REPORT TOWARDS A CREDIBLE FRAMEWORK FOR **MANDATORY HUMAN RIGHTS AND ENVIRONMENTAL DUE DILIGENCE (MHREDD) IN SOUTH AFRICA**

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EXECUTIVE SUMMARY

Mandatory Human Rights and Environmental Due Diligence (MHREDD) is a regulatory response to the limits of voluntary corporate social responsibility. Under the United Nations Guiding Principles on Business and Human Rights (UNGPs), due diligence is how companies show that they respect human rights. The OECD has translated this into a structured, risk-based cycle that all sectors can apply when it comes to adverse impacts linked to corporate groups and value chains. Regulators are now turning this cycle into binding obligations, including disclosure, supervisory enforcement and, in some jurisdictions, civil liability. The EU Corporate Sustainability Due Diligence Directive (EU CSDDD) is the most significant recent example. It requires companies to conduct due diligence across their chain of activities and to use commercial leverage to prevent and mitigate adverse impacts.

South Africa does not have a single statute that creates a general MHREDD duty. Nonetheless, MHREDD-relevant duties already exist. The environmental right in section 24 and the state's duty to respect, protect, promote and fulfil rights in section 7(2) create constitutional foundations for MHREDD.[1] These take operational form through various statutes. In environmental law, the National Environmental Management Act (NEMA), imposes preventive and remedial duties based on a 'reasonable measures' standard. In Company law, the Companies Act requires directors to act with care, skill and diligence. Social and Ethics Committees provide an institutional foothold. Labour and occupational health and safety statutes embed risk identification and mitigation duties in the workplace. The Climate Change Act 22 of 2024 signals a move towards more structured accountability. The question is how South Africa can turn these foundations into a coherent, enforceable due diligence regime aligned with international standards.

This report finds that South Africa's laws contain multiple due diligence-like obligation, but they operate in parallel, have different triggers, are enforced by different bodies, and provide different remedies. Also, the system does not reliably deliver the due diligence cycle that international standards expect. In addition, environmental authorisation processes often do not extend into ongoing corporate governance and supply chain management, while workplace protections do not systematically reach outsourced and value-chain labour. As a result, reporting requirements are uneven and weakly standardised. This increases costs for business and produces uneven protection for rights-holders. It also makes it harder for regulators to assess systemic risk or coordinate enforcement where harms cut across environmental, labour and community impacts.

Although MHREDD-related statutes exist, this study identifies four reasons for a dedicated reform agenda. First, South African law lacks a unified standard of conduct and minimum process requirements because MHREDD obligations sit across statutes and regulators.

1 'The Constitution of the Republic of South Africa' , 1996.

Second, the law regulates harms within a firm's own operations more effectively than harms in upstream and downstream relationships, including contractors, labour brokers, subsidiaries and suppliers. Third, disclosure duties arise only in specific contexts. There is no general, standardised, publicly accessible due diligence reporting system. Fourth, rights-holders can access courts and administrative remedies, but accountability for value-chain harm is often blocked by causation requirements, corporate group structures and practical barriers to access to justice. For these four reasons, existing law does not yet amount to a credible MHREDD system, even if it contains many necessary building blocks. South Africa needs MHREDD reform that is constitutionally grounded, administratively workable and economically realistic, while remaining credible to affected communities, investors and trade partners.

MHREDD can work in different ways through legal reform. First, it can operate as a corporate governance obligation built into the duties of directors and board structures. Second, it can operate as an environmental and labour risk-governance duty with explicit human rights content. Third, it can operate as a hybrid mechanism that uses market and regulatory leverage, including procurement, licensing and finance, to mainstream due diligence. This report uses the UNGPs/OECD framework as a baseline of minimum process elements against which South Africa can reform MHREDD. It proposes three legislative and policy routes. The first route is a standalone MHREDD Act. A standalone statute offers the greatest coherence. It can define scope and thresholds, codify minimum due diligence steps, impose reporting duties and create a supervisory authority with cross-cutting coordination powers. The second route is an amendment to the Companies Act to integrate MHREDD into the duties of directors and other governance mechanisms. This may lower start-up costs by using familiar corporate compliance systems. But it may not address remedy and value-chain reach unless complemented by additional provisions. The third route uses procurement and licensing. Constitutional and statutory provisions, including the Constitution's section 217 procurement principles, can attach MHREDD conditions to state contracts and approvals. This can create strong incentives without immediate economy-wide legislation.

ABBREVIATIONS

CCMA	Commission for Conciliation, Mediation and Arbitration
CIPC	Companies and Intellectual Property Commission
CSDDD	Corporate Sustainability Due Diligence Directive
DFFE	Department of Forestry, Fisheries and the Environment
DOJCD	Department of Justice and Constitutional Development
EIA	Environmental impact assessment
ESG	Environmental, social and governance
EU	European Union
IFRS	International Financial Reporting Standards
ILO	International Labour Organization
IoDSA	Institute of Directors in South Africa
ISSB	International Sustainability Standards Board
JSE	Johannesburg Stock Exchange
King IV	King IV Report on Corporate Governance for South Africa (2016)
King V	King V Code on Corporate Governance for South Africa (2025)
LRA	Labour Relations Act 66 of 1995
MFMA	Municipal Finance Management Act 56 of 2003
MHREDD	Mandatory human rights and environmental due diligence
MHSA	Mine Health and Safety Act 29 of 1996
NEMA	National Environmental Management Act 107 of 1998
OECD	Organisation for Economic Co-operation and Development
OHS Act	Occupational Health and Safety Act 85 of 1993
PAIA	Promotion of Access to Information Act 2 of 2000
PAJA	Promotion of Administrative Justice Act 3 of 2000
PFMA	Public Finance Management Act 1 of 1999
PPPFA	Preferential Procurement Policy Framework Act 5 of 2000
SAHRC	South African Human Rights Commission
SEC	Social and Ethics Committee
UNGPs	United Nations Guiding Principles on Business and Human Rights

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1. Introduction

MHREDD requires companies to identify, prevent, mitigate and account for adverse human rights and environmental impacts linked to their operations, products and services, including through business relationships.[1] The UNGPs[2] and OECD instruments such as the Due Diligence Guidance for Responsible Business Conduct[3] have shaped this logic, which has gained regulatory force as a response to harmful transnational production networks and their climate- and nature-related risks. Although MHREDD regulation differs across jurisdictions, the common move is away from voluntary commitments and towards mandatory, enforceable processes that embed impact risk management in corporate decision-making.[4]

This report finds that these legal developments matter for South Africa for three reasons. First, South Africa is integrated into global value chains in sectors where human rights and environmental risks are salient, including mining, agriculture, automotive manufacturing and high-impact infrastructure. Second, trade and investment partners increasingly treat due diligence as a condition for market access, finance and procurement. They expect evidence of traceability, stakeholder engagement and remedial action rather than generalised Environmental, Social and Governance (ESG) statements. Third, MHREDD overlaps with South Africa's transformative constitutional project to prevent harm to dignity, equality, health, livelihood and the environment. Despite these constitutional rights, South Africa's law needs MHREDD reform to address potential harm in its supply chains. This requires aligning corporate governance duties with environmental and labour protections, clarifying the minimum process steps that constitute reasonable conduct, and creating oversight and reporting mechanisms that generate consistent practice across sectors.[5]

This report has four objectives. First, it maps the legal and institutional foundations relevant to MHREDD in South Africa. These include constitutional rights, the duties of directors, environmental duties of care, climate governance instruments, labour and occupational health and safety regulation, and existing oversight and complaint mechanisms. Second, it identifies issues that prevent these foundations from operating

1 Office of the High Commissioner for Human Rights 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (United Nations 2011) (UNGPs).

