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Twenty-Five More Years of CSR? How states are reinforcing private governance in the anti-forced labour governance arena

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Abstract

Within anti-forced labour circles, there has been considerable excitement lately about governments taking on a more active role in tackling forced labour in supply chains. A common perspective is that after over 25 years of failed corporate social responsibility (CSR) efforts, governments have re-entered the arena; states' enactment of responsive legislation (e.g. due diligence legislation or transparency legislation), import bans, and multi-lateral efforts, including through the G7, are often heralded as evidence of their stepping up. However, the extent to which this wave of government initiatives reinforces and relies upon, rather than replaces, CSR is frequently overlooked. In this article, I consider the ways in which recent government initiatives to tackle forced labour in supply chains expand the market, role, and governance power of unaccountable private actors, including auditing firms, data analytics and Artificial Intelligence companies, and certification bodies. I argue that unless governments enact far more ambitious regulation and restrictions on multinational enterprises, we are heading for another 25 years of deficient and inadequate private-led governance to address forced labour in supply chains.

Keywords: transparency law, HRDD, ethical certification, corporate governance, ethical auditing, data analytics and AI, forced labour, due diligence

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Introduction

The failures of voluntary corporate social responsibility (CSR) to detect, address, and remediate forced labour in global supply chains are at this point well known. Since the early 2000s, private governance efforts led by multinational enterprises (MNEs) and other private actors have been championed as a key solution to forced labour and overlapping forms of labour exploitation in supply chains.[1] These include: corporate codes of conduct through which MNEs dictate standards for all of their suppliers to follow; ethical certification schemes like Fairtrade and Rainforest Alliance which purport to deliver higher labour and other 'ethical' standards to consumers; ethical auditing, which involves MNEs hiring private third-party businesses to visit supplier firms and evaluate conformity to their codes of conduct or various other private standards; multi-stakeholder initiatives, through which MNEs partner with each other and non-governmental organisations (NGOs) towards certain goals (e.g. addressing illegal activity in fishing); and the deployment of technology (e.g. mobile phone surveys or hotlines) to enable workers in supply chains to bring issues directly to the attention of MNEs.

There is ample evidence of the shortcomings of CSR to address forced labour. Studies have revealed, for instance, that: forced labour and overlapping forms of exploitation continue to be widespread in supply chains that are covered by multiple CSR initiatives, including codes of conduct, ethical certification, and auditing;[2] multiple multi-stakeholder initiatives related to forced labour have fallen short of meeting their aims;[3] workers 'liberated' from oppressive and exploitative worksites end up in abusive working conditions;[4] suppliers face

1 G LeBaron, *Combatting Modern Slavery: Why Labour Governance is Failing and What We Can Do About It*, Polity Press, 2020.

2 C Oya, F Schaefer, and D Skalidou, 'The Effectiveness of Agricultural Certification in Developing Countries: A Systematic Review', *World Development*, vol. 112, 2018, pp. 282–312, https://doi.org/10.1016/j.worlddev.2018.08.001; L Rende Taylor and E Shih, 'Worker Feedback Technologies and Combatting Modern Slavery in Global Supply Chains: Examining the Effectiveness of Remediation-Oriented and Due-Diligence-Oriented Technologies in Identifying and Addressing Forced Labour and Human Trafficking', *Journal of the British Academy*, vol. 7, issue s1, 2019, pp. 131–165, https://doi.org/10.5871/jba/007s1.131; C Stringer, D H Whittaker, and G Simmons, 'New Zealand's Turbulent Waters: The Use of Forced Labour in the Fishing Industry', *Global Networks*, vol. 16, issue 1, 2016, pp 3–24, https://doi.org/10.1111/glob.12077.

3 G LeBaron *et al.*, 'The Ineffectiveness of CSR: Understanding Garment Company Commitments to Living Wages in Global Supply Chains', *New Political Economy*, vol. 27, issue 1, 2021, pp. 99–115, https://doi.org/10.1080/13563467.2021.1926954.

