

## AFRICA RISK CONSULTING

### South Africa Monthly Briefing October 2022

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#### South Africa Summary 25 October 2022

*The National Assembly passes the controversial Electoral Amendment Bill, which its critics say is designed to benefit the ruling African National Congress (ANC). Civil society organisations have warned it will undermine the country's democracy. Business Leadership South Africa voices concerns over the possibility that the country will be grey listed by the global Financial Action Task Force (FATF); the likelihood has increased following the suspension by Parliament's Standing Committee on Finance of deliberation on the General Laws (Anti- Money Laundering and Combating Terrorism Financing) Amendment Bill (B18-2022) due to insufficient public consultation. An 11-day countrywide strike hits state-owned ports and railway company Transnet, preventing the export of R65.3 billion (\$3.54 billion) worth of goods, in the latest in a series of major strikes caused by growing economic stress and discontent in the country. The resulting backlogs and disruptions are expected to continue for several weeks. The South African Association of Freight Forwarders (SAAFF) notes on 20 October that the effects of the strike will be felt into 2023.*

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#### National Assembly passes controversial electoral reform bill

The lower house of parliament – the **National Assembly (NA)** – on 20 October passed the controversial **Electoral Amendment Bill** by 232 votes to 98.<sup>1</sup> The vote passed with the support of the ruling **African National Congress (ANC)** and the second-largest opposition party, the **Economic Freedom Fighters (EFF)**. Notably, parliament's **Portfolio Committee on Home Affairs** only completed its work on the bill and submitted it to the NA on 12 October, meaning that the NA discussed and passed the bill in under a week. The ANC-dominated parliament and portfolio committee justified this haste since the bill must be passed and enacted before the constitutional court-set deadline in December.<sup>2</sup> This is an extended deadline after parliament missed the original June 2022 deadline to pass electoral reforms.

A constitutional court ruling in June 2020 mandated the electoral reforms after it found that the country's current system of pure proportional representation was unconstitutional. The court found that the fact that anyone seeking national or provincial political office was required to be a member of a political party violated the constitutional right to association.<sup>3</sup> As such, the court ruled that the legislature must pass an electoral reform to enable independent candidates to contest national and provincial elections. The constitutional court gave parliament and the government until June 2022 to pass these reforms so the new system would be in effect for the 2024 national general election.

However, the bill has been widely criticised by civil society, election experts and opposition parties, who claim that it is poorly structured and will weaken **South Africa's** institutional democracy rather than strengthen it. The bill has further been criticised for creating an ineffective electoral system that will largely benefit the ruling ANC.

The matter was handed to home affairs minister **Aaron Motsoaledi**, as electoral matters largely fall under the portfolio committee on Home Affairs. Motsoaledi set up a **Ministerial Advisory Committee (MAC)** headed by ANC stalwart and former cabinet minister **Valli Moosa** to study the

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<sup>1</sup> Mail & Guardian, 20 Oct 2022

<sup>2</sup> Mail & Guardian, 10 Jun 2022

<sup>3</sup> Saffii, 11 Jun 2020

matter and make recommendations on how South Africa's electoral reform should be implemented.<sup>4</sup> Moosa served as provincial affairs and constitutional development minister between 1996 and 1999 and as environmental affairs and tourism minister between 1999 and 2004.

The MAC concluded its work in June 2021 and put forward two proposed new electoral systems. The first option was referred to in the report as “*a modified multi-member constituency system*” (MMC) to accommodate independent candidates (*from now on referred to as Option 1*) and the second option was a “*mixed member model incorporating single-member constituencies*” (*Option 2*). Significantly, the majority of members on the MAC including Moosa preferred Option 2. This system would essentially recreate the same mixed system employed in South Africa's local government elections at a national level. Under this system, parliament would be split into 200 proportional representation seats and 200 constituency seats which would be filled through directly elected representatives from 200 separate constituencies, which would be drawn based on population size.<sup>5</sup> This system is considered to be highly effective, benefiting from the presence of members of parliament (MPs) who would be directly accountable to their voters while still ensuring the equality and balance of majority rule ensured by the proportional representation system. Similar mixed systems are in practice in countries such as **New Zealand** and **Germany**.

