen, Middelburg: *"Hierdie werkswinkel het my insig gegee oor die voordele sowel as die nadele van boor van skaliegas en die vernietiging van ons kosbare Karoo."*

Fatyelwa Eveline, Richmond: *"Call all community members and give them this important information because I believe they are not aware of what is coming."*

Sarah Lott, Victoria-West: *"Dit was vir my nuwe lig, ek het so min van die gasekplorاسie projek geweet. Dit was baie nuttig, sal graag meer inligting met verloop van tyd wil hê."*

CIVIL SOCIETY ENVIRONMENTAL EXPERT PANEL

The Centre has established a panel of natural and social science experts dedicated to advancing environmental rights and the empowerment of civil society by giving their time and expertise for free to assist the Centre in its work. This Panel meets periodically to discuss burning issues and trends, and works to build a growing database of experts to advise the Centre in its cases, advocacy and peer review on various matters.

LEGAL ADVOCACY

The Centre has created opportunities for civil society inputs into the early stages of legislative development through its relationship with key government departments. The CER has, in its own name and on behalf of other NGOs, made submissions on specific legislative change with both authorities and the legislature.



FORCING ACTION ON ACID MINE DRAINAGE

The Centre has been working with partners Federation for a Sustainable Environment, Earthlife Africa Johannesburg and others to speed up government action on the challenges of acid mine drainage, particularly on the West Rand.

ACTION TAKEN

In early 2011, the Centre, acting on behalf of environmental activists, used the Promotion of Access to Information Act to get an expert report by the Inter-Ministerial Task Team on Acid Mine Drainage released. It also made detailed submissions at hearings in Parliament on, inter alia, the historical liability of mining companies for acid mine drainage.

FUNDING OPPORTUNITIES

From 2012, we would like to partner with existing and new funders to achieve the following:

- grow our legal capacity and expertise on this programme with the assistance of an environmental lawyer with experience in EIAs and land use change;
- make our guidelines and other resources available on our website, and in published format for communities without access to the internet; and
- integrate the work under this programme more closely into the CER's other programmes, and with existing conservation and sustainable development projects managed by our partners.



ABOVE: In June and July 2011, in collaboration with WESSA, the CER's Junaid Francis and Andy Gubb led a series of community workshops on environmental rights, shale gas exploration and hydraulic fracturing in 17 towns across the Karoo.

WHAT WE DO

PROGRAMME 2: EXERCISING ENVIRONMENTAL RIGHTS

THROUGH OUR **EXERCISING ENVIRONMENTAL RIGHTS PROGRAMME**, THE CENTRE'S ATTORNEYS PROVIDE LEGAL SERVICES TO ENVIRONMENTAL CIVIL SOCIETY ORGANISATIONS AND COMMUNITIES WHO WISH TO EXERCISE THEIR ENVIRONMENTAL RIGHTS.

FREE LEGAL SERVICES INCLUDE:

- expert legal advice on rights and remedies available in terms of environmental law;
- the written assertion of rights, negotiation and dispute resolution, and
- effective reporting of non-compliance to competent authorities.

The Centre hosts a free monthly Environmental Rights Clinic where clients can ask advice from our attorneys in person or by telephone. The Clinic prioritises shared learning and aims to assist communities, community organisations and NGOs to undertake remedial steps themselves.

The Centre also institutes legal proceedings, either as attorney of record or as *amicus curiae* (friend of the court). These interventions are reserved for cases in which important legal precedents can be set with far-reaching implications for civil society, the realisation of environmental rights and improved environmental governance.

FUNDING OPPORTUNITIES

From 2012, we would like to partner with existing and new funders to achieve the following:

- continue our work for communities and NGOs on cases involving environmental violations by mining companies;
- continue our work for communities and non-government organisations in battles over access to information;
- use the findings and recommendations of our Transparency in Environmental Governance Project for advocacy for change, both with private companies and with regulators;
- start to take on cases in our new water governance project with the assistance of attorneys with expertise in water law, and
- take on cases in our new wildlife defence project with the assistance of attorneys with both criminal and civil expertise in biodiversity and conservation law.

BATLHABINE FOUNDATION

The Batlhabine Foundation is a community organisation based near Tzaneen in Limpopo that approached the CER to assist them in addressing the non-compliance and lack of rehabilitation by a clay mine on community land.

ACTION TAKEN

Through the Centre's intervention, the mining company committed to take all steps necessary to address its non-compliance, and appointed an independent consultant to recommend measures to be implemented to comply with environmental legislation. Engagement with the mining company will continue until there is full compliance. According to Mashile Phalane of the Batlhabine Foundation, the CER has given the Foundation significant legal assistance. "The passion and knowledge of the staff members have contributed to this achievement. As the Batlhabine Foundation we still rely on the CER to get more information and to assist us in litigation. The benefit of the work is being felt by the community now as the company is coming to the table to negotiate."



ABOVE: Two members of the Batlhabine Foundation point out soil erosion damage caused by illegal clay mining in Limpopo.



ABOVE: A resident of Davidsonville shows where acid water decants into a wetland, and staff attorney Dina Townsend inspects damage caused by acid mine drainage on the West Rand.

DAVIDSONVILLE

The community of Davidsonville is one of the many communities on the Witwatersrand affected by the environmental impacts of unrehabilitated, unmanaged slimes dams of mines that have ceased operations. Despite past legal proceedings and a court order granted against both local and national government, no action has been taken by either to address the impacts of fine dust, polluted and uncontrolled run-off and seepage of acid mine drainage from the abandoned slimes dam at the Durban Roodepoort Deep mine.

ACTION TAKEN

The Centre is engaging with the City of Johannesburg and pressuring the Department of Mineral Resources to take the appropriate and necessary action to rehabilitate the slimes dams. The Centre is also in the process of challenging a prospecting right that has been issued over the dams without proper compliance with the requirements of the Mineral and Petroleum Resources Development Act, 2002.

MADADENI

The Madadeni Mining Committee, representing concerned community members living near Komatipoort in Mpumalanga, approached the Centre for Environmental Rights to assist the community in asserting their rights in the face of unlawful mining activities on land adjacent to and traditionally utilised by the Madadeni community. The Batlabane, Davidsonville and Madadeni cases form part of a project funded by the Ford Foundation.

ACTION TAKEN

The Centre is assisting the community in exercising their rights to be consulted and participate in various applications for environmental authorisations required by the mining company to commence lawful mining. On behalf of the community the Centre is also challenging the mine's inadequate environmental management programme.