2 UNGPs (n 1) Principles 15 & 17(a).

3 OECD 'OECD Due Diligence Guidance for Responsible Business Conduct' (OECD Publishing 2018); Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (EU CSDDD).

4 See for example OECD 'OECD Guidelines for Multinational Enterprises on Responsible Business Conduct' (OECD Publishing 2023).

5 These obligations are already embedded in various statutes, such as the Constitution of the Republic of South Africa, 1996 ss 7(2), 8(2)–(3), 23, 24, 32, 34, 38 & 39(2); National Environmental Management Act 107 of 1998 ss 2, 24, 28 & 32; Companies Act 71 of 2008 ss 7, 20(9), 72, 76–77, 165 & 218(2); Companies Regulations, 2011 reg 43 (GN R351 in GG 34239 of 26 April 2011); Labour Relations Act 66 of 1995 (LRA); Occupational Health and Safety Act 85 of 1993 ss 8–9 & 16.

as a due diligence regime. Third, it sets out the key design decisions that lawmakers must resolve if MHREDD legislation, or equivalent reform, is pursued. Fourth, it evaluates the policy and legislative options available to South Africa.

The study combines doctrinal legal analysis with a policy lens. It uses the internationally recognised due diligence cycle as an analytical benchmark and tests whether South Africa's existing laws provide functionally equivalent duties and enforcement mechanisms. Where they do, the report identifies potential mechanisms for MHREDD integration. Where they do not, the report specifies the gap in terms that can guide legislative drafting and institutional design. Comparative references explain global minimum elements and external pressures but do not propose transplantation or displace South Africa's constitutional and developmental priorities.

2. Standards and minimum elements for MHREDD

2.1 Risk-based due diligence

The UNGPs stipulate that due diligence is how a company knows and shows that it respects human rights.[6] The focus is on risk to people, not risk to the entity. The relevant question is the severity and likelihood of harm, not only whether the entity faces legal or reputational exposure. The OECD guidance adopts the same risk-based logic. It treats due diligence as continuous and adaptive because risk profiles change as business models, operating contexts and value-chain relationships evolve.[7]

A credible MHREDD regime does not impose strict liability for all harms connected to a value chain. Instead, it imposes a standard of conduct. Companies must take reasonable and proportionate steps to identify salient impacts, use leverage to prevent and mitigate them, track whether measures are effective, and communicate how risks are managed. This conduct-based approach serves a regulatory function distinct from traditional ex post liability. MHREDD aims to change corporate decision-making before harm occurs. It does this by requiring governance integration and documented processes that can be supervised, audited and sanctioned. International standards point to six risk-based due diligence criteria:

i. The company must adopt a policy commitment and embed it in governance and management systems.
ii. The company must identify and assess actual and potential adverse impacts through stakeholder engagement and contextual analysis.

6 UNGPs Principle 17.
7 UNGPs (n 1) Principles 15 & 17; UN OHCHR 'The Corporate Responsibility to Respect Human Rights: An Interpretive Guide' (United Nations 2012) 27–32.

iii. The company must cease, prevent or mitigate impacts, including through contractual and commercial leverage in business relationships.
iv. The company must track effectiveness through qualitative and quantitative indicators, internal controls and independent assurance where appropriate.
v. The company must communicate publicly and to affected stakeholders, enabling external scrutiny and informed engagement.
vi. Where the company has caused or contributed to harm, it must provide for, or cooperate in, remediation through legitimate processes.[8]

Two doctrinal features matter when translating this cycle into law. The first is proportionality. The intensity of due diligence should scale to the nature and context of the enterprise, the severity of risks and the degree of leverage that can reasonably be exercised. The second is responsibility linkage. International standards distinguish between harms a company causes, contributes to, or is directly linked to through a business relationship.[9] This distinction shapes remedial duties and the design of civil liability models. A South African MHREDD regime needs a standard that preserves risk-based prioritisation while enabling accountability where a company's business model, contracting practices or purchasing behaviour materially contributes to harm.

2.2 Minimum building blocks for a credible MHREDD regime

MHREDD becomes credible only when it moves beyond aspirational principles and specifies minimum legal building blocks. These translate the due diligence cycle into enforceable duties and create the conditions for consistent implementation. In South Africa, this must account for constitutional and administrative law constraints, including legality, rationality, procedural fairness and accessible remedies.[10]

Lawmakers must first **define which entities are bound and on what basis**. Most MHREDD regimes use thresholds such as turnover, employees or public interest indicators. A South African approach must balance regulatory feasibility against the risk that narrow scope displaces harms into smaller or less visible nodes of the value chain. A credible regime therefore tends to combine threshold-based coverage of larger entities with clear expectations for cascading due diligence into suppliers and contractors, and proportional support measures for smaller enterprises.[11]

The second component is **substantive duties**. At minimum, legislation should require a public policy commitment, a documented due diligence system, periodic impact assessments, integration of findings into procurement, contracting and operational controls, and a requirement to use leverage to address risks in business relationships.

8 UNGPs (n 1); OECD (n 3).
9 UN OHCHR 'The Corporate Responsibility to Respect Human Rights: An Interpretive Guide' (United Nations 2012) 15–20; OECD (n 3) ch II.
10 See Promotion of Administrative Justice Act 3 of 2000 (PAJA); Constitution of the Republic of South Africa, 1996 s 33.
11 See in this regard EU CSDDD & OECD (n 3).

The duty should focus on what the process must achieve, not merely whether documents exist. South Africa's existing reasonable measures standards in environmental and occupational health and safety law provide a workable domestic analogue for a conduct-based duty.[12]

The third component is **meaningful stakeholder engagement**. This is not a discretionary consultation exercise but a legislative duty with minimum engagement expectations for workers, trade unions, affected communities and other rights-holders. It should require identification of vulnerable groups and disclosure of material information in accessible forms. This is relevant in South Africa's constitutional context, where participatory governance recurs in environmental and administrative law and where inequality and historical dispossession shape the distribution of risk and voice.[13]

Fourth, **grievance and remediation mechanisms** are central. International standards require companies to establish or participate in operational-level grievance mechanisms that are *legitimate, accessible, predictable, equitable, transparent, rights-compatible and a source of continuous learning*. Legislation should require companies to implement effective complaint mechanisms and report on outcomes, while preserving the ability of affected persons to pursue judicial remedies. A South African design choice concerns whether sectoral mechanisms, for example in mining and labour relations, can be integrated into a broader MHREDD framework.[14]

Fifth, **reporting and transparency** require legal specification. A credible MHREDD regime should require periodic public reporting on salient risks, due diligence processes, priority actions, effectiveness tracking and remediation outcomes, with minimum content requirements and potential assurance for high-risk entities. Reporting should complement existing South African reporting and disclosure systems while improving comparability and accessibility for stakeholders. Reporting closes the information gap only if supervision follows and consequences attach to misleading or incomplete disclosures.[15]

Finally, credible MHREDD requires **supervisory capacity and consequences**. Without an authority that can issue guidance, receive reports, investigate non-compliance and impose sanctions or refer matters for prosecution, due diligence duties tend to collapse into paper compliance.[16] Sanctions need not be purely punitive. They can be corrective,

12 See National Environmental Management Act 107 of 1998 ss 2, 24, 28 & 32; Occupational Health and Safety Act 85 of 1993 ss 8–9 & 16.