4 E Shih, *Manufacturing Freedom: Sex Work, Anti-Trafficking Rehab, and the Racial Wages of Rescue*, University of California Press, Oakland, 2023.

significant challenges meeting the standards set in codes of conduct and ethical certification schemes, including due to the lack of economic capacity to comply;[5] and there is widespread cheating within auditing which casts considerable doubt onto the credibility of many auditing reports.[6]

As the evidence of CSR's failures has piled up, civil society, academics, and at times even companies themselves have pressured states to take on a more active role in addressing the problem of forced labour in supply chains. This is not to suggest that states have been absent entirely from the governance arena; of course, there is a long history of state action to address slavery and overlapping forms of exploitation following the legal abolition of slavery in the early twentieth century.[7] This includes landmark conventions such as the International Labour Organization *Abolition of Forced Labour Convention* (C105) (1957) and United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000) (the 'Trafficking Protocol'). However, as processes of globalisation—and especially, the growth and complexity of supply chains—created new obstacles for states within the governance arena, the anti-forced labour movement pushed states to create and enforce mechanisms of corporate accountability fit for the modern era to prevent and address forced labour in supply chains. At the same time, the business and human rights movement fought to establish international norms requiring MNEs to take responsibility for ensuring fair labour conditions within their global supply chains.

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5 R M Locke, F Qin, and A Brause, 'Does Monitoring Improve Labor Standards? Lessons from Nike', *Industrial and Labour Relations Review*, vol. 61, issue 1, 2007, pp. 3–31, https://doi.org/10.1177/001979390706100101; S Barrientos and S Smith, 'Do Workers Benefit from Ethical Trade? Assessing Codes of Labour Practice in Global Production Systems', *Third World Quarterly*, vol. 28, issue 4, 2007, pp. 713–729, https://doi.org/10.1080/01436590701336580.

6 J Ford and J Nolan, 'Regulating Transparency on Human Rights and Modern Slavery in Corporate Supply Chains: The Discrepancy Between Human Rights Due Diligence and the Social Audit', *Australian Journal of Human Rights*, vol. 26, issue 1, 2020, pp. 27–45, https://doi.org/10.1080/1323238X.2020.1761633; L Lee, M M Chu, and A Ananthalakshmi, 'Malaysia's Labour Abuse Allegations a Risk to Export Growth Model', *Reuters*, 22 December 2021, retrieved 1 June 2025, https://www.reuters.com/world/asia-pacific/malaysias-labour-abuse-allegations-risk-export-growth-model-2021-12-21.

7 J Fudge, *Constructing Modern Slavery: Law, Capitalism, and Unfree Labour*, Cambridge University Press, 2025; G LeBaron, J R Pliley, and D W Blight (eds.), *Fighting Modern Slavery and Human Trafficking: History and Contemporary Policy*, Cambridge University Press, 2021.

Government responses have been multi-faceted. One cornerstone has been the passage of 'home state regulation',[8] including transparency and due diligence legislation, sometimes also referred to as 'modern slavery laws'.[9] The United States (US) State of California was the first to pioneer and enact a type of law that became known as 'transparency regulation',[10] with its *Transparency in Supply Chains Act* (2010).[11] This Act required large companies undertaking business in the state to publish an annual statement disclosing what efforts, if any, they were taking to address modern slavery in supply chains. Similar laws were passed in the United Kingdom (*Modern Slavery Act 2015*) and then countries across Europe and elsewhere. Some pieces of legislation combine features of both transparency and human rights due diligence (HRDD) (e.g. the Norwegian *Transparency Act*—Forbrukertilsynet, 2022), as will be discussed below. Overlapping with these efforts, governments used other levers to address forced labour in supply chains, including integrating labour standards into trade deals, enacting and enforcing import bans on goods made with forced labour, and advancing international cooperation, such as through the International Labour Organization or G7.

