



HERBERT
SMITH
FREEHILLS

ESG TRACKER (SADC EDITION)

July 2023 | Johannesburg

Herbert Smith Freehills ESG Tracker (SADC Edition)

There are so many ESG-related publications and developments that it is hard to keep abreast of them all. For this reason, HSF publishes a monthly tracker of ESG-related publications and developments, with a primary focus on developments that may be of most interest to or impact our clients in the Southern African Development Community, be they corporates, asset managers or asset owners.

If you have any ESG-related questions, please get in touch with your usual contact at HSF who will be able to direct you as appropriate.

This issue covers the period from 1 to 31 July 2023.

ANGOLA

24 July 2023

It is **reported** that Angola has received over USD1 billion to build photovoltaic electricity distribution infrastructure in rural areas across the country. The project is being developed by the Angolan Ministry of Energy and Water and benefits approximately 203 000 households in 60 communities.

DEMOCRATIC REPUBLIC OF CONGO

7 July 2023

It is **reported** that South Africa and the Democratic Republic of Congo have signed 38 trade agreements spanning agriculture, defence, energy, health and trade and investment. One such agreement is aimed at reviving a hydro-electric scheme known as the Grand Inga Dam project. This project is a series of seven proposed hydro-electric power

stations across the Congo River. If built, it will be the largest of its kind in the world.

LESOTHO

25 July 2023

It has been **reported** that the Government of the Kingdom of Lesotho and the Orange Senqu River Commissioner (ORASECOM) have signed an agreement for the hosting of the Project Management Office (PMO) in Lesotho to maintain a sustainable supply of water and equitable sharing of water resources. The Lesotho Minister of Foreign Affairs and International Relations said the formal ties between the governments of Lesotho, Botswana, South Africa and Namibia integrated the principles of water resource management of the Orange-Senqu River Basin under the umbrella of ORASECOM. The Minister said this agreement also affirms the SADC Revised Protocol on Shared Watercourses.

SEYCHELLES

5 July 2023

It is **reported** that Seychelles has become the second African country, after Rwanda, to access the International Monetary Fund's Resilience and Sustainability Facility which is aimed at assisting countries with limited budget to address long-term challenges, such as climate change and preparedness for a pandemic. Seychelles currently faces climate change-related risks such as coastal erosion, saltwater intrusion into freshwater sources and damage to buildings and infrastructure.

13 July 2023

It is **reported** that the Seychelles government, in collaboration with the United Nations Development Programme launched a Seychelles Sustainable Development Goals (SDG) Investor Map, an innovative market intelligence tool which will help direct domestic and foreign private capital to

investment opportunities at the intersection of the SDGs, national priorities and viable business models.

14 July 2023

Seychelles' Ministry of Agriculture, Climate Change and Environment has [published](#) draft Management Plans for three Sustainable Use Areas identified under Seychelles' Marine Spatial Plan Initiative. The draft Management Plans are open for public comment until 7 August 2023

SOUTH AFRICA

1 July 2023

The Portfolio Committee on Health [opened](#) the Tobacco Products and Electronic Delivery Systems Control Bill (**Bill**) for public comment. The deadline for submissions was 4 August 2023. The Bill outlines new regulations and prohibitions relating not only to tobacco smoking but also to electronic cigarettes or vaping. The bill was originally tabled before parliament in mid-December 2022 and has undergone extensive reviews and consultations. Under the bill, prohibitions and regulations would be empowered by the Minister of Health, who has the authority to designate certain public areas and outdoor areas as no-smoking, among other things. For example, the Minister also has authority over the advertising and displaying of tobacco products. Under the bill, no one can display tobacco and vape products in retail settings, including speciality tobacco stores.

5 July 2023

Civil society organizations Vukani Environmental Justice Movement in Action and groundWork [submitted](#) an appeal against the decision of the National Air Quality Officer to allow Eskom to postpone compliance with the Minimum Emission Standards for sulphur dioxide imposed under the National Environmental Management: Air Quality Act, 2004 at the Kusile coal-fired power station. The decision was taken to allow Eskom to bypass the plants Flue Gas Desulphurization equipment at the plant with a view to increasing generation capacity to assist in the ongoing electricity crisis.

