

THE PROTECTION OF WORKER'S HUMAN RIGHTS AND THE ROLE OF DUE DILIGENCE IN GLOBAL SUPPLY CHAINS

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ABSTRACT: This article discusses the growing issue of labor rights within global supply chains, with a focus on the importance of due diligence in ensuring decent work standards. Global supply chains, often complex and obscured by various economic and contractual layers, frequently result in poor working conditions, low wages, and human rights abuses, especially for vulnerable workers in developing countries. The article emphasizes that corporate due diligence can be a key tool in addressing these challenges, preventing violations, and promoting better labor conditions. The objective of this study is to analyze how due diligence frameworks can be integrated into business practices to improve labor rights. While voluntary Corporate Social Responsibility (CSR) initiatives have gained popularity, they often lack enforceability, which leaves workers unprotected. The article argues for a dual approach that combines both voluntary and mandatory compliance mechanisms to ensure accountability and effective protection for workers across supply chains. The research utilizes a qualitative methodology, examining historical case studies and international frameworks designed to improve labor rights in supply chains. Notable cases like the Rana Plaza disaster in Bangladesh and the Brazil Verde Farm case illustrate the devastating effects of failing to implement labor protections. These cases highlight the need for robust due diligence and human rights protections within global supply chains. The article reviews international guidelines such as the UN Guiding Principles on Business and Human Rights, OECD Guidelines for Multinational Enterprises, and ILO standards on decent work, evaluating their effectiveness in ensuring compliance. The study finds gaps in existing voluntary compliance mechanisms, often leaving labor abuses unaddressed. As a solution, the article advocates for mandatory due diligence legislation, citing Germany's Supply Chain Act as a positive example of proactive legislation that can set global standards for responsible business conduct. Additionally, the research highlights the role of trade unions and collective bargaining in advocating for workers' rights. These social partners are crucial for ensuring that due diligence measures lead to tangible improvements in working conditions, and that workers have a voice in shaping their employment terms. In conclusion, the article stresses the need for a comprehensive approach to addressing labor rights violations in global supply chains. This includes strong legal frameworks, the active participation of trade unions, and effective due diligence practices. By addressing these

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multifaceted issues, companies can ensure decent work standards are met throughout their supply chains, contributing to a fairer and more ethical global economy.

Keywords: Due diligence; Global supply chains; Labor rights; Human rights; Corporate accountability; Decent work.

INTRODUCTION

The growing globalization of supply chains has created a series of challenges regarding labor rights, particularly in developing countries where working conditions are often poor. These increasingly complex and interconnected production chains create layers of economic and contractual relationships that make labor conditions invisible and often neglected, resulting in the exploitation of workers, low wages, and even human rights abuses. The aim of this article is to examine the importance of due diligence as a central mechanism to promote and ensure decent working conditions, analyzing how companies can adopt practices that help mitigate or even prevent these violations.

Corporate due diligence refers to the obligation of companies to identify, prevent, and mitigate the negative impacts of their operations, including those related to labor rights, throughout their supply chains. While voluntary Corporate Social Responsibility (CSR) initiatives have become common, they often lack enforcement mechanisms, leaving workers vulnerable to abuses. Therefore, the article advocates for a dual approach, combining both voluntary compliance and mandatory legal requirements to ensure that companies not only acknowledge their responsibilities but also take concrete actions to guarantee fair and safe working conditions.

This study adopts a qualitative approach, integrating an analysis of historical case studies and international frameworks aimed at improving labor rights in global supply chains. Tragic cases such as the Rana Plaza disaster in Bangladesh, which resulted in the deaths of over 1,100 workers in the garment industry, and the Brazil Verde Farm case, which exposed the use of slave labor in agricultural production, are discussed to illustrate the devastating consequences of failing to implement labor protections. These examples reinforce the urgent need for effective due diligence that protects workers and promotes adequate working conditions.