ABOVE: Consulting with the Madadeni community in eastern Mpumalanga about illegal mining of a watercourse.

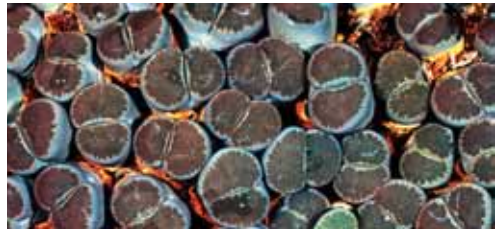


NAMAQUALAND MINES

In 2010, in anticipation of the proposed sale of its marginal Namaqualand Mines on the West Coast, diamond mining giant De Beers made application to the Minister of Mineral Resources to amend its environmental rehabilitation obligations. It did so without consulting interested and affected parties, and insisted that the company is not legally obliged to undertake such participation procedures.

ACTION TAKEN

The Centre for Environmental Rights, representing Conservation South Africa, is challenging this approach on the basis that it infringes on principles of administrative justice, and has threatened to approach the court to set aside the proposed amended environmental management programme and any proposed transfer of mining rights to the purchaser of the Namaqualand Mines. This case can set a significant precedent, as it challenges the practice in the mining industry of amending environmental obligations without public scrutiny.



TOP RIGHT: Prospecting trench at Namaqualand Mine where a new sale deal has triggered environmental concerns on how these disturbances in a globally recognised and nationally prioritised hotspot will be addressed.

BOTTOM: Disturbed landscape from 80 years of diamond mining by De Beers along the Namaqualand coast has left an area of pits and dumps that is equivalent to the size of 2 000 football fields.

MAPUNGUBWE WORLD HERITAGE SITE AND THE PROPOSED VELE COLLIERY

In 2010, the Department of Mineral Resources granted a mining right for a large coal mine a few kilometers from the Mapungubwe National Park and World Heritage Site, despite stiff opposition not only from NGOs, but also initially from the Department of Environmental Affairs.

A coalition of seven environmental and heritage non-government organisations, represented by the Centre for Applied Legal Studies, challenged this mining right, both through an administrative appeal to the Minister

of Mineral Resources as well as through interdict proceedings in the High Court.

In support of the Centre for Applied Legal Studies, the Centre for Environmental Rights is representing the Coalition in an appeal against an *ex post facto* authorisation and rectification of illegal activities at the site, as well as an appeal to the Water Tribunal to challenge a water use licence granted for the proposed mine.



“I FEEL THIS GREAT SENSE OF RELIEF SIMPLY KNOWING THE CENTRE EXISTS. THE ROLE THE CENTRE PLAYS IS SO IMPORTANT, AND SO ESSENTIAL TO GOOD GOVERNANCE AND THE PURSUIT OF SOCIAL AND ENVIRONMENTAL JUSTICE. WORKING FOR THE CENTRE MEANS WORKING FOR THE REALISATION OF RIGHTS, BREATHING LIFE INTO SECTION 24 OF THE CONSTITUTION AND VIGOROUSLY DEFENDING COMMUNITIES AND ECOSYSTEMS. IT IS AN EXTRAORDINARY PRIVILEGE TO BE A PART OF THAT.”

- DINA TOWNSEND, STAFF ATTORNEY, CER

KEY PROJECT: TRANSPARENCY IN ENVIRONMENTAL GOVERNANCE

Many South African private companies are used to keeping private as much information about their environmental impacts as possible. This attitude is, unfortunately, facilitated by government departments who are either inept at implementing access to information legislation, or actively seek to keep information from civil society. Without access to information, the realisation of environmental rights is fundamentally undermined.

For example, civil society organisations encounter massive resistance to requests for basic documents like environmental permits. Government departments generally only provide these documents in response to a formal request under the Promotion of Access to Information Act (PAIA), which frequently takes many months to process in violation of obligations under this Act. Private companies generally refuse access to these documents on principle. Without these permits, affected parties cannot establish what the rules are, and cannot assess whether there is compliance with those rules or not.

With the assistance of funding from the Open Society Foundation of South Africa, the Centre is implementing a project entitled *Transparency in Environmental Governance*.

The key objectives of this project are:

- to try to access key information regarding environmental governance and compliance from both regulators and private companies through both formal requests and through PAIA;
- where necessary, to challenge refusals to provide key information on these issues through appeals and legal action, and
- to publish all information on environmental governance and compliance and the process undertaken to achieve this.

As at June 2011, the Centre has submitted more than 40 formal requests for information and 62 applications under PAIA. The requested information has been provided in no more than eight of these cases. At least one of these cases is likely to culminate in legal proceedings. If successful, it will set a precedent on access to information for similar future cases. The Centre will publish a report on this project early in 2012, setting out lessons learnt and recommendations and strategies for change.

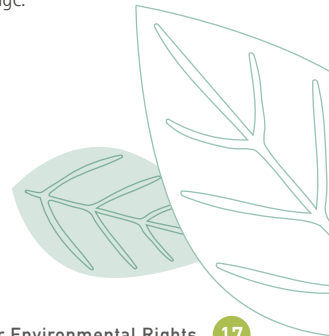
KEY PROJECT: ENVIRONMENTAL COMPLIANCE, TRANSPARENCY AND ACCOUNTABILITY IN MINING

As a result of past environmental damage by mining companies and a flood of new prospecting and mining rights being awarded, the quality of South Africa's precious water and other natural resources is deteriorating rapidly, with generally inadequate provision made by mining companies for the rehabilitation of their environmental impacts. Marginalised and vulnerable communities tend to be more reliant on natural resources, and it is these communities that are most detrimentally affected by the lack of environmental compliance by mining companies, including environmental rehabilitation after the end of the life of the mine.

Despite the ongoing environmental impacts of non-compliance, the lack of major political support for environmental compliance and enforcement, there is very little attempt by authorities to hold the mining companies who fail to comply with environmental laws accountable through civil, administrative or criminal action. This means that mining companies, their management and their shareholders simply do not perceive any real business risk in their failure to comply with environmental laws.

In 2009, the Centre and a number of partner organisations launched a national civil society strategy to promote environmental compliance, transparency and accountability in mining. This strategy, already in its third version, consists of 20 legal interventions, including research, advocacy and precedent-setting litigation. Many of these interventions are being implemented by the Centre and its partners and a number of the interventions are part of a CER project funded by the Ford Foundation.

