



HERBERT
SMITH
FREEHILLS

ESG TRACKER (SADC EDITION)

October 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. This issue covers the period from 1 to 30 September 2023.

Highlights for September which are considered in more detail below include:

- **South Africa:** It is [reported](#) that the government would like to expand the grid

so that the country is able to accommodate the renewable energy solutions that have been rolled out but not yet connected as a result of transmission constraints.

- **Africa:** It is [reported](#) that the Nairobi Declaration on Climate Change and Call to Action (**Declaration**) was adopted at the conclusion of the Africa Climate Summit. It is understood that the Declaration is the basis for Africa's common position in the global climate change process to COP 28 and beyond.
- **Global:** The Taskforce on Nature-related Financial Disclosures (**TNFD**) [published](#) its final recommendations for nature-related

risk management and disclosure which are aimed at helping inform better decision-making by companies and capital providers on nature and biodiversity-related risks, opportunities, dependencies and impacts, as well as to contribute to a shift in financial flows towards nature-positive outcomes and the achievement of global biodiversity and ecosystem preservation goals.

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.

LESOTHO

25 September 2023

It is [reported](#) that Lesotho, in partnership with Botswana, eSwatini, Namibia and South Africa have signed a Memorandum of Understanding to enhance their collective fight against corruption by creating an awareness of corruption cases between those countries and building ongoing relations that will promote the exchange of information in efforts aimed at ending corruption.

25 September 2023

The Minister of Finance and Development Planning [launched](#) a call for investors in the Market Driven Irrigated Horticulture (**MDIH**) project. The MDIH project is a major component of the USD322-million Lesotho Health and Horticulture Compact signed in May 2022. The MDIH project [aims](#) to increase rural incomes and fight food insecurity through investing in climate-smart irrigation infrastructure and attracting commercial farmers to collaborate with local, small-holder farmers to produce high-value crops and build strong value chains. The MDIH project will also support government reforms and capacity to sustain inclusive and sustainable growth of the horticulture sector.

MALAWI

22 Sept 2023

It is [reported](#) that Malawi has been granted a facility of USD174 million by the International Monetary Fund under a new 48-month financing arrangement under the Extended Credit Facility (**ECF**). The prospective ECF supported programme aims to restore macroeconomic stability, building a foundation for inclusive and sustainable growth, addressing weaknesses in governance and institutions and strengthening resilience to climate-related shocks.

24 Sept 2023

It is [reported](#) that the High Court of Malawi has ordered the suspension on the construction of a three-storey structure pending a review process on the basis that it encroaches upon land designated as a precious wetland ecosystem. Section 48 of the Environment Management Act, the development or alteration of wetlands is strictly regulated and requires explicit approval from the Malawi Environmental Protection Authority, which was not obtained in this instance.

MAURITIUS

22 September 2023

It is [reported](#) that Mauritius signed the Marine Biodiversity of Areas Beyond National Jurisdiction aiming at ensuring the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term.

MOZAMBIQUE

19 September 2023

It is [reported](#) that the Board of Directors of the African Development Fund, the African Development Bank Group's concessional lending window, has approved a grant of USD19.98 million to finance the implementation of Mozambique's Economic Acceleration and Governance Support Programme. The programme will support reforms in two broad areas, namely (i) Improving the private sector enabling environment for economic recovery and green growth, and (ii) Strengthening the efficiency, accountability and transparency of public expenditure. It will enable Mozambique to streamline the regulatory framework and investment facilitation processes – that foster private sector development and attract investment in climate-smart agriculture. It is expected to help stimulate the development of agribusiness and micro, small and medium-sized enterprises, as well as finance efforts to mainstream gender and climate action initiatives into economic development. It will also strengthen public financial management, particularly internal controls, public procurement, and debt management functions.

22 September 2023

It is [reported](#) that UN-Habitat and the United Nations Environment Programme are strengthening the institutional and technical capacities of local government officials to build climate resilience in the Greater Maputo Area of Mozambique. The new project will be focusing on ecosystem-based adaptation solutions, which are receiving increasing attention from the international community and are defined as the use of biodiversity and ecosystem services as part of an overall adaptation strategy to climate change. The project is funded by the

Global Environment Facility's Least Developed Country Fund, On 22 September, an induction workshop was held to launch a special component of the project that focuses on building institutional and technical capacity, which will result in the development of up-to-date realistic and ambitious local adaptation plans for 5 districts and municipalities of the Greater Maputo Area.