13 OECD (n 3) Step 2; ILO 'Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy' (6th ed, ILO 2022); Directive (EU) 2024/1760 art 13.

14 UNGPs (n 1); Labour Relations Act 66 of 1995 (LRA); Constitution of the Republic of South Africa, 1996 s 23; Mine Health and Safety Act 29 of 1996 (MHSA).

15 EU CSDDD (n 3); Companies Act 71 of 2008 ss 7, 20(9), 72, 76–77, 165 & 218(2); Companies Regulations, 2011 reg 43 (GN R351 in GG 34239 of 26 April 2011); Institute of Directors in South Africa 'King V Code on Corporate Governance for South Africa 2025' (IoDSA 2025) (effective for financial years commencing on or after 1 January 2026).

16 European Commission 'Impact Assessment Accompanying the Proposal for a Directive on Corporate

including compliance notices, action plan requirements, procurement exclusion, director disqualification and public naming. Legislation must also decide whether and how civil liability links to due diligence breach, particularly where rights-holders face structural barriers to litigation.

3. Legal and institutional foundations relevant to MHREDD in South Africa

3.1 Constitutional foundations

The South African Constitution is the source of substantive rights and interpretive method.[17] Section 24 creates an environmental right that is forward-looking. It requires reasonable legislative and other measures to prevent pollution and ecological degradation, promote conservation, and secure ecologically sustainable development while promoting justifiable economic and social development.[18] Sections 10, 11 and 9 protect dignity, life and equality. Socio-economic rights, including access to housing, healthcare, food, water and social security, shape the state's obligations in ways frequently implicated by business activity. Many corporate impacts, including air pollution, occupational disease, displacement, exploitative labour, water contamination and climate-related harm, are rights-affecting harms rather than mere externalities.[19]

Sustainability Due Diligence' SWD (2022) 42 final (European Commission 2022); OECD 'Annual Report on the OECD Guidelines for Multinational Enterprises' (OECD Publishing 2023).

17 See s 2 (supremacy of the Constitution) and ch 2 of the Bill of Rights in the Constitution.

18 F Dube & A Manthwa 'Putting people first in climate governance: the role of South Africa's indigenous values in securing ecologically sustainable development' in M Addaney, V Jarbandhan & W Dumenu (eds) Climate change in Africa: adaptation, resilience, and policy innovations (Palgrave Macmillan 2023) 237–253.

19 SAHRC 'Business and Human Rights Dialogue Report' (South African Human Rights Commission, Johannesburg, March 2018); SAHRC 'Annual Report' (reporting in terms of s 184(3) of the Constitution).

The constitutional design also supports the legal plausibility of MHREDD. Section 8(2) confirms that the Bill of Rights binds natural and juristic persons if, and to the extent that, it is applicable. Section 39(2) requires courts to develop the common law in line with constitutional values. These provisions do not automatically impose the UNGPs due diligence cycle on private actors. But they support legislation that structures corporate conduct to give practical effect to rights. Parliament can frame MHREDD as a statutory mechanism that operationalises constitutional rights through minimum governance processes and transparency duties for firms whose activities create foreseeable risks of rights infringement.[20]

Section 39(1)(b) requires courts to consider international law when interpreting the Bill of Rights. Section 233 directs courts to interpret legislation consistently with international law where reasonably possible. South Africa is party to core United Nations and African human rights treaties and to key environmental instruments.[21] These instruments inform the content of rights and the state's regulatory obligations. International human rights and environmental standards therefore operate as interpretive resources within South Africa's constitutional system. They support the legal rationale for preventive corporate risk governance and effective remedy.[22]

South African jurisprudence on environmental governance reinforces this point. In *Fuel Retailers*, the Constitutional Court held that environmental protection and socio-economic development form elements of a single constitutional conception of sustainable development.[23] The Court's analysis supports a preventive governance model that requires decision-makers to consider environmental impacts in a manner that enables long-term sustainability. Environmental impacts must not be treated as acceptable costs to be remediated later. This preventive logic aligns with MHREDD's emphasis on early identification of impacts, integration into decision-making and accountability for the effectiveness of mitigation measures.[24]

The Constitution's remedial mechanisms are also relevant. Section 34 guarantees access to courts. Section 38 provides generous standing, including standing for persons acting in the public interest or on behalf of those unable to act in their own name. MHREDD

20 SAHRC (n 19); Daniels v Scribante & Another 2017 (4) SA 341 (CC) paras 38–42 on horizontal application of the Bill of Rights.

21 For example, South Africa is a State Party to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3; African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217; Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS.

22 SAHRC 'Submission to the UN Working Group on Business and Human Rights'; *Glenister v President of the Republic of South Africa & Others* 2011 (3) SA 347 (CC) paras 192 & 201–202 on international law as interpretive resource.

23 Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province & Others 2007 (6) SA 4 (CC).

24 As above.

legislation should not rely exclusively on internal corporate grievance mechanisms or create procedural barriers that undermine constitutional access to remedy. It should strengthen remedies by clarifying duties of prevention and cooperation in remediation, improving information availability and strengthening institutional oversight so that rights-holders do not bear the full burden through complicated litigation.[25]

The Constitution requires regulators to act lawfully, rationally and procedurally fairly.[26] Supervisory institutions that enforce MHREDD therefore require clear statutory authorisation and adequate resourcing. An MHREDD regime that depends on discretionary, ad hoc enforcement risks violating the rule of law and eroding legitimacy. A regime that sets clear standards, transparent reporting obligations and reviewable decisions can align due diligence governance with constitutional legality and accountability.

3.2 Company law and corporate governance

3.2.1 Duties of directors

The Companies Act does not currently impose a general statutory obligation labelled human rights and environmental due diligence. But it creates a governance framework that requires directors to exercise care, skill and diligence, act in good faith and for a proper purpose, and act in the best interests of the company. These duties are not confined to short-term financial optimisation. They can encompass material risk governance, including risks arising from environmental degradation, labour exploitation, community conflict and climate transition, each of which can generate foreseeable legal, operational and reputational consequences.[27]

The duties of directors matter for MHREDD in two ways. First, they provide a domestic legal anchor for board-level oversight of due diligence systems. A statutory MHREDD duty can extend the existing obligation to establish and monitor risk management systems, aligning with familiar compliance concepts and reducing implementation friction. Second, the duties of directors create accountability through derivative litigation and director liability provisions. But these primarily protect the company and its shareholders. An MHREDD regime that relies only on internal corporate enforcement will not close the remedy gap for rights-holders unless it adds standing, reporting and enforcement mechanisms directed to stakeholder protection and public accountability.[28]

Two Companies Act provisions are relevant for MHREDD design. Section 72 enables board committees and provides the statutory basis for mandatory Social and Ethics Committees

25 SAHRC (n 19); *Biowatch Trust v Registrar Genetic Resources & Others* 2009 (6) SA 232 (CC) paras 21–23; *Affordable Medicines Trust v Minister of Health* 2006 (3) SA 247 (CC).
26 Constitution of the Republic of South Africa, 1996 ss 7(2), 8(2)–(3), 24, 32, 33, 34, 38 & 39(2); Promotion of Administrative Justice Act 3 of 2000 (PAJA).
27 Companies Act 71 of 2008 ss 7, 20(9), 72, 76–77, 165 & 218(2).
28 As above.

in prescribed circumstances. Section 165 provides a derivative action mechanism to support accountability where directors fail to discharge governance duties. Section 218(2) has been interpreted as a broad civil liability provision for contraventions of the Act, although its scope and practical utility remain contested and fact-specific.[29] These provisions show that company law can support MHREDD governance. They also show why a coherent MHREDD statute must go beyond shareholder-centred enforcement to protect rights-holders and secure public accountability. Integrating MHREDD into directors' duties requires legislative clarity on three issues:

i. The law must specify the content of the duty through minimum due diligence steps.
ii. It must define the standard of conduct in terms of reasonableness and proportionality rather than strict liability for all harms.
iii. It must address the decision-maker's knowledge base by specifying how directors must inform themselves about salient impacts.

