



Mandatory Environmental and Human Rights Due Diligence in Malawi: A Pathway to Sustainable and Equitable Development

Published by:

The Institute of Sustainable Development, Malawi, 2026

Author:

Mr. Godfrey Mfiti

Executive Director

Institute of Sustainable Development.

INTRODUCTION

Malawi stands at a critical juncture in its developmental trajectory. Endowed with rich natural resources, including arable land, minerals, freshwater bodies, and biodiversity, the nation's economy remains heavily reliant on agriculture, extractive industries, and natural resource exploitation. However, this reliance has often come at a significant cost: environmental degradation, climate vulnerability, and systemic human rights challenges, particularly for vulnerable and rural communities. Instances of land grabbing, water pollution from mining, deforestation, and poor labour conditions in agricultural estates highlight the pressing need for a more accountable and sustainable model of business conduct.

In this context, the global movement towards Mandatory Environmental and Human Rights Due Diligence (mHREDD) presents a transformative framework. mHREDD refers to legally required processes for businesses to identify, prevent, mitigate, and account for how they address their adverse impacts on human rights and the environment throughout their operations and value chains. Unlike voluntary corporate social responsibility, mHREDD establishes a legal duty of care, fostering corporate accountability and access to remedy for affected rights-holders.

This paper, developed through a collaborative effort by civil society organizations dedicated to justice, sustainability, and ethical governance, aims to elucidate the concept of mHREDD for a Malawian audience. It seeks to provide policymakers, business leaders, civil society, and communities with a comprehensive understanding of its components, importance, and practical application. Drawing on international and regional precedents, this document offers tailored lessons and recommendations to guide the development of a robust, context-specific mHREDD framework for Malawi. The ultimate goal is to advocate for legal and policy reforms that align economic growth with the constitutional rights of Malawians to a clean environment and dignity, as enshrined in Sections 13 and 19 of the Constitution of the Republic of Malawi.

2. UNDERSTANDING MANDATORY ENVIRONMENTAL AND HUMAN RIGHTS DUE DILIGENCE

Mandatory Environmental and Human Rights Due Diligence is a risk management process mandated by law, designed for businesses to understand and address their actual and potential adverse impacts on human rights and the environment. It is grounded in the United Nations Guiding Principles on Business and Human Rights (UNGPs), which outline the state's duty to protect human rights and the corporate responsibility to respect them.¹ The "mandatory" element elevates this responsibility from a voluntary expectation to a legal obligation, creating a level playing field and ensuring enforcement.

2.1 Components of Mandatory Environmental and Human Rights Due Diligence

A robust mHREDD process, as articulated by the OECD Guidelines for Multinational Enterprises and emerging EU legislation.² Typically IT involves the following five core, interconnected components:

1. **Embedding Policy & Commitment**: Companies must publicly commit to respecting human rights and the environment. This policy should be approved at the highest management level, embedded into corporate culture, and inform all operational decisions.

2. **Identifying & Assessing Actual and Potential Impacts**: Businesses are required to proactively map their operations, subsidiaries, and value chains to identify where adverse impacts may occur. This involves meaningful consultation with potentially affected groups, including workers, local communities, and civil society, and a gendered analysis of impacts.

3. **Ceasing, Preventing & Mitigating Impacts**: Where adverse impacts are identified, the company must take appropriate action. This includes ceasing activities causing harm, integrating findings into decision-making, and implementing preventive and mitigation measures. In complex value chains, this may involve capacity-building with suppliers or, as a last resort, responsible disengagement.

¹ Ruggie, J. G. (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. United Nations.

² OECD. (2011). OECD Guidelines for Multinational Enterprises. OECD Publishing.

4. **Tracking Implementation & Effectiveness:** Companies must monitor and evaluate the effectiveness of their due diligence measures through qualitative and quantitative indicators, ensuring interventions are working and adapting strategies as needed.

5. **Communicating & Providing Remedy:** Transparency is key. Companies must publicly communicate how they address their impacts, for instance through annual reports. Crucially, mHREDD laws must ensure that affected individuals and communities have access to effective judicial and non-judicial grievance mechanisms and remedy, including compensation, restitution, or guarantees of non-repetition.