Motsoaledi and the ANC, however, went against the advice of their own MAC and have opted to pursue Option 1. This system divides parliament into 200 proportional representation seats and 200 seats allotted to independent candidates. However, instead of creating 200 new constituencies for these candidates to represent, the system outlined by Option 1 demarcates each province as a single constituency. Under Option 1, citizens voting in the national election will receive two ballots. The first will include a list of political parties contesting the proportional representation vote. However, the second ballot will include political parties as well as independent candidates. This means that independent candidates will be contesting directly against political parties themselves.<sup>6</sup> This heavily disadvantages the independent candidates as they are unlikely to have the financial and logistical resources to compete with political parties. The ANC will benefit the most from this system, as it is designed to replicate the results of the proportional representation ballot. This is further complicated by the fact that the proposed electoral system will permit candidates to contest for these independent candidate seats in multiple different provinces.

Furthermore, the Option 1 system creates several barriers to entry for independent candidates. Notably, the bill mandates that an independent candidate will need to secure 20,000 supporting signatures to register for an election, while a political party needs just 1,000.<sup>7</sup> Even more problematically under Option 1, if an independent candidate's seat is vacated for any reason during the parliamentary term, the seat will be filled from the party parliamentary lists, thus ensuring that the ruling party is likely to fill any vacant seats.

The contentious nature of the new proposed system is best exemplified by Moosa's criticism of the system the government has chosen to pursue. Moosa noted that the bill is “*a disaster in waiting*” and even the MPs who voted for it do not understand it.<sup>8</sup> The vocal criticism of the new electoral reforms means that the matter could be taken to the **Constitutional Court** should the act pass the upper house – **National Council of Provinces (NCOP)** – and be signed into law by President **Cyril Ramaphosa** (2018-present). The convoluted system proposed under the amendment bill, the fact that it evidently favours political parties, and that Motsoaledi overruled the advice of his own MAC means that the Constitutional Court may find that the new system falls short of the requirements it laid out in its June 2020 ruling. This could increase tensions between the judiciary and the ANC-led government and legislature.

<sup>4</sup> News24, 10 Oct 2022

<sup>5</sup> PMG, 29 Nov 2022

<sup>6</sup> News24, 23 Oct 2022

<sup>7</sup> EWN, 20 Oct 2022

<sup>8</sup> Mail & Guardian, 10 Oct 2022.

If the constitutional court agrees to hear a challenge to the proposed new system, it may have to agree that the 2024 elections take place under the current electoral system. The **Electoral Commission (IEC)** has already raised concerns over the limited time it is being given to implement a new system and prepare for the next election.<sup>9</sup> The IEC has repeatedly warned that it needs two full years to adequately prepare for an election; given that the next election must take place before the end of October 2024, this timeframe has already been ignored. The IEC will need to learn and adopt the convoluted new election system and implement the necessary changes in less than two years while ensuring that the elections meet all the requirements to be considered free and fair.

The 2024 elections are already expected to be highly contentious given that – if current voting trends hold – the ANC could lose its electoral majority for the first time in the democratic era. Arguably, it is this declining electoral support that has motivated the ANC to pursue the system outlined in Option 1, which may strengthen its parliamentary presence even as its total share of the vote declines.

### Private sector expresses concern over possible grey listing

**Business Leadership South Africa (BLSA)** has voiced alarm over the strong possibility that South Africa could be grey listed by the global **Financial Action Task Force (FATF)** for failing to adequately address concerns over money laundering and terrorist financing. BLSA published a report on 12 October it had commissioned from the economic research firm, **Intellidex**, which assesses that there is an 85% probability that the FATF will grey list South Africa at its plenary in February 2023.<sup>10</sup>

BLSA has been a vocal critic of the government's slow response to take the necessary steps to prevent grey listing. The FATF first raised its concerns in 2019 when it found that South Africa was partially compliant or noncompliant with 20 of the FATF's 40 recommendations and lacking in all 11 of the necessary measures to combat money laundering.<sup>11</sup>

Despite being warned in 2019, the government only submitted the first of its new bills intended to address this matter to parliament in late August of this year.<sup>12</sup> The bill – the **General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill (B18-2022)** – seeks to address deficiencies in at least 14 of the 20 FATF recommendations, including an appropriate enhancement of powers and procedures for regulatory authorities. This includes making amendments to the **Trust Property Control Act**, the **Non-profit Organisations Act**, the **Financial Intelligence Centre Act**, the **Companies Act**, and the **Financial Sector Regulation Act**.<sup>13</sup>