NAMIBIA

25 September 2023

It is [reported](#) that the Environmental Investment Fund of Namibia held the first meeting to discuss the Readiness and Preparatory Support Programme (**Programme**). The Programme is designed to bolster Namibia (and other countries') access to climate finance and facilitating the participating countries' ability to fulfil their Nationally Determined Contribution ambitions.

SEYCHELLES

20 September 2023

It is [reported](#) that Seychelles has become a member of the Ocean Panel, a high level global initiative that allows global leaders to build momentum and work towards a sustainable ocean economy.

SOUTH AFRICA

1 September 2023

The Department of Transport published the [Draft National Ports Amendment Bill, 2023 \(Bill\)](#) for public comment. The objects of the Bill are to amend the National Ports, Act 12 of 2005 so as to align with the international and domestic policy developments and performance trends impacting on South African ports, to provide for certain definitions, to repeal certain provisions and to provide for matters connected therewith. The deadline for submission of comments was 5 October 2023.

13 Sept 2023

The Department of Agriculture, Land Reform and Rural Development has published [draft Norms and Standards for Spatial Planning and Land Use Management \(draft Norms and Standards\)](#) in accordance with the mechanism envisaged under section 8 of the Spatial Planning and Land Use Management Act, 2013. The draft Norms and Standards seek to promote a normative approach that will ensure wise use of land. The objectives of the draft Norms and Standards are to promote social inclusion, spatial equity, efficient settlement patterns, rural revitalization, urban regeneration and sustainable development. The deadline for submission of comments is 12 November 2023.

13 Sept 2023

It is [reported](#) that the Minister of Electricity has been joined to South Africa's first youth-led climate change case – the #CancelCoal campaign. The case challenges the government's decision to procure 1500 MW of new coal-fired power, highlighting the adverse climate impacts of burning coal and its implications for constitutional rights. The Minister of Electricity's newly acquired powers in determining new generation capacity make his inclusion in the case necessary.

15 Sept 2023

The Department of Public Enterprises published the [draft National State Enterprises Bill 2023 \(draft Bill\)](#) which seeks to (among other things): (i) establish the State Asset Management SOC Ltd; (ii) consolidate the State's shareholdings in state enterprises; (iii) provide for the phased succession of state enterprises to the holding company; and (iv) provide for appropriate and effective performance monitoring mechanisms over subsidiaries. The period for comment on the draft Bill ends on 15 October 2023.

15 Sept 2023

The Portfolio Committee on Forestry, Fisheries and Environment considered and [adopted](#) the motion of desirability of the [Climate Change Bill \[B9-2022\] \(Bill\)](#). The Bill, whose primary purpose is to facilitate effective responses to climate change and a long-term equitable transition to a low carbon and climate resilient economy, was referred to the committee in February 2022. The committee is expected to table the Bill in the National Assembly shortly.

17 Sept 2023

The Portfolio Committee on Mineral Resources and Energy has [invited](#) public comment or oral submissions on the [National Nuclear Regulator Amendment Bill \[B25-2023\] \(Bill\)](#). The Bill proposes to amend the National Nuclear Regulator Act, 1999, so as to (among other things): (i) substitute certain definitions and insert new definitions; (ii) authorise the Regulator to perform additional regulatory functions; and (iii) provide for conditions applicable to the transfer of responsibility for authorised activities. The deadline for submission of public comment is 13 October 2023.

17 Sept 2023

The Portfolio Committee on Mineral Resources and Energy has [invited](#) public comments and oral submissions on the [Electricity Regulation Amendment Bill \[B23-2023\] \(Bill\)](#). Among other things, the Bill seeks to amend the Electricity Regulation Act, 2006, so as to: (i) provide for the National Energy Regulator to consider

applications for licences and the issue of licences; (ii) provide for revocation and deregistration of licences; and (iii) provide for additional electricity, new generation capacity and electricity infrastructure. The deadline for submission of comments is 13 October 2023.

18 Sept 2023

The Portfolio Committee on Justice and Correctional Services has [invited](#) comments on the Regulation of Interception of Communications and Provision of Communication-related Information Amendment Bill [B28-2023] (**Bill**). The aim of the Bill is to (among other things) amend the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, so as to: (i) to provide for the designation of an independent designated judge; (ii) provide for adequate safeguards where the subject of surveillance is a journalist or practising lawyer; (iii) provide for adequate procedures to ensure that data obtained pursuant to the interception of communications is managed lawfully and not used or interfered with unlawfully. The deadline for comments is 6 October 2023.