In addition to the practical cases, the article also examines international guidelines such as the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and ILO standards on decent work. The analysis of these instruments reveals the limited effectiveness of voluntary compliance mechanisms, which often fail to prevent workplace abuses. As a solution, the research proposes the adoption of mandatory due diligence legislation, such as

Germany's Supply Chain Act, which requires companies to proactively identify and mitigate labor rights risks within their operations.

In conclusion, this article proposes that the solution to labor rights violations in global supply chains requires a holistic and integrated approach. This includes the implementation of robust legislation, the active participation of trade unions, and the establishment of effective due diligence practices that extend beyond a company's direct operations to include its suppliers and subcontractors. By doing so, companies can contribute to a fairer and more ethical global economic system, ensuring decent work at all stages of production.

1. VALUE CHAINS, SUPPLY CHAINS, AND LABOR RIGHTS

The concepts of production chains and supply chains are borrowed from studies in production engineering, economics, and business administration, initially aimed at improving production costs. These concepts were not initially relevant to labor law or the International Labour Organization (ILO). However, as value and supply chain models evolved and crossed national borders to become global, theories began to emerge suggesting that the business relationships between companies in these chains should hold the "recipient" companies accountable for labor issues.

This is a complex construct, as relationships in both production and supply chains are primarily commercial: one company hires another to supply electronic components, clothing (as per a pre-established model), or buys the entire production from a farmer to turn it into processed food. Based on previous sections, a distinction can be made for legal-labor analysis:

- Supply chains refer to the various processes of buying and selling materials and supplies necessary for the production and industrialization of a given good: the material sold by the supplier (which can be a commodity or a specific substance or part) enters the industrialization process to become a new product (completely different from the raw material purchased).
- Value chains are a form of outsourcing in which large companies segment their production process to buy part of their final product already completed (e.g., a conglomerate involved in the clothing industry that orders finished or at least semi-finished pieces from small workshops).

There is often some confusion in doctrine and jurisprudence when discussing these concepts, which are frequently treated as synonyms. Initially, both have their origins in a commercial relationship,

so it would not be possible to bring them into labor law terms in terms of the responsibility of contractors. However, at least in Brazil, it is common for regulatory authorities to try to hold the final recipient of a product responsible for labor-related issues, aiming to establish a link between the worker's activity and the dynamics of the recipient company.

This is where the need to distinguish between supply chains and production chains arises: in the former, there is the buying and selling of an input (raw material) to produce a good, while in the latter, there is segmentation of production. This segmentation of production can lead to claims related to the economic dependency of a company participating in a specific production stage on the final recipient (often its only customer), as well as the structural subordination of workers (referred to as the "lead company").

These are theories often considered to establish a nexus (or employment relationship) between workers and the lead company, thus enabling labor accountability. Since this research focuses on production chains and the ILO, discussions on these theories and the possibility of establishing an employment relationship in labor inspections will not be deepened.

Given that this is a highly complex topic, and each value chain's dynamics needs to be analyzed on a case-by-case basis, it is impossible to establish a single guideline or suggest a normative parameter. Despite the importance of the topic, which truly deserves to be prioritized by authorities worldwide, it is crucial to correctly distinguish a supply chain (which has strictly contractual boundaries, with no possibility of being brought into labor law, except in terms of compliance programs with suppliers) from a value chain (within which debates and theories about workers' involvement in the lead company's dynamics can arise).

This study aims to analyze alternatives for improving working conditions in global supply chains, but still from the contractual perspective of relationships between companies within production and supply chains and lead companies, without delving into the possibility of an employment relationship (as this is not the focus of the research). To facilitate reading and once the distinction between supply chains and value chains has been made, as well as the clarification that the chapter's goal is not to study labor accountability (i.e., within the framework of an employment relationship) for large conglomerates, but rather to study actions to be taken by all agents, the term "global chains" will be used. This term will encompass both production chains and supply chains, as well as lead companies, to refer to the large conglomerates receiving the produced goods.