This General Laws Amendment bill has been criticised for overreach, and the **National Treasury**, which submitted the bill to parliament, has been lambasted for failing to leave time for sufficient public comment. Parliament's standing committee on finance chairperson **Joseph Maswanganyi** criticised the National Treasury on 11 October for leaving such an important piece of legislation until the last minute and using the FATF's deadline as a means to push parliament to rush the bill through without leaving sufficient time for public comment.<sup>14</sup> This became evident in the committee's initial hearings, where representatives from the **Johannesburg Stock Exchange (JSE)** and the non-profit organisation (NPO) industry body, the **NPO Working Group**, described elements of the bill as unworkable.

The JSE expressed fears that the burdensome regulations would force South African companies to delist from the exchange, while the NPO Working Group noted that as the bill stands, any NGO or even religious or voluntary organisations, including social organisations such as knitting clubs, would be subjected to burdensome regulations. These complaints regarding the bill led the standing committee

<sup>9</sup> News23, 22 Oct 2022

<sup>10</sup> BLSA, 12 Oct 2022

<sup>11</sup> News24, 12 Oct 2022

<sup>12</sup> National Treasury, 29 Aug 2022

<sup>13</sup> National Treasury, 29 Aug 2022

<sup>14</sup> News24, 12 Oct 2022

to suspend its deliberations on the bill until a more extensive public comment period had been concluded.

The delay was necessary, as the overbearing regulations mandated by the General Laws Amendment Bill would almost certainly have resulted in it facing a legal or constitutional challenge. This challenge would have been bolstered if the bill had been rushed through without a sufficient public comment period. It is unlikely that the bill will be passed before the **Financial Intelligence Centre (FIC)** has its meetings with the FATF in November.

The second bill proposed by the National Treasury to improve the country's anti-money laundering and terrorist financing framework, the **Protection of Constitutional Democracy against Terrorist and Related Activities Amendment Bill**, is also only set to be submitted to parliament in November, just before the December recess. As such, neither bill may be enacted before February.<sup>15</sup>

BLSA's Intellidex report is clear on the ramifications of South Africa being grey-listed, noting that South African clients would be subject to enhanced due diligence,

*"...which will mean more frequent [usually annual instead of every three years] and more invasive assessments for AML [anti-money laundering] and CFT [combatting of terrorism financing measures] risks. This will mean increased costs for SA businesses and individuals that trade internationally and have bank accounts or investment accounts abroad."<sup>16</sup>*

South African banks would also be faced with higher charges in managing banking relationships and relationships with infrastructure providers such as payment systems.<sup>17</sup> This will increase operational challenges for South African businesses and investors. International institutional investors, who are prohibited by their risk policies from engaging with grey-listed countries, may be forced to divest from the South African financial sector. This will hit South Africa's capital markets particularly hard. Intellidex estimates that the potential economic harm caused by a greylisting could cost the country anywhere between 1% and 3% of GDP.<sup>18</sup> This would eliminate the 1.1% in economic growth forecast by **International Monetary Fund (IMF)** for 2023. However, the reputational damage to the country's globally respected financial sector and capital markets could be even more significant and take several years to recover from.

### Transnet hit by major strike

South Africa's ports and railways operator, **Transnet**, was impacted by a major countrywide strike between 6 and 19 October over a wage dispute, preventing the transport and export of over R65.3 billion (\$3.54 billion) worth of goods.<sup>19</sup> The strike was led by the parastatal's two largest unions, the **United National Transport Union (UNTU)** and the **South African Transport and Allied Workers Union (SATAWU)**, which collectively represent more than 80% of Transnet workers.

The unions embarked on a strike after rejecting Transnet's offer of a 1% wage increase, which is markedly lower than the current consumer price inflation of 7.5%.<sup>20</sup> Transnet argued that it needed to offer such a negligible increase to improve the group's long-term sustainability.<sup>21</sup> Transnet group CEO **Portia Derby** revealed on 13 October that labour costs account for around 66% of the state-owned enterprise's operating expenses. Transnet capitulated and agreed to a three-year agreement in which workers would receive a 6% increase in the first year, 5.5% in the second, and 6% in the third after industry clients and the government added pressure. This will add a further R1.5 billion (\$81m) to Transnet's labour bill; however, this is negligible compared with the cost of the strike itself.