2.2 Importance of Mandatory Environmental and Human Rights Due Diligence for Malawi

For Malawi, adopting mHREDD is not merely a regulatory compliance issue but a strategic imperative for sustainable development.

- ✓ **Fulfilling Constitutional and International Obligations:** Malawi's Constitution guarantees the right to a clean environment and dignity. mHREDD provides a concrete mechanism for the state to fulfil its duty to protect these rights from business-related abuse. It also aligns with Malawi's commitments under international treaties, including the International Covenant on Economic, Social and Cultural Rights and various environmental conventions.
- ✓ **Addressing Systemic Vulnerabilities:** Malawi's economy is characterized by informality and power imbalances, leaving smallholder farmers, artisanal miners, and plantation workers highly vulnerable. mHREDD shifts the burden of proof, requiring larger domestic and international companies to ensure their procurement and operations do not exacerbate these vulnerabilities through unfair wages, land displacement, or environmental harm.
- ✓ **Safeguarding Natural Capital:** Environmental health is synonymous with economic health in Malawi, where over 80% of the population depends on climate-sensitive agriculture. mHREDD can help prevent deforestation from tobacco estates, water pollution from mining (as historically seen in the Kayelekera area), and soil degradation, thereby protecting the country's long-term economic foundation.

2.3 Benefits of Mandatory Environmental and Human Rights Due Diligence

The adoption of a mHREDD framework promises multi-faceted benefits:

- a. **For People and Communities:** It empowers rights-holders by providing clearer avenues to raise concerns and seek remedy. It can lead to improved community health, secured land tenure, fairer wages, and safer working conditions.
- b. **For Responsible Businesses:** It provides legal clarity, manages long-term operational and reputational risks, secures social license to operate, and enhances access to international markets (especially the EU) that are increasingly demanding verified sustainable and ethical supply chains.
- c. **For the Government:** It enhances governance by creating a coherent regulatory framework. It can attract quality investment, reduce conflicts and associated enforcement costs, and advance progress toward the Malawi 2063 vision of an inclusively wealthy and self-reliant nation.
- d. **For the Environment:** It promotes sustainable resource use, climate resilience, and biodiversity conservation, aligning with national strategies like the National Resilience Strategy.

2.4 Challenges to Implementing Mandatory Environmental and Human Rights Due Diligence in Malawi

Anticipating and planning for challenges is crucial for effective design:

Capacity Constraints: Both regulatory agencies and many businesses, especially MSMEs, may lack the technical and financial capacity to conduct sophisticated due diligence. A phased approach and support systems will be essential.

Complexity of Value Chains: Tracing impacts in globalized and informal value chains, such as for tobacco, tea, or sugarcane, is inherently complex. The law must provide clarity on expectations for different tiers of the supply chain.

Enforcement and Access to Remedy: A weak judiciary, limited resources for regulatory monitoring, and power imbalances can hinder effective enforcement and victims' access to remedy. Strengthening these institutions is a parallel requirement.

Resistance from Powerful Interests: Sectors accustomed to operating with minimal oversight may lobby against strong regulations. Building a broad coalition of support from progressive businesses, communities, and civil society is vital to counter this.

3. CASE STUDIES OF MANDATORY ENVIRONMENTAL AND HUMAN RIGHTS DUE DILIGENCE FRAMEWORKS

Examining existing frameworks provides valuable lessons for Malawi. Examining existing frameworks across the African continent provides valuable, contextually relevant lessons for Malawi. These case studies illustrate the varied approaches from hard law to policy innovation that African nations are employing to hold businesses accountable for human rights and environmental impacts.

3.1 South Africa: A Constitutional and Sectoral Approach

While South Africa does not have a comprehensive mHREDD law, its progressive constitutional framework provides a strong foundation. Section 24 of the Constitution enshrines the right to a healthy environment, and the courts have increasingly interpreted corporate duties accordingly. More concretely, South Africa's Broad-Based Black Economic Empowerment (B-BBEE) Act and its sector-specific Mining Charter incorporate elements of due diligence.

Mechanism: The Mining Charter (2018) imposes social and labor plan (SLP) obligations on mining rights holders. These legally binding plans require companies to assess and address the socio-economic impacts of their operations, including on housing, livelihoods, and local community development. Failure to comply can result in the suspension or cancellation of mining rights.