This strategy has created a platform for non-government and community organisations to share information, coordinate efforts and design legal interventions for maximum impact and change.





WHAT WE DO

PROGRAMME 3: ENVIRONMENTAL INFO HUB

THE CENTRE HAS A VIBRANT WEBSITE AT WWW.CER.ORG.ZA WITH ALMOST 400 SUBSCRIBERS, MANY OF WHOM ENGAGE WITH THE CENTRE THROUGH COMMENTS POSTED ON THE WEBSITE. THE WEBSITE CONTAINS UPDATED INFORMATION ABOUT THE CENTRE'S WORK, AND IS ALSO THE HOME OF OUR VIRTUAL ENVIRONMENTAL LAW LIBRARY.

This library contains:

- digital copies of environmental legislation with guidance on the myriad of subordinate legislation and declarations;
- key environmental law court judgements with media coverage of those judgements;
- a list of Parliamentary questions and answers on water, environmental management, mining, waste and air quality;
- key government reports on environmental matters;
- coverage of the Centre's work, including correspondence with government departments, ministries and industry role-players.

-  We also maintain a well-visited Facebook page with environmental law news and links, and provide a
-  Twitter feed on current events in environmental law, including cases being argued in court, or important announcements by authority.

FUNDING OPPORTUNITIES

The Centre would like to partner with new and existing funders to develop its website into a more interactive and informative communication tool, through:

- growing its virtual environmental law library;
- hosting a regular series of film clips on the Centre's work and environmental law changes;
- creating opportunities for members of our Civil Society Environmental Expert Panel to share expertise on burning issues;
- publishing an automated monthly newsletter for website users and other stakeholders; and
- developing a Wiki on environmental law and remedies for use by civil society.

PROJECT: MINING AND ENVIRONMENT CIVIL SOCIETY NETWORK AND RESEARCH

As part of the Centre's coordination of the Civil Society Legal Strategy to Promote Environmental Compliance, Transparency and Accountability in Mining, it maintains a network of civil society role-players on mining and environment.

It also supports two key research projects essential for strategic legal advocacy:

- an inventory of reported and unreported judgements and rulings on mining and environment, in collaboration with the University of the Witwatersrand Law School; and
- an assessment of financial provisions for rehabilitation and closure in mining, in collaboration with WWF South Africa and the University of Cape Town.

www.cer.org.za

WHAT WE DO

PROGRAMME 4: CAPACITY BUILDING

THE CENTRE PRIORITISES TRAINING AND CAPACITY-BUILDING WITHIN THE NGO SECTOR THROUGH AN INTERNSHIP AND TRAINING PROGRAMME, IN PARTNERSHIP WITH NGO STAKEHOLDERS, PROFESSIONAL ASSOCIATIONS, LOCAL UNIVERSITIES AND INTERNATIONAL INSTITUTIONS.

In its first year, the Centre hosted four volunteer interns:

- Sibongile Kotela (Diploma in Environmental Management student at Cape Peninsula University of Technology)
- Claire le Roux (LLM student at University of Cape Town)
- Olivia Rumble (LLM student at University of Cape Town)
- Unathi Sobekwa (Diploma in Environmental Management student at Cape Peninsula University of Technology)

In 2011, the Centre is employing:

- Junaid Francis, a project officer on our Promoting Participation Programme.
- Christine Reddell (LLM student at the University of Cape Town), a legal intern on our Exercising Environmental Rights Programme; and

Where possible, the Centre also accepts applications from self-funded volunteer local and international law graduates. In 2011, the Centre is hosting volunteer intern Kate Swart, an LLM student at the University of Cape Town.

The Centre's interns work closely with attorneys and are regarded as part of the work team. They are expected to take responsibility and initiative in a responsible way, but attorneys are also expected to teach and guide the interns so that they leave the Centre with a sound understanding of the challenges faced by civil society in realising their environmental rights.

"It was an immense privilege to have the opportunity to volunteer at the Centre. The kinds of matters that are being challenged by the Centre, the talent and passion with which they are pursued, and the creativity and commitment of its leaders has been both encouraging

and exciting. I am grateful to have played a small part in this work and have gained immensely through the legal insight and practical training I received there. I wish the Centre well in all its endeavours with the certainty that it will play a pivotal role in the realisation of environmental rights far into the future." *Olivia Rumble, volunteer intern 2010.*

"The CER has provided me with an opportunity to expand my skills base. I have thoroughly enjoyed the chance to work with excellent professionals and learn as much as I can. I enjoy the prospect of travelling across South Africa and interacting with various communities." *Junaid Francis, project officer, Promoting Participation Programme, 2011.*



Sibongile Kotela



Unathi Sobekwa



Christine Reddell



Junaid Francis

ENVIRONMENTAL DEFENCE FUND



The Environmental Defence Fund was established as an independent non-profit company to provide a separate funding vehicle for the work of the Centre for Environmental Rights, but also for environmental public interest litigation in general. The Fund shares the Centre's mission of advancing environmental rights in South Africa.

While the Centre for Environmental Rights applies for project funding in its own name, donors have the option of making the donation into the Environmental Defence Fund.

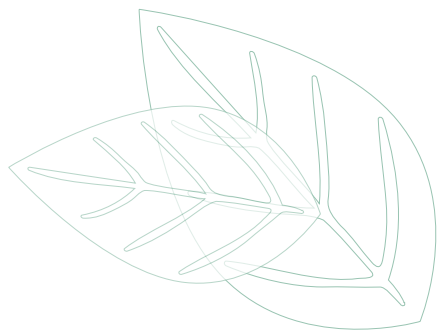
In terms of its constitution, the Fund is obliged to use all donations first to fund the operations of the Centre for Environmental Rights. Should surplus funds be available, the Fund may also apply those funds to the work of other organisations with similar objectives to that of the CER.

The Board anticipates that a growing proportion of funding in the Environmental Defence Fund will be allocated to the Centre for Environmental Rights as its capacity and impact grow.

All general donations in support of the work of the Centre, and for environmental public interest litigation in general, are accepted by the Environmental Defence Fund.

The Fund also encourages individuals to include a bequest in favour of the Fund in their wills. Bank details are available on page 21. For any information about donations to the Fund, please email edf@cer.org.za.

