POLICY BRIEF

Mandatory Human Rights and Environmental Due Diligence (MHREDD) in South Africa

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1. Context

South Africa does not yet have a consolidated MHREDD statute. Instead, MHREDD-relevant duties are distributed across constitutional, environmental, company, labour and procurement law. However, this fragmented system does not reliably deliver an enterprise-wide, value-chain-capable due diligence cycle with standardised disclosure and accessible remediation.

Why it matters now

International standards treat due diligence as the operational core of responsible business conduct. Major markets are translating this into binding governance, reporting and enforcement expectations. For South Africa, the principal channel is commercial and financial leverage. In this regard, exporters and suppliers increasingly face contractual and information demands that require credible due diligence systems.

What MHREDD adds

MHREDD is not strict liability for all harm. It is a conduct-based, risk-based, ongoing duty requiring governance integration, impact assessment, prevention and mitigation, tracking, communication and remediation where a company causes or contributes to harm. Its value-addion is coherence (one cycle), value-chain reach (business relationships), information (standardised reporting) and remedy (grievance mechanisms and remediation duties).

2. The policy problem

The legal mapping in the accompanying report identifies four structural gaps in South Africa concerning MHREDD. First, MHREDD obligations are dispersed across multiple statutes and regulators. This lack of a unifying standard of conduct undermines predictability and weakens supervision of systemic risk. Second, there is a failure to regulate value chains because South Africa regulates many harms within own operations but does not impose a general expectation of systematic due diligence across contractors, subsidiaries and suppliers where risks are salient. Third, information is unavailable because affected stakeholders lack consistent, comparable disclosures about salient risks, leverage strategies, effectiveness and remediation outcomes. Finally, remedies are deficient because value-chain harms are difficult to address due to evidentiary barriers, costs and corporate complexity.

3. South Africa's foundations for MHREDD

South Africa's Constitution provides a strong basis for MHREDD reform. Section 24 entrenches an environmental right with an explicitly preventive orientation, while section 7(2) establishes the state's duty to protect rights. Section 8(2) enables horizontal application of rights to juristic persons where appropriate, and section 39(2) requires the development of law in line with constitutional values. These provisions support legislation that structures corporate conduct to give practical effect to rights through minimum governance processes, transparency and remediation duties.

Environmental law already contains a due diligence-like 'reasonable measures' standard. NEMA's principles (section 2) and duty of care (section 28) embed sustainable development, precaution and polluter-pays reasoning, and impose prospective duties to prevent, minimise and rectify significant pollution and environmental degradation. Case law confirms that these principles are legally significant and that sustainable development requires integrated consideration of environmental impacts. Climate jurisprudence further confirms that climate impacts are legally relevant considerations in environmental authorisations.

Company law provides an institutional hook for MHREDD. Directors' duties support board accountability for material rights and environmental risk governance, while section 72 and regulation 43 of the Companies Regulations provide for Social and Ethics Committees (SECs) with an express monitoring mandate over the environment, health and public safety, labour matters and alignment with international principles. Civil accountability levers lack practical effectiveness for stakeholder protection. These require careful design if MHREDD reform is routed primarily through company law.

Equally, Labour and occupational health and safety (LOHS) laws already require proactive risk management. However, these laws are primary focused on the employment relationship. MHREDD can complement existing statutes by requiring governance-level value-chain labour risk mapping, procurement controls and grievance accessibility for outsourced or precarious workers, without duplicating technical standards. Climate governance developments strengthen the policy case for integrating climate impacts and transition measures into due diligence reporting, while aligning with legally operative instruments under the Climate Change Act 22 of 2024.

4. Legal options for South Africa

Option A: Standalone MHREDD Act

A dedicated statute can codify minimum due diligence steps, impose standardised reporting, define value-chain reach and establish a supervisory authority with cross-cutting coordination powers. Its principal constraint is institutional because effective supervision and complaint-handling require resourcing and coordination with specialist regulators.

Option B: Companies Act and Regulations route

This model integrates MHREDD into directors' duties and strengthens SECs mandates and reporting. It leverages familiar governance infrastructure and may reduce start-up costs. However, it risks under-delivering on value-chain remedy unless paired with strong supervisory powers, stakeholder-facing disclosure and effective sanctions.

Option C: Procurement and licensing leverage.

Procurement and licensing conditions can drive rapid behavioural change through market leverage, particularly in high-risk sectors and State Owned Enterprises (SOEs) supply chains. However, criteria must be clear and reviewable, aligned with section 217 procurement principles, and supported by anti-corruption safeguards and SMEs proportionality measures.

5. Recommendations

A staged approach is recommended;

Stage 1 (0–12 months) should normalise due diligence through national guidance aligned with UNGP and OECD standards, strengthen SECs practice expectations, develop reporting templates and run pilots in selected high-risk sectors and procurement contexts. Stage 2 (12–24 months) should introduce targeted legal duties for large and high-risk entities and establish a supervisory authority with guidance, information-gathering, complaint-handling and sanctioning powers. Stage 3 (24–48 months) should expand scope and deepen remedy, including clearer remediation duties where companies cause or contribute to harm, improved access to information relevant to claims, and strengthened non-judicial grievance mechanisms linked to courts and specialist regulators.

6. Considerations for drafting a MHRDD law

Drafting requires early resolution of the following:

i. scope and thresholds for large and high-risk entities;
ii. value-chain reach regarding subsidiaries and business relationships where leverage and severity justify;
iii. standard of conduct, including reasonableness, proportionality and prioritisation by severity;
iv. governance architecture, including board approval and SEC oversight;
v. reporting format and registry;
vi. supervisory design and coordination with specialist regulators; and
vii. remedy design pertaining to grievance mechanisms and remediation duties, with a clear approach to civil liability.