These developments are often heralded as a turning point, and there is optimism that governments' use of their power to address forced labour in global trade will replace ineffective voluntary CSR with more effective forms of public governance. However, I caution in this article that state-led anti-forced labour and human trafficking governance is not a straightforward replacement of CSR; rather, many recent government efforts have reinforced CSR and expanded the market, role, and governance power of unaccountable private actors, including auditing firms, data analytics and artificial intelligence (AI) companies, and certification bodies.

Similar themes are explored elsewhere in the scholarly literature. For instance, studies have shed light on the power and profits of the enforcement industry that has emerged in the wake of MNE CSR commitments,[12] the ways that industry-led technocratic tools are being mobilised to foster an 'ethics of detachment' wherein MNEs push due diligence responsibilities downwards within the

8 G LeBaron and A Rühmkorf, 'Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance', *Global Policy*, vol. 8, issue S3, 2017, pp. 15–28, https://doi.org/10.1111/1758-5899.12398.

9 Fudge.

10 LeBaron and Rühmkorf, 2017.

11 N Phillips, G LeBaron, and S Wallin, *Mapping and Measuring the Effectiveness of Labour-Related Disclosure Requirements for Global Supply Chains*, International Labour Office, Geneva, 2018.

12 LeBaron, 2020.

supply chain,[13] how marketised logics and discourses have come to shape anti-trafficking work,[14] and, as Judy Fudge has adeptly argued, how modern slavery laws 'divert attention from the underlying structures and processes that generate exploitation'[15] instead of tackling corporate power and business models. This article builds on these insights, sharply emphasising the often overlooked reality that government regulations around forced labour and human trafficking reinforce CSR and expand the power of private actors. Given that 2025 marked the twenty-fifth anniversary of the Trafficking Protocol—a key launching point for global anti-forced labour and trafficking governance efforts—it is an opportune moment to holistically take stock of governance trends and to consider the strongest route forward.

To develop this argument and synthesis, I marshal evidence on the failures of CSR that I have collected (at times in collaboration with colleagues); the full methodologies for these studies are published elsewhere. I also draw on exploratory desk-based research conducted in 2025 around the expanding role and power of private actors in supply chain governance. This has been gathered through publicly available information, including from records related to United Kingdom parliamentary and other public policy proceedings, as well as websites of supply chain verification companies; audit, assurance, and advisory firms; investor initiatives; risk assessment technology firms; and other private actors relevant to forced labour in supply chains. I also mobilise research by other scholars in the field.

The Return of the State

In the 2010s, amidst growing disillusionment with lacking progress in relation to MNE commitments to address modern slavery in supply chains, activists within the overlapping anti-slavery/forced labour/human trafficking arenas stepped up pressures on governments to enforce labour standards in global supply chains; this echoed calls from the 'anti-sweatshop' movement in the late 1990s. Much of the energy focused on lobbying the 'home states' of MNEs—in other words, the countries in which large corporations leading global supply chains are incorporated—to create and enforce requirements on MNEs. The hope for 'home state' regulation was that if the governments of Global North countries in which MNEs were based imposed new requirements on corporations to be transparent about their global supply chains, consumers in those countries would make more ethical purchasing decisions.

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13 G A Sarfaty and R Deberdt, 'Supply Chain Governance at a Distance', *Law & Social Inquiry*, vol. 49, issue 2, 2023, pp. 1036–1059, https://doi.org/10.1017/lsi.2023.17.

14 Shih.

15 Fudge.

There are two distinct types of home state regulation relevant to addressing forced labour and human trafficking in supply chains, though as mentioned above, occasionally, legislation has adopted features of both. The first is transparency legislation, which, generally speaking, requires companies to publicly disclose any efforts to identify or address forced labour and human trafficking in their supply chains. This style of legislation does not generally require companies to undertake action towards detecting, preventing, addressing, or remediating forced labour or human trafficking; rather, transparency legislation requires disclosure—or transparency—about the efforts in which companies choose to engage. For instance, the United Kingdom's *Modern Slavery Act 2015* simply requires companies to report on any effort they make to detect and address modern slavery and to post this information on their website.