Without this clarity, MHREDD risks collapsing into an unenforceable exhortation, invoked opportunistically rather than applied systematically.

The corporate governance landscape has been further strengthened by the Companies Amendment Act 16 of 2024 and the Companies Second Amendment Act 17 of 2024, both of which commenced on 27 December 2024.[30] Act 16 reconstitutes Social and Ethics Committees (SECs) for public companies and state-owned companies (SOCs) by requiring that a majority of SEC members are non-executive directors who have not been involved in day-to-day management for the previous three financial years. It also requires SECs to present formal reports to shareholders at every annual general meeting. This strengthens the SEC's accountability function. Additional provisions on mandatory remuneration reports and pay gap disclosures remain pending commencement. Act 17 implements recommendations from the Zondo Commission on director accountability by extending the time bar for delinquency applications from 24 to 60 months, empowering courts to extend the limitation period for director liability claims on good cause, and confirming that accountability mechanisms apply to former directors. Together, these amendments reinforce the governance infrastructure on which MHREDD integration can be built, particularly by enhancing SEC independence, reporting obligations and director accountability.

3.2.2 Social and Ethics Committees

South Africa already has a governance mechanism closely aligned with MHREDD: the Social and Ethics Committee (SEC). The Companies Act provides for SECs, and regulation 43 of the Companies Regulations sets out their functions. Regulation 43 requires SECs to

29 *Hlumisa Investment Holdings (RF) Ltd & Another v Kirkinis & Others* 2020 (5) SA 419 (SCA) paras 41 & 48.
30 Companies Amendment Act 16 of 2024 (GG 51010, 30 July 2024; commenced 27 December 2024, GG 51837); Companies Second Amendment Act 17 of 2024 (GG 51011, 30 July 2024; commenced 27 December 2024, GG 51837).

monitor the company's activities regarding social and economic development, including the company's standing in terms of the United Nations Global Compact principles,[31] the OECD recommendations regarding corruption,[32] the Employment Equity Act[33] and the Broad-Based Black Economic Empowerment Act.[34] It also requires monitoring of the environment, health and public safety, consumer relationships, and labour and employment matters.[35]

The SEC framework is relevant to MHREDD because it shows that South African company law already contemplates board-level oversight of external impacts and alignment with international standards. It also provides an institutional mechanism for due diligence oversight. A SEC can monitor the design and implementation of due diligence systems, receive reports and ensure escalation of findings to the board.

But the SEC framework also exposes the limits of relying on existing governance mechanisms without statutory consolidation. The SEC mandate focuses on monitoring rather than implementing risk-based due diligence. It does not operate as a value-chain governance mechanism. The framework applies only to specified categories of companies. It does not create clear public reporting obligations with minimum content requirements accessible to affected stakeholders. Without a coherent MHREDD duty, SECs may function as compliance committees with variable practice across firms rather than as drivers of systematic due diligence.[36]

MHREDD reform can strengthen the SEC mechanism rather than replace it. Legislation can require SECs, or a functionally equivalent committee, to oversee the due diligence cycle, commission periodic impact assessments, review leverage strategies in procurement and contracting, and ensure that grievance mechanisms and remediation processes operate effectively. This embeds MHREDD within existing corporate governance architecture while imposing minimum process steps and public accountability.[37]

3.2.3 King IV

South African corporate governance is also shaped by the King Reports, which provide a normative framework for stakeholder-inclusive governance and responsible corporate citizenship. King IV positions organisations as responsible corporate citizens and

31 United Nations Global Compact 'The Ten Principles of the UN Global Compact' (United Nations 2000).
32 OECD 'Convention on Combating Bribery of Foreign Public Officials in International Business Transactions' (OECD 1997).
33 Employment Equity Act 55 of 1998.
34 Broad-Based Black Economic Empowerment Act 53 of 2003.
35 Companies Act 71 of 2008 ss 7, 20(9), 72, 76–77, 165 & 218(2); Companies Regulations, 2011 reg 43 (GN R351 in GG 34239 of 26 April 2011).
36 See Companies Regulations, 2011 reg 43 (GN R351 in GG 34239 of 26 April 2011); Companies Act 71 of 2008 ss 7, 20(9), 72, 76–77, 165 & 218(2).
37 Companies Regulations, 2011 reg 43 (GN R351 in GG 34239 of 26 April 2011); UNGPs (n 1); OECD (n 3).

emphasises ethical leadership, integrated thinking, risk governance, compliance and transparent reporting. King IV is not legislation, but it has practical influence because it informs expectations of boards, investors and lenders and, for listed companies, market disclosure practice.[38]

Since late 2025, King V has been released as the updated corporate governance code, with effect for financial years commencing on or after 1 January 2026.[39] Early commentary suggests that King V strengthens sustainability-related governance expectations, including the language of impact and the integration of stakeholder interests, while refining disclosure guidance in response to evolving sustainability reporting standards.[40] King V does not create a legal duty. But it can accelerate alignment. Where governance codes already require boards to consider impacts and disclose how they are managed, MHREDD legislation can operate as a minimum enforceable baseline.

Voluntary governance codes have limits. King-based disclosure does not ensure that due diligence processes are robust, comparable or rights-holder centred. Voluntary frameworks rarely create enforceable consequences for failure to prevent harm.[41] Governance codes may also prioritise reputational and investor-facing risk management rather than risk to people and the environment. A South African MHREDD regime can use King IV/V to normalise practice and shape interpretive expectations, but it requires statutory duties, supervisory enforcement and access to remedies.

3.3 Environmental law

The National Environmental Management Act (NEMA) is South Africa's framework environmental statute and the closest domestic analogue to MHREDD's preventive logic.[42] Section 2 of NEMA sets out environmental management principles that apply to the actions of all organs of state that may significantly affect the environment. These principles incorporate sustainable development, public participation, environmental justice, the precautionary approach and the polluter-pays principle. They support a governance approach that anticipates and manages environmental harm.[43]

38 Institute of Directors in Southern Africa 'King IV Report on Corporate Governance for South Africa' (IoDSA 2016).

39 Institute of Directors in South Africa & the King Committee 'King V Report on Corporate Governance for South Africa 2025' (IoDSA, 31 October 2025) (effective for financial years commencing on or after 1 January 2026).

40 King V (n 39); JSE 'Sustainability Disclosure Guidance' (JSE, June 2022, updated January 2025); JSE 'Climate Change Disclosure Guidance' (JSE, June 2022, updated April 2025).