In 2010, in partnership with a public benefit trust, the Fund issued its first call for applications for the funding of legal costs in environmental public interest litigation. In approved cases, attorneys' and counsel's fees are paid directly, and in successful cases, costs recovered are repaid to the Fund to replenish funds available for future cases.



CASES CURRENTLY SUPPORTED BY THE FUND INCLUDE:

- Legal action to set aside authorisation for a proposed development against the steep slopes of the mountain in Gordon's Bay which would fall outside the urban edge and within the buffer zone of the Kogelberg Biosphere Reserve.
- Legal action to set aside authorisations for a giant golf course and residential development at Lagoon Bay which would constitute unsustainable coastal ribbon development and affect important ecosystems.
- Legal action to set aside an authorisation granted to a developer that threatens the indigenous Phiphidi forest and waterfall in Limpopo. The Phiphidi Waterfall is a sacred site for the Ramunangi Clan, whose elders are bringing the legal proceedings with the assistance of a community-based organisation.



PHIPHIDI WATERFALL AND FOREST

Phiphidi Forest Reserve and Waterfall falls within the eastern Soutpansberg mountain range and is one of the few remaining patches of indigenous forest in this area which is remarkable for its diversity of species, both flora and fauna. In many parts of the world, it is the indigenous peoples who are protecting the forests, the rivers, and the land from exploitation, because not only do they depend on it, but they also have a deep spiritual link with the earth, which most westernized peoples have lost. In this case, the Ramunangi Clan, as custodian of the sacred site at the Phiphidi Waterfall, seeks to have the environmental authorisation issued by the Limpopo Department of Environmental Affairs for the development of a tourist resort set aside on review. The Fund is supporting legal proceedings brought in the Limpopo High Court by the elders in the Ramunangi Clan as well as community-based organisation, Dzomo la Mupo.

To continue the valuable work of the Centre for Environmental Rights and the Environmental Defence Fund, the Fund welcomes all donations. Donations may be made anonymously or will be kept confidential if donors so wished. The Centre and Fund both report annually to its members and funders on their activities and the application of all funding received.

HOW TO DONATE

OUR BANK DETAILS

Bank:	Nedbank	Account holder:	Environmental Defence Fund
Branch:	Claremont	Account number:	1008440019
Branch code:	10460901	Account type:	Current account



ANNUAL FINANCIAL STATEMENTS - CENTRE FOR ENVIRONMENTAL RIGHTS

FOR THE YEAR ENDED 28 FEBRUARY 2011

DIRECTORS' RESPONSIBILITIES AND APPROVAL

The directors are required by the Companies Act of South Africa, to maintain adequate accounting records and are responsible for the content and integrity of the financial statements and related financial information included in this report. It is their responsibility to ensure that the financial statements fairly present the state of affairs of the company as at the end of the financial year and the results of its operations and cash flows for the period then ended, in conformity with the Internal Financial Reporting Standard for Small and Medium-sized Entities. The external auditors are engaged to express an independent opinion on the financial statements.

The financial statements are prepared in accordance with the Internal Financial Reporting Standard for Small and Medium-sized Entities and are based upon appropriate accounting policies consistently applied and supported by reasonable and prudent judgments and estimates.

The directors acknowledge that they are ultimately responsible for the system of internal financial control established by the company and place considerable importance on maintaining a strong control environment. To enable the directors to meet these responsibilities, the board sets standards for internal control aimed at reducing the risk of error or loss in a cost effective manner. The standards include the proper delegation of responsibilities within a clearly defined framework, effective accounting procedures and adequate segregation of duties to ensure an acceptable level of risk. These controls are monitored throughout the company and all employees are required to maintain the highest ethical standards in ensuring the company's business is conducted in a manner that in all reasonable circumstances is above reproach. The focus of risk management in the company is on identifying, assessing, managing and monitoring all known forms of risk across the company. While operating risk cannot be fully eliminated, the company endeavours to minimise it by ensuring that appropriate infrastructure, controls, systems and ethical behaviour

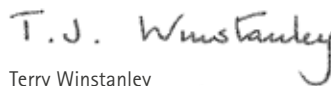
are applied and managed within predetermined procedures and constraints.

The directors are of the opinion, based on the information and explanations given by management, that the system of internal control provides reasonable assurance that the financial records may be relied on for the preparation of the financial statements. However, any system of internal financial control can provide only reasonable, and not absolute, assurance against material misstatement or loss.

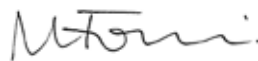
The directors have reviewed the company's cash flow needs for the year to 29 February 2012 and, in the light of this review and the current financial position, they are satisfied that the company has or has access to adequate resources to continue in operational existence for the foreseeable future.

The external auditors are responsible for independently reviewing and reporting on the company's financial statements. The financial statements have been examined by the company's external auditors and their report is presented on page 23.

The financial statements set out on pages 24 to 30, which have been prepared on the going concern basis, were approved by the board on 13 April 2011 and were signed on its behalf by:



Terry Winstanley
Chair of the Board: Centre for Environmental Rights
13 April 2011



Melissa Fourie
Executive Director: Centre for Environmental Rights
13 April 2011

INDEPENDENT AUDITORS' REPORT

TO THE MEMBERS OF THE CENTRE FOR ENVIRONMENTAL RIGHTS

We have audited the financial statements of the Centre for Environmental Rights, which comprise the statement of financial position as at 28 February 2011, and the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory notes, and the directors' report, as set out on pages 24 to 30.

DIRECTORS' RESPONSIBILITY FOR THE FINANCIAL STATEMENTS

The company's directors are responsible for the preparation and fair presentation of these financial statements in accordance with the International Financial Reporting Standard for Small and Medium-sized Entities, and in the manner required by the Companies Act of South Africa. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

AUDITORS' RESPONSIBILITY

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness

of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

OPINION

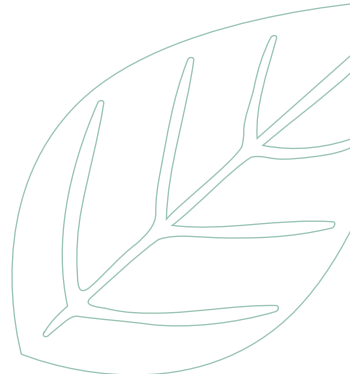
In our opinion, the financial statements present fairly, in all material aspects, the financial position of the Centre for Environmental Rights as at 28 February 2011, and its financial performance and its cash flows for the year then ended in accordance with the International Financial Reporting Standard for Small and Medium-sized Entities, and in the manner required by the Companies Act of South Africa.