7 July 2023

The Minister of Forestry, Fisheries and the Environment has [published](#) an extension of the period for the establishment of the National Environmental Consultative and Advisory Forum by a further period of 12 months until 17 August 2024. This extension follows the initial announcement by the Minister of Forestry, Fisheries and the Environment on 12 May 2022 to establish the forum under section 3A of the National Environmental Management Act, 1998. The purpose of the

forum will be to conduct an extensive consultative process with key interested and affected parties to assess and present all significant relevant research and analysis in a public forum for review and interrogation, and to report to the Minister of Forestry, Fisheries and the Environment on the outcome.

11 July 2023

Double Olympic 800m champion Caster Semenya has [won](#) her case against Switzerland in the European Court of Human Rights. The Court found that the Swiss Courts had violated Ms Semenya's right to equality (taken together with her right to privacy) by discriminating against her on the grounds of sex and sexual characteristics (in particular, genetic characteristics) and also violated her right to an effective remedy by upholding the Court of Arbitration for Sport's ruling that she had to take testosterone-suppressants in order to compete as a woman. The Court issued a declaratory order and ordered Switzerland to pay Ms Semenya EUR60 000 in legal costs.

11 July 2023

The Portfolio Committee on Transport has [published](#) the Marine Oil Pollution (Preparedness, Response and Cooperation) Bill [B10-2022] and invited the public to submit comments on the draft bill by 16 August 2023 (**Bill**). The Bill seeks to give effect to the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990. The stated objects of the Bill include providing for the safe, effective and efficient management and deployment of resources in response to, cooperation in and control of, spills of oil, or any other pollutant from ships or any other sources within South African waters.

13 July 2023

The Ministry of Forestry, Fisheries and Environment [published](#) a notice of intention to take decisions on applications received for the exclusion of a waste stream or a portion of waste stream from the definition of waste for a certain beneficial use. Once a waste stream has been excluded from the definition of waste, a risk management plan, which is based on the risk assessment prepared as part of the application for exclusion, must be complied with. The risk assessments and management plans under consideration are published on the South African Waste Information Centre's website. The public has until 13 August 2023 to submit comments.

13 July 2023

The Constitution Twentieth Amendment Bill [B20-2023] was [tabled](#) in Parliament. This Bill is a private members bill which aims to amend the Constitution of the Republic of South Africa, 1996, so as to require national

legislation to establish a Cyber Commissioner in the Republic, and to provide for matters connected therewith.

19 July 2023

President Cyril Ramaphosa [signed](#) the Constitution Eighteenth Amendment Bill formally recognizing sign language as the 12th official language in South Africa. Zimbabwe, Kenya and Uganda are the only other African countries to formally recognize sign language.

19 July 2023

The Minister of Mineral Resources and Energy [published](#) the South African Renewable Energy Master Plan for public comment. The South African Renewable Energy Masterplan (SAREM) articulates a vision, objectives and an action plan for South Africa to tap into these opportunities. It aims to leverage the rising demand for renewable energy and storage technologies, with a focus on solar energy, wind energy, lithium-ion battery and vanadium-based battery technologies, to unlock the industrial and inclusive development of associated value chains in the country. The public have until 18 August 2023 to submit their comments.

26 July 2023

It is [reported](#) that the Transnet National Ports Authority has shortlisted three consortia to participate in an upcoming bidding process to design, fund and construct a greenfield deep-water port at Boegoebaai in the Northern Cape, as well as rail infrastructure linking the port to mines in the province. The Boegoebaai Green Hydrogen Development has been included as a Strategic Integrated Project for accelerated development under the country's Infrastructure Development Act, while a feasibility study to explore the potential of the site as an export hub for green ammonia is underway. A request for proposals will now be issued to the qualifying respondents but no timeframe has as yet been provided for bid submission, financial close and construction.

26 July 2023

The Minister of Mineral Resources and Energy [published](#) the Explanatory Summary National Nuclear Regulator Amendment Bill, 2021 (**Summary**) in the Government Gazette. The purpose of the Bill is to amend the National Nuclear Regulator Act, 1999 to (among other things) strengthen the nuclear safety regulatory framework; to substitute certain definitions and to insert new definitions that align with international best practices; to provide for the regulation of occupational exposure of air crew; regulation over the decontamination, decommissioning and closure of any of South Africa's National Defence Force facilities, equipment, machinery

or scrap prior the release for civilian use and clarify the scope of the application of the Act; to provide for a centralised dose record system for occupational exposures for radiation workers; and to provide for conditions applicable in the transfer of responsibility for authorised activities.