41 OECD 'OECD Due Diligence for Responsible Business Conduct' (OECD Publishing 2023); European Commission (n 16).

42 See J Nel & W du Plessis 'An evaluation of NEMA based on a generic framework for environmental framework legislation' (2001) 8 South African Journal of Environmental Law and Policy 1, for justifications of NEMA as environmental framework legislation in South Africa.

43 National Environmental Management Act 107 of 1998 ss 2, 24, 28 & 32.

Section 28 of NEMA contains a general *duty* of care that closely tracks due diligence logic. Every person who causes, has caused, or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring. Where it cannot reasonably be prevented, the person must minimise and rectify it. The duty is prospective and preventive. It supports a governance model that expects companies to anticipate foreseeable harms, document preventive measures and remediate where harm occurs.[44]

South African courts have treated NEMA's principles as legally operative. In *BP Southern Africa*, the High Court affirmed the interpretive role of NEMA's principles and the integration of environmental considerations into decision-making.[45] In *Fuel Retailers*, the Constitutional Court linked environmental protection to sustainable development and required decision-makers to consider environmental impacts as part of integrated governance.[46] This jurisprudence supports the proposition that South African environmental law already contains the conceptual basis for the preventive, risk-based governance that MHREDD seeks to generalise across corporate practice.[47]

Environmental law also shows why MHREDD cannot be reduced to more Environmental Impact Assessments (EIAs). NEMA's authorisation and compliance model is often project-specific and decision-point driven. MHREDD requires enterprise-wide, continuous due diligence that extends into procurement and value-chain relationships. The section 28 duty of care also has limits in relation to historic pollution and retroactivity. Enforcement is often constrained by capacity, evidentiary burdens and the complexity of corporate group structures. An MHREDD regime would not replace NEMA but would extend its preventive logic into corporate governance and supply chain management, while adding transparency and accountability mechanisms beyond the authorisation process.[48]

3.4 Climate change law

Climate change governance has become central to the environmental dimension of MHREDD. South Africa enacted the Climate Change Act in 2024.[49] It provides a statutory framework for climate change response, including mechanisms for setting national adaptation and mitigation objectives, sectoral emissions targets and carbon

44 Department of Forestry, Fisheries & the Environment 'National Environmental Compliance and Enforcement Report 2023/24' (DFFE, Pretoria, November 2024); *Chief Pule Shadrack VII Bareki NO & Another v Gencor Limited & Others* (19895/03) [2005] ZAGPHC 109; 2006 (1) SA 432 (T) (19 October 2005), where the High Court held that s 28(1) & (2) of NEMA creates at least a strict liability for those who cause significant pollution or degradation of the environment.

45 BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs 2004 (5) SA 124 (W).

46 Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province & Others 2007 (6) SA 4 (CC).

47 BP Southern Africa (n 45); National Environmental Management Act 107 of 1998 ss 2, 24, 28 & 32.

48 National Environmental Management Act 107 of 1998 ss 2, 24, 28 & 32; Bareki NO v Gencor Ltd 2006 (1) SA 432 (T).

49 Climate Change Act 22 of 2024.

budgets. The Act matters for MHREDD design because it signals a move towards plan-based accountability and creates tools that can be linked to corporate governance requirements.[50]

The Climate Change Act's commencement has been phased. Proclamation 251 of 2025 brought the Act into operation from 17 March 2025, but excluded certain provisions pending further proclamation. This staged commencement affects the immediacy of certain duties, including some institutional and planning provisions. MHREDD design should prioritise legally operative mechanisms while creating alignment hooks for later-commencing climate instruments such as carbon budgets and sectoral plans.[51]

Climate governance developments also appear in South African environmental jurisprudence. In *Earthlife Africa Johannesburg (the Thabametsi power company case)*,[52] the High Court confirmed that decision-makers must treat climate change impacts as relevant considerations in environmental authorisation decisions. A failure to assess those impacts properly may render a decision unlawful. This supports a central MHREDD proposition: climate risk is not only a financial or reputational concern but a legally cognisable dimension of environmental governance with direct rights implications. A South African MHREDD regime can require climate-related impact identification and mitigation within the due diligence cycle without duplicating the Climate Change Act's specific instruments.[53]

Due diligence regimes increasingly expect companies to align business models with climate transition objectives and to adopt transition plans where climate risks and impacts are material.[54] A hybrid approach is likely preferable for South Africa. MHREDD legislation can require companies to identify and manage climate-related impacts and to disclose transition measures through due diligence reporting, while leaving the detailed content of climate plans to climate legislation and sectoral instruments as they become operative. This avoids duplication while ensuring that climate remains a core risk and impact category rather than a voluntary ESG disclosure.

3.5 Labour law and occupational health and safety

South Africa's labour and occupational health and safety law already embeds a logic of risk identification and mitigation that aligns with due diligence. The Constitution

50 Climate Change Act 22 of 2024 ss 25–28; Proclamation 251 of 2025 (Proc 251 in GG 52319 of 17 March 2025) (commencement, with specified sections excluded pending further proclamation).
51 See n 50 above; Proclamation 251 of 2025 published in GG 52319 (17 March 2025).
52 Earthlife Africa Johannesburg v Minister of Environmental Affairs & Others (65662/16) [2017] ZAGPPHC 58.
53 National Environmental Management Act 107 of 1998 ss 2, 24, 28 & 32; Constitution of the Republic of South Africa, 1996 ss 7(2), 8(2)–(3), 24, 32, 34, 38 & 39(2).
54 See for example EU CSDDD (n 3).

guarantees fair labour practices.[55] The Labour Relations Act[56] gives institutional form to collective bargaining, organisational rights and dispute resolution. The Basic Conditions of Employment Act[57] sets minimum employment standards and recordkeeping duties. The Occupational Health and Safety Act (OHS)[58] and the Mine Health and Safety Act[59] impose proactive duties on employers to provide and maintain a working environment that is safe and without risk to health. These duties are supported by reporting obligations, worker participation mechanisms and inspectorate enforcement.

These regimes matter for MHREDD because they show that South African law already treats certain harms, including occupational injury, hazardous exposures and unsafe systems of work, as foreseeable risks that require proactive management through documented systems. They also provide institutional infrastructure, including workplace committees, unions, inspectors and the CCMA and labour courts, that can support stakeholder engagement and complaint resolution. The risk-governance element of MHREDD is not foreign to South African labour law. It already forms part of domestic law.[60]

But labour law and OHS regimes are anchored in the employment relationship and workplace jurisdiction. Modern value chains often externalise labour and safety risks through subcontracting, labour broking, franchising and informalised work arrangements. South African labour law can address some forms of externalisation, for example through joint and several liability in specific contexts, but it does not impose a general value-chain due diligence duty. An MHREDD regime should complement labour statutes by requiring companies to conduct due diligence across contractors and suppliers where labour rights risks are salient, and by strengthening transparency and remedy for workers in outsourced or precarious positions.[61]

Labour and OHS regimes already impose detailed duties and enforcement mechanisms. MHREDD legislation should not replicate technical standards. Instead, it should operate at the governance level. Companies should be required to map value-chain labour risks, integrate labour standards into procurement and contracting, track compliance through credible monitoring, and provide accessible grievance mechanisms. This preserves expertise in specific economic sectors while closing the value-chain gap that arises when harms occur outside the direct employment relationship.[62]

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55 Constitution of the Republic of South Africa, 1996 s 23.
56 Labour Relations Act 66 of 1995 (LRA).
57 Basic Conditions of Employment Act 75 of 1997 ss 29–31.
58 Occupational Health and Safety Act 85 of 1993 ss 8–9 & 16.
59 Mine Health and Safety Act 29 of 1996 (MHSA).
60 See for instance Occupational Health and Safety Act 85 of 1993 ss 8–9 & 16; Mine Health and Safety Act 29 of 1996 (MHSA); Labour Relations Act 66 of 1995 (LRA); Constitution of the Republic of South Africa, 1996 s 23.
61 Labour Relations Act 66 of 1995 (LRA); Constitution of the Republic of South Africa, 1996 s 23; Basic Conditions of Employment Act 75 of 1997 ss 29–31; UNGPs (n 1); OECD (n 3).
62 OECD (n 3); Labour Relations Act 66 of 1995 (LRA); Constitution of the Republic of South Africa, 1996 s 23.