Case Example – The Marikana Impact: Following the 2012 Marikana massacre, where 34 striking miners were killed, significant scrutiny fell on platinum mining companies' human rights practices. This catalysed a push for more stringent due diligence, with investors and courts demanding greater transparency and community engagement in SLPs. In 2019, the High Court in *Maledu and Others v Itereleng Bakgatla Mineral Resources* affirmed the rights of communities impacted by mining, reinforcing the duty of companies to conduct meaningful consultation.

Lesson for Malawi: A sectoral approach, starting with high-impact industries like mining, can be an effective entry point for mHREDD. Integrating due diligence requirements into existing licensing and permitting regimes (e.g., through the Malawi Mines and Minerals Act) provides immediate leverage and enforcement power. South Africa demonstrates how judicial activism, grounded in a strong constitution, can propel corporate accountability forward.

3.2 Côte d'Ivoire & Ghana: The COCOBOD Model in Commodity Supply Chains

As the world's leading cocoa producers, Côte d'Ivoire and Ghana face severe human rights risks, including child labour, deforestation, and farmer poverty. In response, both governments have innovated with a coordinated, state-led due diligence mechanism.

Mechanism: The Ghana Cocoa Board (COCOBOD) and Côte d'Ivoire's Conseil du Café-Cacao control all cocoa exports. Leveraging this centralized system, the two countries jointly instituted a "Living Income Differential" (LID) in 2019—a premium paid on cocoa beans to raise farmer incomes. More critically for due diligence, they have moved towards a "National Traceability System." Companies wishing to purchase cocoa must provide farm-level GPS data and demonstrate via due diligence that their sourcing is not from protected forests or using the worst forms of child labour. Non-compliant companies risk being barred from purchasing.

Case Example – EU Regulation as a Catalyst: The impending EU Deforestation Regulation (EUDR), which will require geo-located proof of deforestation-free supply chains, has accelerated these national traceability efforts. The Ivorian and Ghanaian governments are using the threat of market exclusion from the EU to drive industry-wide compliance with their national due diligence standards, turning a potential vulnerability into a coordinated policy response.

Lesson for Malawi: For agricultural commodity-dependent economies like Malawi (tobacco, tea, sugar), a centralized marketing board or authority can be a powerful vehicle for implementing mandatory due diligence across an entire sector. Malawi could mandate that the Tobacco Commission or the Smallholder Tea Authority require human rights and environmental due diligence reports as a condition for export licensing. This model shows how African nations can proactively build state capacity to govern global value chains rather than being passive price-takers.

3.3 Kenya: Pioneering a National Action Plan and Legislative Proposal

Kenya has positioned itself as a regional leader in the Business and Human Rights (BHR) agenda through a multi-pronged soft-law and legislative approach.

Mechanism: In 2020, Kenya launched its National Action Plan on Business and Human Rights (NAP), a product of extensive multi-stakeholder consultation. The NAP commits the government to, among other things, "develop a legislative framework for mandatory human rights due diligence." Following this, the Business Human Rights Bill was drafted in 2021. While not yet passed, the draft bill proposes to require companies of a certain size to undertake human rights and environmental due diligence, report publicly, and provide for access to remedy.

Case Example – The 2021 SGR Land Compensation Case: Although not prosecuted under a mHREDD law, the long-running disputes over land compensation for the Chinese-built Standard Gauge Railway (SGR) highlight the acute need for such legislation. Communities displaced by the SGR reported inadequate compensation and consultation. A future mHREDD law in Kenya would provide a clear legal basis to hold both the state and the operating companies accountable for such failures in infrastructure projects.

Lesson for Malawi: Kenya's process underscores the importance of a phased approach. Starting with a National Action Plan allows for consensus-building, baseline studies, and piloting without the immediate pressures of enforcement. Malawi should immediately initiate the development of its own NAP on BHR as a foundational step towards legislation. Furthermore, Kenya's experience highlights the need for mHREDD laws to cover not just private sector actors but also public-private partnerships and state-led infrastructure projects, which are significant in Malawi's development agenda.