27 July 2023

It is reported that the Minister of Trade, Industry and Competition launched the Energy One-Stop Shop (EOSS) and the Energy Resilience Fund to mitigate the impact of the energy crisis. The EOSS is a new facility that government has put in place to help with fast-tracking energy projects as part of government wider effort to refocus resources and increase the supply of energy available to the grid, mainly through additional renewable energy. The EOSS was developed to address a key constraint that energy developers face, namely that the many regulatory and other measures that need to be complied with, can and do slow down approval of energy supply projects. The EOSS will also have teams of staff working with developers to unblock or fast-track applications for approvals. In phase two, the project will be scoping provincial and municipal processes and building capacity at these two spheres. In phase three, a single, electronic application process will be put in place, with greater automated feedback. In phase four, the full project will be in place, covering both immediate blockages and looking at a wider reform programme.

28 July 2023

The Chief Inspector of Mines published the Guideline for a Mandatory Code of Practice for the selection and provision of personal protective equipment (PPE) for women. The guideline provides that the selection, provision and use of PPE in the workplace should not only be based on hazard identification and risk assessment processes but should incorporate ergonomic and comfort aspects of users to guarantee PPE efficiency for all workers. This approach will ensure that the specificities of female anthropometrics are accommodated. The hazards identified will determine the body part that is to be protected and therefore the PPE required. The guideline is effective from 30 September 2023.

28 July 2023

The Chief Inspector of Mines published the Guideline for a Mandatory Code of Practice for the Management of Medical Incapacity due to ill-health and injury under the Mine Health and Safety Act, 1996. This guideline does not deal with individual medical conditions, but rather aims to formalise the basic principles of the management of employees with medical incapacity in order to ensure that a fair and

consistent approach will be followed. The guideline is effective from 1 October 2023.

28 July 2023

The Department of Forestry, Fisheries and Environment published the Amendment of the protocols for the specialist assessment and minimum report content requirements for environmental impacts on terrestrial animal and plant species. The primary amendment will remove reference to "terrestrial" where it occurs in the protocol so that the amended protocol will apply to all animal and plant species. The amended protocol applies from the date of publication.

28 July 2023

The Department of Forestry, Fisheries and Environment published a notice requesting consultation on the intention to amend certain requirements for an application for an environmental authorisation (EA) for a renewable energy facility or for the request for registration of an exclusion from the requirement to obtain an EA (Notice). The intention of the Notice is to require a letter of consent from Eskom Holdings Ltd (or its successor) be submitted with an application for an EA for identified activities as set in the schedule to the Notice when proposed within (i) 2km of a main electricity transmission substation or (ii) 1km of a main electricity distribution substation. The public has until 28 August 2023 to submit comments on the Notice. The Notice also identifies that work is currently ongoing on Norm for the Exclusion of the Development and Expansion of Solar Photovoltaic Facilities in areas of low or medium environmental sensitivity.

28 July 2023

The Department of Forestry, Fisheries and Environment published a notice of intention to prescribe protocols for the assessment and minimum report contents requirements for determining impacts on Cape Vultures associated with the development of onshore wind energy generation facilities which require environmental authorisation. The proposed protocol must be read with the Protocol on Avifaunal Species and the site sensitivities verification required in terms of the proposed protocol must be undertaken in parallel with the reconnaissance study and pre-application avifaunal specialist assessment. The public has until 28 August 2023 to submit comments on the proposed procedure.

31 July 2023

It is reported that the Pretoria High Court heard civil society organisations' challenge to a proposed gas to power facility in the Richards Bay Industrial Development Zone. In light of

the serious climate change implication of using fossil gas to generate electricity, and the absence of any assessment of potential impacts, the civil society organisations are calling on government to follow the Environmental Impact Assessment Regulations of 2014, take into account the greenhouse gas emissions released during the life cycle of gas as a fossil fuel, as well as assess the potentially destructive climate change impacts of the proposed project. The Applicants allege that there are substantive and procedural inadequacies in the environmental authorisation application process, including a failure to undertake the legally required climate change impact assessment. This matter is ongoing.

