



# **The interpretation of social relations in the environmental, social and governance framework**

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## ABSTRACT

Environmental, social and governance (ESG) issues have gained prominence in recent years. Companies have come to understand their role in the global economy and that their decisions cannot be based solely on profits. They are now required to have regard for the environment in which they operate, to be mindful of the social factors that affect their employees, customers and the community at large, and to ensure that their corporate governance complies with the standards set out in the *Companies Act 71* of 2008 and the various King Reports.

While ESG has become a buzz word in the corporate world, there is still much uncertainty among stakeholders about what they are required to do and what the reporting requirements, if any, are. Its implementation in South Africa is still in its infancy and there is much uncertainty about what ESG monitoring and compliance truly entail. A perfect illustration of this is the fact that the Johannesburg Stock Exchange (JSE) only published ESG disclosure guidelines for the first time in 2022. This means that until the guidelines were published, hundreds of companies in South Africa had been wondering aimlessly in the dark when it comes to ESG issues.

To make matters worse, while environmental issues and corporate governance issues have received significant attention from scholars and legislators in South Africa alike, the "S" in ESG has received little attention. It is often treated as the undesirable stepchild that everyone conveniently forgets is part of the ESG family.

The purpose of this study is to highlight the gaps in the existing ESG regulatory framework, which leads to gaps in the understanding and monitoring of the implementation of the social indicators of ESG. The study aims to firstly determine whether companies in South Africa have a proper understanding of the social framework of ESG and whether the current legal and/or regulatory framework in South Africa offers sufficient guidance to n organisations to ensure that they comply with and fully implement the social guidelines of the ESG framework.

**Key words:** ESG; ESG Framework; social factors; social indicators; governance factors; section 29 of Companies Act; King IV report.

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## LIST OF ABBREVIATIONS

AfCTA	African Continental Free Trade Area
AJoBE	African Journal of Business Ethics
Am UL Rev	American University Law Review
AREF	African Review of Economics and Finance
AVCA	African Private Equity and Venture Capital Association
BASA	Banking Association of South Africa
B-BBEE	Broad-based black economic empowerment
BHRJ	Business and Human Rights Journal
BIJ	Benchmarking: An International Journal
BSE	Business Strategy and the Environment
CCIJ	Corporate Communications: An International Journal
CCMA	Commission for Conciliation, Mediation and Arbitration
CDJ	Community Development Journal
COIDA	Compensation for Occupational Injuries and Diseases Act 130 of 1993
CRISA	Code for Responsible Investing in South Africa
CSR	Corporate social responsibility
CSRD	Corporate Sustainability Reporting Directive
ESG	Environmental, social and governance
FSA	Fundamentals of Sustainability Accounting
FSCA	Financial Sector Code Authority
GDP	Gross domestic product
GRI	Global Reporting Initiative
HBR	Harvard Business Review
IAJ	Investment Analysts Journal
IFRS	International Financial Reporting Standards
IJMER	International Journal of Management & Entrepreneurship Research

IJRPR	International Journal of Research Publication and Reviews
Int J Environ Sci	International Journal of Environmental Studies
IODSA	Institute of Directors of Southern Africa
ISSB	International Sustainability Standards Board
IT	Information technology
J Community Dev Soc	Journal of the Community Development Society
J Manag Stud	Journal of Management Studies
J Travel Res	Journal of Travel Research
J World Bus	Journal of World Business
JAAR	Journal of Applied Accounting Research
JMAR	Journal of Management Accounting Research
JSE	Johannesburg Stock Exchange
King IV	King IV Code on Corporate Governance
Manag Audit J	Managerial Auditing Journal
MENA	Middle East and North Africa
MPRDA	Mineral and Petroleum Resources Development Act 28 of 2002
NDC	Nationally determined contribution
NEDLAC	National Economic Development and Labour Council
NEMA	National Environmental Management Act 107 of 1998
NGO	Non-governmental organisation
NLC	National Lotteries Commission
NRF	Natural Resources Forum
RIBAF	Research in International Business and Finance
ROAPE	Review of African Political Economy
ROAPE	Review of African Political Economy
S Afr J Sci	South African Journal of Science
SABR	Southern African Business Review
SAHRC	South African Human Rights Commission

SAJBM	South African Journal of Business Management
SAJEMS	South African Journal of Economic and Management Sciences
SAMPJ	Sustainability Accounting, Management and Policy Journal
SARB	South African Reserve Bank
SDGs	Sustainable development goals
SED	Socio-economic development
SJES	Swiss Journal of Economics and Statistics
SMJ	Strategic Management Journal
SRI	Socially Responsible Investment
TIJA	The International Journal of Accounting
UN	United Nations
UNEP-FI	United Nations Environment Programme - Finance Initiative
UNPRI	United Nations Principles for Responsible Investment
VBS	VBS Mutual Bank
WCED	World Commission on Environment and Development

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# CHAPTER 1 INTRODUCTION

## 1.1 Introduction

Environmental, social and governance (ESG) issues have in recent years come to play a more central role in company regulations worldwide.<sup>1</sup> Organisations, particularly large corporations, have started to understand their role as members of the global economy and have realised that all their actions and choices have an impact on people's lives and the environment.<sup>2</sup> Companies are becoming alive to a conscious world, where stakeholders are showing more interest in the non-financial parameters that affect a business' operations.<sup>3</sup>

ESG is a corporate concept that is primarily concerned with sustainable finance and deploying financial capital in a manner that leads to economic prosperity, environmental protection and social justice.<sup>4</sup> Sustainable finance is a big part of corporate social responsibility.<sup>5</sup> There can therefore be no expectation of sustainable finance if corporate social responsibility is neglected. Companies that neglect ESG, particularly the social indicators, in the long run find it difficult to remain competitive.<sup>6</sup>

Investors who invest large sums of money in companies have come to understand that their role as responsible investors means that they must take into account environmental, social and corporate governance issues before investing money in a company in order to generate long-term competitive financial returns and a positive societal impact.<sup>7</sup> In the past, investors were concerned only with placing their money in an entity that would give them the highest financial returns, the thinking has started to change and investors now expect companies to be much more than just money-making machines. They expect companies to be responsible corporate citizens who do their bit to improve and uplift the lives of their employees and the community.<sup>8</sup>

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<sup>1</sup> Becchetti *et al* 2022 *Sustainability* 1.

<sup>2</sup> Roach 2023 <https://www.bu.edu/eci/files/2023/09/Corporate-Power-Module.pdf>.

<sup>3</sup> Rapson and Novotny 2022 <https://www.webberwentzel.com/News/Pages/esg-reporting-and-disclosure-in-a-new-era-for-companies.aspx>.

<sup>4</sup> Chiu and MacNeil Research Handbook on Global Capital Markets Law 5.

<sup>5</sup> Park 2018 *SJIL* 5.

<sup>6</sup> Yimer 2023 *Mizan Law Review* 127.

<sup>7</sup> Viviers and Els 2017 *AREF* 123.

<sup>8</sup> Muthuri *et al* 2012 *Business & Society* 356.

It cannot be denied that investors, particularly institutional investors, have influence on the decisions and management strategies of the companies in which they invest.<sup>9</sup> Institutional investors are companies or legal entities such as pension funds and hedge funds that garner funds from several investors to make investments on their behalf in various financial institutions.<sup>10</sup> Due to the large sums of money that they are able to inject into companies and the economy as a whole, institutional investors wield a lot of influence and are often known to vote with their feet when companies make decisions they are not in favour of.<sup>11</sup> They therefore ought to be encouraged to prioritise the implementation of ESG indicators in the companies where they invest, particularly the social indicators of ESG, so that they can see sustainable, long-term returns.

While issues around ESG have gained some prominence, its implementation and monitoring in South Africa is still in its infancy and there is much uncertainty among the different stakeholders about what ESG monitoring and compliance entails. The situation has not been made any better by the fact that the Johannesburg Stock Exchange (JSE) only published ESG disclosure guidelines for the first time in the year 2022.<sup>12</sup> Prior to that, companies were left to their own devices to try and figure out what ESG meant for them and what indicators or metrics to put in place to monitor their own compliance. Further, while the environmental and corporate governance indicators in the ESG framework have received sufficient attention from different scholars<sup>13</sup> and have been sufficiently regulated in legislation such as the *National Environmental Management Act* 107 of 1998 (NEMA) and the *Companies Act* 71 of 2008 (the *Companies Act*), the interpretation, understanding and implementation of the social indicators in the ESG framework have not received similar attention.

It cannot be denied that social indicators are just as important, if not more important than the environmental and corporate governance indicators, especially in a country like South Africa which has a history of social injustices, poverty and inequality that have hampered its socio-economic development.<sup>14</sup> There is therefore an urgent need to address, *inter alia*, the key issues that affect compliance with the social indicators of the ESG framework, such as a lack of understanding of what constitutes social indicators, lack of consensus on social metrics, the

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<sup>9</sup> Locke and Esser 2011 *ASSAL* 296.

<sup>10</sup> Illig 2007 *Am UL Rev* 231.

<sup>11</sup> Bushee *et al* 2014 *JMAR* 124.

<sup>12</sup> JSE Limited 2022 <https://www.jse.co.za/our-business/sustainability/jses-sustainability-and-climate-disclosure-guidance> (hereinafter referred to the JSE Guidelines).

<sup>13</sup> Mooneeapen *et al* 2022 *SAMPJ* 965; Johnson *et al* 2019 *SAJEMS* 1.

<sup>14</sup> Herring *et al* 2009 *IAJ* 16.

complexity of social dynamics, lack of engagement by stakeholders and ethical and moral considerations.<sup>15</sup>

It is essential to address these challenges to unlock all the potential of the ESG framework as a tool for promoting sustainable development, promoting the trust of stakeholders and facilitating positive social changes.<sup>16</sup> By exploring these issues, this study aims to help corporate and stakeholder groups in South Africa better understand how to effectively interpret and integrate the social indicators in the ESG framework to achieve a meaningful and lasting effect.

## 1.2 Background to the Study

In 1983, the United Nations (UN) founded the World Commission on Environment and Development (WCED), which paved the way for the development of the concept of ESG.<sup>17</sup> It was concerns about the rise in international inequality and world poverty, which are recognised as some the social indicators in the ESG framework, that led to the UN facilitating the establishment of the WCED.<sup>18</sup> In recent years, ESG frameworks have become a way to evaluate the sustainability and ethical impact of investment and corporate practices. ESG standards are used by investors, analysts and stakeholders to evaluate company performance beyond the customary financial measures, taking into account the company's environmental, social and governance responsibilities.<sup>19</sup>

The components that make up ESG have gained such global importance that in 2005, the UN again took a leading role as it had done with the establishment of the WCED in the eighties. It drafted the United Nations Principles for Responsible Investment (UNPRI) to bring understanding about the importance of sustainability in decisions pertaining to investments and ownership.<sup>20</sup> The UNPRI has been useful in providing relevant statistics pertaining to sustainability issues through the corporate and investment lens.<sup>21</sup>

Environmental considerations within the ESG framework focus on the impact of a company on the natural world, including its carbon footprint, its use of resources, its level of pollution and its

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<sup>15</sup> Soares ESG is in the eye of the beholder 61.

<sup>16</sup> Jonsdottir *et al* 2021 *Sustainability* 7331.

<sup>17</sup> Polunin 1985 *Environmental Conservation* 78.

<sup>18</sup> United Nations <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>.

<sup>19</sup> Eccles and Serafeim 2013 *HBR* 4.

<sup>20</sup> Sjøfjell and Richardson *Company Law and Sustainability* 77.

<sup>21</sup> UNPRI 2016 [https://www.unpri.org/download\\_report/22438](https://www.unpri.org/download_report/22438).

commitment to sustainable practices. A company's environmental performance is often assessed by measures such as greenhouse gas emissions, water use and waste management.<sup>22</sup>

The governance considerations, on the other hand, focus on the structures and processes that regulate how companies are managed and controlled. This includes the diversity of management, the compensation of employees, the acquisition of shares and other securities, shareholder rights, transparency, responsibility and compliance with ethical standards.<sup>23</sup>

Social indicators, which are the primary focus of this study, cover a wide range of issues related to human capital, employee health and safety, social relations and community involvement pertaining to the operation and functioning of companies. The social indicators include aspects such as diversity and inclusion, labour practices, human rights, the welfare of employees and community development. Socially responsible enterprises give priority to fair labour practices and support diversity and inclusion initiatives to ensure a happy and loyal workforce.<sup>24</sup> They understand that they have a big role to play, along with government and other stakeholders, to remedy some of the ills that exist in society.