2. GLOBAL CHAINS AND THE ADDRESSING OF RESPONSIBILITIES

There is evidence that the dynamics of production and employment within the global economy, including global supply chains, can have negative implications for working conditions.

The most iconic event that drew global attention to labor conditions in global supply chains was the collapse of the Rana Plaza building in Dhaka, Bangladesh, on April 24, 2013. The building housed five garment factories. The disaster killed 1,132 people and injured over 2,500. Just five months earlier, at least 112 workers had lost their lives in another tragic accident at the Tazreen Fashions factory near Dhaka.

These disasters, among the worst industrial accidents ever recorded, brought worldwide attention to the appalling working conditions faced by garment workers in Bangladesh and the broader garment supply chain. Since the Rana Plaza disaster, no fewer than 109 additional accidents have occurred.

In this context, the Governing Body of the International Labour Organization (ILO) decided, in October 2013, to place a discussion item on the agenda of the 105th International Labour Conference (2016) regarding decent work in global supply chains. Many studies, particularly in the fields of business administration and production engineering, have explored the economic and commercial dimensions of global supply chains; however, especially after the Bangladesh collapse, the focus shifted to the conditions of workers within these chains.

Global supply chains are known to be complex, diverse, fragmented, dynamic, and evolving in organizational structures. The ILO defines them as cross-border organizations of activities necessary to produce goods or services and deliver them to consumers through inputs and various stages of development, production, and delivery. This definition includes foreign direct investment by multinational companies in all subsidiaries or joint ventures in which the multinational has direct responsibility, as well as the increasingly dominant model of international contracting, where multinational involvement is defined by the terms and conditions of contractual, or sometimes tacit, agreements with their suppliers and subcontracted companies for specific goods, inputs, and services.

As these relationships are based on buying and selling or supplying goods, at this stage, it is not about holding lead companies liable under labor law. However, the commercial nature of the relationship does not exempt contracting parties from being diligent in the process of selecting their contractors.

3. DUE DILIGENCE

The concept of due diligence as a standard of care originates from Roman law. A transgressor would be held accountable for negligence if they failed to meet the standard of conduct expected from a prudent pater familias (head of the family).

An example is a farmer who burns crop waste on a calm day, monitoring the fire diligently. However, if the farmer burns the waste on a windy day and fails to control the fire, causing damage, they would be held liable for the damage to a neighbor's crops.

Since Roman law, due diligence has been an expected standard of conduct, depending on specific case facts. Although terminology may vary, the principle of exercising care to avoid harm is still commonly applied, though in Brazil, there's no specific legal definition beyond civil liability for omission.

In international law, due diligence is an obligation of conduct, not result. The focus is on the behavior of the duty-bearer, not the outcome.

The duty to exercise due diligence in human rights matters is not new. It was introduced in the UN Guiding Principles on Business and Human Rights (UNGPs) in 2011, forming part of businesses' responsibility to respect human rights.

It has since been incorporated into frameworks like the OECD Guidelines for Multinational Enterprises, ILO's Tripartite Declaration, and the IFC Sustainability Framework.

In 2018, the OECD adopted "Due Diligence Guidance for Responsible Business Conduct," outlining how businesses should avoid rights violations and address adverse impacts by identifying, preventing, mitigating, and accounting for responses to human rights impacts. The guidelines include:

- Incorporating responsible business conduct into company policies and systems;
- Identifying and assessing actual and potential impacts;
- Ceasing, preventing, and mitigating adverse impacts;
- Monitoring results;
- Communicating responses;
- Providing or contributing to remedy when appropriate.

Regarding state responsibility, the Fazenda Brasil Verde case is notable. Examined by the Inter-American Court of Human Rights, it concerns alleged forced labor at Fazenda Brasil Verde in Pará, Brazil. Despite awareness of violations since 1989, Brazil failed to prevent or respond effectively, nor did it provide a judicial mechanism for remedy.