19 Sept 2023

The Minister of Forestry, Fisheries and Environment [published](#) the draft Policy Position on the Conservation and Sustainable Use of Elephant, Lion, Leopard and Rhinoceros for public comment (**policy paper**). The policy paper focuses on correcting unsustainable practices, promoting conservation and sustainable use of the five species, and providing policy direction for international commercial trade in five species. Measures proposed in the policy paper include consideration of international commercial elephant ivory trade when conditions become favourable. The deadline for submission of comments is 19 October 2023.

19 September 2023

The Minister of Forestry, Fisheries and The Minister of Forestry, Fisheries and Environment published the [draft Strategy for Reducing Food Losses and Waste](#) in terms of section 72 and 73 of the National Environmental Management: Waste Act, 2008 (**draft strategy**) for public comment. The draft strategy is a waste management policy directive that assimilates the Department of Forestry, Fisheries and Environment's strategic approach to waste management with the commitments and directives of the Sustainable Development Goals, South Africa's National Development Plan: Vision 2030 and the Chemicals and Waste Economy Phakisa

Outcomes. The deadline for submission of comments is 19 October 2023.

26 September 2023

It is [reported](#) that the government would like to expand the grid so that the country is able to accommodate the renewable energy solutions that have been rolled out but not yet connected as a result of transmission constraints. In order to do this, government understands that it is necessary to engage the private sector in order to understand what will attract more investment into transmission.

29 September 2023

The Minister of Finance published a [notice](#) inviting public comment on the draft amendments to the Money Laundering and Terrorist Financing Control Regulations (**draft regulations**). The draft regulations set out the requirements for the sharing of information between accountable institutions. The deadline for submission of comments is 29 October 2023.

UNITED REPUBLIC TANZANIA

1 September 2023

It is [reported](#) that the Tanzania Petroleum Development Corporation intends to expand its natural gas production at the Mnazi Bay block by 65% percent in response to the country's rising demand for natural gas. It is also reported that the Tanzania Electric Supply Company is aiming to augment power generation to meet the country's growing energy requirements.

10 September 2023

It is [reported](#) that Ireland and the United Nations (**UN**) in Tanzania have entered into an agreement in terms of which a EUR 3.85 billion contribution will be made to the Sustainable Development Goals (**SDGs**) Acceleration Fund. The partnership signifies a firm commitment from both Ireland and the UN to support Tanzania in realizing its SDGs.

ZAMBIA

28 September 2023

It is [reported](#) that the Zambian and Chinese governments entered into a number of commercial co-operation agreements to the value of USD 3 billion during Zambia's recent state visit to China. The agreements cover digitization, green energy, infrastructure and environmental protection. China continues to be Zambia's largest trading partner, with increased bilateral trade from copper and other minerals.

AFRICA

1 September 2023

It is reported that the [Climate Change \(Amendment\) Bill, 2023 \(**Bill**\)](#) has been debated and passed by the Kenyan Senate. Despite the Climate Change Act, 2016 laying the groundwork for Kenya's climate change response by establishing the National Climate Change Council and mandating the development of the National Climate Change Action Plan, the passage of the Bill will now make it possible for Kenya to engage a broader range of stakeholders and support its emissions reduction goals. Among the international agreements that the Bill addresses is the Paris Agreement that Kenya ratified in December 2016.

4 September 2023

It is [reported](#) that on 4 September 2023 the International Renewable Energy Agency (**IRENA**), in collaboration with Kenya, Denmark, Germany, and the United Arab Emirates founded a new partnership pledging to boost renewable energy in Africa. This partnership, titled Accelerated Partnership for Renewables in Africa (**APRA**), focuses on mobilising finance, providing technical assistance and capacity building, and engaging the private sector. The APRA also includes countries such as, Ethiopia, Namibia, Rwanda, Sierra Leone, and Zimbabwe. The partnership invites other countries as well as public and private sector organizations to join APRA to amplify efforts, lead ambitious climate action, and implement effective green energy strategies.

4 September 2023

It is [reported](#) that IRENA and the African Union Development Agency signed an agreement on 4 September 2023 which is aimed at supporting African countries in their efforts to achieve the African Union's Agenda 2063 and the United Nations Sustainable Development Goal 7. This new partnership will work to enhance the capabilities of African countries and regional organisations through knowledge-based capacity building services, support implementation of the renewable energy projects in the Programme for Infrastructure Development in Africa and facilitate access for project developers to IRENA's Climate Investment Platform and Energy Transition Accelerator Financing platform.