3.6 Institutions, oversight and remedies

South Africa's oversight mechanisms relevant to MHREDD include multi-regulators. National and provincial authorities and environmental management inspectors enforce environmental compliance. Labour inspectorates and specialist bodies oversee workplace protections.[63] The Companies and Intellectual Property Commission (CIPC) oversees corporate governance. Investors, auditors and stock-exchange disclosure expectations shape market practice.[64] This plurality is not inherently problematic, but becomes difficult to manage without a MHREDD duty and a coordinating mechanism. Without coordination, it is hard to assess risks, monitor enterprise-wide due diligence practice, and provide a clear point of accountability for rights-holders.

The South African Human Rights Commission (SAHRC) can play an important role in MHREDD. It has a constitutional mandate to promote respect for human rights and to monitor and assess the observance of human rights.[65] Its enabling statute confers investigative and reporting powers.[66] The SAHRC can issue guidance, receive and investigate complaints, and convene multi-stakeholder processes. But it does not currently operate as a sector-wide corporate supervisor with powers to impose administrative penalties or compel due diligence reporting. Lawmakers must decide whether to designate an existing institution, such as the SAHRC or the CIPC, as an MHREDD supervisor, create a specialist unit, or adopt a hybrid model in which different regulators enforce different parts of the due diligence duty under a common framework.

South African law provides several remedial routes relevant to business-related harms. These include judicial review of administrative decisions under PAJA, access to information under PAIA, civil claims in delict, statutory remedies under environmental and labour statutes, and constitutional litigation where rights are infringed.[67] The Constitution's standing provisions facilitate public interest litigation. Class action jurisprudence has improved the procedural feasibility of collective claims in appropriate cases.[68] But remedies are uneven in practice because of cost, complexity, evidentiary burdens, and the structural difficulty of attributing value-chain harm to specific corporate actors. A credible MHREDD regime must treat remedy as a systemic design component, not an afterthought.

63 See for example National Environmental Management Act 107 of 1998 ss 2, 24, 28 & 32; Labour Relations Act 66 of 1995 (LRA); Constitution of the Republic of South Africa, 1996 s 23.
64 See for example Companies Act 71 of 2008 ss 7, 20(9), 72, 76–77, 165 & 218(2).
65 Constitution of the Republic of South Africa, 1996 s 184.
66 South African Human Rights Commission Act 40 of 2013.
67 Promotion of Administrative Justice Act 3 of 2000 (PAJA); Promotion of Access to Information Act 2 of 2000 (PAIA); National Environmental Management Act 107 of 1998 ss 24 & 28; Labour Relations Act 66 of 1995; Constitution of the Republic of South Africa, 1996 s 34.
68 Constitution of the Republic of South Africa, 1996 ss 34 & 38; *Children's Resource Centre Trust & Others v*
Pioneer Food (Pty) Ltd & Others 2013 (2) SA 213 (SCA) paras 25–26.

4. The problem with current laws from the MHREDD perspective

4.1.1 Multiple laws and regulators

South African law regulates human rights and environmental risk through multiple, partially overlapping statutes without a single general duty to conduct risk-based due diligence. Minimum process requirements central to MHREDD, including impact assessments, leverage strategies, tracking effectiveness and public reporting, apply inconsistently outside specific statutory processes such as environmental authorisation applications or workplace incidents. Firms experience this as compliance disjointedness. Obligations appear as separate silos, including environmental compliance, labour compliance and governance reporting, each with its own terminology and enforcement mechanisms. Rights-holders experience accountability fragmentation. Harms that cut across these silos, for example community health impacts linked to air pollution and occupational disease linked to subcontracting, do not map neatly onto a single regulator or remedy pathway.[69]

The Constitution anticipates that legislative and other state duties will be performed in harmony.[70] Statutory and institutional fragmentation affects rights because dispersed and inconsistently enforced duties make practical protection contingent on regulatory chance rather than predictable governance. MHREDD legislation can operate as a coherence-enhancing measure. It does not create new rights, but it structures corporate conduct and transparency in ways that support more consistent prevention of rights-affecting harm.

4.1.2 Failure to regulate value chains

Many of South Africa's strongest protective laws, including environmental duties of care and workplace protections, focus on harms within a company's own operations or within the jurisdiction of a particular workplace. But modern business models frequently externalise risk through contracting, purchasing practices and corporate group structures. Adverse impacts may occur in a supplier's operations, through a labour broker, or through a subsidiary with limited assets, even where the lead company's commercial leverage and business model materially drive the risk.[71]

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69 SAHRC (n 19); see also the discussion of specific regimes in ss 2–3 above.

70 Constitution of the Republic of South Africa, 1996 s 41 (principles of co-operative government); *National Gambling Board v Premier of KwaZulu-Natal & Others* 2002 (2) SA 715 (CC) paras 32–33.

71 ILO 'World Employment and Social Outlook 2021: The Role of Digital Labour Platforms in Transforming the World of Work' (ILO 2021); OECD 'OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector' (OECD Publishing 2017).

Current South African law addresses some dimensions of value-chain risk indirectly. Certain labour law doctrines and procurement requirements can create accountability for contractors in limited contexts.[72] Environmental authorisations may impose conditions that reach contractors during construction and operation. But there is no general requirement for companies to map value chains, prioritise salient risks, and use leverage to prevent and mitigate harm beyond the first-tier contractor relationship. International MHREDD regimes target this governance gap.[73]

For South Africa, the value-chain gap has domestic and cross-border implications. Domestically, it affects sectors where subcontracting and outsourcing are prevalent. Cross-border, it affects South African suppliers to multinational enterprises that must demonstrate due diligence down their supply chains under foreign law. Without a coherent domestic approach, South Africa risks becoming a compliance taker. Companies will face due diligence demands through contractual pressure without domestic regulatory guidance that clarifies expectations and supports capacity-building.

4.1.3 Unavailability of information

South Africa does not have a single law to ensure that information about corporate impacts and due diligence processes is available and comparable. Disclosure is required only in specific contexts, including company financial reporting, certain governance disclosures, environmental authorisation documentation, and sectoral reporting. There is no uniform public due diligence report with minimum content requirements linked to the due diligence cycle. Stakeholders struggle to assess whether corporate ESG statements reflect substantive risk management or narrative reporting.[74]

PAIA provides a constitutional and statutory basis for accessing information, but it does not function as a proactive transparency regime for due diligence. Requests can be time-consuming, contested and resource-intensive. Commercial confidentiality claims can limit access to material information about supply chains, contracting practices or risk assessments. This matters because meaningful stakeholder engagement and remedy depend on timely access to information about risks and mitigation measures. A credible MHREDD regime therefore typically includes proactive reporting duties and, in some

72 Labour Relations Act 66 of 1995 ss 198A–198D; Department of Employment & Labour 'Annual Report' (Department of Employment & Labour, Pretoria).