The case report emphasized the state's duty to act with due diligence, which was heightened by the seriousness of the violations. The Court held Brazil responsible for violating due process and reasonable time guarantees.

While precedents for state accountability exist, there are no legislative initiatives in Brazil imposing compulsory due diligence on companies. An example of voluntary due diligence is Decree No. 9,571/2018, which establishes National Guidelines on Business and Human Rights.

4. SCOPE OF DUE DILIGENCE

All businesses, regardless of size, have the potential to positively or negatively affect workers' lives. Therefore, legislative proposals that exclude certain companies based on criteria such as the number of employees, revenue brackets, structure, or ownership from the scope of due diligence will not achieve the desired results in such situations.

While the size of a business may influence policies and processes, especially for practical feasibility in verification, this criterion should not exempt any company from due diligence practices. This is particularly important for micro, small, and medium-sized enterprises, which should receive additional support in terms of training and guidelines for implementing due diligence systems.

The obligation to practice diligent conduct must also extend to entities that businesses are linked to through contractual relationships and investments. This is a key point of analysis, as from a labor law perspective, responsibility cannot be established when connections with other entities in the supply or production chain are purely commercial.

To effectively protect all parties involved in the process of transforming raw materials into final products (up to consumer delivery) in a labor law context, the conduct of commercial partners and suppliers must be assessed. If due diligence procedures are limited to the company itself, and not to its partners and suppliers, legal provisions on due diligence lose much of their purpose.

Regarding the visibility of a company's conduct by another company connected through partnership, purchase, or supply contracts, the concept of "willful blindness" is relevant.

The doctrine of willful blindness, also known as "ostrich instructions," "conscious avoidance," or "deliberate ignorance" in Spanish law, refers to when an agent intentionally "turns a blind eye" to a situation they could have recognized or suspected if they had kept their eyes open. The ostrich metaphor is used because it "buries its head" at the first sign of danger, avoiding the possibility of becoming aware of something wrong.

This theory originated in English law and became well-known in U.S. jurisprudence. It applies when there are indications that the agent could have known about illegal conduct but deliberately avoids it. The agent chooses to avoid contact with the illegal conduct to simulate that their omission was due to their intended ignorance of the situation.

To avoid claims of ignorance regarding the conduct of commercial partners and suppliers, it is crucial that the verification process extends beyond the operation itself in any legal framework addressing due diligence.

Governments often relax applicable standards to improve the competitiveness of businesses within their jurisdiction, sometimes allowing violations of international human rights obligations. Therefore, the transformative potential of due diligence in human rights to counter these problematic aspects of business globalization depends on its ability to cover the entire scope of multinational corporate operations and activities.

5. BROAD PROTECTION OF HUMAN AND LABOR RIGHTS

Due diligence should not be limited to human rights but should also encompass the protection of decent work and environmental aspects. It is important to highlight that the Universal Declaration of Human Rights was founded on the recognition of the indivisibility and interdependence of all human rights, emphasizing that the denial of one right inevitably prevents the enjoyment of other rights.

In this regard, corporate responsibility to respect workers' human rights must, at a minimum, be based on the standard of decent work, which includes freedom of association and collective bargaining, equality and non-discrimination, combating forced labor and child labor, wages, health and safety, social security, and limiting working hours.

The ILO Centenary Declaration stresses the importance of strengthening labor institutions to ensure adequate protection for all workers in a context characterized by new and emerging forms of work, regardless of professional status or contractual relationship.

Beyond protection itself, it is crucial to monitor the implementation of effective mechanisms for addressing complaints arising from operational activities, ensuring a channel (internal, alongside external state channels) through which those directly impacted by the company's operations can raise concerns when they believe they are or will be subjected to adverse impacts, without any retaliation.