ZAMBIA

20 July 2023

It has been reported that the African Development Bank Group (AfDB) has offered the Zambian Government support for several investment projects in important economic sectors such as agriculture, transport and energy. The AfDB has also indicated that it will support the establishment of a Youth Entrepreneurship Investment Bank and Special Agro-Industrial Processing Zones to build new financial ecosystems and create jobs.

ZIMBABWE

5 July 2023

It has been reported that Zimbabwe's industrial electricity consumers and exporters aim to raise USD250 million to build the first phase of floating solar panels on the world's largest man-made lake. Members of the Intensive Energy User Group, which also includes mining companies, will own 52% of a development company for the project to be located on Lake Kariba, between Zimbabwe and Zambia.

14 July 2023

The Labour Amendment Act (Act) was recently signed into law by President Emmerson Mnangagwa. The Act makes provision for termination on notice, contract workers, maternity rights, and an improved retrenchment package regime. However, the Zimbabwe Diamond, Mineral and Allied Workers Union has expressed concerns over the exclusion of certain provisions relating to the right to strike and the right to a fair and reasonable wage, pregnancy leave and paternity leave.

27 July 2023

It is [reported](#) that Zimbabwe is taking steps to increase the participation of women in wildlife conservation and creating a conducive environment to attract women into viable career paths in conservation. For many years men have dominated the wildlife conservation sector but Zimbabwe is now motivating women into careers of conservation through funding support from the African Wildlife Foundation and Swedish International Development Agency as well as the Zimbabwe Parks and Wildlife Management Authority.

AFRICA

3 July 2023

It is [reported](#) that Kenyan President William Ruto lifted a five-year tree-logging freeze that boosted forest cover to a modest 8.8% in the East African nation that experiences routine

drought. Removing the moratorium will create employment and revive the wood products industry, according to the president. Activists say the government has little capacity to monitor sustainable harvesting of trees and expect environmental degradation on resumption of logging.

6 July 2023

It is [reported](#) that Nigeria has suspended a newly introduced 10 percent tax on single-use plastics and excise duty on some locally manufactured products to reduce business costs. Executive orders signed by newly elected President Tinubu have suspended the green tax on single-use plastics including plastic containers and bottles, the implementation of a 5 percent telecoms tax and the increase in car import duties and excise duties on selected goods manufactured locally.

12 July 2023

It has been [reported](#) that the African Development Bank Group has approved a EUR400 million partial credit guarantee for Côte d'Ivoire to support the mobilization on international financial markets of financing for strategic ESG projects. The funds will foster projects across a variety of sectors, including sustainable agriculture and agro-industry, water and sanitation, renewable energy, health, affordable housing, education and vocational training, financial inclusion and entrepreneurship.



2 July 2023

The German law [implementing](#) the EU Whistleblowing Directive, the Whistleblower Protection Act (Hinweiserschutzesgesetz, "HinSchG"), came into force on 2 July 2023. The effect of this is that the EU Whistleblowing Directive has now been fully implemented in Germany. All legal entities employing more than 50 employees in Germany and all financial institutions, regardless of the number of employees, are therefore now obliged to maintain an internal reporting system that meets the requirements of the HinSchG.

5 July 2023

The ESG Data and Ratings Working Group (**DRWG**), an industry group formed at the request of UK regulator the Financial Conduct Authority (FCA), [announced](#) the launch of a draft voluntary Code of Conduct for ESG ratings and data providers. The DRWG has also established a consultation into the draft Code, which will remain open until 5 October 2023. Key aims of the code include improving the availability and quality of information for investors at both the product and entity level, improving transparency, governance and systems and controls in order to enhance market integrity, and fostering better comparability of products and providers in order to improve competition in the ESG data and ratings space.

