



## Criteria for Case Selection<sup>i</sup>

1. The Centre for Environmental Rights has to apply limited resources effectively, efficiently and strategically. The criteria below are intended to guide decisions on case selection by the Centre. To be selected, a case has to comply with all three criteria.

### Criterion 1: Advancing realisation of Section 24

2. The first criterion for case selection by the Centre for Environmental Rights is that the Centre's support for that case must advance and contribute to the realisation of the rights entrenched in Section 24 of the Constitution.
3. The table below dissects that right into the following components and provides indicators for each component. To comply with Criterion 1, a case must fall under at least one of the components listed below:

Component	Indicators	Examples
3.1 <b>Everyone</b> has the right	<ul style="list-style-type: none"> <li>• Cases that involve the exclusion of people, groups or communities, particularly vulnerable people, groups or communities, from environmental decision-making.<sup>ii</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Procedural requirements in environmental licensing processes are flouted by authorities and/or private enterprises.</li> <li>• Complaints by a particular community regarding non-compliance with an environmental law or licence are ignored by authorities.</li> </ul>
3.2 Everyone has the right to an environment that is <b>not harmful to their health or well-being</b> .	<ul style="list-style-type: none"> <li>• Cases that involve the health of people negatively affected by exposure to the emissions of a particular facility, but not employed by the facility responsible for the emissions.</li> <li>• Cases that involve deterioration in the quality of key ecosystem services, including but not limited to coastal waters, freshwater (ground and surface), soil and air.</li> </ul>	<ul style="list-style-type: none"> <li>• Residents of a particular area are exposed to emissions from a neighbouring factory.</li> <li>• A municipality's malfunctioning water treatment plant is causing raw sewage to enter waterways.</li> </ul>
3.3 Everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other	<ul style="list-style-type: none"> <li>• Cases that involve a threat to the survival and/or sustainability of important ecosystems<sup>iii</sup> or ecosystem functionality.</li> </ul>	<ul style="list-style-type: none"> <li>• A wetland is threatened by a new mining application.</li> </ul>

Component	Indicators	Examples
measures that <b>prevent pollution and ecological degradation.</b>	<ul style="list-style-type: none"> <li>Cases that involve the potential irreplaceable loss of species or ecosystems.</li> </ul>	<ul style="list-style-type: none"> <li>A threatened or protected species is further threatened by a new development proposal or a non-compliance with an existing authorisation.</li> </ul>
3.4 Everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that <b>promote conservation.</b>	<ul style="list-style-type: none"> <li>Cases that involve threats to or impingements on protected areas (including World Heritage Areas), protected environments, areas identified in conservation planning as having potential for stewardship or declaration under the National Environmental Management: Protected Areas Act, or that undermine conservation targets or conservation of the diversity of life.</li> </ul>	<ul style="list-style-type: none"> <li>Prospecting rights are granted in a provincial nature reserve.</li> </ul>
3.5 Everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that <b>secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.</b>	<ul style="list-style-type: none"> <li>Cases that involve the unsustainable use of natural resources, including interdependencies and cumulative impacts.</li> </ul>	<ul style="list-style-type: none"> <li>A mine or a golf estate is approved that will use an unsustainable amount of water.</li> <li>A particular development or non-compliance detrimentally impacts on climate change prevention or mitigation.</li> </ul>

### Criterion 2: The NEMA principles

- The secondary criterion for case selection by the Centre for Environmental Rights is that the facts of the case must violate at least one of the environmental management principles set out in Section 2 of the National Environmental Management Act, 1998 (Act 107 of 1998).

### Criterion 3: Public impact and funding

- In addition to this overarching approach, cases will only be taken on by the Centre if:
  - the person or organisation that requires support or representation cannot afford to engage the services of private environmental assessment practitioners (EAPs), attorneys and/or counsel,<sup>iv</sup> and cannot reasonably access the resources required to engage such services.<sup>v</sup> Where a person or organisation can afford such services, the Centre will make all reasonable efforts to assist them in finding suitably qualified and experienced EAPs, attorneys and/or counsel; and
  - the Centre has funding available or can access funding to cover the costs of the case; and

- c. the case has the potential to set a legal or practical precedent beyond the facts of that particular case. This includes (but is not limited to) the following potential outcomes:
  - i. best practice in environmental management and/or environmental decision-making is established and recognised;
  - ii. legislation is overturned;
  - iii. new jurisprudence is created;
  - iv. existing jurisprudence is extended;
  - v. the court makes positive orders for enforcement of environmental legislation;
  - vi. the court orders the enactment of legislation;<sup>vi</sup> and
- d. there is factual evidence available that strongly supports the remedy sought; and
- e. the case has the potential of raising public awareness around the impact of environmental degradation and/or the importance of environmental rights; and
- f. the case has the potential to strengthen civil society's capacity to assert and realise environmental rights in general; and
- g. the particular injustice to the environment "screams out for a remedy".<sup>vii</sup>

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<sup>ii</sup> Note that, to be accepted, a case has to comply with Criterion 1, 2 and 3, so Component 3.1 cannot be seen in isolation, and cases that have only procedural and no substantive grounds will not be accepted by the Centre.

<sup>iii</sup> For the purpose of these selection criteria, important ecosystems must comply with at least one of the following requirements:

1. the ecosystem must be valued or used by local communities or society as a whole;
2. the ecosystem must support the livelihoods and self-sufficiency of communities in a direct manner (i.e. people live off this resource to sustain themselves) or plays a role in food security;
3. the ecosystem must be located in a recognized or designated ecological corridor and/or critical biodiversity area;
4. the ecosystem must be critical to achieving or maintaining conservation targets; d. the ecosystem must be of cultural or spiritual significance;
5. the ecosystem must be spatially located in such a way that it is evident that the ecosystem provides a connection or plays a role in ecological connectivity (in circumstances where ecological corridors have not been determined);
6. the ecosystem must contain protected, endemic and/or Red Data species; or
7. the ecosystem must provide ecosystem services (e.g. cleans water such as is the case with wetlands).

<sup>iv</sup> This requirement is necessary to comply with Law Society rules applicable to Law Clinics. An appropriate means test will be implemented, though note that non-profit organisations dependent on donor-funding will generally fall into this category. This does not exclude the possibility the, if it is able to do so, the client will be required to pay disbursements such as counsel's fees.

<sup>v</sup> This requirement is necessary to ensure that the Centre's resources is not applied to provide free legal services to resourced individuals who set up or use a non-profit organisation in order to access such free legal services.

<sup>vi</sup> Certain criteria borrowed from those of the Women's Legal Centre.

<sup>vii</sup> Paraphrasing Advocate George Bizos.