It is often not so difficult to measure a company's environmental impact or to determine the soundness of its corporate governance as these aspects are, to a large extent, sufficiently regulated by the relevant legislative provisions. NEMA, for instance, compels all companies whose operations involve extracting resources from the environment to apply for a permit, which assists the relevant authorities to ensure that the applicants always remain compliant with the Act. NEMA also established a direct link between the "E" and the "S" in ESG. Section 2(2) provides that "environmental management must place people and their needs (social factors) at the forefront of its concern and serve their physical, psychological, developmental, cultural and social interests equitably".

The *Companies Act*, for its part, regulates corporate governance by placing strict liability and/or sanctions on company boards of directors and prescribed officers who fail to carry out their governance obligations in the required manner.<sup>25</sup>

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<sup>22</sup> Global Reporting Initiative (GRI) *Sustainability Reporting Standards* (2020).

<sup>23</sup> World Economic Forum *The Global Risk Report* (2020).

<sup>24</sup> Findler *et al* 2007 ASW 82.

<sup>25</sup> Section 77 of the *Companies Act*.

The measurement of social indicators, on the other hand, is not so easy to achieve as it depends on uncertain and often unlegislated factors.

### **1.3 Motivation**

#### **1.3.1 Rationale for the Study**

The aim of this examination of the social indicators in the ESG framework is to assess, firstly, whether companies in South Africa have a proper understanding of the social indicators of ESG and, secondly, whether the current legal and/or regulatory framework in South Africa offers sufficient guidance to organisations to ensure that they comply with and fully implement the social indicators of the ESG framework.

#### **1.3.2 Limitation of the Study**

This research only focuses on ESG within the South African legal framework, and while there is reference to ESG developments in other countries, such reference is for comparison purposes only and none of the detail of the frameworks in other countries are explored.

### **1.4 Research Question**

The research question that this study attempted to answer is: "Are there sufficient guidelines on the appropriate interpretation and implementation of the social indicators in the ESG framework in South Africa"?

### **1.5 Aims and Objectives**

#### **1.5.1 Aims**

The aims of this research can be summarised as follows:

- (a) examine the role of social indicators in the ESG framework;
- (b) critically analyse the existing guidelines, if any, in South Africa pertaining to the interpretation of social indicators in the ESG framework;
- (c) investigate the importance of social factors in evaluating corporate sustainability and responsibility;
- (d) explore the effect of ESG criteria on social relations and how they in turn affect various organisational contexts;

- (e) identify the difficulties and advantages linked to the integration of social considerations into ESG assessments; and
- (f) contribute to an analysis and understanding of how stakeholders perceive and prioritise social aspects of ESG.

### **1.5.2 Objectives**

The study sought the overall goals and aims of the research by pursuing the following objectives:

- (a) To examine the current body of literature on ESG, with a specific focus on the interpretation and execution of social criteria;
- (g) To determine the primary social indicators and metrics that are commonly used in ESG assessments and to evaluate their significance and efficacy;
- (h) To assess the potential effects of social factors on financial performance, reputation and the long-term sustainability of companies within the context of ESG;
- (i) To evaluate the efficiency of existing methodologies and instruments for evaluating and disclosing social performance in ESG frameworks; and
- (j) To provide suggestions for improving the integration of social considerations into ESG assessments and reporting procedures.

## CHAPTER 2      METHODOLOGY

### 2.1    Research Design

This study followed an exploratory qualitative research design to sufficiently investigate the gaps and challenges in interpreting and implementing the social aspects of the ESG framework in the South African context. The exploratory nature of this research is particularly relevant when considering the multifaceted and often ambiguous nature of the social aspects of ESG, which are frequently not captured by quantitative measures. The qualitative approach allowed the study to address the nuanced nature of these social aspects as interpreted by various stakeholders, such as corporations, communities, policymakers and investors. The study consulted document analysis, case studies and secondary data from academic literature and industry reports to facilitate a broad understanding of how social factors are integrated into corporate strategies and practices.

### 2.2    Data Collection

The data collection process for this research was meticulous and incorporated the following interrelated components, each enriching the understanding of the social indicators of the ESG framework:

**Literature review:** The study included a thorough and systematic review of primary and secondary sources, focusing on academic writings, industry reports, white papers, and regulatory documents. This study specifically targeted social indicators relevant to South Africa and their application across various sectors. The aim is to compile a comprehensive synthesis of existing knowledge, identify prevailing themes and underscore the theoretical underpinnings driving the current discourse on ESG in the country.

**Legal and policy analysis:** The study thoroughly examined the legal frameworks governing ESG reporting in South Africa. This included an analysis of the *Constitution of the Republic of South Africa* (the Constitution), the *Companies Act*, NEMA, the King Reports, the JSE Sustainability and Climate Disclosure Guidance (the JSE Guidelines) and other pertinent labour, mining and finance laws. Understanding these legal prescripts is critical, as they define the regulatory landscape within which companies operate. They influence the ESG implementation and reporting practices of the companies. This analysis also considered the implications of regulatory changes over time, particularly in response to socio-economic and political shifts.

Case studies: The selection of specific case studies, such as those from the South African mining and banking industries, is intended to provide real-world context and highlight the practical challenges companies face when integrating social indicators into governance. These case studies illustrate the complexities and variabilities of social relations as they pertain to ESG and thus allow for a critical examination of best practices to identify areas that need improvement.

### **2.3 Sampling**

While primary data collection through interviews or surveys is outside the scope of this study, the study will strategically sample secondary data from diverse sectors across South Africa, ensuring a holistic perspective on the social indicators in the ESG framework. The sectors are as follows:

The mining and natural resources sector: This sector has been fraught with socio-economic challenges, including labour disputes, health and safety issues and community protests, making it an ideal area on which to focus for examining the social indicators of ESG. The research highlights how historical context and ongoing struggles shape corporate behaviours and community interactions and how tragedies can sometimes be the catalyst for much needed change in an industry.

The banking sector: The banking sector is a critical lens through which one can examine the intersection of corporate governance and social responsibility. Given South Africa's deep socio-economic disparities, this sector's approach to addressing social indicators offers significant insights into how financial institutions can influence broader social change while managing risk. Whether or not the South African banking sector has done enough to bring about development and change in society is a debate that will rage on for many years to come and which, thankfully, does not need to be answered in this study.

### **2.4 Data Analysis**

The analytical framework for this study adopts qualitative content analysis, enabling a systematic and in-depth interpretation of texts and documents. This method is particularly suited for identifying recurring themes, patterns, and discrepancies in the understanding and application of social indicators in ESG frameworks. The following methods were used:

Thematic analysis: The research sought to identify and scrutinise critical themes from the literature and legal analysis through thematic analysis. These themes may include corporate diversity initiatives, labour rights protections, community engagement strategies and socio-economic equality efforts. Identifying these themes will reveal underlying trends, gaps in understanding and opportunities for enhanced corporate social responsibility.

Case study analysis: The case study examined specific South African companies in pertinent industries, assessing the consequences of their failures in addressing social indicators. By exploring cases such as the regulatory aftermath of the Lonmin Plc (Marikana) and Lily Gold Mine tragedies, the research analyses how these tragedies have inspired some significant changes in the mining industry.

## **2.5 Ethical Considerations**

Ethical considerations in this study are paramount, particularly given its reliance on secondary data sources. While there are no direct interactions with human participants, it is essential to uphold rigorous academic integrity throughout the research process using the following methods:

Source accuracy and citation: The researcher ensured that all sources are accurately represented and properly cited, adhering to North-West University's academic integrity policies. This involves carefully selecting reputable academic journals, governmental publications, industry reports and corporate disclosures to create a solid foundation for the research.

Plagiarism prevention: The researcher relied on thorough documentation practices to avoid plagiarism, providing precise citations for all referenced materials in accordance with the university's citation guidelines. This commitment to ethical sourcing respects the intellectual contributions of others and enhances the credibility of the study's findings.

This comprehensive approach ensured that the study could offer a robust evaluation of social indicators in the ESG framework in South Africa, contributing valuable insights to the academic literature and practical applications in the corporate sector.

## CHAPTER 3 THE EVOLUTION OF ENVIRONMENTAL, SOCIAL AND GOVERNANCE FRAMEWORKS

### 3.1 Introduction

The broader academic discourse surrounding ESG frameworks has predominantly concentrated on the environmental and governance pillars, often neglecting the social dimension, especially in the South African context.

The lack of understanding and progress when it comes to the social indicators in the ESG framework is not unique to South Africa. Some studies show that for a long time, social ratings products accounted for only 14% of the Global Initiative for Sustainability Reporting targeted at an investor audience.<sup>26</sup> This serves as an indication of the lack of interest in social indicators among writers, researchers, investors and stakeholders in the total performance of investment outcomes. Investors only seem to show interest in social performance when it imposes short term costs that are easy to calculate.<sup>27</sup> As will be argued further below, the implantation and monitoring of the social indicators in the ESG framework is a costly and time-consuming exercise for organisations, which could be the reason for investors' lack of interest.

However, it is not all doom and gloom. The world appears to have woken up and has been realising that ESG or sustainability issues have great potential to affect the financial value of companies.<sup>28</sup> This has resulted in scholars directing a bit more time and energy towards the social indicators in the ESG framework.

The shift can only serve to benefit companies and their stakeholders as social indicators are pivotal to corporate practices that facilitate sustainable development and equitable growth.<sup>29</sup> Given South Africa's ongoing struggle with the legacies of apartheid, pervasive inequality, and social injustice, a comprehensive examination of the social dimensions of ESG is not merely beneficial but essential.

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<sup>26</sup> Global Initiative for Sustainability Ratings (GISR) 2017. <http://ratesustainability.org/hub/index.php/search/report-in-graph>.

<sup>27</sup> O'Connor and Labowitz *Putting the "S" in ESG* 68.

<sup>28</sup> Anstey 2024 <https://www.ebnet.co.za/changes-on-the-horizon-for-esg-disclosures-in-south-africa/>.

<sup>29</sup> Bansal 2005 *SMJ* 199.

### 3.2 Examination of the Current Body of Literature and Regulatory Environmental, Social and Governance Framework in South Africa

The development of ESG as a concept can be traced back to the 1980s, catalysed by a rapidly increasing understanding that corporate governance should involve more than mere financial metrics.<sup>30</sup> This evolution in thought gained significant traction due to pivotal reports, including the United Nations' WCED, commonly referred to as the Brundtland Commission in honour of its founding chairwoman, Gro Harlem Brundtland. The commission's foundational premise of "sustainable development" has since been a cornerstone for embedding environmental and social considerations in the corporate decision-making processes.<sup>31</sup>

Past ESG research has mainly focused on companies operating in developed economies,<sup>32</sup> with very little attention to entities operating in developing or emerging markets.<sup>33</sup>

Despite a slight increase in the interest in sustainable corporate practices in emerging markets in recent years, very limited ESG-related research has been conducted in South Africa. In addition, the majority of local researchers have elected to focus on corporate governance<sup>34</sup> and not so much on the two other categories in the ESG framework. However, if ESG is to have the desired results, it is vital for entities and their managers to focus on all three factors.<sup>35</sup>

Due to the limited research on social indicators of ESG in South Africa, one is forced to seek guidance from the legislative reforms that are in place and those that are forecasted.

South Africa is part of the global economy. Before examining the legislative reforms in South Africa, it is necessary to study some of the international developments that have gotten South Africa to the point that it is at when it comes to ESG implementation and monitoring.

There have been significant improvements globally in ESG reporting or in the reporting on sustainability matters. Great efforts have been made to standardise, converge and consolidate

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<sup>30</sup> Eccles *et al* 2019 *Organization & Environment* 578.

<sup>31</sup> Pearce and Atkinson 1998 *SJES* 251.

<sup>32</sup> Balatbat *et al* 2012 [https://www.researchgate.net/publication/260907931\\_ESG\\_Scores\\_and\\_its\\_Influence\\_on\\_firm\\_performance\\_Australian\\_Evidence/download](https://www.researchgate.net/publication/260907931_ESG_Scores_and_its_Influence_on_firm_performance_Australian_Evidence/download); Ferrero-Ferrero, Fernández-Izquierdo and Muñoz-Torres 2016 *Sustainability* 1-16; Nollet, Filis and Mitrokostas 2016 *Economic Modelling* 405.

<sup>33</sup> Aaltonen 2013 <http://hawkamah.org/wpcontent/uploads/2014/10/environmental.social.and.corporategovernance.practices.in.the.MENA.region.2007-2012.pdf>.

<sup>34</sup> Mangena and Chamisa 2008 *TIJA* 28-44; Mans-Kemp *et al* 2017 *SAJBM* 33-43; Ntim *et al* 2012 *JAAR* 122-144; Tshipa *et al* 2018 *SAJEMS* 1-18; Waweru 2014 *Manag Audit J* 455–485.