3.4 Nigeria: The Petroleum Industry Act and Host Community Obligations

Nigeria's oil-rich Niger Delta is a stark example of the catastrophic human rights and environmental consequences of unregulated corporate activity. The 2021 Petroleum Industry Act (PIA) represents a long-overdue attempt to institutionalize a form of due diligence in the extractive sector.

Mechanism: The PIA mandates the creation of Host Community Development Trusts by oil companies. Operators must contribute 3% of their annual operational expenditure to these trusts, which are meant to fund socio-economic development projects. The law requires companies to conduct environmental impact assessments and implement environmental management plans. Crucially, it links funding to performance: if vandalism or sabotage occurs, the operating company may deduct the cost of repairs from the trust fund—a controversial provision criticized for punishing communities.

Case Example – Persistent Flaws in Implementation: While the PIA creates a structure, early implementation has exposed weaknesses akin to due diligence failures. Communities report a lack of meaningful consultation in trust formation, opaque management, and the continued use of the "collective punishment" clause. This mirrors a "box-ticking" approach to due diligence without genuine stakeholder engagement or accountability for ongoing pollution from oil spills.

Lesson for Malawi: A law's design determines its effectiveness. Malawi must learn from Nigeria's shortcomings by ensuring any mHREDD framework prohibits punitive clauses that transfer liability to victims. It must emphasize process over procedure, guaranteeing that community engagement is free, prior, and informed. Furthermore, environmental obligations must be clear, with strict liability for pollution, independent monitoring, and clean-up funds that cannot be diverted.

3.5 The African Regional Perspective: The Binding Treaty Process

At the continental level, the African Union is engaged in the development of a Legally Binding Instrument on Business and Human Rights, spearheaded by the Working Group on Transnational Corporations in Africa.

Mechanism: This proposed treaty aims to establish regional standards for corporate accountability, including due diligence obligations. While still in negotiation, its draft articles emphasize the primacy of victims' rights to remedy, state obligations to regulate corporate actors, and the need to close governance gaps in cross-border investment.

Lesson for Malawi: Malawi should actively participate in and align its national mHREDD ambitions with this regional process. A strong Malawian law would position the country as a leader in these negotiations and help create a harmonized African standard, preventing a "race to the bottom" to attract investment. It also highlights the importance of crafting a Malawian law with extraterritorial reach to cover the activities of Malawian companies operating elsewhere in the region.

Synthesis of African Lessons:

The African case studies collectively demonstrate that:

1. Hybrid Models Work: Combining constitutional imperatives, sector-specific regulations, state-controlled commodity boards, and stand-alone legislative proposals can create a comprehensive ecosystem.

2. Enforcement is the Litmus Test: Laws without robust monitoring, accessible grievance mechanisms, and judicial enforcement will fail (as seen in Nigeria). Malawi must invest in these institutions concurrently.

3. Leverage Market Power: African nations, as commodity producers, can use their collective market position (like Ghana and Côte d'Ivoire) to dictate due diligence terms to global buyers, turning a dependency into a point of leverage.

4. Start with High-Risk Sectors: A phased implementation focusing on mining, large-scale agriculture, and forestry would address Malawi's most pressing risks while building regulatory experience.

These African precedents provide a rich, practical blueprint for Malawi to craft a uniquely Malawian mHREDD framework that is both ambitious in its protection of people and planet and pragmatic in its pathway to implementation.

4. LESSONS AND RECOMMENDATIONS FOR MALAWI

Synthesizing global insights with Malawi's context leads to the following recommendations:

Recommendation 1: Enact a Stand-Alone, Comprehensive mHREDD Law.

Malawi should develop a dedicated Act of Parliament on mHREDD, rather than relying on amendments to disparate laws. This ensures coherence and visibility. The law should apply to all large businesses operating in Malawi, including state-owned enterprises, and to Malawian companies of significant size and turnover, with a phased approach for SMEs.

Recommendation 2: Ensure Meaningful Stakeholder Inclusion in Design and Implementation.

The law-making process must be consultative, incorporating the voices of rural communities, workers, women's groups, business associations, and civil society. The resulting law must mandate community consultation as a core component of the due diligence process itself.