The second type of regulation is human rights due diligence legislation. Partially as a response to the widespread perception that transparency legislation has been of limited effectiveness in spurring change in relation to forced labour in supply chains, another form of legislation has emerged to require action by companies. Broadly speaking, according to the United Nations *Guiding Principles on Business and Human Rights*, often referred to as the 'Ruggie Principles', human rights due diligence is defined as involving four duties for companies. 1) They should assess and identify actual or potential adverse human rights impacts; 2) They should form and implement a plan of action to address these; 3) They should effectively monitor measures taken; and 4) They should issue reports on actions taken and their outcomes. Due diligence approaches are seen as more stringent than transparency alone, since they generally require corporations to identify and assess human rights risks and prevent and remedy abuses. However, the degree to which these principles have been reflected in legislation has largely been a matter of political contestation, with industry lobbying influencing regulatory efforts.[16] As noted, some pieces of legislation combine features of transparency and human rights due diligence.

Governments passed a wave of home state regulation, which included California's *Transparency in Supply Chains Act* (2012), the US *Dodd–Frank Wall Street Reform and Consumer Protection Act* (2010) (which regulates, among other things, conflict minerals), the UK *Modern Slavery Act 2015* (which includes a transparency in supply chains clause), and France's *Corporate Duty of Vigilance Law* (2017). These laws varied by stringency, with the least stringent iterations (e.g. UK or California) being pure transparency laws; in general, this type of legislation encourages companies to report on efforts to address and prevent modern slavery, but it does not have standardised or required indicators for their reporting or enforce

[16] P Schleifer and L Fransen, 'Smart Mix Politics: Business Actors in the Formulation of Global Supply Chain Regulation', *Review of International Political Economy*, vol. 31, issue 6, 2024, pp. 1710–1734, https://doi.org/10.1080/09692290.2024.2367582.

penalties for non-compliance, nor does it require actual improvements in labour standards. The justification for this approach has generally been that governments are encouraging companies to share information to guide purchasing decisions, so that consumers could 'vote with their dollar'. In other words, this legislation largely focuses on disclosure around any voluntary efforts taken to address the problem, rather than placing new requirements on companies to do so.

Another way that governments have stepped up their anti-forced labour efforts is through import bans on goods made with forced labour. Anti-slavery organisations, including Walk Free, have celebrated import bans as a way for states to punish companies or countries heavily reliant on forced labour by halting their access to key consumer markets, such as in the US, Canada, and Europe.[17] For instance, the US was first to prohibit the import of goods made with forced labour by amending section 307 of its *Tariff Act* of 1930, and the EU Parliament adopted a proposal to ban all products made with forced labour in 2022. Further initiatives seek to ban the import of forced labour-made goods in certain sectors (e.g. EU regulation 2017/821 focuses on minerals and metals) or from specific countries or regions (e.g. the US *Uyghur Forced Labor Prevention Act* in 2021). Table 1 provides an indicative list of some key policy developments to help illustrate the types of action states and international organisations like the United Nations have recently taken.

Table 1: Indicative Key Policy Developments Since 2010

2011	United Nations Guiding Principles on Business and Human Rights
2012	United States State of California, *Transparency in Supply Chains Act*
2014	European Union, CSR Reporting Directive; Singapore *Prevention of Human Trafficking Act*
2015	United Kingdom, *Modern Slavery Act 2015*; United States Federal Acquisition Regulation Rule on Combatting Trafficking in Persons
2016	Global *Magnitsky Act*; United Nations, Sustainable Development Goals
2017	France, *Corporate Duty of Vigilance Law*
2018	Australia, *Modern Slavery Act*
2019	Netherlands, *Child Labor Due Diligence Law*; European Union, Regulation on Sustainability-Related Disclosure in the Financial Sector
2021	Germany, *Supply Chain Act*; Norway *Transparency Act*
2022	Japan, Guidelines on Respecting Human Rights in Responsible Supply Chains
2023	Canada, *Fighting Against Forced Labor and Child Labor in Supply Chains Act*
2022	European Union, Corporate Sustainability Reporting Directive

[17] See, for instance: Walk Free, 'Importing Risk', n.d., retrieved 30 May 2025, https://www.walkfree.org/global-slavery-index/findings/importing-risk.