<sup>35</sup> Linnenluecke and Griffiths 2010 *J World Bus* 357–366.

sustainability-related disclosure standards. An organisation such as the International Financial Reporting Standards (IFRS) Foundation, which was previously only concerned with accounting standards, has widened its focus to include sustainability-related standards through the formation of the International Sustainability Standards Board (ISSB) in November 2021.<sup>36</sup>

Many countries, including Canada, Japan, Singapore and Australia, are at advanced stages of consultations regarding the possible incorporation of sustainability related disclosures in their respective regulatory frameworks through the adoption or other use of the ISSB Standards. Brazil, Costa Rica, Sri Lanka, Nigeria, and Turkey have already indicated their intention to make use of the ISSB Standards.<sup>37</sup> The European Union also took steps in June 2022 to incorporate ISSB Standards into the European Sustainability Reporting Standards.<sup>38</sup> There is also an appetite to spread the adoption of ISSB Standards across the African continent. The meeting held in March 2024 between the chair of the ISSB and leaders in Kenya, Nigeria and South Africa is a clear indication of this.<sup>39</sup>

In South Africa, the *Companies Act* and the Companies Regulations of 2011 make it compulsory for certain companies (including state-owned companies, public companies listed on an exchange and non-profit companies incorporated by the state or performing a statutory or regulatory function) to comply with the IFRS<sup>40</sup> as issued from time to time by the International Accounting Standards Board or its successor body when preparing their financial statements.

Part of the stated purposes of the *Companies Act* are "to promote the development of the South African economy by encouraging transparency and high standards of corporate governance as appropriate, given the significant role of enterprises within the social and economic life of the nation"<sup>41</sup> and "to reaffirm the concept of the company as a means of achieving economic and social benefits".<sup>42</sup> It is therefore evident that the *Companies Act* strives to get companies to a

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<sup>36</sup> Frazier 2024 <https://www.ifrs.org/products-and-services/sustainability-products-and-services/fsa-credential>.

<sup>37</sup> Anstey 2024 <https://www.ebnet.co.za/changes-on-the-horizon-for-esg-disclosures-in-south-africa/>.

<sup>38</sup> European Commission 2023 [https://finance.ec.europa.eu/news/commission-adopts-european-sustainability-reporting-standards-2023-07-31\\_en](https://finance.ec.europa.eu/news/commission-adopts-european-sustainability-reporting-standards-2023-07-31_en).

<sup>39</sup> IFRS 2024 <https://www.ifrs.org/news-and-events/news/2024/03/issb-chair-meets-with-leaders-in-kenya-nigeria-and-south-africa/>.

<sup>40</sup> Section 29(5)(b) of *Companies Act*.

<sup>41</sup> Section 7(b)(iii) of *Companies Act*.

<sup>42</sup> Section 7(d) of *Companies Act*.

position where they make profits but also uplift society and the economy of the nation, while ensuring that the environment remains intact.

In July 2024, the current President of the Republic of South Africa, Mr Cyril Ramaphosa (Mr Ramaphosa), signed the Companies Amendment Bills into law, although the implementation date is still to be announced.<sup>43</sup> One of the big changes that will be introduced by the Companies Amendment Bills is the amendment of section 30A to the *Companies Act*. This has a bearing on ESG. The change aims to introduce a remuneration policy that must be prepared by all public and state owned companies and approved by the shareholders at the annual general meeting. The said companies will be compelled to disclose the total remuneration of the highest and lowest paid employees, the average and median total remuneration of all employees, and the remuneration gap between the top five per cent highest paid and five per cent lowest paid employees in the company.<sup>44</sup> The JSE Guidelines, on the other hand, recommend that companies report on the ratio of the average annual remuneration of the top 10 per cent of the organisation's top earners and the average annual remuneration for the bottom 10 per cent of the lowest earners in the organisation.<sup>45</sup>

These amendments ought to be applauded as a giant step towards the standardisation of ESG principles in South Africa and the promotion of the social indicators in the ESG framework.

Sustainability related or ESG disclosures and reporting are also regulated in the *King IV Code on Corporate Governance* (King IV) as part of the integrated reporting framework approach. Although they are a set of voluntary principles, they remain binding and mandatory for JSE-listed entities by virtue of the JSE Listing Requirements.<sup>46</sup> Insurers and public companies whose shares are listed on the JSE are obliged by the JSE Listings Requirements to apply King IV. They have to report on their application of King IV principles and recommendations in their annual integrated reports. They are also required to publish ESG and/or sustainability reports annually. In terms of King IV, diversity is something that should be encouraged in company culture and ought to be

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<sup>43</sup> SA Government 2024 <https://www.gov.za/news/media-statements/president-cyril-ramaphosa-assents-laws-advancing-ease-doing-business-and>.

<sup>44</sup> Dahms-Jansen and Mazibuko 2024 <https://bowmanslaw.com/insights/south-africa-companies-act-changes-impact-on-remuneration-and-financial-disclosure/>.

<sup>45</sup> JSE Guidelines 42.

<sup>46</sup> JSE Limited 2019 <https://www.jse.co.za/sites/default/files/media/documents/2019-04/JSE%20Listings%20Requirements.pdf>.

understood as "the varied perspectives and approaches offered by members of different identity groups". It ought to take into account age, culture, race and gender.<sup>47</sup>

The King IV Report compels companies to make decisions that are for the benefit of all stakeholders, including shareholders, employees, clients and the community at large.<sup>48</sup> This ensures that companies do not ignore the social indicators in the ESG framework.

The main criticism that has been levelled at King IV is that it does not provide detailed guidance on what sustainability or ESG disclosure standards should be adopted.<sup>49</sup> As a result, companies, investors and regulators alike are left with much uncertainty and most therefore elect to ignore the King IV principles.

The JSE, for its part, issued the JSE Guidelines, which are to a large extent based on global initiatives on ESG, such as the ISSB's reporting requirements. This is a clear indication of South Africa's desire to catch up with the rest of the world when it comes to ESG matters. The downside to the JSE Guidelines is that they are, as the name suggests, only meant to be a guidance tool that JSE listed companies may use on a voluntary basis.<sup>50</sup> They have no binding effect on non-listed companies.

Other regulatory bodies in South Africa have also come to the party when it comes to ESG issues. As recently as 10 May 2024, South Africa's Prudential Authority, which is a body that regulates financial institutions and market infrastructures and is concerned with the promotion of financial stability<sup>51</sup> issued guidance notes. These notes were influenced by ISSB Standards and were aimed at entities operating in the banking and insurance space on ESG and sustainability issues.<sup>52</sup>

The Prudential Authority has also issued Prudential Standard GOI 3, in accordance with which insurers are required to prepare their investment policies. The standard requires an insurer's investment policy to set out the insurer's strategy for investing. This includes asset allocation

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<sup>47</sup> Principle 7 of King IV.

<sup>48</sup> Van Zyl and Mans-Kemp 2020 *SABR 24*; Principle 6 of King IV.

<sup>49</sup> Anstey 2024 <https://www.ebnet.co.za/changes-on-the-horizon-for-esg-disclosures-in-south-africa/>.

<sup>50</sup> Rapson and Novotny 2022 <https://www.webberwentzel.com/News/Pages/esg-reporting-and-disclosure-in-a-new-era-for-companies.aspx>.

<sup>51</sup> SARB 2020 <https://www.resbank.co.za/en/home>.

<sup>52</sup> Rapson *et al* 2023 <https://www.webberwentzel.com/News/Pages/prudential-authority-publishes-highly-anticipated-draft-guidance-notes-for-banks-and-insurers-on-climate-related-risks.aspx>.

strategies and how assets will be managed. It should consider any factor that may materially affect the sustainable long-term performance of assets, including ESG factors.

Another contribution to the regulatory framework in South Africa is the Code for Responsible Investing in South Africa (CRISA) issued by the Institute of Directors of Southern Africa (IODSA). The definition of CRISA includes retirement funds.<sup>53</sup>

CRISA has come up with five guiding principles pertaining to institutional investors, which can be summarised as follows:<sup>54</sup>

- Principle 1: An institutional investor is required to incorporate sustainability considerations, including ESG issues, when carrying out its investment analysis and investment activities as part of the delivery of advanced returns to the beneficiaries.
- Principle 2: An institutional investor ought to display its acceptance of ownership responsibilities in its investment arrangements and investment activities.
- Principle 3: as far as reasonably possible, institutional investors ought to consider a collaborative approach to promote acceptance and implementation of the principles of CRISA and other applicable codes and standards.
- Principle 4: An institutional investor is required to recognise factors that carry the potential to cause conflicts of interest and should pro-actively manage these when they occur.
- Principle 5: Institutional investors need to display transparency when it comes to the content of their policies, how the policies are implemented and how CRISA is applied so that stakeholders are able to make informed assessments.

Principle 1 speaks directly to ESG issues. CRISA holds the firm view that companies that prioritise ESG issues are very likely to save a lot of money in the long run, which will be to the benefit of their clients.<sup>55</sup> There have, however, been those who have argued against the above principle by stating that institutional investors' first duty is to their clients before they owe any duty to the company, and that their clients' main interest is in profit-maximisation in the short term and not so much on ESG issues.<sup>56</sup> This way of thinking has contributed to the slow progress of ESG

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<sup>53</sup> IODSA 2022 [https://www.iodsa.co.za/page/governance\\_standards\\_and\\_codes](https://www.iodsa.co.za/page/governance_standards_and_codes).

<sup>54</sup> CRISA 2023 <https://www.crisa2.co.za/wp-content/uploads/2022/09/CRISA-FAQ.pdf>.

<sup>55</sup> CRISA 2022 [https://www.iodsa.co.za/page/governance\\_standards\\_and\\_codes](https://www.iodsa.co.za/page/governance_standards_and_codes).

<sup>56</sup> Esser and Havenga 2008 *Speculum Juris* 74.

implementation in South Africa in the financial sector, particularly with respect to the social indicators of ESG.

The *Pension Funds Act* 24 of 1956 also contains provisions that aim to, in their small way, promote ESG principles. Regulation 28(2)(c)(ix) of the *Pension Funds Act* enjoins the fund and its Board of Trustees to give due consideration to any factor that may have a material impact on the sustainable long-term performance of the asset before making an investment, including those of an environmental, social and governance character. The Financial Sector Code Authority (FSCA) has issued guidance on Regulation 28 of the *Pension Funds Act* in which it has aptly described "sustainability" as "the ability of an entity to conduct its business in a manner that primarily meets existing needs without compromising the ability of future generations to meet their needs".<sup>57</sup>

The National Treasury has published "Financing a Sustainable Economy: Technical Paper 2021"<sup>58</sup> as its contribution to sustainable finance through its Sustainable Finance initiative. The stated objectives of the initiative are, *inter alia*, to identify market barriers to sustainable finance and the implementation of environmental and social risk management best practices. It also aimed to identify gaps in the existing regulatory framework and recommend actions required of regulators, financial institutions and industry associations.

Internationally, a number of documents, such as Sustainable Development Goals, the Paris Agreement and UN Guiding Principles on Business and Human Rights, embody the underlying principles of sustainable finance and offer considerable guidance to South Africa on the implementation of ESG principles. The Paris Agreement is quite liberal in its approach when it comes to ESG and allows countries to come up with their own measures for ESG indicators. Every country is at liberty to develop a nationally determined contribution (NDC), which should provide details on the activities and targets that the particular country intends to meet in order to, *inter alia*, mitigate the effects of climate change.<sup>59</sup> The liberalism of the Paris Agreement is problematic in the ESG context where there is a desperate need for standardisation and certainty.

Despite the abovementioned legislative and regulatory steps taken in South Africa towards standardised ESG implementation reporting, there simply isn't enough authoritative literature to

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<sup>57</sup> Davids *et al* 2024 <https://iclg.com/practice-areas/environmental-social-and-governance-law/south-africa>.

<sup>58</sup> Treasury 2021 [https://www.treasury.gov.za/comm\\_media/press/2021/2021101501%20Financing%20a%20Sustainable%20Economy.pdf](https://www.treasury.gov.za/comm_media/press/2021/2021101501%20Financing%20a%20Sustainable%20Economy.pdf).

<sup>59</sup> Yimer 2023 *Mizan Law Review* 131.

provide guidance to companies and stakeholders on the significance of ESG factors, particularly the social factors. There is an urgent need for a shift in the mindsets of many South African companies that do not currently prioritise sustainability-related or ESG-related issues as they do not regard them as important enough since they are not financial in nature.<sup>60</sup>

One of the low hanging fruits that the South African legislators can latch on to in order to affect the mindset shift is an amendment of the *Companies Act* and its Regulations to make the adoption of the ISSB standards mandatory in the South African legal and regulatory sphere.