6 September 2023

It is [reported](#) that the Nairobi Declaration on Climate Change and Call to Action (**Declaration**) was adopted at the conclusion of the Africa Climate Summit. It is understood that the Declaration is the basis for Africa's

common position in the global climate change process to COP 28 and beyond. The Declaration referred to the importance of decarbonizing the global economy for equality and shared prosperity as well as investment to promote the sustainable use of Africa's natural assets for the continent's transition to low carbon development and contribution to global decarbonization. It also encourages the acceleration of on-going initiatives to reform the multilateral financial system and global financial architecture including the Bridgetown Initiative, the Accra-Marrakech Agenda, the UN Secretary General's SDG Stimulus Proposal and the Paris Summit for a New Global Financing Pact.

7 September 2023

It is [reported](#) that the United States Special Presidential Envoy for Climate John Kerry announced USD4 million for the International Organization for Migration to support migrants, refugees, and host communities impacted by climate events in Kenya provided through the Department of State's Bureau of Population, Refugees, and Migration. Kenya recently ranked as the 31st most vulnerable country to the effects of climate change. Parts of Kenya are home to large pastoral communities that host thousands of refugees and migrants who have fled conflict and drought across the region. The contribution is dedicated to improving data on climate mobility and providing support in agricultural regions home to so many displaced persons, consistent with President Biden's Executive Order 14013 concerning the impacts of climate change on migration.



1 September 2023

On 1 September 2023, the Democratic Party of South Korea formally proposed a [Bill on Human Rights and Environmental Protection for Sustainable Business Management \(Bill\)](#). The Bill aims to prevent and address adverse human rights and environmental impacts related to business activities. The Bill reflects key elements of corporate, human rights and environmental due diligence, including requirements for companies to formulate and internalize human rights commitments and/or policies, conduct human rights and environmental impact assessments, establish and implement a system to manage and monitor risks and impacts, disclose relevant information regarding due diligence, and operate effective grievance mechanisms.

9 September 2023

At a two day summit held in India, G20 leaders adopted a [declaration](#) which targets tripling renewable energy capacity by 2030 and includes an agreement to cooperate on the development of clean energy technologies. The summit covered a wide range of topics, including Russia's war in Ukraine and its impact on food and energy security, economic growth, progress on the UN SDGs, and climate and the environment, among other issues. A significant lack of progress towards the UN SDGs was noted. While the declaration included pledges to "pursue and encourage efforts to triple renewable energy capacity globally," and "accelerating efforts towards phase down of unabated coal power, in line with national circumstances," reductions in overall fossil fuels were not included, with the text mentioning only a prior commitment "to phase-out and rationalise, over the medium term, inefficient fossil fuel subsidies," and reiterating the existing pledge to "achieve global net zero greenhouse gas emissions/ carbon neutrality by or around mid-century.

11 September 2023

It is [reported](#) that Malaysia will develop export ban policies on rare earth elements to avoid exploitation and loss of resources. This will guarantee maximum returns to the country. Malaysia has deposits of monazite and xenotime, which are minerals with rare earth elements of critical importance to high tech electronics and renewable technologies. The country's Minerals and Geoscience Department had reported that the rare earth minerals are found in 10 of the country's 13 states on both the Malay Peninsula and Borneo Island. The rare earth industry was identified as a high-growth, high-value sector that can accelerate structural economic reforms. Non-radioactive rare earths are expected to contribute as much as USD2 billion to the country's gross domestic product and create nearly 7,000 jobs by 2025.

12 September 2023

It is [reported](#) that the European Parliament voted in favour of new legislation mandating that renewables constitute 42.5% of the EU's energy consumption by 2030. The approval marks one of the last major steps to advance the proposal into law, with the legislation now awaiting formal approval by the EU Council. In addition to raising the mandated share of renewables, the legislation aims to speed up the permitting process for new renewable energy power plants, with approvals of under 12 months in areas designated as "renewables go-to areas," identified under the REPowerEU plan as locations that are particularly suitable for the installation of renewable energy plants and in which deployment is not expected to have significant environmental impacts. In

other areas, the approval process should not exceed 12 months under the new rules. Sector targets under the legislation include reaching at least a 49% renewable energy share in buildings by 2030, as well as measures to gradually increase renewable targets for cooling and heating, a 14.5% reduction in transport sector emissions by 2030 through increased renewables deployment, requirements for industry to increase the use of renewable energy annually by 1.6% and for 42% of the hydrogen used in industry to come from renewable fuels of non-biological origin by 2030, and 60% by 2035.

13 September 2023

In what has been [described](#) as a "historic milestone in climate litigation", six individuals aged between 11 and 24 appeared at the European Court for Human Rights on 27 September 2023. The individuals sought an order compelling 32 countries to rapidly escalate their emissions reductions on the basis that their rights to life, to be free from inhuman or degrading treatment, privacy and family life, and to be free from discrimination are not being upheld. The countries named in the action are the 27 members of the EU (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden) as well as Norway, Russia, Switzerland, United Kingdom and Turkey.