Recommendation 3: Establish Clear Liability and Access to Remedy.

The law must include provisions for civil liability, allowing affected parties to seek redress in Malawian courts for harms caused by a company's failure to conduct adequate due diligence. It should also reinforce the mandate of the Malawi Human Rights Commission and the Ombudsman to receive related complaints.

Recommendation 4: Build Institutional Capacity and Provide Guidance.

Designate a lead government agency (e.g., Ministry of Justice or a new inter-ministerial committee) to oversee implementation. Develop sector-specific guidelines for high-risk industries (agriculture, mining, forestry) and create state-supported capacity-building programs for businesses and civil society monitors.

Recommendation 5: Align with and Strengthen Existing Frameworks.

The mHREDD law should be explicitly linked to Malawi's Environmental Management Act, Labour laws, the Access to Information Act, and the Malawi 2063 strategy. This creates a unified accountability ecosystem rather than a silo initiative.

5. Conclusion

The journey towards Mandatory Environmental and Human Rights Due Diligence in Malawi is a necessary one. It represents a decisive step away from a development model that externalizes social and environmental costs towards one that internalizes accountability, respects dignity, and stewards natural resources for future generations. While challenges exist, they are far outweighed by the opportunity to build a more resilient, just, and sustainable economy.

This paper calls upon the Government of Malawi, Parliament, the business community, and all stakeholders to initiate a serious, inclusive dialogue on crafting a Malawian-made mHREDD law. By doing so, Malawi will not only protect its people and its environment but will also position itself as a responsible and attractive destination for ethical investment in a rapidly changing global economy. The time for voluntary measures has passed; the era of mandatory accountability must begin.

References

1. Brabant, S., & Savourey, E. (2017). The French Law on Duty of Vigilance: Practical Implications and Challenges for Companies. ClientEarth.
2. European Parliament. (2024). Corporate Sustainability Due Diligence Directive (CSDDD). [Official Text]. EUR-Lex.
3. Federal Ministry for Economic Cooperation and Development. (2023). The German Act on Corporate Due Diligence in Supply Chains. Berlin: BMZ.
4. Government of the Republic of Malawi. (1994). The Constitution of the Republic of Malawi.
5. Government of the Republic of Malawi. (2020). Malawi 2063: An Inclusively Wealthy and Self-Reliant Nation. National Planning Commission.
6. OECD. (2011). OECD Guidelines for Multinational Enterprises. OECD Publishing.
7. Ruggie, J. G. (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. United Nations.

Note: This paper is intended for advocacy and educational purposes. The author acknowledges the evolving nature of international mHREDD legislation and encourages readers to consult the latest legal texts and resources.

Mandatory Environmental and Human Rights Due Diligence (MEHRDD) in Malawi Sector-Specific MEHRDD Checklists

This section provides a checklists for applying MEHRDD across priority sectors in Malawi.

Mining Sector MEHRDD Checklist

- ✓ Human rights and environmental risk assessment conducted
- ✓ Community consultation and FPIC where applicable
- ✓ Disclosure of mining contracts and licenses
- ✓ Environmental management and closure plans in place
- ✓ Labour rights, safety, and grievance mechanisms operational
- ✓ Ongoing monitoring and public reporting

Agriculture Sector MEHRDD Checklist

- ✓ Land tenure and user rights assessed
- ✓ Smallholder and women farmer protections included
- ✓ Environmental impacts on soil and water assessed
- ✓ Fair labour standards applied
- ✓ Grievance and remedy systems accessible
- ✓ Climate resilience integrated

Infrastructure Sector MEHRDD Checklist

- ✓ Environmental and social impact assessment completed
- ✓ Resettlement and compensation plans implemented
- ✓ Contractor labour compliance monitored
- ✓ Transparency in procurement ensured
- ✓ Community monitoring mechanisms established
- ✓ Remedies for harm available

Energy & Climate Projects MEHRDD Checklist

- ✓ Climate and human rights risks identified
- ✓ Land acquisition and benefit-sharing transparent

- ✓ Ecosystem protection measures applied
- ✓ Labour health and safety enforced
- ✓ Climate finance disclosures made
- ✓ Accessible grievance mechanisms provided