ESG reporting also ought to be made mandatory to a wider group of entities than required by the current framework, which obliges only JSE-listed companies to report on their ESG practices.

Many scholars have lamented the fact that there have not been any material enforcement actions with respect to ESG issues<sup>61</sup> and have cited the protracted delays in the finalisation of the silicosis class action as a classic example. In this case, miners who developed silicosis from exposure to silica dust in the mines brought a class action against more than 30 mining companies.<sup>62</sup>

### 3.3 Conclusion

There is a popular proverb that says that "to know where you are going, you need to know where you come from". This part of the study was focussed on examining the origins of ESG and its evolution over the years in order to determine how South Africa arrived at the current point.

As ESG frameworks gained mainstream acceptance among investors and corporations over the years, there has been a notable shift towards incorporating social and environmental effects alongside traditional financial outcomes. Scholarly contributions, such as those by Eccles and Serafeim,<sup>63</sup> have demonstrated that corporations embracing ESG principles witness enhanced long-term performance. Their research posits that effective integration of ESG considerations mitigates the risks associated with environmental degradation, social unrest, and governance failures. Yet, despite the clear articulation of the ecological and governance components, the social aspect of ESG remains inadequately defined and explored.

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<sup>60</sup> Anstey 2024 <https://www.ebnet.co.za/changes-on-the-horizon-for-esg-disclosures-in-south-africa/>.

<sup>61</sup> Davids *et al* 2024 <https://iclg.com/practice-areas/environmental-social-and-governance-law/south-africa>.

<sup>62</sup> *Nkala v Harmony Gold Mining Company Limited* 2016 5 SA 240 (GJ).

<sup>63</sup> Eccles and Serafeim 2013 *HBR* 54.

Socially responsible investment (SRI) has recently gained some prominence. In SRI, investors apply either a negative screening method or a positive screening method when making the decision on which entity to place their investment in. Negative screening is a process by which investors avoid investing in companies that are considered socially and environmentally inept,<sup>64</sup> while positive screening sees investors specifically seeking out companies with a good ESG track record in order to invest in them. Investors who apply positive screening are even prepared to forego financial interest to promote socially sound investment.<sup>65</sup> This position is often at odds with the position taken by companies, who are in business for the primary purpose of making a profit. It is therefore essential to find a good balance between sustainability and profitability for sustainable investment to thrive and become mainstream.<sup>66</sup>

Despite the good that it professes to bring, not everyone is in favour of ESG. Those who argue against the prioritisation of ESG principles argue that the main business of companies is to do business and maximise their profits.<sup>67</sup> Others argue that a strong emphasis on ESG will lead to an increase in corruption as some directors and managers may use ESG and corporate social responsibility (CSR) as a cover to channel funds to NGOs that are linked to them.<sup>68</sup> Nowhere else has this been more evident than in South Africa. One example is the VBS Mutual Bank (VBS) scandal, where billions of rands, mainly belonging to the elderly and the poor who had invested in VBS, were looted from VBS under the guise of CSR.<sup>69</sup> Another example is the looting at the National Lotteries Commission (NLC), where former Board members stole approximately R1.4 billion through funding to bogus entities that were passed off as NGOs, all linked to the former board members.<sup>70</sup> Once the funds had been paid out to the bogus entities under the guise that they were grants meant for social development, the funds quickly found their way back into the pockets of the former NLC board members, who used them for their own enrichment and selfish purposes.

While stories such as the above place a dampener on ESG issues in South Africa, one thing that cannot be denied is that ESG is here, and it is slowly becoming entrenched in the South African corporate space. Perhaps the main complaint that can be raised is that this is not happening fast

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<sup>64</sup> Cochran 2007 *Business Horizons* 451.

<sup>65</sup> Jansson and Biel 2011 *Sustainable Development* 137.

<sup>66</sup> Zetsche and Anker-Sørensen "Towards a Smart Regulation of Sustainable Finance" 87–113.

<sup>67</sup> Yimer 2023 *Mizan Law Review* 128.

<sup>68</sup> Liang H and Renneboog L "Corporate Social Responsibility and Sustainable Finance" 701.

<sup>69</sup> Editorial *Mail & Guardian* "VBS heist's forgotten victims".

<sup>70</sup> Barnard *News24* "R1.4 Billion Looted from National Lotteries Commission".

enough. In fact, a solid argument can be made that if South Africa already had suitable ESG guidelines in place, particularly pertaining to social factors, incidents such as the VBS and NLC looting would not have happened or in the event that they did happen, would have been detected early and therefore not allowed to get to the catastrophic levels they did reach.

## CHAPTER 4 THE SOCIAL INDICATORS IN THE ENVIRONMENTAL, SOCIAL AND GOVERNANCE FRAMEWORK

### 4.1 Introduction

The social criteria in the ESG framework address a broad spectrum of issues, including but not limited to human rights, labour practices, diversity and inclusion, community relations and employee welfare.<sup>71</sup> The intricacies and sensitive nature of social dynamics often render these factors the most challenging to quantify and measure, complicating their integration into corporate assessments and decision making.

In South Africa, the significance of the social component of ESG is even more heightened in light of the nation's historical and socio-political backdrop. The apartheid regime left a legacy of deep socio-economic divides,<sup>72</sup> which continue to influence relationships in communities, labour markets, and social and corporate environments. The apartheid government divided the South African population into four groups – white, black, coloured and Indian – and did its best to ensure that these four racial groups did not mix or integrate. Even to this day, employees of the same race will tend to gravitate towards one another in the workplace, which can hamper the flow of ideas among employees with diverse skills and experiences.<sup>73</sup> These are some of the hurdles that the social indicators in the ESG framework aim to address. Companies should be mindful of these matters and pay close attention if they are to foster trust and build meaningful relationships with local communities.

The importance of diversity and inclusion cannot be overstated. South Africa's demographic landscape highlights the necessity for corporate policies that embrace a diverse workforce reflective of the broader population. Research indicates that companies prioritising diversity often experience improved innovation and decision-making capabilities, benefiting their organisational culture and the bottom line.<sup>74</sup>

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<sup>71</sup> Park 2018 *BHRJ* 233-255.

<sup>72</sup> Herringer *et al* 2009 *IAJ* 16.

<sup>73</sup> Webster and Omar 2003 *Work and Occupations* 194–195

<sup>74</sup> Hunt *et al* 2018 *Delivering through diversity*.

The implementation of the broad-based black economic empowerment (B-BBEE) legislation and policies by the South African government has played a significant role in the efforts to bring redress and diminish the inequalities brought about by the injustices of the past.<sup>75</sup>

The social dimension of ESG is critical in shaping corporate practices that align with sustainable development goals,<sup>76</sup> particularly in South Africa. Addressing the social factors inherent in ESG frameworks not only aids in mitigating social risks but also enables companies to contribute positively to societal transformation.<sup>77</sup> This necessitates a more nuanced understanding and exploration of the social aspects in the existing ESG literature, particularly as they pertain to the unique challenges and opportunities in the South African context.

#### **4.2 Challenges with Implementing Social Metrics**

Due to the fact that ESG is largely dependent on self-reporting, most entities view it as a box-ticking, greenwashing, whitewashing and an obfuscation exercise.<sup>78</sup> As a result, including social metrics in ESG assessments presents significant challenges, mainly owing to the absence of a universally accepted framework for evaluating social performance. Unlike environmental metrics, which lend themselves to quantitative measures such as carbon emissions, energy consumption or water usage,<sup>79</sup> social metrics are inherently qualitative and influenced by intricate contextual factors. This variance complicates the establishment of reliable and standardised indicators for social performance.

The challenges with the implementation of social indicators in the ESG framework can be summarised as follows:

Lack of clear social indicators: Numerous scholars, including Herringer, Firer and Viviers,<sup>80</sup> identify the conspicuous absence of explicit social performance indicators as a prominent challenge. Companies often grapple with identifying universally accepted metrics that provide a consistent means of evaluating their social impact. This lack of consensus can lead to

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<sup>75</sup> Davids *et al* 2024 <https://iclg.com/practice-areas/environmental-social-and-governance-law/south-africa>.

<sup>76</sup> Eccles *et al* 2019 *Organization & Environment* 575.

<sup>77</sup> Agbakwuru *et al* 2024 *IJRPR* 3630.

<sup>78</sup> Yu *et al* 2020 *RIBAF* 1–23.

<sup>79</sup> Global Reporting Initiative (GRI) *Sustainability Reporting Standards* (2020).

<sup>80</sup> Herringer *et al* 2009 *IAJ* 11–26.

discrepancies in reporting and a failure to reflect a company's social contributions or detriments accurately.

One of the reporting methods that has come to light in recent times is what is known as integrated reporting, which allows companies to report on important information pertaining to, *inter alia*, their strategy, prospects and governance in a manner that is indicative of the environmental, commercial and social space within which they function.<sup>81</sup> This method helps bring some uniformity in the reporting of companies that function in the same space. South Africa is to be commended for being one of the first countries to adopt and seek to implement integrated reporting in its corporate governance framework.<sup>82</sup>

Stakeholder engagement: Engaging a diverse range of stakeholders – including employees, local communities, consumers and civil society organisations – presents another critical obstacle in the practical assessment of social impacts. The complexity of these relationships necessitates a comprehensive approach that recognises and attempts to prioritise each stakeholder group's interests and perspectives. Companies may struggle to establish meaningful channels for dialogue and feedback that inform their understanding of social performance. This difficulty is exacerbated in countries like South Africa where historical and socio-economic factors further complicate stakeholder dynamics.

Ethical considerations: Ethical dilemmas frequently arise when addressing social issues such as labour practices and community development. Companies, especially those operating in sectors that rely heavily on low-wage labour, must navigate the tension between profitability and ethical responsibility.<sup>83</sup> The challenge lies in meeting legal requirements and actively contributing to positive social outcomes. As organisations confront these moral quandaries, their decisions can significantly affect their reputation, stakeholder relationships and ultimately, their corporate sustainability.

Despite these challenges, the potential benefits of prioritising social performance far outweigh any obstacles that may be found along the way. Companies that excel in social metrics often have better reputations, lower employee turnover, and improved community relationships. Johnson, Mans-Kemp and Erasmus<sup>84</sup> elucidate that these positive outcomes can contribute to long-term

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<sup>81</sup> Anstey 2024 <https://www.ebnet.co.za/changes-on-the-horizon-for-esg-disclosures-in-south-africa/>.

<sup>82</sup> Anstey 2024 <https://www.ebnet.co.za/changes-on-the-horizon-for-esg-disclosures-in-south-africa/>.

<sup>83</sup> Eyo-Udo *et al* 2024 *IJMER* 1069–1077.

<sup>84</sup> Johnson *et al* 2019 *SAJEMS* 1.

profitability and sustainability, suggesting that integrating social metrics into business practices is not merely an ethical obligation but also a strategic imperative.<sup>85</sup>

### 4.3 Comparative Studies: Global vs South African ESG Frameworks

A more comparative analysis of ESG frameworks reveals substantial differences in the emphasis on social metrics in different regions, particularly between South Africa and more developed markets such as Europe and North America. The European and North American regions increasingly recognise social metrics as vital corporate responsibility and sustainability reporting components.<sup>86</sup>

The European Union's Corporate Sustainability Reporting Directive (CSRD) mandates that companies engage in extensive reporting on social issues.<sup>87</sup> This encompasses a range of topics, including diversity, equity, human rights, labour practices and the social implications of their business operations. The CSRD provides a structured framework to enhance transparency and accountability in corporate behaviour, encouraging companies to adopt best practices in social sustainability. This regulatory framework fosters a rigorous assessment and continuous improvement culture, compelling companies in the European Union to consider their social responsibilities systematically.

When it comes to ESG implantation, most countries fall into one of the following categories: countries with a well-developed ESG framework (such as the United Kingdom and France), countries with rapidly improving ESG framework (such as South Africa, Brazil, Italy and the United States of America), countries with ESG framework that is at the developing stage (such as Singapore, China and India) and countries with early-stage frameworks (such as Nigeria, Russia and Vietnam).<sup>88</sup>

In Africa, only the countries with large and stable economies appear to pay proper attention to ESG and sustainability frameworks. Only South Africa, Kenya, Egypt and Mauritius have ESG-

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<sup>85</sup> Johnson *et al* 2019 *SAJEMS* 4.

<sup>86</sup> Singhanian and Saini 2022 *Vision* 163–171.

<sup>87</sup> European Commission 2023 [https://finance.ec.europa.eu/news/commission-adopts-european-sustainability-reporting-standards-2023-07-31\\_en](https://finance.ec.europa.eu/news/commission-adopts-european-sustainability-reporting-standards-2023-07-31_en).