In addition to transparency and due diligence legislation as well as import bans, there are several other ways in which governments have recently taken on more active roles to combat forced labour in supply chains. These include: public procurement systems designed to ensure forced labour is not entering into government supply chains and government due diligence systems;[18] 'name and shame' lists of countries and entities who use forced labour (e.g. Brazil's 'Dirty List' or the annual US Department of Labor's List of Goods Produced by Child Labor or Forced Labor); the integration of labour provisions into trade agreements;[19] the establishment of anti-slavery commissioners (e.g. Australia or UK) or similar roles (e.g. US Ambassador-at-Large to Combat Trafficking in Persons); and international and multi-lateral cooperation, such as around legal frameworks and conventions.

But for all the excitement about governments taking on a more active role in tackling forced labour in supply chains, the evidence that these state initiatives are leading to meaningful improvements in working conditions, reduced prevalence or severity of forced labour, or even stronger corporate accountability is thin. At a general level, while there is some variation across different models of transparency and due diligence legislation, academics and corporate accountability organisations have documented that these laws have done relatively little so far to spur significant changes in corporate behaviour or business models.[20] One issue is that they have largely failed to reach the segments of supply chains where the worst human rights violations are occurring, and there is a serious lack of evidence demonstrating reduced occurrence of forced labour on the ground.[21] Another issue is that legislation can carry hidden costs, perverse effects, and unintended consequences. For instance, some scholars have argued that transparency and due diligence legislation simply shifts responsibility and potentially also liability for forced labour deeper into the supply chain where industry actors are less well-

[18] See, for instance: UK Parliament, 'UK Parliament's Modern Slavery Programme', n.d., retrieved 6 February 2025, https://www.parliament.uk/about/modernslavery.

[19] See, for instance: I Damjanovic and N de Sadeleer, 'Labour Standards in International Trade Agreements: A Rule of Law Perspective', *European Journal of Risk Regulation*, vol. 15, issue 3, 2024, pp. 551–571, https://doi.org/10.1017/err.2024.82.

[20] See, for instance: L K E Hsin *et al.*, *Effectiveness of Section 54 of the Modern Slavery Act: Evidence and Comparative Analysis,* Modern Slavery & Human Rights Policy & Evidence Centre, February 2021; S New and L K E Hsin, 'Deconstructing Modern Slavery Statements: A Detailed Analysis of Arcadia Group and Babcock International', *SSRN*, 2021, https://doi.org/10.2139/ssrn.3768495; N Ahmad, S Haque, and M A Islam, 'Modern Slavery Disclosure Regulations in the Global Supply Chain: A World-Systems Perspective', *Critical Perspectives on Accounting*, vol. 99, 2024, pp. 102677, https://doi.org/10.1016/j.cpa.2023.102677.

[21] LeBaron, 2020.

equipped to address and remediate it.[22] No doubt, the original policy proposals put forward—informed by civil society, activists, experts, and others—may have been more effective than the final enacted versions have ended up being, as is the case for the UK *Modern Slavery Act 2015*.[23] But that does not change the limited impacts that have been documented in the wake of the legislation.

At this point, there has been extensive analysis of the challenges related to the design and implementation of state legislation and initiatives when it comes to creating on-the-ground change for those experiencing forced labour and human trafficking in supply chains and the business models that perpetuate it. However, there has been much less analysis of the role of CSR in contributing to policy ineffectiveness. A significant obstacle is the extent to which this wave of government initiatives reinforces CSR and expands the power of private actors within anti-slavery governance.