OTHER MATTER

Without qualifying our opinion, we draw attention to the fact that supplementary information set out on page 30 does not form part of the financial statements and is presented as additional information. We have not audited this information and accordingly do not express an opinion thereon.



Hanley Hudson
Registered Auditor
13 April 2011
Cape Town



DIRECTORS' REPORT

The directors submit their report of the year ended 28 February 2011.

1. INCORPORATION

The same company was incorporated in South Africa on 28 October 2009 and obtained its certificate to commence business on the same day.

2. REVIEW OF ACTIVITIES

Main business and operations

The company is a non-profit public benefit organisation engaged in the advancement of environmental rights in South Africa.

The operating results and state of affairs of the company are fully set out in the attached financial statements. The company commenced operations in March 2010 and has exempt tax status in terms of Section 10(1) and Section 18A of the Income Tax Act.

Registered office	Business address
8A Sussex Road Observatory Cape Town 7925	8A Sussex Road Observatory Cape Town 7925

3. GOING CONCERN

The financial statements have been prepared on the basis of accounting policies applicable to a going concern. This basis presumes that funds will be available to finance future operations and that the realisation of assets and settlement of liabilities, contingent obligations and commitments will occur in the ordinary course of business.

4. EVENTS AFTER THE REPORTING PERIOD

The directors are not aware of any matter or circumstance arising since the end of the financial year.

5. DIRECTORS

The directors of the company during the year and to the date of this report are as follows:

Name	Nationality
Ah Shene Carolyn	South African
Eastwood Josie	South African
Fourie Melissa	South African
Law Stephen	South African
Ratsheko Tshoko	South African
Smith Louis	South African
Winstanley Terry	South African

6. AUDITORS

Hanley Hudson will continue in office in accordance with Section 270(2) of the Companies Act.

STATEMENT OF FINANCIAL POSITION

FIGURES IN RAND	NOTE(S)	2011
Assets		
Non-Current Assets		
Fixed assets	2	29 535
Current Assets		
Trade and other receivables	3	5 700
Cash and cash equivalents	4	1 629 248
		1 634 948
TOTAL ASSETS		1 664 483
Equity and Liabilities		
Equity		
Retained income		1 608 841
Liabilities		
Current Liabilities		
Trade and other payables	5	55 642
TOTAL EQUITY AND LIABILITIES		1 664 483

STATEMENT OF COMPREHENSIVE INCOME

FIGURES IN RAND	NOTE(S)	2011
Revenue	6	2 249 887
Administrative fee income		25 000
Operating expenses		(666 046)
Operating surplus		1 608 841
Surplus for the year		1 608 841
Other comprehensive income		-
TOTAL SURPLUS FOR THE YEAR		1 608 841

STATEMENT OF CHANGES IN EQUITY

FIGURES IN RAND	RETAINED INCOME	TOTAL EQUITY
Balance at 01 March 2010	-	-
Changes in equity		
Total surplus for the year	1 608 841	1 608 841
Total changes	1 608 841	1 608 841
Balance at 28 February 2011	1 608 841	1 608 841

STATEMENT OF CASH FLOWS

FIGURES IN RAND	NOTE(S)	2011
Cash flow from operating activities		
Cash generated from operations	7	1 664 143
Cash flows from investing activities		
Purchase of fixed assets	2	(34 895)
Total cash movement for the year		1 629 248
TOTAL CASH AT END OF YEAR	4	1 629 248

ACCOUNTING POLICIES

1. PRESENT OF FINANCIAL STATEMENTS

The financial statements have been prepared in accordance with the International Financial Reporting Standard for Small and Medium-sized Entities, and the Companies Act of South Africa. The financial statements have been prepared on the historical cost basis, and incorporate the principal accounting policies set out below. They are presented in South African Rands.

1.1 FIXED ASSETS

Fixed assets are tangible items that:

- are held for use in the production or supply of goods or services, for rental to others or for administrative purposes; and
- are expected to be used during more than one period.

Costs include costs incurred initially to acquire or construct an item of fixed assets and costs incurred subsequently to add to, replace part of, or service it. If a replacement cost is recognised in the carrying amount of an item of fixed assets, the carrying amount of the replaced part is derecognised.

Fixed assets are carried at cost less accumulated depreciation and any impairment losses.

Depreciation is provided using the straight-line method to write down the cost, less estimated residual value over the useful life of the fixed assets, which is as follows:

Item	Average useful life
IT equipment	3 years

The residual value, depreciation method and the useful life of each asset are reviewed at each annual reporting period if there are indicators present that there is a change from the previous estimate.

Each part of an item of fixed assets with a cost that is significant in relation to the total cost of the item and has significantly different patterns of consumption of economical benefits is depreciated separately over its useful life.

Gains and losses on disposals are determined by comparing the proceeds with the carrying amount and are recognised in profit or loss in the period.

1.2 FINANCIAL INSTRUMENTS

Financial instruments at amortised cost

Financial instruments may be designated to be measured at amortised cost less any impairment using the effective interest method. These include trade and other receivables, loans and trade and other payables. At the end of each reporting period date, the carrying amounts of assets held in this category are reviewed to determine whether there is any objective evidence of impairment. If so, an impairment loss is recognised.

Financial instruments at cost

Equity instruments that are not publicly traded and whose fair value cannot otherwise be measured reliably are measured at cost less impairment. This includes equity instruments held in unlisted investments.

Financial instruments at fair value

All other financial instruments are measured at fair value through profit and loss.

1.3 IMPAIRMENT OF ASSETS

The company assesses at each reporting period date whether there is any indication that an asset may be impaired. If any such indication exists, the company estimates the recoverable amount of the asset.

Irrespective of whether there is any indication of impairment, the company also:

- tests goodwill, with an indefinite useful life or intangible assets not yet available for use for impairment annually by comparing its carrying amount with its recoverable amount. This impairment test is performed during the annual period and at the same time every period.

If there is any indication that an asset may be impaired, the recoverable amount is estimated for the individual asset. If it is not possible to estimate the recoverable

amount of the individual asset, the recoverable amount of the cash-generating unit to which the asset belongs is determined.

If an impairment loss subsequently reverses, the carrying amount of the asset (or group of related assets) is increased to the revised estimate of its recoverable amount (selling price less costs to complete and sell, in the case of inventories), but not in excess of the amount that would have been determined had no impairment loss been recognised for the asset (or group of assets) in prior years. A reversal of impairment is recognised immediately in profit or loss.