<sup>88</sup> Singhanian and Saini 2022 *Vision* 163–171.

related financial policies in the form of incentives for ESG market standards, incentives for issuing ESG assets, and/or climate stress testing.<sup>89</sup>

There are, however, smaller countries that have found a way of making do with the limited resources at their disposal. Ethiopia does not have specific laws that deal with sustainable finance but has successfully managed to use its existing legal framework to channel its financial institutions towards sustainable business practices in an attempt to enhance the implementation of ESG factors in the economy.<sup>90</sup> Such efforts ought to serve as an inspiration to other under-resourced African countries that will, hopefully, also seek to emulate Ethiopia's efforts.

The main difficulty that most African countries face is that the implementation of sustainability and ESG-related principles and practices requires money, which most of the African countries do not have.<sup>91</sup> Africa as a continent requires more than USD 2.5 trillion to support its set development goals by 2030<sup>92</sup>, which is a tall order for a continent that is still struggling with many other challenges. African countries have other more pressing problems to attend to, such as poverty, inequality, civil wars, lack of infrastructure, malaria and natural disasters, to name a few. They will therefore continue to view ESG compliance, particularly the social indicators of ESG, as a luxury rather than a priority.<sup>93</sup>

While a survey conducted in 2021 has shown that many African countries have the desire to introduce regulations and guidelines that mandate their respective financial sectors to prioritise sustainability, the reality is that only a few countries have taken actual steps to introduce such regulations and guidelines.<sup>94</sup> These include Nigeria, South Africa, Kenya, Ghana, Egypt and Morocco. Considering the financial muscle of these countries and the fact that they are among the most politically stable countries on the African continent, it is not far-fetched to assume that the failure by the rest of the countries to come up with any regulations and guidelines is related to financial and political constraints.

It is, however, encouraging that African countries, through the Agreement Establishing the African Continental Free Trade Area (AfCTA) on Investment, have started to recognise the importance of

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<sup>89</sup> Absa 2022 <https://www.omfif.org/wp-content/uploads/2022/10/Absa-Africa-Financial-Markets-Index-2022.pdf>.

<sup>90</sup> Yimer 2023 *Mizan Law Review* 125.

<sup>91</sup> Yimer 2023 *Mizan Law Review* 131.

<sup>92</sup> Guzmán et al 2022 Climate Policy Initiative.

<sup>93</sup> Bezerra 2024 *Applied Sciences* 8

<sup>94</sup> UNEP-FI 2021 <https://www.unepfi.org/themes/climate-change/climate-risk-regulation-in-african-financial-sector-and-related-private-sector-initiatives/>.

social and environmental factors. The preamble to the draft AfCTA agreement contains, *inter alia*, the following provisions:

RECOGNISING the significant contribution investment can make to the sustainable development of the State Parties, including the reduction of poverty, and the furtherance of investment-related human rights and human development while understanding that sustainable development requires the fulfilment of its economic, social and environmental pillars.<sup>95</sup>

African states are now cognisant of the fact that investment cannot just be focused on profits without paying due attention to the social factors that have an effect on the everyday lives of the citizens.

African countries would benefit greatly from benchmarking as a tool to make gains with the implementation of ESG. Benchmarking is an effective tool that companies worldwide use to measure their efficiency when it comes to ESG implementation. It is basically a method through which companies identify, adopt and incorporate best practices from other companies worldwide to help that company enhance its own ESG performance and implementation.<sup>96</sup> Benchmarking is also promoted and encouraged by the JSE in its *Sustainability and Climate Disclosure Guidance*.<sup>97</sup> The world is now one big global economy. There is therefore no reason why African states should continue to struggle to find their way when it comes to ESG implementation when there are other more advanced countries from which they can learn.

Some writers, such as Runa Alam, Chair of the African Private Equity and Venture Capital Association (AVCA) Sustainability Committee, argue that African countries have been doing ESG work of the highest quality for at least the past 20 years and that when it comes to ESG implementation, Africa is ahead of the curve. The AVCA report in which Alam's views are contained then goes on to list what she views to be the successes of African countries when it comes to corporate governance and environmental issues. However, she is unable to point out any significant successes or gains made by the African countries when it comes to advancing social factors.<sup>98</sup>

As far as South Africa is concerned, while its approach to ESG metrics appears to be gradually evolving, there are notable gaps in integrating social indicators. The 2022 ESG disclosure guidelines set forth by the JSE represent a positive step towards addressing these deficiencies.

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<sup>95</sup> WTI 2023 <https://edit.wti.org/document/show/e5d51824-c467-4e24-922b-3fb376d89550>.

<sup>96</sup> Kumar *et al* 2006 *BIJ* 290–310.

<sup>97</sup> JSE Limited 2022 *JSE Climate Disclosure Guidance* (hereinafter the JSE Guidelines).

<sup>98</sup> AVCA 2018 [www.avca-africa.org](http://www.avca-africa.org).

They provide some detail, which has been missing for a while, regarding what is recommended to be reported when it comes to social indicators. The disclosure guidelines have divided the social metrics into five categories, being labour standards, community development, health and safety, customer responsibility and supply chain.<sup>99</sup>

Labour standards are further sub-categorised into the following: diversity and inclusion, pay equality, wage level and living level, freedom of association and collective bargaining, and the characteristics of employees and workers in workforce.<sup>100</sup>

Community development is sub-categorised into the following: community human rights, skills for the future, employment and wealth creation, and economic contribution.<sup>101</sup>

Health and safety have been sub-categorised as follows: workplace health and safety.<sup>102</sup> Health and safety issues are unfortunately often overlooked in studies pertaining to the labour industry.<sup>103</sup>

Customer responsibility is sub-categorised as follows: high risk products and services, products innovation, and consumer data and privacy.<sup>104</sup>

Supply chain refers to the social supply chain.<sup>105</sup>

While the details in the guidelines are welcome, the extensive number of sub-categories means that there are more things for companies to report on, which requires more time and more resources. The perceived overregulation may serve to demotivate rather than motivate companies to prioritise social factors and to adopt them as part of their corporate identity.

There are, however, studies that have revealed that companies in jurisdictions with robust reporting requirements for social metrics tend to perform better with stakeholder trust and long-term viability.<sup>106</sup> The findings indicate that increased transparency regarding social issues can be

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<sup>99</sup> JSE Guidelines 40–49.

<sup>100</sup> JSE Guidelines 40–42.

<sup>101</sup> JSE Guidelines 44–46.

<sup>102</sup> JSE Guidelines 46.

<sup>103</sup> Stewart *et al* 2020 *ROAPE* 28.

<sup>104</sup> JSE Guidelines 48.

<sup>105</sup> JSE Guidelines 48.

<sup>106</sup> Sroufe and Gopalakrishna-Remani 2019 *Organization & Environment* 342.

aligned with enhanced corporate reputation and stakeholder engagement, ultimately positioning organisations better to navigate the complexities of today's social landscape.<sup>107</sup>

**Global ESG Adoption Rates by Region<sup>108</sup>**

<b>Region</b>	<b>  Adoption Rate (%)</b>
North America	80%
Europe	95%
Africa	50%
Asia-Pacific	70%
South America	60%

The above percentages indicate that Africa is lagging behind the rest of the world when it comes to ESG adoption, and that while South Africa is making strides toward developing a more integrated ESG framework, particularly concerning social metrics, significant progress still remains to be made. While strides have been made when it comes to the monitoring of environmental and corporate governance factors, South Africa's legal framework lags behind when it comes to enforcing comprehensive social reporting in the ESG framework. The *Companies Act* contains some provisions related to corporate social responsibility, but these are vague and lack enforcement mechanisms. The King IV Report also emphasises the importance of social responsibility, yet its adoption and/or implementation remains voluntary. Drawing insights from the more advanced frameworks in Europe and North America could offer valuable lessons for policymakers and businesses in South Africa and lay the foundation for a more holistic approach to assessing and reporting social performance in the South African context. Further, the JSE Guidelines, if properly implemented and enforced, could go a long way in closing the gap that currently exists in the South African ESG framework.

**4.4 Analysis of the Social Indicators in the Environmental, Social and Governance Framework**

Social indicators in the ESG framework are important for evaluating a company's contributions to societal welfare and equitable growth, especially given the socio-economic challenges that South Africa has faced in the past. However, it is difficult to quantify these social dimensions, as the quantification often entails subjective and qualitative analyses, which is often not easy to

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<sup>107</sup> Pérez 2015 *CCIJ* 11.

<sup>108</sup> Capital Group 2024 <https://www.buildingbridges.org/app/uploads/esg-global-study-2024-en.pdf>.

standardise. South African companies, whether listed or not, will do well to adopt the provisions of the JSE Guidelines in measuring their social impact on the society in which they operate.

#### 4.4.1 Common Social Indicators

Several key social indicators are frequently employed, each offering a distinct lens through which to evaluate corporate social responsibility:

##### 4.4.1.1 Labour practices

This metric evaluates how companies meet labour law requirements and standards, administer fair wages, uphold workers' rights and create a conducive environment for their employees. In South Africa, adherence to regulations outlined in the *Basic Conditions of Employment Act 75 of 1997 (Basic Conditions of Employment Act)* is critical. This includes safeguarding minimum wages, regulating working hours, ensuring fair treatment in the workplace and generally being cognisant of an employee's cultural and psychological needs. Companies that excel in these areas tend to cultivate a loyal workforce and reduce staff turnover, which can result in increased operational efficiency.<sup>109</sup>

The South African labour sector is largely regulated by the *Labour Relations Act 66 of 1995 (the Labour Relations Act)* and the *Basic Conditions of Employment Act*. While South Africa had labour laws prior to the promulgation of the above acts, such legislation was based on old apartheid principles and was found wanting when measured against the provisions of the *Constitution* and other international instruments to which the South African government had committed itself.<sup>110</sup>

In 1994, the Cheadle Commission began to work on making proposals for a new act that would regulate labour relations in South Africa, and after lengthy and robust deliberations by the National Economic Development and Labour Council (NEDLAC), the *Labour Relations Act* was signed into law and implemented on 11 November 1996.<sup>111</sup>

Perhaps the most significant provision of the *Labour Relations Act* is the introduction of the Commission for Conciliation, Mediation and Arbitration (CCMA), which is an institution that was set up as an independent juristic person<sup>112</sup> whose functions were, *inter alia*, to attempt to resolve,

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<sup>109</sup> Vakouftsis 2024 KNOWLEDGE-International Journal 18.

<sup>110</sup> Grogan Workplace Law 2.

<sup>111</sup> GN 1877 in GG 16861 of 13 December 1995.

<sup>112</sup> Section 112 of LRA.

through conciliation, any [labour] dispute referred to it in terms of the *Labour Relations Act*.<sup>113</sup> The CCMA effectively gives employees easy access to justice against unjust labour practices by employers.

The *Labour Relations Act* also regulates the rights of employees to belong to a union of their choice<sup>114</sup> and not to be victimised for doing so, as well as the right not to be subjected to unfair labour practices.<sup>115</sup> These rights accord with the rights regulated in section 23 of the *Constitution* and offer protection to workers that was not afforded by the predecessors of the *Labour Relations Act*.

The *Basic Conditions of Employment Act*, for its part, lays down fundamental conditions of employment, regulates the maximum working hours employees may be required to work, ensures that employees are given sufficient breaks and that they are sufficiently remunerated for the services they render.<sup>116</sup>

In addition to the above legislation, the *Employment Equity Act* 55 of 1998 (the *Employment Equity Act*) was also passed into law, with its objective being to eliminate discrimination in the workplace and promote affirmative action.<sup>117</sup>

There are other pieces of legislation that are relevant to labour practices in South Africa, such as:

- The *Compensation for Occupational Injuries and Diseases Act* 130 of 1993 (COIDA), which is an act that ensures that employees who have suffered injuries or death while rendering services in the course and scope of their employment, are compensated adequately from the fund created for this purpose. COIDA exists to fulfil the right to social security as contained in Article 22 of the Universal Declaration on Human Rights,<sup>118</sup> which provides that "everyone, as a member of society, has a right to social security". Article 25(1) further provides that "everyone has the right... to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control";

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<sup>113</sup> Section 115(1) of LRA.

<sup>114</sup> Section 4 of LRA.

<sup>115</sup> Section 185 of LRA.

<sup>116</sup> Sections 9, 14 and 32 of Basic Conditions of Employment Act.

<sup>117</sup> Preamble of Employment Equity Act.

<sup>118</sup> Universal Declaration of Human Rights 10 December 1948; Section 22 of COIDA.