7 July 2023

The International Maritime Organisation (**IMO**), the 175 member state UN agency responsible for developing global standards for shipping, has [adopted](#) the 2023 IMO Strategy on Reduction of GHG Emissions from Ships (**Strategy**) in accordance with programme of follow-up actions that was agreed by the IMO in October 2018. The Strategy envisages, in particular, a reduction in carbon intensity of international shipping (to reduce CO₂ emissions per transport work), as an average across international shipping, by at least 40% by 2030, and that total annual greenhouse gas (**GHG**) emissions from international shipping should reach net-zero GHG emissions by or around, ie, close to, 2050, compared to 2008. The Strategy also includes a new level of ambition relating to the uptake of zero or near-zero GHG emission technologies, fuels and/or energy sources which are to represent at least 5%, striving for 10%, of the energy used by international shipping by 2030.

11 July 2023

It is [reported](#) that, following the publication of the inaugural ISSB Standards—IFRS S1 and IFRS S2—the Financial Stability Board has asked the IFRS Foundation to take over the monitoring of the progress on companies' climate-related disclosures from the Task Force on Climate-related Financial Disclosures (TCFD). IFRS S1 and IFRS S2 fully incorporate the recommendations of the TCFD. As such, the FSB noted that the Standards mark "the

culmination of the work of the TCFD", which was established in 2017 at the request of the Financial Stability Board.

24 July 2023

According to new rules [released](#) for ESG investment funds by the Securities and Exchange Board of India (SEBI), ESG funds in India will be required to have at least 80% of their assets invested in securities aligned with their specific strategies, and asset managers will be required to provide monthly ESG scores for holdings. SEBI also announced that it introduced a new ESG investment sub-category for funds, in order to enable mutual funds to offer several ESG schemes to investors. Under the prior rules, mutual funds were able to offer only one ESG scheme under the thematic category.

25 July 2023

Republicans in the House Financial Services Committee in the United States Congress [announced](#) the introduction of the American Financial Institution Regulator Sovereignty and Transparency Act, which includes rules not allowing US regulators to meet with organizations including the Financial Stability Board and the Basel Committee on Banking Supervision on the topic of climate-related risk unless a series of requirements are met, and the Businesses Over Activists Act, targeting the Securities and Exchange Commission's control over shareholder proposals.

25 July 2023

Republicans in the House Financial Services Committee in the United States Congress **announced** the proposed introduction of the Guiding Uniform and Responsible Disclosure Requirements and Information Limits Act, which targets the Securities and Exchange Commission's (SEC) upcoming climate-related disclosure rules. The proposal would only allow the SEC to require disclosure that the issuer has determined as material to a voting or investment decision. It also requires the SEC to evaluate the "detrimental impact" and the legal basis for the Corporate Sustainability reporting Directive and Corporate Sustainability Due Diligence legislation that effectively require large US companies to provide sustainability-related disclosures.

25 July 2023

The European Council has **adopted** new rules to reduce final energy consumption at EU level by 11.7% in 2030. All member states will contribute to achieving the overall EU target. They will set indicative national contributions and trajectories towards reaching the target in their integrated national energy and climate plans (**NECPs**). Draft updated NECPs were due in June 2023 and final plans will be due in 2024.

27 July 2023

The United Nations Environment Programme **published** the Global Climate Litigation Report: 2023 Status Review (**Report**). The Report provides an overview of the current state of

climate change litigation and an update on global climate change litigation trends.

31 July 2023

The European Commission has **adopted** the European Sustainability Reporting Standards which are the rules and requirements for companies to report on sustainability-related impacts, opportunities and risks under the EU's upcoming Corporate Sustainable Reporting Directive. This marks a major step towards the implementation of the law, with reporting set to begin for some companies as soon as the 2024 financial year.



Latest HSF Publications:

- [ESG newsletter UK](#)
- [ESG Reporting In Australia](#)
- [UK transition plan taskforce publishes status update and response to disclosure framework consultation](#)
- [Global sustainability disclosures: navigating the landscape](#)
- [Keeping up with esg in australia - july 2023](#)
- [ESG tracker sadc region june 2023](#)
- [Reform on the horizon: whistleblowers afforded more protection](#)
- [Re-greening the planet: is the EU charting the way forward with the deforestation-free products regulation?](#)
- [Advancing international arbitration in Africa: a discussion with Svetlana Vasileva, the new secretary general of AFSA](#)

Key SADC ESG contacts

The ESG Tracker SADC Region is compiled by lawyers based in our Johannesburg office.



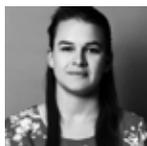
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