

**US HOUSE OF REPRESENTATIVES WAYS & MEANS COMMITTEE**

**SUBCOMMITTEE ON TRADE**

**Hearing on “The Global Challenge of Forced Labor in Supply Chains: Strengthening Enforcement and Protecting Workers”**

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**Testimony of PROFESSOR GENEVIEVE LEBARON**

**Department of Politics and International Relations  
University of Sheffield**

Chairman Blumenauer, Ranking Member Buchanan, and distinguished Members of the Subcommittee,

It is an honor to appear before you today as you explore the issue of forced labor in the global economy and how to strengthen enforcement and protect workers. My name is Genevieve LeBaron. I serve as a Professor of Politics within the Department of Politics and International Relations at the University of Sheffield, and Co-Principal Investigator of ReStructure Lab, a collaboration between Sheffield, Stanford and Yale Universities. I was previously Yale University’s Human Trafficking and Modern Day Slavery Fellow and Co-Chair of the Yale University Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition Modern Slavery Working Group.

Over the last decade, I have researched the patterns and business dynamics of forced labor in supply chains. I’ve published studies on the business of forced labor in a range of supply chains with production located in Ethiopia, Ghana, Honduras, India, Myanmar, the United Kingdom, and the United States, amongst other countries. I’ve also published books and scholarly articles on the effectiveness of several forms of supply chain governance including public policy (eg. transparency legislation, anti-slavery legislation), industry initiatives (eg. corporate social responsibility programs, ethical auditing), and civil society efforts (eg. Fairtrade certification) in eradicating forced labor and overlapping forms of human rights abuses. As part of my testimony to the Committee, I have submitted two briefs, on the role and capacity of Due Diligence and Transparency legislation to address forced labor, and on Commercial Contracts and Sourcing practices in incentivizing forced labor in supply chains.

I will offer an international perspective on the successes and challenges in recent efforts by foreign governments to address forced labor, discuss the commercial drivers of forced labor in supply chains, and provide recommendations.

Over the last two decades, governments, civil society organizations, United Nations agencies, and some industry associations and companies have created a coalition to fight forced labor and overlapping practices such as modern slavery and human trafficking in the global economy. Awareness has grown that goods sold to consumers in the United States, United Kingdom, Canada, Europe and many other countries can be produced through forced labor. While this sometimes occurs domestically, forced labor often occurs overseas in supply chains. A supply chain encompasses all of the activities required by a business to deliver goods or services, from raw materials to consumer delivery. This includes producers and intermediaries along both product and labor supply chains.

Recognizing that forced labor is endemic across several sectors of the economy and within supply chains, governments have enacted new legislation to address forced labor in global supply chains.

This includes the California Transparency in Supply Chains Act (2012), the United Kingdom's Modern Slavery Act (2015), and France's Duty of Vigilance Law (2017).<sup>1</sup> This body of legislation varies across jurisdiction, for instance with respect to the regulatory approach, level of stringency (eg. coverage across the supply chain, penalties), standards set, and enforcement provisions (if any). While this legislation has helpfully raised the awareness of companies around problems of forced labor, there is little evidence that it is achieving its aims with respect to spurring corporations to address and prevent forced labor in supply chains.

Much anti-slavery legislation, including the California and United Kingdom Acts, adopt a model called transparency legislation, which places new reporting requirements on some corporations to disclose any efforts they are taking to address and prevent forced labor in their supply chain. This low-stringency regulatory approach has to date been largely ineffective in achieving its purpose of reducing actual levels of forced labor and human rights abuse in supply chains.

There are several major weaknesses of transparency legislation that have limited its capacity to influence corporate behavior relevant to forced labor, including: it lacks strong sanctions for non-compliance and in most jurisdictions suffers from weak or no enforcement; it does not provide paths for remedy and redress for victims; corporations can comply with transparency legislation without altering commercial practices that create incentives for forced labor in their supply chains; its coverage fails to reach the segments of supply chains where the worst human rights violations are occurring. Overall, to date, transparency legislation has sparked disclosure without actually changing things.<sup>2</sup> It has tended to lead to superficial reporting focused on processes (eg. policies against forced labor) rather than outcomes (eg. actual reductions in forced labor or better labor rights, wages, or conditions).

The recent wave of anti-slavery legislation has been paralleled by the proliferation of private, voluntary supply chain monitoring tools, including social auditing, ethical certification, and various forms of corporate social responsibility programs. Corporations frequently report on their use of these tools as strategies to address and prevent forced labor. However, there is ample evidence demonstrating that these are ineffective tools to detect, address, and correct forced labor.<sup>3</sup> Further, they can mislead consumers and policymakers about working conditions in supply chains.<sup>4</sup> While these tools create a flurry of activity around supply chains and can give the impression that forced labor is being addressed, after twenty years of such voluntary business efforts, there is little evidence of meaningful impact and ample evidence that forced labor remains commonplace across several supply chains.