1.4 REVENUE

Grant and donation income is recorded as income when received.



NOTES TO THE FINANCIAL STATEMENTS

FIGURES IN RAND

2011

2. Fixed assets

	2011		
	Cost / Valuation	Accumulated depreciation	Carrying value
IT equipment	34 895	(5 360)	29 535

Reconciliation of fixed assets – 2011

	Opening balance	Additions	Depreciation	Total
IT equipment	-	34 895	(5 360)	29 535

A register containing the information required by paragraph 22(3) of Schedule 4 of the Companies Act is available for inspection at the registered office of the company.

3. Trade and other receivables

Deposits	5 700
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4. Cash and cash equivalents

Cash and cash equivalents consist of:

Bank balance	1 629 248
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5. Trade and other payables

Accrued expenditure	55 642
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6. Revenue

Grants received from: Ford Foundation (R1 016 828), Table Mountain Fund (R800 000), Global Greengrants Fund (R308 060), Open Society Foundation of South Africa (R100 000) and the International Association of Impact Assessment South Africa (R25 000).	2 249 887
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7. Cash generated from operations

Profit before taxation	1 608 841
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Adjustments for:

Depreciation and amortisation	5 360
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Changes in working capital:

Trade and other receivables	(5 700)
Trade and other payables	55 642

1 664 143

NOTES TO THE FINANCIAL STATEMENTS

FIGURES IN RAND

2011

8. Related parties

Relationships

Related not for profit organisation

Environmental Defence Fund

Related party transactions

Donation paid to related parties

Environmental Defence Fund

25 000

Administration fee charged to related parties

Environmental Defence Fund

25 000

9. Directors' emoluments

Executive

2011

Emoluments

In connection with the affairs of the company

319 792

10. Comparative figures

No comparative figures have been presented as these are the first financial statements of the company

DETAILED INCOME STATEMENT

FIGURES IN RAND	NOTE(S)	2011
Revenue		
Revenue		2 249 887
Other income		
Administration and management fees received		25 000
Expenses		(666 046)
Accounting fees		(9 362)
Bank charges		(3 109)
Cleaning		(3 872)
Computer expenses		(6 514)
Depreciation, amortisation and impairments		(5 360)
Donations		(25 000)
Employee costs		(426 260)
Insurance		(11 417)
Lease rentals on operating lease		(55 000)
Legal expenses		(2 150)
Printing and stationary		(24 700)
Security		(3 760)
Small purchases		(1 200)
Subscriptions		(4 982)
Telephone and fax		(26 174)
Travel - local		(36 485)
Utilities		(1 150)
Venue hire and catering		(6 850)
Workshop expenses		(12 701)
Surplus for the year		1 608 841

The supplementary information presented above does not form part of the financial statements and is unaudited.

ANNUAL FINANCIAL STATEMENTS - ENVIRONMENTAL DEFENCE FUND

FOR THE YEAR ENDED 28 FEBRUARY 2011

DIRECTORS' RESPONSIBILITIES AND APPROVAL

The directors are required by the Companies Act of South Africa, to maintain adequate accounting records and are responsible for the content and integrity of the financial statements and related financial information included in this report. It is their responsibility to ensure that the financial statements fairly present the state of affairs of the company as at the end of the financial year and the results of its operations and cash flows for the period then ended, in conformity with the Internal Financial Reporting Standard for Small and Medium-sized Entities. The external auditors are engaged to express an independent opinion on the financial statements.

The financial statements are prepared in accordance with the Internal Financial Reporting Standard for Small and Medium-sized Entities and are based upon appropriate accounting policies consistently applied and supported by reasonable and prudent judgments and estimates.

The directors acknowledge that they are ultimately responsible for the system of internal financial control established by the company and place considerable importance on maintaining a strong control environment. To enable the directors to meet these responsibilities, the board sets standards for internal control aimed at reducing the risk of error or loss in a cost effective manner. The standards include the proper delegation of responsibilities within a clearly defined framework, effective accounting procedures and adequate segregation of duties to ensure an acceptable level of risk. These controls are monitored throughout the company and all employees are required to maintain the highest ethical standards in ensuring the company's business is conducted in a manner that in all reasonable circumstances is above reproach. The focus of risk management in the company is on identifying, assessing, managing and monitoring all known forms of risk across the company. While operating risk cannot be fully eliminated, the company endeavours to minimise it by ensuring that appropriate infrastructure, controls, systems and ethical behaviour are applied and managed within predetermined procedures and constraints.

The directors are of the opinion, based on the information and explanations given by management, that the system of internal control provides reasonable assurance that the financial records may be relied on for the preparation of the financial statements. However, any system of internal financial control can provide only reasonable, and not absolute, assurance against material misstatement or loss.

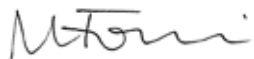
The directors have reviewed the company's cash flow needs for the year to 29 February 2012 and, in the light of this review and the current financial position, they are satisfied that the company has or has access to adequate resources to continue in operational existence for the foreseeable future.

The external auditors are responsible for independently reviewing and reporting on the company's financial statements. The financial statements have been examined by the company's external auditors and their report is presented on page 32.

The financial statements set out on pages 33 to 35, which have been prepared on the going concern basis, were approved by the board on 13 April 2011 and were signed on its behalf by:



Stephen Law
Chair of the Board: Environmental Defence Fund
13 April 2011



Melissa Fourie
Director: Environmental Defence Fund and
Executive Director: Centre for Environmental Rights
13 April 2011

INDEPENDENT AUDITORS' REPORT

TO THE MEMBERS OF THE ENVIRONMENTAL DEFENCE FUND

We have audited the financial statements of the Environmental Defence Fund, which comprise the statement of financial position as at 28 February 2011, and the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory notes, and the directors' report, as set out on pages 33 to 35.

DIRECTORS' RESPONSIBILITY FOR THE FINANCIAL STATEMENTS

The company's directors are responsible for the preparation and fair presentation of these financial statements in accordance with the International Financial Reporting Standard for Small and Medium-sized Entities, and in the manner required by the Companies Act of South Africa. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

AUDITORS' RESPONSIBILITY

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness

of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

OPINION

In our opinion, the financial statements present fairly, in all material aspects, the financial position of the Environmental Defence Fund as at 28 February 2011, and its financial performance and its cash flows for the year then ended in accordance with the International Financial Reporting Standard for Small and Medium-sized Entities, and in the manner required by the Companies Act of South Africa.