17 September 2023

It is [reported](#) that the California Governor recently announced that he plans to sign two new landmark climate-related disclosure bills into law, which will require most large companies in the U.S. to disclose their full value chain emissions, as well as requiring companies to report on their climate-related financial risks and adaptation measures. Both bills, SB 253, the "Climate Corporate Data Accountability Act" and SB-261, "Greenhouse gases: climate-related financial risk," passed in the California Assembly advancing the bills to the Governor's desk, who has until 14 October 2023 to sign the bills. The new laws would introduce the first major mandatory climate-related reporting obligations for many U.S. companies, although there are others likely to apply to U.S. companies as well. The SEC is preparing the final version of its own climate-related disclosure rules for U.S. companies, following the release of an [initial proposal in March 2022](#). The California law would go further in some ways than the proposed SEC rules, applying to all large companies, as opposed to only public companies, and including all Scope 3 emissions. Many U.S. companies will also have

to comply with the EU's Corporate Sustainability Reporting Directive (CSRD), which includes mandatory climate and sustainability-related reporting obligations for large companies on doing business in Europe.

20 September 2023

The Taskforce on Nature-related Financial Disclosures (TNFD) published its final recommendations for nature-related risk management and disclosure which are aimed at helping inform better decision-making by companies and capital providers on nature and biodiversity-related risks, opportunities, dependencies and impacts, as well as to contribute to a shift in financial flows towards nature-positive outcomes and the achievement of global biodiversity and ecosystem preservation goals. It is anticipated that these recommendations will be used to shape the development of future sustainability disclosure standards. The International Sustainability Standards Board of the IFRS Foundation, for example, which recently launched its landmark sustainability and climate reporting standards, has already announced that the TNFD recommendations will inform its future standard setting, and environmental disclosure platform CDP stated that it plans to align its global disclosure platform with the TNFD framework.

21 September 2023

It is reported that lawmakers at the European Parliament and EU Council announced that they have reached a provisional agreement on new rules aimed at protecting consumers from misleading sustainability claims and greenwashing practices. The agreements follow from a set of proposals to amend the EU's existing rules aimed at protecting consumers from unfair commercial practices to include considerations relating to the green transition. Under the new agreement, the EU's rules will be updated to ban generic environmental claims such as "environmentally friendly" or "climate neutral," unless proof of "recognised excellent environmental performance" is provided. The new rules also prohibit the use of sustainability labels that are not based on approved certification schemes, and also includes rules addressing early obsolescence.

25 September 2023

The European Commission recently adopted new rules that restrict microplastics intentionally added to products under the EU chemical legislation REACH. The new rules will prevent the release to the environment of approximately half a million tons of microplastics. The new rules will also prohibit the sale of microplastics, products to which microplastics have been intentionally added,

and products that release those microplastics when used. Exceptions and transition periods for the affected parties to adjust to the new rules will apply.

26 September 2023

It is reported that the French government announced its plan to cut greenhouse gas emissions by 55% by 2030 in line with the EU's interim climate goals. The strategy includes a plan to increase climate-focused investments to EUR10 billion next year, compared with EUR3 billion in 2023. Key areas of investment detailed under the plan include boosting building energy efficiency, developing energy technologies including hydrogen and renewable natural gas, and natural resources, farming, agriculture and forestry. The plan also aims to boost clean mobility and renewable energy including developing offshore wind farms, producing 1 million electric vehicles by 2027 as well as opening 4 battery plants in Northern France, and investing EUR700 million in commuter train projects around big cities. One of the plan's key focus areas is on cutting reliance on fossil fuels. It was announced that the country's last coal-fired electricity generation plants will be closed by 2027 and converted to biomass energy plants. The focus is on incentivizing cleaner technologies rather than outright bans, with plans to introduce incentives to switch to electric vehicles and to install heat pumps.

Key SADC ESG contacts

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



Ernst Müller
Senior Associate
Johannesburg
T +27 10 500 2628
ernst.muller@hsf.com



Amanda (Mandy) Hattingh
Senior Associate
Johannesburg
T +27 79 425 4502
amanda.hattingh@hsf.com



Jacqui Reed
Senior Associate
Johannesburg
T +27 82 886 2580
jacqui.reed@hsf.com

For a full list of our global offices visit [HERBERTSMITHFREEHILLS.COM](https://www.herbertsmithfreehills.com)