One key reason that both public and private governance initiatives to address forced labor in supply chains fail to realize their aims is that they do not address the commercial root causes of forced labor. Forced labor is not usually an anomalous crime perpetrated by shadowy criminals. Rather, it is a stable and predictable feature of common business models and commercial dynamics associated with contemporary supply chains.<sup>5</sup>

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<sup>1</sup> For an overview, see: Nicola Phillips, Genevieve LeBaron & Sara Wallin, *Mapping and Measuring the Effectiveness of Labour-Related Disclosure Requirements for Global Supply Chains. International Labour Organization Working Paper 32* (Geneva: International Labour Office, 2018).

<sup>2</sup> Academic evidence on the effectiveness of transparency legislation in addressing forced labor is best summarized in: ReStructure Lab, *Due Diligence and Transparency Legislation* (Sheffield, Stanford and Yale Universities, 2021).

<sup>3</sup> Genevieve LeBaron, *Combatting Modern Slavery: Why Labour Governance is Failing and What We Can Do About It* (Cambridge: Polity Books, 2020).

<sup>4</sup> Genevieve LeBaron, 'A Market in Deception? Ethically Certifying Exploitative Supply Chains,' in Genevieve LeBaron, Jessica Pliley and David W. Blight (eds), *Fighting Modern Slavery and Human Trafficking: History and Contemporary Policy* (Cambridge: Cambridge University Press, 2021).

<sup>5</sup> Academic evidence on the role of commercial practices in giving rise to forced labor is best summarized in: ReStructure Lab, *Commercial Contracts and Sourcing* (Sheffield, Stanford and Yale Universities, 2021). See

Forced labor is incentivized by the ways in which business models and supply chains operate and are set up. Business models configured around forced labor have been well documented in a range of sectors. They are especially common where: a sector is labor intensive; labor costs comprise a high proportion of total business costs; there are high levels of subcontracting and intermediaries; and in portions of supply chains focused on low-value added activities.<sup>6</sup>

As corporations at the helm of supply chains source goods and procure services, their sourcing practices can easily hard-wire demand for illegal labor practices into supply chains. Forced labor is a logical consequence of routine sourcing practices of brands and retailers, which include: sourcing goods beneath the costs of production (including legally mandated labor standards); demanding goods and inputs for less than production costs; late payments to suppliers; high pressure on speed to market and ship dates; the imposition of heavy financial penalties onto suppliers for delays; refusal to adjust prices in light of improvements to labor standards (including minimum wage); unpredictable ordering patterns; allowing workers to bear the costs of recruitment into new jobs; and paying very low wages.<sup>7</sup>

The patterns of forced labor in supply chains are also shaped by broader political economic trends, including: high levels of corporate concentration and consolidation; growing financialization and changing ownership structures; surging corporate power; the absence of a labor-centered legal regime surrounding corporations and supply chains.<sup>8</sup> Under these conditions, the value produced within supply chains is concentrated at the top of supply chains amongst lead firms and financial actors. It is squeezed out of the bottom, diminishing the labor share, creating tight margins for suppliers, and fuelling the market for intermediaries (eg. recruiters) who seek to compress labor costs below legal minimums. Highly uneven patterns of value distribution are a key reason that forced labor and overlapping forms of exploitation continue to be widespread within the economy.

In many sectors, the Covid-19 pandemic has exacerbated these dynamics and rendered the inequities between businesses and workers within supply chains starkly visible. For instance, I recently conducted a study with colleagues of the impacts of the pandemic on the patterns of forced labor within the garment supply chains, based on interviews and a survey with 1200 garment workers in Ethiopia, Honduras, India and Myanmar as well as interviews with business and social compliance representatives. We found that even as the pandemic has led to historic highs in the profitability and cash positions of some garment companies, it is leading to a spike in forced labor indicators and severe economic deprivation for garment workers within supply chains.<sup>9</sup> Government action to protect workers in supply chains is urgent.

## Recommendations

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also: Genevieve LeBaron, 'The Role of Supply Chains in the Global Business of Forced Labour,' *Journal of Supply Chain Management* 57(2), pp. 29-42.