Reinforcing CSR and the Power of Private Actors

Many imagine a strict separation between public (e.g. state-based) regulation and private governance (e.g. CSR). However, most state initiatives have a high degree of hybridity, with public initiatives reinforcing private governance and CSR. This is concerning insofar as it is fuelling the profits and growth of MNEs as well as the market, role, and governance power of unaccountable private actors, including auditing firms, data analytics and AI companies, and certification bodies. Individual private actors cannot be assumed *a priori* to limit governance efforts around forced labour, and there is certainly a high degree of variation in the role played by these actors (for instance, amongst assurance and advisory firms, in the quality of service provided). However, taken together, the degree to which government legislation and initiatives rely on private actors and action is concerning.

There are several different types of private actors involved in the delivery of anti-slavery governance. These include: standard setters (including MNEs), ethical certification organisations and standardisation organisations; verification and assurance organisations, including social auditors and civil society organisations;

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22 See, for instance: T Barkay *et al*., 'Anti-Trafficking Chains: Analyzing the Impact of Transparency Legislation in the UK Construction Sector', *Law & Social Inquiry*, vol. 49, issue 4, 2024, pp. 2152–2183, https://doi.org/10.1017/lsi.2024.6; Sarfaty and Deberdt; R Vijeyarasa, 'A Missed Opportunity: How Australia Failed to Make its Modern Slavery Act a Global Example of Good Practice', *Adelaide Law Review*, vol. 40, issue 3, 2019, pp. 857–866.

23 G LeBaron and A Rühmkorf, 'The Domestic Politics of Corporate Accountability Legislation: Struggles Over the 2015 UK Modern Slavery Act', *Socio-Economic Review*, vol. 17, issue 3, 2019, pp. 709–743, https://doi.org/10.1093/ser/mwx047.

consulting and advisory organisations, including large companies offering consulting and advisory services across a range of issues as well as smaller more specialised companies focused specifically on labour and human rights issues and risks; and risk assessment organisations, including commercial data platforms, worker hotline and 'voice' technology, and shared traceability platforms.

The commercial nature of these firms and the proprietary nature of their data and customer bases make it hard to gather comprehensive data on the scale of the industry and the evolution of this over time. But a quick glance at MNE reporting under transparency and due diligence legislation reveals that they are deepening their reliance on private governance actors in response to new state anti-slavery legislation and other initiatives. Companies covered under transparency and due diligence legislation are turning to social auditing, certifying, consulting, risk assessment, and ethical certification. For instance, Amazon's 2024 statement under the UK *Modern Slavery Act 2015* stated, 'We expanded our supplier audit program to reach more of Amazon's global logistics network, conducting audits across third-party labour, service, and not-for-resale goods providers',[24] while Kingfisher's 2024 statement under the same Act says, 'In 2024, we increased the number of audits conducted at high-risk production sites'.[25]

Guidance issued by the United States Office of Trade instructs that to identify and correct problems to respond to or prevent application of the import ban of goods made with forced labour, companies should conduct audits, noting 'audits are useful tools to help companies identify forced labor risks' and that corrective action plans where the import ban has been applied should include audit findings.[26]

In addition to reinforcing the market for CSR, recent state initiatives have also contributed to an evolution of the role that these firms play within the global economy. Risk mapping technologies, including those reliant on AI, data from audit firms, and audit platforms, have become pivotal in determinations and decision making around risk and the changing geography of sourcing. Some of these tools cross-reference sources to build layered pictures of risk, which has allowed them to detect problems deeper in the supply chain. Furthermore,

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[24] Amazon, *Modern Slavery Statement 2024*, n.d., retrieved 2 November 2025, https://sustainability.aboutamazon.com/modern-slavery-statement.pdf.

[25] Kingfisher, *Modern Slavery Act Transparency Statement 2024/25*, June 2025, https://www.kingfisher.com/~/media/Files/K/Kingfisher-Plc/Universal/documents/responsible-business/RB-Report/2025/Kingfisher-plc-Modern-Slavery-Act-Statement-2024-25.pdf.

[26] United States Customs and Border Protection Office of Trade Forced Labor Division, *Withhold Release Order (WRO) and Finding Modification Guide: CBP Publication No. 5040-0525*, https://www.cbp.gov/sites/default/files/2025-05/FLD_Withhold_Release_Order_and_Finding_Modifications_Guide.pdf.

as MNEs divest or exit from regions or relationships, they rely heavily on these firms to redesign supply chains.