- The *Unemployment Insurance Act* 63 of 2001 (“UIA”), which is aimed at providing for the payment of benefits to employees who lose their employment through pregnancy or other circumstances beyond their control;<sup>119</sup>
- The *Occupational Health and Safety Act* 85 of 1993 (*Occupational Health and Safety Act*) which places a duty on employers to provide a reasonably safe and healthy working environment; and
- The *Skills Development Levies Act* 9 of 1999 which places an obligation on every employer to pay a development levy that is then used to improve the skills and productivity in the workplace.

The above legislation is an indication that South Africa has made some gains in addressing the unfair labour practices that were prevalent during the apartheid era. The above legislation places compulsory obligations on employers and ensures sufficient safeguards for employees against exploitation and unfair labour practices. Compliance with the aforementioned legislative provisions serves as one of the commonly used social indicators in ESG assessments. The number of cases that are brought before the CCMA and/or the Labour Court provide a good measure of whether or not employers are complying with the legislative provisions. It was reported in 2019 that the number of cases that were brought to the CCMA had increased by 25% from the previous year, from 186 902 in 2018 to 193 732 in 2019, and that 71% of those cases related to unfair dismissals, while 11% related to unfair labour practices.<sup>120</sup> The staggering increase in the matters referred to the CCMA points to a failure by companies to prioritise social factors.

#### **4.4.1.2 Diversity and inclusion**

Diversity and inclusion are important subcomponents of the labour practices indicator. This subcomponent measures how much a company fosters diversity throughout its workforce, prioritising dimensions such as gender, race and ethnicity. Given South Africa's rich cultural diversity (South Africa is home to 11 official language groups (12 if one takes into account the recent addition of Sign Language as an official language), each with its own cultural beliefs and practices), organisations are increasingly expected to adopt and implement practices that adhere

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<sup>119</sup> Grogan Workplace Law 8; Preamble of UIA.

<sup>120</sup> Labour Guide 2019 <https://labourguide.co.za/general/ccma-caseload-continue-to-increase>.

to principles of equal opportunity and affirmative action, as mandated by legislation such as the *Labour Relations Act* and the *Employment Equity Act*. According to the JSE Guidelines:<sup>121</sup>

Organisations with higher levels of diversity, particularly within executive teams, are generally better able to innovate, attract top talent, improve their customer orientation, enhance employee satisfaction, access more wide-ranging networks, and secure their licence to operate.

South Africa currently ranks as one of the most unequal societies in the world, with a Gini-coefficient above 0.6.<sup>122</sup> This is attributed to the history of apartheid in the country during which the majority of the people, made up of the black population, were not allowed to hold certain jobs or operate certain types of businesses in the mainstream economy.<sup>123</sup> This has resulted in rife poverty, unemployment and inequality in the country, and sadly, not much has happened to change the status *quo* since the turn of democracy 30 years ago.

In light of the above, it is rather disappointing that companies do not seem to pay much attention to the above ills when mapping out their compensation plans and bonus structures. The determining factor when working out the compensation and bonus structures of employees appears to mainly be based on the financial performance of the company.<sup>124</sup> The focus is on the maximisation of company profits as opposed to bringing social redress and prioritising the social needs of the employees and stakeholders in the company and the community within which the company operates.<sup>125</sup>

South Africa has a dark history of social injustices that have hampered its socio-economic development.<sup>126</sup> Furthermore, the increasing number of HIV and AIDS infections in the country continues to place considerable pressure on the country's social and economic development. The spread of the disease has a number of direct and indirect consequences for companies, such as increased absenteeism and decreased productivity, as well as escalating healthcare and HIV/AIDS awareness training costs.<sup>127</sup>

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<sup>121</sup> JSE Guidelines 41.

<sup>122</sup> Rathbone 2022 *Acta Academica* 92–112.

<sup>123</sup> Habiyaremye 2022 *AJoBE* 25–41.

<sup>124</sup> Flammer *et al* 2019 *SMJ* 1097–1122.

<sup>125</sup> Phung *et al* 2023 *BSE* 1634–1649.

<sup>126</sup> Herringer *et al* 2009 *IAJ* 16.

<sup>127</sup> Johnson *et al* 2019 *SAJEMS* 3.

#### 4.4.1.3 Employee health and safety

This indicator assesses a company's dedication to a safe working environment and promoting the health and wellness of its employees. In sectors such as mining, where occupational hazards are prevalent, companies are required to comply with rigorous safety regulations under the *Mine Health and Safety Act 29 of 1996*. The dire effects of failure in this regard is explored in more detail below by looking at the examples of the disasters that took place at the Lonmin (Marikana) Platinum Mine and Lily Gold Mine in Barberton. The JSE Guidelines propose the following when it comes to employee health and safety:

Maintaining strong safety and health standards can improve employee productivity and operational efficiency. Working proactively in these areas of business will help identify and mitigate risks and it is increasingly required by law.

Companies will therefore do very well to prioritise the safety and well-being of their employees to improve their productivity, which will in turn result in increased profits for the companies.

#### 4.4.1.4 Human rights compliance

Assessing human rights performance in a company involves scrutinising a company's policies and practices in relation to, *inter alia*, forced labour, child labour and the right to freedom of association.

The supreme law in South Africa – the Constitution of the Republic of South Africa, 1996 – contains a Bill of Rights that extends various socio-economic rights to all who live within the borders of South Africa. Some of these rights are relevant to ESG: the right to equality,<sup>128</sup> the right to human dignity,<sup>129</sup> the right to life,<sup>130</sup> the right to freedom and security of the person<sup>131</sup>, the right not to be subjected to slavery, servitude and forced labour,<sup>132</sup> the right to privacy,<sup>133</sup> the right to freedom of religion, belief and opinion,<sup>134</sup> the right to freedom of expression,<sup>135</sup> the right to freedom of assembly, demonstration, picket and petition,<sup>136</sup> the right to freedom of association,<sup>137</sup> the right

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<sup>128</sup> Section 9 of the Constitution.

<sup>129</sup> Section 10 of the Constitution.

<sup>130</sup> Section 11 of the Constitution.

<sup>131</sup> Section 12 of the Constitution.

<sup>132</sup> Section 13 of the Constitution.

<sup>133</sup> Section 14 of the Constitution.

<sup>134</sup> Section 15 of the Constitution.

<sup>135</sup> Section 16 of the Constitution.

<sup>136</sup> Section 17 of the Constitution.

<sup>137</sup> Section 18 of the Constitution.

to freedom of trade, occupation and profession,<sup>138</sup> the right to an environment that is not harmful to their health and wellbeing,<sup>139</sup> the right to property,<sup>140</sup> the right to education<sup>141</sup> and the right to access to information.<sup>142</sup> Companies need to create an environment that makes it easy for their employees to report any abuse or oppression of their basic rights.

The UN has also published the United Nations Guiding Principles on Business and Human Rights<sup>143</sup> and compliance is essential, particularly for South African companies with a global footprint. Demonstrating a commitment to human rights mitigates reputational risks and promotes a more sustainable business model that aligns with ethical expectations from consumers and investors alike.<sup>144</sup>

South Africa is a signatory to the Paris Agreement and therefore subscribes to the sustainable development goals (SDGs) contained therein, which include a commitment to eradicating poverty, promoting gender equality and reducing inequality.<sup>145</sup> It is therefore imperative that ESG indicators be incorporated into company executive decisions and that reporting on them be made compulsory for companies to ensure a positive contribution by South African companies to the SDGs.

Investors have come to recognise that a lack of reliable information on the human rights track record of a company can hamper their ability to manage medium to long-term risks. Reliable information advances the social objective of the company in which investors invest their money.<sup>146</sup> Companies with poor observance of human rights often find themselves with an unhappy workforce and in constant clashes with labour unions, which then affects the productivity and profitability of the company. The JSE Guidelines recommend five reporting categories for the human rights metric.<sup>147</sup> Compliance will require sufficient time and resources from the companies. The operational hurdles and costs associated with the assessment of human rights performance

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<sup>138</sup> Section 22 of the Constitution.

<sup>139</sup> Section 24 of the Constitution.

<sup>140</sup> Section 25 of the Constitution.

<sup>141</sup> Section 29 of the Constitution.

<sup>142</sup> Section 32 of the Constitution.

<sup>143</sup> United Nations 2011 [https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>144</sup> FASTERLING 2017 *BHRJ* 240–241.

<sup>145</sup> ROBERTS 2016 *S Afr J Sci* 1–3.

<sup>146</sup> O'CONNOR and LABOWITZ *Putting the "S" in ESG* 59.

<sup>147</sup> JSE Guidelines 44.

in a company may discourage companies from placing sufficient emphasis on this aspect of ESG assessment.<sup>148</sup>

Leading corporates, however, recognise the importance of the observance of human rights on the business models. Unilever's CEO Paul Polman has been quoted as saying the following about human rights observance and social factors on an organisation:

What we firmly believe is that if we focus our company on improving the lives of the world's citizens and come up with genuine sustainable solutions, we are more in sync with consumers and society and ultimately this will result in good shareholder returns.<sup>149</sup>

Companies with a track record of human rights prioritisation are able to attract and retain employees of the highest quality and have lower staff turnover.<sup>150</sup>

The JSE Guidelines state the following regarding the rationale behind the human rights metric in the Guidelines:

The activities of organisations may cause or contribute to environmental or social abuses that violate the human rights of individuals, workers and communities. Without a mechanism for employees and other key stakeholders to report human rights violations, organisations could miss opportunities to identify and mitigate such underlying issues.<sup>151</sup>

The result of non-prioritisation of human rights is an increase in protests and staff turnover. In the year 2015, the South African Chamber of Commerce and Industry warned that investment would be hampered by the rapid increase in the number of protest actions in the country. This was after a number of violent protest actions swept the country as a result of poor service delivery by government. At the time, South Africa was dubbed the "protest capital of the world".<sup>152</sup> Strikes and protests have an effect not only on businesses but on employees, their families and the economy as a whole.<sup>153</sup>

The increase in the number of protests is an indication that companies need to take the lead to ensure the prioritisation of human rights, not only those of their employees and stakeholders but also the human rights of the communities within which the companies operate. They should put

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<sup>148</sup> O'Connor and Labowitz *Putting the "S" in ESG* 59.

<sup>149</sup> Confino *The Guardian* "Unilever's Paul Polman: Challenging the Corporate Status Quo".

<sup>150</sup> Baumann-Pauly and Nolan *Business and Human Rights* 11.

<sup>151</sup> JSE Guidelines 45.

<sup>152</sup> Xinhua *Global Times* "Increasing Protests to Hamper Investment in South Africa: Business Body".

<sup>153</sup> Tenza 2020 *Obiter* 519–537.

sufficient mechanisms in place to record and report on any human rights abuses. The prioritisation of human rights should not just be left to the government.

It is also necessary to mention, before concluding on this topic, that there is a link between environmental factors and human rights, as was brought to light in the foreign judgment in the matter of *Urgenda Foundation v State of the Netherlands* (2019). The Supreme Court of the Netherlands, in upholding a decision of the lower court that ordered the Dutch government to reduce CO2 emissions by at least 25% by the end of the year 2020, declared that "climate change threatens human rights."<sup>154</sup> The Court found in its ruling that the State has a duty to protect against climate change as an obligation under human rights.

The main challenge with this indicator is that company reporting is individualised and companies have too much control over what they choose to report. The structure and content of what is reported differs from company to company and even from one year to the next for the same company.<sup>155</sup> This means that companies have the power to conceal human rights abuses within their organisational structures.

#### **4.4.1.5 Community engagement and development**

This indicator measures a company's efforts to contribute positively to the socio-economic development of local communities. In South Africa, alignment with B-BBEE initiatives is essential for equitable economic growth. Companies are expected to engage in meaningful corporate social responsibility (CSR) activities that address community needs, thus promoting social cohesion and trust. Research suggests that active community engagement can lead to enhanced brand loyalty and increased consumer support, thereby reinforcing the economic viability of the business.<sup>156</sup>

Community empowerment plays a significant role in sustainability because of its focus on developing people's skills and providing them with the knowledge they require to sustain themselves and the environment in which they live.<sup>157</sup> People who feel empowered generally feel a sense of ownership of their surroundings and will therefore put in more effort towards uplifting and conserving their environment.<sup>158</sup>

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<sup>154</sup> Paragraph 5.7.9.

<sup>155</sup> O'Connor and Labowitz *Putting the "S" in ESG* 71.

<sup>156</sup> So et al 2016 *J Travel Res* 66.

<sup>157</sup> Ansari et al 2012 *J Manag Stud* 813–842.

<sup>158</sup> Harley et al 2000 *J Community Dev Soc* 348–364.

South Africa has recognised the need for companies to engage with and make meaningful attempts to uplift the communities within which they operate. Legislation such as the *Mineral and Petroleum Resources Development Act 28 of 2002* (MPRDA) places obligations on mining companies to engage in development programmes to assist and uplift the community, particularly previously disadvantaged communities. Community is defined in the MPRDA as:

... a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: provided that, where as a consequence of the provisions of this act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affected by mining on land occupied by such members or part of the community.