OTHER MATTER

Without qualifying our opinion, we draw attention to the fact that the detailed income statement set out on page 35 does not form part of the financial statements and is presented as additional information. We have not audited this information and accordingly do not express an opinion thereon.



Hanley Hudson
Registered Auditor
13 April 2011
Cape Town

DIRECTORS' REPORT

The directors submit their report for the year ended 28 February 2011.

1. INCORPORATION

The company was incorporated in South Africa on 22 April 2010 and obtained its certificate to commence business on the same day.

2. REVIEW OF ACTIVITIES

Main business and operations

The company is a non-profit organisation engaged in acquiring donor funding for the purpose of advancing environmental rights in South Africa.

The operating results and state of affairs of the company are fully set out in the attached financial statements and do not in our opinion require any further comment. The company has applied for exemption from income tax in terms of Section 10(1) and in terms of Section 18A of the Income Tax Act.

Registered office	Business address
8A Sussex Road Observatory Cape Town 7925	8A Sussex Road Observatory Cape Town 7925

3. GOING CONCERN

The financial statements have been prepared on the basis of accounting policies applicable to a going concern. This basis presumes that funds will be available to finance future operations and that the realisation of assets and settlement of liabilities, contingent obligations and commitments will occur in the ordinary course of business.

4. EVENTS AFTER THE REPORTING PERIOD

The directors are not aware of any matter or circumstance arising since the end of the financial year.

5. DIRECTORS

The directors of the company during the year and to the date of this report are as follows:

Name	Nationality	Changes
Eastwood Josie	South African	
Fakir Saliem	South African	
Fourie Melissa	South African	
Gubb Andrew	South African	Resigned 15 December 2010
Law Stephen	South African	
Ratsheko Tsheko	South African	

6. AUDITORS

Hanley Hudson will continue in office in accordance with section 270(2) of the Companies Act.

STATEMENT OF FINANCIAL POSITION

FIGURES IN RAND	NOTE(S)	2011
Assets		
Current Assets		
Trade and other receivables	2	25 000
TOTAL ASSETS		25 000
Equity and Liabilities		
Equity		
Retained income		25 000
TOTAL EQUITY AND LIABILITIES		25 000

STATEMENT OF COMPREHENSIVE INCOME

FIGURES IN RAND	NOTE(S)	2011
Revenue	3	50 000
Operating expenses		(25 000)
Operating surplus		25 000
Surplus for the year		25 000
Other comprehensive income		-
TOTAL SURPLUS FOR THE YEAR		25 000

STATEMENT OF CHANGES IN EQUITY

FIGURES IN RAND	RETAINED INCOME	TOTAL EQUITY
Balance at 01 March 2010	-	-
Changes in equity		
Total surplus for the year	25 000	25 000
Total changes	25 000	25 000
Balance at 28 February 2011	25 000	25 000

NOTES TO THE FINANCIAL STATEMENTS

ACCOUNTING POLICIES

1. Presentation of Financial Statements

The financial statements have been prepared in accordance with the International Financial Reporting Standard for Small and Medium-sized Entities, and the Companies Act of South Africa. The financial statements have been prepared on the historical cost basis, and incorporate the principal accounting policies set out below. They are presented in South African Rands.

1.1 Revenue

Grant and donation income is recorded as income when received.

FIGURES IN RAND	2011
2. Trade and other receivables	
Donation receivable	25 000
3. Revenue	
Donations received	50 00
4. Related parties	
Relationships	
Related non-profit organisations	Centre for Environmental Rights
Related party transactions	
Administrative fee paid to related party	
Centre for Environmental Rights	25 000
Donation received from related party	
Centre for Environmental Rights	25 000
5. Directors' emoluments	
No emoluments were paid to the directors during the year	
6. Comparative figures	
No comparative figures have been presented as these are the first financial statements of the company.	

DETAILED INCOME STATEMENT

FIGURES IN RAND	NOTE(S)	2011
Revenue		
Donations received		50 000
Expenses		
Administration and management fees		(25 000)
Surplus for the year		25 000

The supplementary information presented above does not form part of the financial statements and is unaudited.



BOARD OF DIRECTORS

CENTRE FOR ENVIRONMENTAL RIGHTS

- ✓ Terry Winstanley (non-executive director and chair of the board). Terry is an environmental lawyer in private practice.
- ✓ Melissa Fourie (executive director)
- ✓ Carolyn Ah Shene-Verdoorn (non-executive director). Carolyn is the policy and advocacy for BirdLife South Africa.
- ✓ Josie Eastwood (non-executive director). Josie is an environmental lawyer and former Deputy Director of Public Prosecutions.
- ✓ Stephen Law (non-executive director). Stephen is the Executive Director of the Environmental Monitoring Group.
- ✓ Tsheko Ratsheko (non-executive director). Tsheko is a former Chief Director: Environmental Compliance and Enforcement in the Gauteng provincial government, and a member of the Johannesburg Bar.
- ✓ Louis Smith (non-executive director). Louis is a property and conservation lawyer in private practice.

ENVIRONMENTAL DEFENCE FUND

- ✓ Stephen Law (non-executive director and chair of the board). Stephen is the Executive Director of the Environmental Monitoring Group.
- ✓ Melissa Fourie (executive director, Centre for Environmental Rights)
- ✓ Josie Eastwood (non-executive director). Josie is an environmental lawyer and former Deputy Director of Public Prosecutions.
- ✓ Saliem Fakir (non-executive director). Saliem is the head of WWF South Africa's Living Planet Unit.
- ✓ Tsheko Ratsheko (non-executive director). Tsheko is a former Chief Director: Environmental Compliance and Enforcement in the Gauteng provincial government, and a member of the Johannesburg Bar.



Terry Winstanley



Melissa Fourie



Carolyn Ah Shene-Verdoorn



Josie Eastwood



Stephen Law



Tsheko Ratsheko



Saliem Fakir



Louis Smith

ORGANISATIONAL DETAILS

STAFF

MELISSA FOURIE, EXECUTIVE DIRECTOR

Melissa is an admitted attorney of the High Court of South Africa and holds a BA LLB degree from the University of Stellenbosch, an MSc degree in Environment and Development from the London School of Economics and a Certificate in Environmental Law from the University of the Witwatersrand. Before joining the Centre, Melissa spent six years in private practice, and thereafter held the position of Director: Enforcement in the national Department of Environmental Affairs, where she was responsible for both the national enforcement programme for environmental quality and protection legislation, as well as the national roll-out of the Environmental Management Inspectorate, known as the Green Scorpions.