In this context, anti-slavery private governance tools and firms are evolving. They are no longer simply about assisting MNEs and suppliers to achieve compliance. While this may on the face of it seem like a positive phenomenon, there are several drawbacks that need to be considered. First, many of these tools over-rely on inaccurate or highly partial data. Unfortunately, the underpinning data on forced labour that feeds risk maps and AI models is patchy, often misleading (e.g. when entire countries are identified as 'high risk' on the basis of poor quality data[27]), compromised by fraud and fabrication (e.g. in the case of audits), and tainted by geopolitics.

Second, on the basis of this highly inaccurate data, private governance firms are driving decision making in supply chains that heavily impacts workers' lives. For instance, when MNEs disengage from suppliers based on audits or data provided by anti-slavery private governance firms, vulnerable workers can be made worse off, including by losing their jobs, incomes, and employment-linked benefits and social protection (e.g. meals provided in the company canteen).

Third, while anti-slavery private governance tools and firms are driving considerable activity—such as exiting regions and divesting from supplier relationships—none of this addresses the actual problem. MNEs are investing large amounts of money in anti-slavery private governance in response to new state activity, but they are leaving entirely intact the business models that lead to forced labour in supply chains in the first place.[28] While MNEs shift around the geography of their supply chains using increasingly elaborate (and expensive) service firms and information, they continue to use the purchasing practices, contract systems, and financial systems that drive the business demand for forced labour within their supply chains. Meanwhile, workers suffer.

The governance power of these assurance, advisory, risk mapping, and standard-setting firms is accelerating. Not only are they increasingly driving supply chain sourcing decisions in response to government legislation and import ban activity, but they are also influencing corporate strategy in ways that ultimately serve to maintain the status quo of their business models and heighten profitability. Anti-slavery private governance industry actors are entirely unaccountable for the decisions and perceptions they inform, such as amongst MNEs or public

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27 A T Gallagher, 'What's Wrong with the Global Slavery Index?', *Anti-Trafficking Review*, issue 8, 2017, pp. 90–112, https://doi.org/10.14197/atr.20121786.

28 G LeBaron, 'The Role of Supply Chains in the Global Business of Forced Labour', *Journal of Supply Chain Management*, vol. 57, issue 2, 2021, pp. 29–42, https://doi.org/10.1111/jscm.12258.

policymakers, or the consequences of those decisions.

For instance, multiple lawsuits have been filed against social audit firms who have failed to detect major problems at worksites and rubber-stamped their labour conditions, only for disasters to take place or forced labour to be discovered shortly afterwards. At the time of writing, none of the claims filed have yet resulted in a finding of liability.[29] Private governance actors like social auditors are shaping critical decision making within supply chains, and yet, they have no accountability or liability for the consequences of those decisions.

This is not a coincidence, but rather is by design. In the face of recent legislation and import bans, MNEs hiring private governance firms allows them to achieve plausible deniability and demonstrate they are managing human rights risks in their supply chains, even where the actual abuses persist unchanged. The very attractiveness of the private governance industry lies in the fact that firms—like social auditors—have no legal duty to those harmed by misleading audits, have extensive liability disclaimers (e.g. not being responsible for their accuracy), and face no consequences for false assurances. Yet, the presence of these third parties dilutes the liability of MNEs for problems occurring in their supply chains.

Rather than government anti-slavery initiatives being met by greater workplace inspection or meaningful change in business models or sourcing practices to facilitate higher labour standards in supply chains, the regulatory push has been met with greater reliance on weak private governance systems. Private actors have growing power to shape labour standards and determine which workers are able to be part of global supply chains, but without democratic legitimacy, public accountability, or legal liability. This allows MNEs to externalise risk while appearing to be compliant with new government regulation and facilitates the growth of an industry that wields considerable influence but without responsibility or liability.