<sup>15</sup> National Treasury, 29 Aug 2022

<sup>16</sup> BLSA, 12 Oct 2022

<sup>17</sup> BLSA, 12 Oct 2022

<sup>18</sup> BLSA, 12 Oct 2022

<sup>19</sup> News24, 20 Oct 2022

<sup>20</sup> Daily Maverick, 19 Oct 2022

<sup>21</sup> Business Day, 13 Oct 2022

The **Minerals Council South Africa (MCSA)** estimated that the strike cost the mining sector around R815m (\$44m) a day and forced facilities at **Richards Bay Coal Terminal** and the **Port of Saldanha** to deplete their stockpiles, which now need to be replenished.<sup>22</sup> South African petrochemical giant, **Sasol** was also forced to declare *force majeure* due to the strike.<sup>23</sup> Sasol further noted that it is still dealing with the backlogs and supply chain disruptions caused by the industrial action despite the strike being called off.

The resulting backlogs and disruptions are expected to continue for several weeks if not months. The **South African Association of Freight Forwarders (SAAFF)** noted on 20 October that the effects of the strike will be felt into 2023. According to the SAAFF, one day of a work stoppage at Transnet can result in as much as a 10-day delay due to disruptions and backlogs. As such, it could take until February or even March for operations to normalise.

The Transnet strike is the latest in a series of major strikes to impact the South African economy this year. The most notable was the wildcat strike at state-owned utility **Eskom** in late June/early July which resulted in the onset of Stage 6 load shedding. These strikes are being driven by high levels of inflation, economic insecurity and the lingering economic effects of the **Covid-19** pandemic limiting companies' ability to increase wages in line with inflation. This is exacerbated by organised labour's frustration with the government, as well as increased competition for workers among labour unions. These factors are expected to drive further major strikes in the near future. Indicative of this is the fact that the **Public Servants' Association (PSA)** officially served a strike notice on the government on 24 October, following the collapse of wage negotiations.

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<sup>22</sup> News24, 20 Oct 2022

<sup>23</sup> ENCA, 21 Oct 2022

## Planner

26 Oct 2022 **Cape Town (South Africa)** Medium Term Budget Policy Statement;

22-24 Nov 2022 **Pretoria (South Africa)** **South African Reserve Bank** (central bank) MPC meeting;

6 Dec 2022 **Pretoria (South Africa)** Q3 2022 GDP data;

13-15 Dec 2022 **Washington (United States)** **The US-Africa Leaders' Summit**;

Dec 2022 **(South Africa)** **African National Congress** elective congress;

2024 **(South Africa)** General election

## Chronology

24 Oct 2022 **Johannesburg (South Africa)** *News24*. The country's largest civil servants' trade union, the **Public Servants' Association (PSA)**, issues a notice to strike after wage negotiations with the government collapse;

23 Oct 2022 **Johannesburg (South Africa)** *Business Tech*. President **Cyril Ramaphosa** announces the processes and changes underway to address the recommendations made by the **State Capture Commission of Inquiry**, including changes to the country's laws and establishing new agencies to focus on corruption;

23 Oct 2022 **Johannesburg (South Africa)** *Times Live*. Former president **Jacob Zuma** delivers a speech in which he accuses President **Cyril Ramaphosa** of treason, claiming that Chief Justice **Raymond Zondo** was inappropriately appointed to the **Zondo Commission of Inquiry into State Capture**, despite Zuma himself having appointed Zondo;

23 Oct 2022 **Johannesburg (South Africa)** *News24*. Former president **Thabo Mbeki** addresses the **Strategic Dialogue Group (SDG)**, criticising the **African National Congress (ANC)** as lacking leadership;

21 Oct 2022 **Johannesburg (South Africa)** *News24*. The ruling **African National Congress (ANC)** has once again extended its deadline for leadership nominations from its branches to 7 November;

21 Oct 2022 **Johannesburg (South Africa)** *ENCA*. Petrochemical giant **Sasol** declares *force majeure* due to the lasting effects of the **Transnet** strike;