73 Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (French Duty of Vigilance Law); Lieferkettensorgfaltspflichtengesetz (LkSG) (German Supply Chain Due Diligence Act, 2021); Directive (EU) 2024/1760 arts 7–8.

74 JSE 'Sustainability Disclosure Guidance' (JSE, June 2022, updated January 2025); JSE 'Climate Change Disclosure Guidance' (JSE, June 2022, updated April 2025); National Treasury 'Integrated Reporting Guidance' (National Treasury, Pretoria).

designs, specific rights to request due diligence information subject to narrowly defined exceptions.[75]

Purely formalistic reporting imposes costs without improving accountability. Overly open-ended reporting undermines comparability. The design of MHREDD must specify minimum content that reflects the due diligence cycle, including salient risks, processes, actions, effectiveness and remediation, while allowing proportionality and avoiding duplication with existing reporting obligations. This is relevant as global sustainability disclosure standards evolve and South African companies face increasing investor expectations for decision-useful information. [76]

These information gaps may be partly addressed by emerging regulatory developments. The CIPC issued Customer Notice 06 of 2025 on 4 February 2025, initiating a sustainability reporting market sentiment survey as a precursor to a regulatory impact assessment under sections 188(1) and (3) of the Companies Act.[77] The survey is linked to the adoption of the International Sustainability Standards Board (ISSB) standards, particularly IFRS S1 and S2, for mandatory sustainability reporting. This signals a regulatory trajectory toward structured, comparable sustainability disclosures under the Companies Act framework. MHREDD reporting requirements should complement this emerging ISSB-aligned reporting infrastructure, creating a coherent disclosure ecosystem that serves rights-holders, regulators and investors. If MHREDD duties and sustainability reporting standards develop in isolation, South African companies risk duplicative and inconsistent obligations.

4.1.4 Remedy deficits

The remedy gap reflects a mismatch between rights and duties on the one hand, and the practical accessibility of remedies on the other. South Africa has a strong constitutional foundation for access to courts and standing, and it has developed procedural mechanisms such as class actions that can support collective redress.[78] Environmental statutes also provide expansive standing for the enforcement of environmental rights. But business-related harms, especially those connected to corporate groups and value chains, often require costly, technically complex litigation to establish causation and responsibility.

75 SAHRC 'Report on the Use and Implementation of PAIA' (reporting in terms of ss 83 & 84 of the Promotion of Access to Information Act 2 of 2000).

76 The main pressure points for South African entities that operate internationally are OECD (n 3); EU CSDDD (n 3).

77 CIPC 'Customer Notice 06 of 2025: Sustainability Reporting Market Sentiment Survey' (4 February 2025), issued under s 188(1) & (3) of the Companies Act 71 of 2008; IFRS Foundation 'IFRS S1: General Requirements for Disclosure of Sustainability-related Financial Information' (2023); 'IFRS S2: Climate-related Disclosures' (2023).

78 See Constitution of the Republic of South Africa, 1996 ss 7(2), 8(2)–(3), 24, 32, 34, 38 & 39(2).

These challenges are compounded by informational and resource asymmetries facing affected persons.[79]

MHREDD regimes address this gap by shifting part of the accountability burden upstream. If companies must conduct and document due diligence, failures in process and governance become visible and justiciable. Regulators can intervene before harm becomes entrenched. Requirements for operational-level grievance mechanisms, and clearer duties to cooperate in remediation where a company causes or contributes to harm, can reduce the all-or-nothing character of litigation-based remedy. Remedy design must remain attentive to constitutional constraints. Grievance mechanisms must not displace judicial remedies. Statutory duties must be enforceable without imposing unfair or unworkable burdens.

Remedies also depend on information. Without access to due diligence information, rights-holders struggle to establish facts and challenge corporate narratives. Strengthening transparency and reporting is not merely a disclosure agenda. It is a remedy-enabling mechanism that can make administrative, civil and constitutional remedies more accessible and effective.

5. Key design decisions for South Africa

Designing MHREDD for South Africa requires giving practical effect to constitutional rights, particularly section 24 on environmental protection, and related rights such as the rights to dignity, equality, health and access to courts. The framing of MHREDD must prioritise prevention of harm and ensure transparency and access to remedy. It should not present due diligence primarily as a competitiveness or ESG tool. A narrow scope limited to very large companies may be administratively convenient, but it risks missing high-risk sectors with smaller firms and contractor networks. A broad scope applying to all companies may be attractive but will be unenforceable without proportionality and phased implementation. A credible South African approach is likely to combine threshold-based coverage, using metrics such as turnover, number of employees, or the public interest score logic already used in company regulation, with a risk-based trigger that captures enterprises operating in high-impact contexts.[80] The legislation must also decide whether to cover state-owned companies and public entities explicitly, given their systemic footprint and the constitutional expectations of accountable public governance.

79 Mukaddam v Pioneer Foods (Pty) Ltd & Others 2013 (5) SA 89 (CC); Nkala & Others v Harmony Gold Mining Company Ltd & Others 2016 (5) SA 240 (GJ); National Environmental Management Act 107 of 1998 ss 2, 24, 28 & 32.

80 Companies Act 71 of 2008 s 30(7); Companies Regulations 2011 reg 26(2) (public interest score calculation and thresholds).

Another design concern relates to value-chains. International practice varies between supply chain, value chain and chain of activities concepts, but the practical question remains which business relationships trigger due diligence expectations, and how far the duty extends beyond first-tier suppliers and contractors. A South African statute must address corporate group structures, including subsidiaries, joint ventures and controlled entities, and determine how group-level due diligence is documented and supervised. A narrow definition will not address the externalisation of risk that characterises modern business models. An overbroad definition without proportionality will create an unworkable compliance burden.

Another consideration concerns the standard of conduct. The UNGPs and OECD model supports a reasonable and proportionate measures standard linked to the severity and likelihood of harm and the company's leverage, rather than strict liability for all adverse impacts. South African law already uses reasonableness standards in comparable contexts, such as NEMA's duty of care and the OHS Act's duties to maintain safe systems of work. This provides a domestic doctrinal basis for MHREDD. The duty can operate as a continuous obligation to take reasonable due diligence measures, prioritise prevention of severe harms, and document and report in ways that enable supervision and enforcement.[81]

If MHREDD aims to change corporate behaviour, it must operate through board-level accountability. The Companies Act already provides governance mechanisms that can support this, including directors' duties, committees and reporting expectations, and the Social and Ethics Committee structure. Lawmakers must decide whether MHREDD oversight sits with the SEC with strengthened functions, a dedicated board committee, or a designated senior officer with board reporting obligations. Each option carries different implications for accountability, expertise and enforcement.