Section 17 of the MPRDA gives the Minister of Minerals and Energy the power to impose conditions as are necessary to promote the rights and interests of the community before granting an application for prospecting rights. Applicants for mining rights are required to submit a social and labour plan in which they must make a commitment to invest a fair amount of their profits in the upliftment of their employees and the local community through initiatives such as skills development and bursary schemes, infrastructure development and a procurement progression plan (procurement of goods and services from local suppliers).<sup>159</sup>

Other sectors would do very well to follow the path carved out by the mining industry when it comes to community development. Perhaps the time has come for the regulators in other dominant sectors such as the banking sector to impose stringent community development requirements on entities that apply for or hold banking licences and to require them to report on their efforts on a regular basis.

In addition to the gains made in the mining sector, the B-BBEE codes have also proved to be an effective tool in fostering community engagement and community development among companies in South Africa. Among some of the key pillars of the B-BBEE codes is socio-economic development (SED), which has proven to be a driving force for positive change in engagement between businesses and local communities made up of previously disadvantaged persons. Businesses operating in South Africa are required to allocate at least one percent of their net profit after tax to SED initiatives.<sup>160</sup>

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<sup>159</sup> Farmer *Mining Review Africa* "Community development requires community buy-in".

<sup>160</sup> BEE Chamber 2024 <https://www.linkedin.com/pulse/impact-b-bbee-socio-economic-development-businesses-communities-luaef>.

The MPRDA and the B-BBEE codes serve as good indicators and measurements of companies' contribution to the social factors envisaged in ESG. More legislative reforms are required to ensure that every company that does business in South Africa makes a meaningful contribution to the development and upliftment of their employees and the surrounding communities.

#### **4.4.2 Importance of Social Indicators in ESG Assessments**

The significance of social indicators in the ESG framework cannot be overstated. The Global Reporting Initiative (GRI) emphasises that social dimensions are vital for cultivating trust between organisations and their stakeholders.<sup>161</sup> In a country like South Africa, characterised by a protracted history of socio-economic inequalities, these indicators provide an indispensable framework for assessing a company's alignment with national development objectives and the Constitution.

Research indicates that high-performing organisations tend to be more forthcoming in the disclosure of their ESG compliance, while low-performing organisations tend to come up with creative ways to hide or mask their performance.<sup>162</sup>

While labour practices appear to be sufficiently regulated and reported in South Africa,<sup>163</sup> there is still significant work to be done when it comes to upholding human rights and reporting on such matters, as well as community engagement.<sup>164</sup>

Companies have to understand that organisations that commit to community development and local employment strategies can reduce social tensions, enhance their reputation and create a more conducive environment for business operations, which will only serve to benefit the companies and their profitability in the long run. Research by Jonsdottir *et al*<sup>165</sup> underscores that proactive organisations undertaking social initiatives tend to achieve greater long-term sustainability. This is attributable to their stronger relationships with stakeholders and their ability to mitigate risks linked to social unrest and inequality, thus positioning them favourably in an increasingly socially conscious market landscape.

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<sup>161</sup> Global Reporting Initiative (GRI) *Sustainability Reporting Standards* (2020).

<sup>162</sup> Veenstra and Ellemers 2020 *Sustainability* 3.

<sup>163</sup> Cole and van der Walt 2014 *Obiter* 506

<sup>164</sup> Zembe and Barnes 2023 *Indonesian Journal of Community Engagement* 56–57

<sup>165</sup> Jonsdottir *et al* 2021 *Sustainability* 7331.

With social media gaining prominence in recent years, a company's role as a social citizen is something that is under constant scrutiny.<sup>166</sup> Recent examples of this include the racism scandal that engulfed the Clicks Group of Companies after they published what was perceived to be a racist hair advert. So big was the scandal that it made headline news in international news agencies,<sup>167</sup> further highlighting the importance of social factors in the stability and well-being of a company.

KFC in South Africa also recently came under fire for a social initiative gone wrong. KFC, in an attempt to be charitable, established a donation drive called "Add hope" through which they requested customers buying food from KFC to donate R2 that would then be donated to charity organisations. It emerged on social media platforms that KFC had placed targets for its employees to meet pertaining to the R2 donations and that those who failed to meet the targets faced disciplinary action.<sup>168</sup> The two examples serve as an indicator that South African companies are now required to do more than just pay lip service when it comes to upholding social factors as envisaged in the ESG framework.

#### **4.4.3 Case study: Social Performance of South African Mining Companies**

South Africa's mining history dates back to the 1900s when gold was discovered in the Witwatersrand goldfields and diamonds were found in Kimberley.<sup>169</sup> During that period, South Africa's population was around five million people.<sup>170</sup>

Since then, the South African population has grown significantly. By 2022, South Africa had a population of 62 million people, approximately 30 million of them male and the remainder female.<sup>171</sup> According to data published by the Minerals Council of South Africa, in 2018, the mining sector contributed R351 billion to the South African gross domestic product (GDP), a total of 456 438 people were employed in the mining sector and each person employed in the mining sector had up to nine indirect dependants.<sup>172</sup> Mining therefore affects many lives in South Africa.

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<sup>166</sup> Stanley 2019 <https://co.agencyspotter.com/can-brand-activation-survive-the-age-of-constant-scrutiny/>.

<sup>167</sup> BBC 2020 <https://www.bbc.com/news/world-africa-54055814>.

<sup>168</sup> Sikhakhane and Roberts *Daily Maverick* "KFC Under Fire After Worker Gets Warning for not Meeting R2 Charity Donation Targets".

<sup>169</sup> Sorensen 2012 *Int J Environ Sci* 21–40.

<sup>170</sup> Christopher 2011 *Historia* 5.

<sup>171</sup> Stats SA 2022 <https://www.statssa.gov.za>.

<sup>172</sup> Minerals Council of SA 2023 <https://www.mineralscouncil.org.za/sa-mining>.

A large proportion of South Africa's mining entities operate in or around some of the poorest communities<sup>173</sup> and this often causes tension between the mining companies, their employees and the community. Terrible living and working conditions were one of the primary reasons for the standoff between the workers and management at the Lonmin Mine in Marikana, North West province, that led to the tragedy on 16 August 2012 (the Marikana Massacre),<sup>174</sup> which will be discussed in more detail below.

The social performance of South African mining companies serves as an appropriate case study to highlight the importance of the social indicators in the ESG framework. This industry has faced extensive scrutiny for its treatment of its labour force and the local communities surrounding the mining activities, culminating in incidents such as the Marikana Massacre. The Marikana Massacre can be summarised as follows: during a labour strike at Lonmin's Marikana Platinum Mine, 34 mineworkers were shot and killed by the police, allegedly at the behest of the mine's executives, which at the time included South Africa's current president, Mr Ramaphosa. The incident highlighted the dire consequences that can arise when a company neglects social factors to maximise profits. The testimonies of surviving workers about the incidents that led to the tragedy point to a workforce that was filled with fear of death, was concerned for its safety, felt that it was being pushed to work in unsafe areas and that its safety was ignored, which is what led to the strike and the tensions that culminated in the tragedy.<sup>175</sup>

The State established a commission of enquiry under Proclamation 50 of 2012,<sup>176</sup> headed by retired judge Ian Farlam and aptly popularly known as "the Farlam Commission". The task of the Farlam Commission, as captured in the Commission's report, was stated as follows:

Investigate matters of public, national and international concern arising out of the tragic incidents at the Lonmin Mine in Marikana in the North West Province from Saturday 11th August to Thursday 16th August 2012 which led to the deaths of approximately 44 people, more than 70 persons being injured, approximately 250 people being arrested for damage and destruction of property.

The Farlam Commission conducted a lengthy and thorough investigation and submitted a report<sup>177</sup> in which it found, *inter alia*, that Lonmin did not provide sufficient safeguards and measures to ensure the safety of its employees and that its failure to deliver on its housing obligations created an environment conducive to tension. In short, it was a failure to uphold labour

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<sup>173</sup> Kemp 2010 CDJ 198–218.

<sup>174</sup> Macmillan 2017 ROAPE 272–291.

<sup>175</sup> Alexander *et al Marikana* 8.

<sup>176</sup> Proc 50 in GG 35680 of 12 September 2012.

<sup>177</sup> SAHRC 2015 <https://www.sahrc.org.za/home/21/files/marikana-report-1.pdf>.

practices, ensure employee safety and carry out good community development initiatives that led to the tragedy.

Another example of social failure in the mining sector occurred in Barberton, Mpumalanga, where on 5 February 2016, a crown pillar collapsed, leading to three employees in the lamp room being trapped underground. Their bodies have not been recovered to date.<sup>178</sup> The incident highlighted the failure of a mine to ensure the safety and well-being of its employees.

In response to the above tragedies and many others that unfortunately go undocumented in the mining industry and happen away from any media attention, there has been a concerted effort from various stakeholders – including governmental bodies, non-governmental organisations and civil society – to hold mining companies accountable for their social performance.<sup>179</sup> Enhanced scrutiny has led many companies to adopt more rigorous corporate governance standards to improve labour conditions and strengthen community engagement. The Mining Council of South Africa reported that in 2023, the mining sector spent R4.9 billion on social investment spending in mining communities.<sup>180</sup> The transformation in the mining sector illustrates the potential for social indicators to inspire meaningful change, promote ethical business practices and advance the overall socio-economic fabric of the regions in which these companies operate. It is just unfortunate that it took tragedies of such epic proportions to drive the message home and bring about long overdue change.

In a continuous effort to address the social indicators, the mining industry – and indeed all sectors – ought to work towards creating a more equitable and ethical business landscape and contributing to sustainable development goals that will ultimately benefit all stakeholders involved. Given the Marikana and Lily Gold tragedies, Lonmin, Lily Gold and other mining companies have to revisit their social strategies and have to place extra emphasis on improving their labour practices, employee health and safety, and community engagement. If they are to avoid future tragedies such as the ones mentioned above, mining companies have to urgently adopt ESG frameworks that prioritise social welfare.

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<sup>178</sup> Mudimu 2021 <https://law.uct.ac.za/mineral-law/articles/2021-11-23-five-years-and-still-searching-justice-what-really-happened-lily-mine>.

<sup>179</sup> Vives-Gabriel and Van der Merwe 2022 <https://www.business-humanrights.org/en/blog/corporate-remedy-and-accountability-a-decade-after-the-marikana-massacre/>.

<sup>180</sup> Mining Review Africa 2024 <https://www.miningreview.com/gold/minerals-council-mining-companies-invest-in-communities/>.

The large investment of the mining industry in mining communities in 2023 is welcome since studies have shown that in the past, mines simply focused on providing charitable donations to communities without really putting any significant effort into changing the social ills facing many mining communities.<sup>181</sup> This has had the proverbial effect of giving a man a fish as opposed to teaching him how to fish as it has resulted in limited development for the mining communities.

It is hoped that the large cash injection will be accompanied by well-formulated policies and initiatives to improve the lives of the members of the mining communities. In addition to the cash injections, regulations ought to be put in place to ensure that mining companies continue to engage in sustainable community upliftment initiatives.

#### **4.4.4 Case study: Banking sector**

The banking sector is a very powerful machinery that wields a lot of influence in the South African economy.<sup>182</sup> To highlight the enormity of the banking industry in South Africa, as at July 2017, banking assets were in the estimated region of R2.5 trillion.<sup>183</sup> Section 224 of South Africa's *Constitution* provides that the South African Reserve Bank (SARB) is mandated to ensure sustainable economic growth and that the primary objective of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic. The SARB therefore has a statutory mandate from the supreme law in South Africa to protect the economy and, particularly, the financial system from risks related to ESG. Addressing the social indicators of ESG is therefore one of SARB's constitutionally-entrenched mandates.

While South African banks are subject to a stringent regulatory framework with legislation such as the *Financial Sector Regulation Act* 9 of 2017, the *Banks Act* 94 of 1990, the *National Payment System Act* 78 of 1998, the *Currency and Exchanges Act* 9 of 1933, the *National Credit Act* 34 of 2005 and the *Consumer Protection Act* 68 of 2008, it is telling that this legislation appears to be concerned with the financial performance of banks and their corporate governance, with little focus, if any at all, on the banks' social performance.

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<sup>181</sup> Hamann 2004 *NRF* 278–290.

<sup>182</sup> Moyo 2018 *SAJEMS* 1; Statista 2024 <https://www.statista.com/topics/10261/banking-industry-in-south-africa/#topicOverview>.

<sup>183</sup> Moyo 2018 *SAJEMS* 3.