DINA TOWNSEND, STAFF ATTORNEY

Dina is an admitted attorney of the High Court of South Africa. She completed a BA and LLB at the University of Cape Town and has a master's degree in environmental law from the University of Auckland in New Zealand. Dina completed her articles at attorneys Webber Wentzel after which she practised as an associate in the firm's Mining and Environment Department. Dina is responsible for providing legal advice, support and representation to the Centre's clients, assisting in developing the Centre's online resources, providing input into draft environmental policies and legislation and training and overseeing the work of legal interns.

CHRISTINE REDDELL, LEGAL INTERN

Christine Reddell provides support on the Centre's access to information project, and also provides general support to the executive director and staff attorney in the legal and administrative operations at the Centre. Christine holds the degrees BA (majoring in History) and LLB from the University of Cape Town. Christine is also currently working towards an LLM degree from the University of Cape Town in Marine and Environmental Law.

ANDY GUBB, PROJECT MANAGER (SECONDED BY WESSA)

Andy is the leader for the joint CER/WESSA Promoting Participation Project. Andy is an ecologist, who holds a degree in Botany and Zoology and a master's degree in Botany. He is best known for his work for WESSA, where he most recently held the position of senior national conservationist. Andy retired from full-time employment with WESSA at the end of 2010 and is currently employed in a part-time capacity, seconded to the CER.

JUNAID FRANCIS, PROJECT OFFICER

Junaid holds a BSc in Environmental and Geographical Sciences and Ocean and Atmosphere Science from the University of Cape Town. Junaid worked on many community-based projects during his student days, and as a field researcher in a global study, *Remaking the Apartheid City*, facilitated by Brown University. Junaid's role is to engage local disadvantaged community members in environmental decision making processes by providing them with information, advice and support.

ZULFA MOHAMMED, OFFICE ADMINISTRATOR

Zulfa is a qualified legal secretary, responsible for the legal and office administration for the Centre. Before joining the Centre, Zulfa worked for various law firms in Cape Town. Zulfa is the mother of five daughters.



ABOVE (from left to right): Andy Gubb, Christine Redell, Junaid Francis, Melissa Fourie, Dina Townsend
(Absent: Zulfa Mohammed)



FOUNDING MEMBERS

The Centre for Environmental Rights was set up by nine non-government, non-profit organisations in the environmental and environmental justice sector. The Centre works closely with all these organisations:

- Biowatch Trust
- BirdLife South Africa
- Endangered Wildlife Trust
- Environmental Monitoring Group Trust
- groundWork
- Table Mountain Fund
- Wildlife and Environment Society of South Africa
- Wilderness Foundation
- WWF South Africa

PARTNERSHIPS

The Centre also maintains strong working partnerships with all its founding members, and also maintains strong working partnerships with organisations that include the following:

- Centre for Applied Legal Studies
- Earthlife Africa
- Environmental Law Association of South Africa
- Federation for a Sustainable Environment
- International Association of Impact Assessment of South Africa
- Lawyers for Human Rights
- Legal Resources Centre
- National Association of Conservancies of South Africa
- Open Democracy Advice Centre
- South African History Archive
- South Durban Community Environmental Alliance
- Vaal Environmental Justice Alliance

CIVIL SOCIETY ENVIRONMENTAL EXPERT PANEL

The panel of natural and social science experts who advise the Centre in its work currently includes the following experts:

- Susie Brownlie, an environmental management expert
- Eugene Cairncross, a chemical engineer and former professor at the Cape Peninsula University of Technology
- Carin Bosman, a water management and governance expert
- Mary-Jane Morris, an environmental management expert
- Mark Botha, a botany and ecology expert
- Ilse Aucamp, a social impact assessment specialist

The CER has good working relationships with a number of key environmental law practitioners and leading advocates across the country. We also regularly engage with law schools at a number of tertiary academic institutions, including the University of Cape Town, the University of KwaZulu-Natal and the University of the Witwatersrand.

KEY FUNDERS

- The Table Mountain Fund
- The Ford Foundation
- The Global Greengrants Fund
- Open Society Foundation of South Africa
- International Association of Impact Assessment (South Africa)

In July 2011, the Centre was awarded a joint grant with Lawyers for Human Rights from the National Lottery Distribution Trust Fund, to expand its work on mining, communities and the environment.

The Centre has also received funds from the Konrad Adenauer Foundation in 2011 for preparatory consultation for its new Water Governance Project.



“IT’S NOW INCONCEIVABLE TO IMAGINE
THE ENVIRONMENTAL LANDSCAPE IN
SOUTH AFRICA WITHOUT THE CER.”

— SUSIE BROWNLIE, MEMBER OF CER’S EXPERT PANEL

TRIBUTE AND THANKS

Andy Gubb has been an activist for the environment and environmental justice for as long as most of us can remember. Without his vision, passion and perseverance, neither the Centre for Environmental Rights nor the Environmental Defence Fund would exist today.

Andy started his career in 1978 as a ranger in what was then known as the Cape of Good Hope Nature Reserve. After more than a decade of working as botanist and manager in museums in Kimberley and East London, Andy started work for WESSA (the Wildlife Society of South Africa) in 1991, eventually becoming their senior national conservationist in 2008. During his time at WESSA, he worked tirelessly to promote responsible management of our natural resources and natural heritage, frequently calling authorities and developers to account.

For at least a decade, Andy had engaged with various organisations about establishing an environmental law centre which he believed was desperately needed in the environmental sector. In 2009, through WESSA, he managed to secure seed funding from the Table Mountain Fund to convene the project steering committee that led to the establishment of the Centre for Environmental Rights and the Environmental Defence Fund in 2009/10.

Although Andy is still working with the Centre on its crucial Promoting Participation Project, the boards of the Centre and the Fund would like to recognise Andy's personal contribution to these two institutions. The boards also thank WESSA for supporting Andy in his vision.

An activist is always an activist, and we expect Andy to continue his activism for environmental rights for many years to come.



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and a Law Clinic registered with the Law Society of
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Centre *for*
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Environmental
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