Conclusion

A potential hidden cost of the new wave of government action on forced labour is that it has deepened the power and profits of the private governance industry. This deserves more attention and serious consideration and study by scholars and civil society groups. While those involved in bringing about the greater role of governments in tackling forced labour in supply chains are understandably excited about the progress they are making, and have argued that even weak

[29] Business & Human Rights Resource Centre, *Social Audit Liability: Hard Law Strategies to Redress Weak Social Assurances*, September 2021, https://media.business-humanrights.org/media/documents/Executive_Summary_EN_2021_CLA_Annual_Briefing.pdf.

laws can be incrementally built upon and strengthened, it is equally important to examine recent developments through a wide-angle lens with a focus on outcomes and long-term consequences. What are the hidden costs, perverse effects, and unintended consequences of new state initiatives?

In this article, I have argued that a key trend that needs to be carefully considered and further investigated is the evolving relationship between public and private anti-slavery governance. The interplay between these is not new. Indeed, home state regulation was from the outset informed by voluntary business and human rights principles that relied on private governance power and tools to succeed. The 'Ruggie Principles', for instance, which informed public policy discussions leading to home state regulation, emphasise a corporate responsibility to respect human rights; they are frequently referenced as the key policy framework carving out a role for CSR within global human rights governance.

Nevertheless, the interlinkages and overlaps are becoming more consequential and complex. As legislation and import bans drive deepening reliance on private governance, this industry is generating abrupt shifts in sourcing patterns and supply chain relationships. While hundreds of firms are generating millions of dollars from these developments, it is important to look carefully at the consequences for workers, and for labour governance of global supply chains more broadly.

After more than a decade of home state legislation, there is still very little evidence that this is leading to concrete improvements for workers in supply chains, never mind a net reduction of forced labour. And it may be creating a situation where workers in entire regions or worksites are losing access to jobs in global supply chains—no doubt, sometimes informed by genuine human rights risks, but given the problems noted above with the underpinning data used by private anti-slavery governance firms, it is also possible that such losses are anchored in faulty or simply inaccurate information. In a world where precarity and poverty are widespread and decent employment opportunities in short supply, decisions to redraw supply chains to leave out suppliers or regions can have major, life-changing consequences for workers already struggling.

Taken as a whole, the growing power and profit in private anti-slavery governance is unlikely to be a positive phenomenon for labour governance in global supply chains more broadly. Not only is this facilitating the ongoing growth and monopolisation of MNEs and helping them to evade consequences for the human rights issues hard-wired into their business models, but it is bestowing governance power and decision making onto scarcely known and under-studied firms. As mentioned, these firms are not accountable to the public nor to the workers whose lives are influenced by their decisions and advice, and they easily evade liability and muddy the waters of corporate accountability while enabling MNEs to do the same.

If current trends continue, we are on track for 25 more years of CSR reinforced and rubber-stamped by governments, such as through home state regulation. At the same time, we are unlikely to see meaningful and effective action by states that will improve labour standards and address forced labour. There is a need for much bolder and more ambitious government action than we have seen to date. Just as governments were willing to challenge and put enormous pressure on business models reliant on slavery when they made it illegal in the late nineteenth and early twentieth century, governments need to be willing to transform the status quo of contemporary business models reliant on forced labour. This will require sweeping changes to corporate and supply chain governance that touch upon everything from fiduciary duty and value share and distribution to joint liability and labour law enforcement. No doubt, this is far more challenging to build coalitions and political momentum around compared to a toothless transparency law, but it is what is needed to meaningfully address forced labour in supply chains.

In a world where civil society organisations, unions, and even academics face pressure to show return on investment and impact, it is challenging to prioritise large structural change over smaller more achievable wins. But these wins come with hidden costs, and some risk perpetuating harm to the populations they claim to help. Keeping these hidden costs in clear view changes calculations around 'wins', raising questions about who is winning, and whether these wins are coming at a cost for workers. That recent state initiatives have sowed the seeds for CSR to take on an even more decisive and powerful role in labour governance is certainly a very high cost.

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