6. UNION INVOLVEMENT

Due diligence in human rights should be linked to engagement with unions. The OECD Due Diligence Guidance for Responsible Business Conduct specifies that meaningful stakeholder engagement should involve two-way communication based on good faith, allowing companies to obtain the views of those affected by their decisions (including unions).

Industrial relations are a form of stakeholder engagement, ensuring ongoing commitment between companies and unions. Companies should establish partnerships or agreements with unions to facilitate worker involvement in the design and application of due diligence procedures, the implementation of worker rights standards, and the handling of complaints.

Regarding the role of unions, it is worth mentioning the bill passed by the German parliament on June 11, 2021, concerning supply chains. German unions played a significant role in formulating this law, campaigning for years to strengthen the due diligence obligations of German companies regarding human rights. They have closely followed the parliamentary debate.

The law will impose legal obligations on companies based in Germany to ensure human rights and environmental standards are observed at all levels of their supply chains. It will come into effect in 2023, initially covering companies with more than 3,000 employees, expanding to those with over 1,000 employees from 2024. Subcontractors in other countries will need to adhere to the same standards, though indirect suppliers will only be scrutinized if issues are identified. This would make German companies accountable for abuses in their supply chains. If they fail to address such abuses, unions and NGOs can take legal action in Germany on behalf of the victims.

Thus, unions play a key role not only in legislative initiatives but also in monitoring the enforcement of these laws once passed.

7. CHALLENGES FOR DECENT WORK IN GLOBAL SUPPLY CHAINS

Challenges to decent work existed in many developing countries long before they engaged in global supply chains. The operation of these chains perpetuated, intensified, or introduced new challenges. One major obstacle to promoting decent work (and, conversely, the expansion of substandard working conditions) is the intense competition between suppliers. To reduce final prices, suppliers lower wages, working conditions, and fail to respect workers' fundamental rights.

In subcontracted layers of global production chains, suppliers—often large or small informal actors—may deal with these pressures by using labor practices that do not meet labor standards. In extreme cases, they may employ children or use conditions akin to slavery. These practices affect

competition between suppliers, creating unfair competition between companies that violate local labor laws and those that adhere to them.

Labor legislation, regulations, and jurisdiction are typically implemented nationally, and cross-border supply of goods and services makes compliance with labor standards challenging. Regulatory frameworks are often established and enforced by government authorities that may lack the resources or experience to monitor legislation enforcement. Not all governments have been able to address the rapid transformation caused by exposure to the global economy, leading to gaps in labor law and enforcement.

The decentralization of production from developed countries to developing ones has indeed created job opportunities, allowing millions to transition from low-productivity subsistence farming to work in mines, plantations, manufacturing, or services. In countries where labor standards are followed, decent work in global supply chains is expected to increase. However, in many cases, global supply chains lead to deficits in decent work.

Challenges to decent work were already present before countries engaged in global supply chains, but they became more evident after the decentralization of production. These challenges emerge when large conglomerates make purchasing and investment decisions affecting labor conditions in their global supply chains without being directly responsible for the employment conditions. There is a risk that global pressures on prices and delivery timelines, coupled with intense supplier competition, negatively impact wages, working conditions, and respect for workers' fundamental rights. This, in turn, creates unfair competition for suppliers adhering to labor regulations and international labor standards.

Since labor legislation, regulation, and jurisdiction are typically national, cross-border supply chains create difficulties in achieving workplace compliance. Regulatory structures may lack the necessary resources to enforce existing legislation or reform a system that fails to protect workers. Leading companies can compare costs and supplier capabilities globally, moving orders between suppliers in various production locations. Intense price competition and fluctuations in production volume and variety may encourage companies to subcontract more of their production to businesses indirectly linked to the buyer. These subcontracting practices can include smaller companies, informal workshops, and home-based workers unknown to the final recipient of the product. Small and medium-sized enterprises, often providing intermediate goods to exporting companies, are integrated into global production chains.

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