20 Oct 2022 **Cape Town (South Africa)** *EWN*. The **National Assembly** passes the controversial **Electoral Amendment Bill**;

19 Oct 2022 **Cape Town (South Africa)** *News24*. The independent panel appointed by parliament to investigate allegations related to the break-in and theft at President **Cyril Ramaphosa's Phala** farm begins its work;

19 Oct 2022 **Johannesburg (South Africa)** *Bloomberg*. France-headquartered banking group **BNP Paribas** puts its **South African** subsidiary up for sale, following the sale of its subsidiaries in **Burkina Faso, Mali, Guinea, Senegal, Tunisia, and Cote d'Ivoire**;

19 Oct 2022 **Nkomazi (South Africa)** *Daily Maverick*. The **Economic Freedom Fighters (EFF)** win a by-election in **Nkomazi** in **Mpumalanga** province, typically a stronghold of the ruling **African National Congress (ANC)**;

19 Oct 2022 **Johannesburg (South Africa)** *News24*. State-owned ports and railways operator **Transnet** reaches a wage agreement with the **South African Transport and Allied Workers Union (SATAWU)**, the second largest union representing workers at the parastatal, essentially ending the strike;

19 Oct 2022 **Johannesburg (South Africa)** *MarketWatch*. **Statistics South Africa (StatsSA)** reveals that Consumer Price Inflation (CPI) fell to 7.5% in September from 7.6% in August;

17 Oct 2022 **Johannesburg (South Africa)** *News24*. **Transnet** reaches a wage agreement with the **United National Transport Union (UNTU)**, the largest union representing its workers;

17 Oct 2022 **Durban (South Africa)** *ENCA*. Former **Democratic Alliance (DA)** **KwaZulu-Natal** provincial leader **Zwakele Mncwango** officially joins **ActionSA** as that party's provincial leader. after resigning from the DA on 8 October;

15-16 Oct 2022 **Riyadh (Saudi Arabia)** *South African Government*. President **Cyril Ramaphosa** visits **Saudi Arabia** and signs agreements and memoranda of understanding worth an estimated \$15 billion;

6 Oct 2022 **Johannesburg (South Africa)** *News 24*. Labour unions at state-owned ports and railways operator **Transnet** go on strike;

3 Oct 2022 **Johannesburg (South Africa)** *Mail & Guardian*. Heckling delegates prevent **African National Congress (ANC)** chairperson **Gwede Mantashe** from addressing the **Congress of South African Trade Unions (COSATU)** annual conference, raising concerns over the possible collapse of the ANC's alliance with the union federation;

30 Sep 2022 **Pretoria (South Africa)** *Times Live*. Public enterprises minister **Pravin Gordhan** announces a new board to oversee state-owned power utility **Eskom**, which will be chaired by former Eskom CEO and current **Nedbank** chairperson **Mpho Makwana**;

30 Sep 2022 **Johannesburg (South Africa)** *Financial Times*. **National Prosecuting Authority** adds global management consulting firm **McKinsey & Co** and former partner at its local office **Vikas Sagar** to a corruption case against former leaders of the nation's ports and rail operator **Transnet**;

28 Sep 2022 **Cape Town (South Africa)** *News24*. The **National Assembly** adopts the **Expropriation Bill** despite most opposition parties opposing the bill for either being too excessive or too weak; the bill will now be submitted to the **National Council of Provinces (NCOP)**;

28 Sep 2022 **Bloemfontein (South Africa)** *EWN*. Former mineral resources minister **Mosebenzi Zwane** is arrested and charged with corruption concerning the controversial **Estina Dairy** project in the **Free State**;

27 Sep 2022 **Johannesburg (South Africa)** *EWN*. **Statistics South Africa (StatsSA)** releases its latest employment figures which show that total employment fell by 119,000 people quarter-on-quarter but has improved by 74,000 jobs year-on-year;

27 Sep 2022 **Durban (South Africa)** *News24*. The **African National Congress (ANC)** provincial leadership in **KwaZulu-Natal** province endorses former health minister **Zweli Mkhize** to be the next ANC president;

24 Sep 2022 **Johannesburg (South Africa)** *News24*. Former **Democratic Alliance (DA)** leader **Mmusi Maimane** launches a new political party called **Build One South Africa (BOSA)**;

### About Africa Risk Consulting:

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