The Banking Association of South Africa (BASA), which describes itself as "the national association of domestic and international banks operating in South Africa",<sup>184</sup> has introduced a guiding principle for managing risks associated with ESG. The principles promote sustainable banking practices and increase transparency and consistency in applying ESG risk management. They set minimum standards that banks are encouraged to take into consideration in running their operations, lending to clients, and financial activities, while saying very little about the social indicators that banks ought to address in their operations.<sup>185</sup>

Banks have come under fire for the long working hours and unbearable pressures they place on their employees. The recent death of an employee at Standard Bank of South Africa, who committed suicide by jumping from the sixth floor of Standard Bank's offices, was blamed on the high pressured corporate culture that is prevalent at most of the banks in South Africa.<sup>186</sup>

The aforementioned VBS looting incident also happened in the banking industry due to insufficient regulations and oversight in respect of social responsibility. It therefore cannot be denied that there is a need for better monitoring and reporting on the social indicators of ESG in the banking sector, particularly the indicators pertaining to community development and labour practices.

#### **4.4.5 Challenges in Measuring Social Indicators**

Measuring social performance remains a significant challenge for many companies in South Africa. Unlike environmental or governance metrics, which can be quantified through tangible indicators like carbon emissions or board composition, social indicators are often qualitative and more complex to assess.<sup>187</sup> According to Mooneeapen *et al*,<sup>188</sup> the effectiveness of social indicators depends on a company's ability to engage with stakeholders and understand all the complex social dynamics in the community in which the company operates. A company that fails to do this runs the risk of finding itself focusing on the wrong social aspects by, for example, reporting on its diversity statistics but failing to address underlying issues of workplace discrimination or unequal opportunities. This will only result in tension between the company, its employees, investors, and the community.

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<sup>184</sup> BASA 2021 <https://www.banking.org.za/about-us/>.

<sup>185</sup> BASA 2015 [https://sustainablefinanceinitiative.org.za/wp-content/uploads/2020/10/BASA-PRINCIPLES-FOR-MANAGING-ENVIRONMENTAL-AND-SOCIAL-RISK\\_Oct2015.pdf](https://sustainablefinanceinitiative.org.za/wp-content/uploads/2020/10/BASA-PRINCIPLES-FOR-MANAGING-ENVIRONMENTAL-AND-SOCIAL-RISK_Oct2015.pdf).

<sup>186</sup> Mashamaite *Times Live* "Cops probe Standard Bank employee's death after fall from 6<sup>th</sup> floor of offices".

<sup>187</sup> Eccles and Strohle "Exploring Social Origins in the Construction of ESG Measures" 30.

<sup>188</sup> Mooneeapen *et al* 2022 *SAMPJ* 965.

In addition to the above, the lack of standardised methodologies for measuring social performance across different sectors is proving to be an Achilles heel in the measurement of the social performance of South African companies.<sup>189</sup> Companies in industries like mining or manufacturing may face different social challenges to those in the financial or technology sectors, making it difficult to develop a one-size-fits-all approach to social performance assessment.

The fact that the JSE only issued comprehensive guidelines for the first time in 2022 means that it will take a number of years, if not decades, before South African companies eventually come to grips with the reporting requirements prescribed therein. Furthermore, it should not escape the reader that the JSE Guidelines are, as their name suggests, guidelines and depend on the willingness of companies to adopt them and implement them. As at the date of this paper, reporting on ESG compliance was not a legislative requirement in South Africa.

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<sup>189</sup> Eccles and Strohle "Exploring Social Origins in the Construction of ESG Measures" 30–31.

Table 4.1: Key Social Indicators in South African ESG Assessments

<b>Social Indicator</b>	<b>Description</b>	<b>Regulatory Framework</b>
Diversity and Inclusion	Measures efforts to promote workplace diversity and equal opportunities by looking at factors such as the percentage of employees per employee category by race, gender, age group other diversity indicators.	<i>Employment Equity Act, B-BBEE</i>
Employee Health and Safety	Assesses workplace safety standards and employee health policies by measuring, inter alia, the number and rate of fatalities as a result of a work-related injury or ill health.	<i>Mine Health and Safety Act 29 of 1996, Occupational Health and Safety Act 85 of 1993</i>
Labour Practices	Evaluates compliance with labour laws, fair wages and worker rights by looking at factors such as pay equality, freedom of association and collective bargaining.	<i>Basic Conditions of Employment Act 75 of 1997, Labour Relations Act 66 of 1995</i>
Human Rights	Reviews policies on child labour, forced labour and freedom of association, and records the number and percentage of operations that have been subject to a human rights due diligence process or impact assessments.	Bill of Rights in the South African Constitution, United Nations Guiding Principles on Human Rights
Community Engagement	Examines corporate involvement in community development and socio-economic upliftment and examines the nature of processes for engaging with affected communities and their representatives, and channels for affected community members to raise concerns.	<i>Mineral and Petroleum Resources Development Act 28 of 2002, B-BBEE Codes, CSR initiatives</i>

## CHAPTER 5 CONCLUSION AND RECOMMENDATIONS

### 5.1 Conclusion

Efforts to address the social indicators in the ESG framework is a critical yet unexplored area in South Africa's corporate landscape. While the environmental and governance components of ESG have garnered considerable attention and legislative oversight, the social dimension remains neglected and largely unregulated, save for the mining sector where some monitoring and compliance provisions have been drafted through NEMA and the MPRDA. This research has explored South African companies' challenges in interpreting and implementing the social metrics in the ESG framework, largely due to a lack of literature and legislative guidelines. The time has come for the social factors in the ESG framework to no longer be treated as the undesirable stepchild. Even the great philosopher Adam Smith recognised the importance of social responsibility when he implored corporations to place environmental and societal concerns over greater economic returns.<sup>190</sup>

The JSE Guidelines, if properly considered and implemented, will go a long way in removing the uncertainty that currently exists about the monitoring and reporting of social factors in the ESG framework.

Key findings from the research indicate that:

- Social factors such as diversity and inclusion, labour practices and community engagement are essential for sustainable corporate governance, particularly in a country like South Africa with a history of deep socio-economic inequalities;
- South Africa's legal and regulatory framework lacks specific, enforceable guidelines for social reporting in the ESG framework. While the JSE has introduced ESG disclosure guidelines, they are not legislated and compliance remains voluntary. The same applies to the recommendations contained in the King IV reports;
- Case studies, such as those from the mining industry and the banking industry, reveal that companies often struggle to integrate social metrics due to a lack of standardised indicators and the complex nature of social relations in communities affected by corporate activities; and

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<sup>190</sup> Du Toit and Lekoloane 2018 *SAJEMS* 1.

- Companies that successfully incorporate the social metrics of ESG into their day-to-day operations tend to have better reputations, improved employee relations, and stronger community ties, all of which contribute to long-term sustainability.

Despite the above challenges related to the implementation of the social factors in the ESG framework, there is great potential for companies in South Africa to enhance their social performance within the ESG framework by adopting more comprehensive and transparent social metrics such as the ones recommended in the JSE Guidelines. Doing so will help South African companies with their sustainability goals, build trust with stakeholders and contribute to the broader goal of socio-economic development in South Africa.

## **5.2 Recommendations**

Based on the research findings, the following recommendations are made to improve the understanding and implementation of social indicators in the ESG framework in South Africa:

### **5.2.1 Develop Clear Guidelines for Social Reporting**

In collaboration with the JSE, the South African government is encouraged to develop more precise guidelines for social reporting based on the ESG framework. There is no need to reinvent the wheel as the JSE Guidelines contain comprehensive recommendations.

To augment the JSE Guidelines, further guidelines should be developed, which should:

- provide standardised social indicators that companies across all sectors can measure and be able report on pertaining to their social performance. The indicators should be easily measurable and should not burden companies with great expense;
- ensure that companies report on vital social factors such as diversity and inclusion, labour practices, human rights and community engagement; and
- introduce a system that incentivises companies that comply with the guidelines and imposes harsh penalties on those companies that do not comply with the social reporting requirements.

### **5.2.2 Enhance Stakeholder Engagement**

Companies should improve their engagement with stakeholders, including employees, communities, investors and civil society organisations. Effective stakeholder engagement will enable companies to:

- better understand the social challenges their employees and surrounding communities face, thus avoiding tragedies such as the one that transpired in Marikana;
- improve the working environments so that incidents such as the one at Standard Bank, where an employee committed suicide, become a very rare occurrence;
- identify areas where corporate activities may be contributing to social harm and take steps to mitigate these impacts; and
- build trust, foster stronger stakeholder relationships and enhance corporate reputation and sustainability.

### **5.2.3 Invest in Capacity Building**

South African companies should invest in capacity-building initiatives to improve their ability to measure and report on social indicators. This includes:

- training of company corporate governance teams on integrating the social metrics of the ESG framework into their compliance reports;
- investing in information technology (IT) systems that will enable them to carry out ESG monitoring in a speedy and efficient manner; and
- collaborating with academic institutions, non-governmental organisations and other stakeholders to develop more accurate and context-specific social indicators and thereafter lobbying the legislature to pass legislation that entrenches the implementation of such factors into law.

### **5.2.4 Case Studies and Best Practices**

Companies should learn from case studies and best practices from other countries that have successfully integrated social factors into their ESG frameworks. This includes:

- studying international standards such as the European Union's CSRD, which provides comprehensive guidelines for social reporting; and
- adapting these best practices to the South African context, given the country's unique socio-economic challenges and legal frameworks.

**5.2.5 Improve Enforcement Mechanisms**

The South African government should strengthen enforcement mechanisms to ensure that companies comply with social reporting requirements. This could include:

- introducing legislation that will make it compulsory for companies to report on their social performance;
- introducing penalties for companies that fail to report on social metrics or companies that engage in practices that harm the social well-being of employees and/or the community; and
- providing incentives for companies that consistently comply with the social reporting obligations, possibly in the form of tax breaks.

**5.3 Figures and Tables**

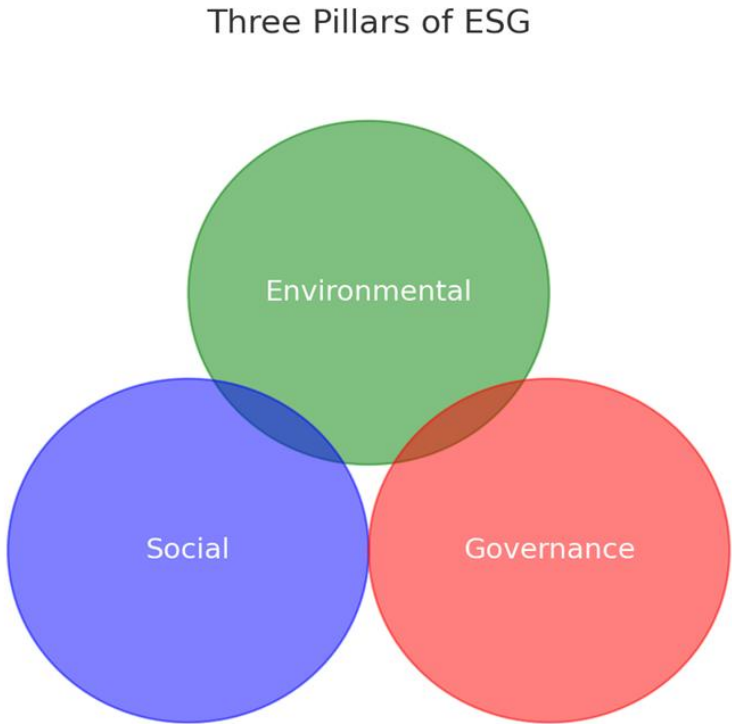


Figure 5.1: Key Components of the ESG Framework

Table 6.1: Proposed Social Indicators for South African Companies

<b>Social Indicator</b>	<b>Description</b>	<b>Regulatory Framework</b>
Diversity and Inclusion	Metrics for workplace diversity and equal opportunities	<i>Employment Equity Act, BBBEE</i>
Employee Health and Safety	Standards for workplace safety and employee well-being	<i>Mine Health and Safety Act, Occupational Health Act</i>
Labour Practices	Compliance with labour laws, fair wages, and worker rights	<i>Labour Relations Act, Basic Conditions of Employment Act</i>
Human Rights	Policies on child labour forced labour, and worker rights	United Nations Guiding Principles on Human Rights, the Bill of Rights in the South African Constitution
Community Engagement	Corporate contribution to socio-economic development	Broad-Based Black Economic Empowerment (B-BBEE), CSR

#### 5.4 Summary of Recommendations

- Develop standardised guidelines for social reporting.
- Enhance stakeholder engagement for better alignment with community needs.
- Invest in training and capacity-building for accurate social metric assessment.
- Learn from international best practices.
- Strengthen enforcement mechanisms for non-compliance.

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