<sup>6</sup> Andrew Crane, Genevieve LeBaron, Kam Phung, Laya Behbahani, Jean Allain, 'Confronting the Business Models of Modern Slavery,' *Journal of Management Inquiry*, <https://journals.sagepub.com/doi/10.1177/1056492621994904>; see also: ReStructure Lab, *Commercial Contracts and Sourcing* (Sheffield, Stanford and Yale Universities, 2021); Genevieve LeBaron, *Combatting Modern Slavery: Why Labour Governance is Failing and What We Can Do About It* (Cambridge: Polity Books, 2020).

<sup>7</sup> This list is adapted from: ReStructure Lab, *Commercial Contracts and Sourcing* (Sheffield, Stanford and Yale Universities, 2021, p. 5).

<sup>8</sup> Genevieve LeBaron, *Combatting Modern Slavery: Why Labour Governance is Failing and What We Can Do About It* (Cambridge: Polity Books, 2020).

<sup>9</sup> Genevieve LeBaron, Penelope Kyritsis, Perla Polanco Leal, Michael Marshall, *The Unequal Impacts of Covid-19 on Global Garment Supply Chains: Evidence from Ethiopia, Honduras, India and Myanmar* (Sheffield: University of Sheffield, 2021); Genevieve LeBaron and Penelope Kyritsis, 'Without Action, Modern Slavery Will Surge in Supply Chains,' *Globe & Mail*, 21 January 2021, available at: <https://rsc-src.ca/fr/voix-de-la-src/without-action-modern-slavery-will-surge-in-supply-chains>

In spite of these pressures towards forced labor, and the lacking effectiveness of public and private governance efforts to tackle it to date, it is fully possible to create a robust legal regime to successfully guide corporations to eliminate forced labor and uphold labor rights and standards in global supply chains. To be effective, government initiatives must address the root causes of forced labor in supply chains, including commercial dynamics and pressures.

- Multi-faceted government action is required to address the dynamics that perpetually and predictably lead to forced labor in supply chains. There is a need to strengthen legal regimes around trade, production and finance to promote decent work and ensure that exploitative business models are no longer viable or profitable. For instance, trade rules could be reformed to incorporate bans on forced labor, such as by adding it as a general exception within the World Trade Organization's General Agreement on Tariffs and Trade, and prohibiting forced labor within bilateral trade agreements with strong commercial sanctions. As well, financial markets could be regulated to remove the structural constraints and pressures exerted around labor costs.
- Government should make better use of data that enables 'follow-the-money' approaches to forced labor detection and remediation. As noted, it is possible to pinpoint the characteristics of businesses and supply chains that make use of or incentivize forced labor. Governments should target and expand their enforcement efforts around these business models and portions of supply chains. Deepening enforcement of existing labor standards is crucial to ending the impunity that currently surrounds the business of forced labor. This should occur not only in the private sector, but in public procurement as well.
- Governments should take bold, sustained action to promote corporate accountability. This should be part of a broader effort by the home states of large corporations to effectively use the legal levers at their disposal to ensure production and trade protect workers rather than rendering them vulnerable to forced labor, such as through anti-trust reform, trade agreements, extraterritorial jurisdiction, labor law enforcement, and new criminal offenses for corporations.
- As one component of a corporate accountability regime, transparency legislation could be strengthened. Reforms to transparency legislation might include: requiring corporations to report on outcomes (eg. net reductions in forced labor, increased wage levels) rather than just processes (eg. ethical auditing or new policies); require corporations to report on their human rights due diligence processes, with that duty enforced by a public authority; impose financial penalties for inaccurate or missing reports.<sup>10</sup>
- The enactment of meaningful mandatory due diligence legislation could also help to promote corporate accountability. For this legislation to be effective, the required standard of care must: address commercial drivers and root causes of the business of forced labor in supply chains; prompt corporations to take meaningful action to address the causes of forced labor, rather than simply understanding and mapping risks, as has been their focus to date; end prevailing social auditing and ethical certification practices that lead to dangerous and exploitative worksites being certified; enact robust, state-based, worker-driven, and co-enforcement strategies for enforcement; and take action to rebalance power relations related to employers and employees' gender, race and ethnicity, nationality, and geography so as not to reinforce existing inequities in supply chains.<sup>11</sup>

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<sup>10</sup> For an elaboration of how transparency legislation could be strengthened to better address forced labor, see: ReStructure Lab, *Due Diligence and Transparency Legislation* (Sheffield, Stanford and Yale Universities, 2021).

<sup>11</sup> For an elaboration of the key components of robust due diligence to address forced labor, see: ReStructure Lab, *Due Diligence and Transparency Legislation* (Sheffield, Stanford and Yale Universities, 2021).

- Within all of these solutions, workers, trade unions, and worker organizations should play a meaningful and central role. They have been too often side-lined in government and business efforts to address forced labor. Their involvement is crucial to developing and enforcing effective solutions.