MHREDD should treat engagement as a substantive method of due diligence, not a procedural formality. South African environmental law has strong participatory traditions,[82] but corporate governance practice often treats stakeholder engagement as reputational management. MHREDD legislation should require engagement that can inform risk identification and mitigation. This means worker consultations, union engagement, community engagement in high-impact operations, and mechanisms to identify and address impacts on vulnerable groups. The legislation must also address protection against retaliation and integrate whistleblowing protections into due diligence governance.[83]

81 UNGPs (n 1); UNGPs Commentary to Principle 17; OECD (n 3) ch II.

82 National Environmental Management Act 107 of 1998 s 2(4)(f)–(g); Department of Forestry, Fisheries & the Environment 'Public Participation Guidelines' (DFFE, Pretoria); *Fuel Retailers* (n 23) para 79.

83 Protected Disclosures Act 26 of 2000; Department of Justice & Constitutional Development 'Discussion Paper on Proposed Reforms to the Whistleblowing Legislation' (DOJCD, Pretoria, July 2023).

A South African MHREDD regime should specify minimum content aligned to the due diligence cycle, allow proportionality, and avoid duplication with existing reporting obligations. Reporting should be decision-useful for rights-holders and regulators, not only for investors. The design question is whether reporting remains primarily narrative or includes structured disclosures, including risk categories, priority actions, indicators, and remediation outcomes, that enable comparability. The regime must also address verification and the consequences of materially misleading reporting.

South Africa must decide whether to create a specialist MHREDD supervisor or designate an existing institution. A specialist supervisor can develop expertise, issue guidance, and coordinate across regulators, but it requires resources and legislative clarity. Designating an existing institution may be institutionally efficient, but it risks mandate overload or misalignment. A hybrid model, where a central authority sets standards, receives reports and coordinates while sectoral regulators enforce specific aspects, may align best with South Africa's existing regulatory structure.

- The MHREDD law must change behaviour without incentivising superficial compliance.
- Administrative penalties, compliance notices and enforceable undertakings can provide proportionate tools.
- Procurement exclusion and licensing conditions can create strong incentives, particularly where the state is a major purchaser or licensor.
- Director accountability mechanisms, including potential disqualification for serious contraventions, can reinforce board-level attention.
- Sanctions that are too severe or too uncertain can encourage defensive box-ticking. The sanction model should rest on clear standards, graduated consequences and supervisory guidance.

6. Policy and legislative options

There are three main options for South Africa when it comes to designing a MHREDD regime:

- A standalone MHREDD Act,
- amendments to the Companies Act,
- and/or procurement and licensing changes.

6.1 A standalone MHREDD Act

A standalone MHREDD Act would create a single statutory duty to conduct human rights and environmental due diligence. The Act could specify scope and thresholds, define value-chain reach, mandate stakeholder engagement and grievance mechanisms, require periodic public reporting, and establish a supervisory authority with investigative and enforcement powers. It can also coordinate with existing sectoral regimes by clarifying that MHREDD duties operate as additional governance duties, not replacements for environmental, labour or sector-specific compliance obligations.

The principal advantage of a standalone Act is that it can address the problems identified in section 4 by codifying a single standard of conduct and a uniform due diligence cycle, while allowing sector-specific tailoring through regulations and guidance. It can also incorporate remedy design, including clear duties to cooperate in remediation and, if adopted, a statutory cause of action linked to due diligence failure. A standalone Act can also provide a domestic baseline that supports South African firms' compliance with international due diligence expectations in trade and investment contexts.

But a standalone MHREDD Act carries institutional and political risks. It requires careful supervisory design to avoid duplication and ensure feasible enforcement. It also requires regulatory capacity. Without guidance, reporting systems and investigative capability, the Act will produce paper compliance. Drafting must also address proportionality. If the Act imposes burdens that firms experience as unmanageable, political contestation may undermine broader development objectives. These risks are manageable, but they require staged implementation and sustained institutional investment.

6.2 Amendments to the Companies Act

A Companies Act route would integrate MHREDD into corporate governance law through amendments to directors' duties, committee functions and reporting obligations. This model treats due diligence primarily as a governance and risk oversight obligation. It could require boards to approve and oversee due diligence policies and systems, mandate that Social and Ethics Committees supervise implementation, and require annual due diligence reporting as part of corporate reporting. The advantage lies in institutional familiarity and administrative feasibility. Corporate actors already operate under the Companies Act and related governance codes. Compliance systems often track corporate reporting cycles. Companies Act amendments could mainstream due diligence quickly in larger entities, particularly if linked to existing committee structures and reporting obligations. It also creates clear board-level accountability, which often drives behavioural change. The convergence of the 2024 Companies Amendment Acts, the CIPC's sustainability reporting reform initiative and King V governance expectations creates a regulatory moment in which MHREDD reporting duties can be mainstreamed into the Companies Act ecosystem with relatively low institutional friction.

But there are limitations. The Companies Act does not operate primarily as a rights-holder protection regime. Unless carefully drafted, a Companies Act route may prioritise investor-facing disclosure and internal governance over substantive prevention of harm and access to remedy. It may also struggle to reach entities outside corporate form, and it may not provide a supervisory and remedial architecture accessible to workers and communities. If lawmakers pursue this route, they should complement it with cross-cutting supervisory arrangements and explicit remedy provisions to avoid reproducing the remedy gap.

6.3 Procurement and licensing

A procurement and licensing model uses existing regulatory levers to require due diligence as a condition for access to state contracts, public finance, and key regulatory approvals. South Africa's procurement regime is constitutionally grounded in section 217, which requires procurement systems that are fair, equitable, transparent, competitive and cost-effective. Legislation and regulations can require bidders and contractors to maintain due diligence systems, disclose due diligence reports, and cascade due diligence obligations into subcontractors and suppliers as a condition of contracting.[84]

The Public Procurement Act 28 of 2024, assented to on 18 July 2024, has not yet commenced in its substantive provisions. Commencement depends on future proclamation, with finalisation of the new Act's regulations targeted for mid-2026. Until then, the operative procurement framework comprises the PFMA, MFMA, PPPFA and the Preferential Procurement Regulations 2022. MHREDD-linked procurement conditions can already be attached under this current framework through preferential procurement criteria, contract specifications and supply chain management regulations. The new Act, once commenced, will provide a more systematic statutory basis for procurement-linked due diligence.

The advantage of using procurement and licensing in MHREDD is speed. Procurement-linked duties can create behavioural incentives without immediately imposing economy-wide statutory duties. The approach also aligns with state obligations to prevent rights-affecting harm connected to public projects and state purchasing power. Where the state is a major purchaser, for example in infrastructure, services and commodities, procurement-linked due diligence can generate significant spill-over effects across supply chains. However, procurement and licensing creates two risks;

- First, procurement-linked compliance can become formalistic if tender processes reduce it to tick-box documentation without credible monitoring and enforcement.
- Second, procurement leverage is partial because it does not cover purely private supply chains and may not address export-driven due diligence pressures.

Procurement and licensing leverage works best as a complementary tool within a broader MHREDD strategy.

84 Constitution of the Republic of South Africa, 1996 s 217; Public Procurement Act 28 of 2024 (assented to 18 July 2024; GG 50967 of 23 July 2024) s 69 (commencement by proclamation). Note: The Act's substantive provisions are not yet in force; see President Ramaphosa 'State of the Nation Address' (12 February 2026), confirming that finalisation of the Public Procurement Act regulations is targeted for mid-2026. Until commencement, the operative procurement framework comprises the Public Finance Management Act 1 of 1999 (PFMA); Municipal Finance Management Act 56 of 2003 (MFMA); Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA); Preferential Procurement Regulations, 2022 (GN 2721 in GG 47452 of 4 November 2022).

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