

## CASE REPORT \_\_\_\_\_

### **RINA certifies safety before factory fire in Pakistan**

As soon as Muhammad Jabir heard about the fire in the Ali Enterprises factory on 11 September 2012 in Karachi, Pakistan, he rushed there in order to look for his son, a machine operator. He was too late. After the first months of grieving, he, together with other family members, founded the Ali Enterprises Factory Fire Affectees Association (AEFFAA). Within a year, more than two hundred survivors and family representatives of deceased workers had become members in order to advocate for their rights, for adequate compensation, and for long-term structural change in the safety conditions in garment factories. In 2015, four representatives of the AEFFAA filed a civil claim at the Regional Court in Dortmund, Germany, to demand adequate compensation and an apology from the German textile retailer KiK, the main customer of the factory. The organization is also part of an OECD complaint against RINA, an Italian company that provided the Ali Enterprises factory with the SA8000 certification, designed to indicate safe working conditions – just a few weeks before the fire.

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#### **Italian auditors issue certificate to Ali Enterprises factory**

In August 2012, RINA Services S.p.A., an Italian company headquartered in Genoa, issued an SA8000 certificate to the Ali Enterprises factory. RINA offers inspection, assessment, and certification services in compliance with national and international standards.<sup>1</sup> The SA8000 certificate followed a social audit which was conducted by a RINA subcontractor in Karachi, the firm RI&CA. Diagnostic social audits, or workplace assessments, are generally followed by corrective

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<sup>1</sup> RINA Services, “Overview”, undated, available at: <http://www.rina.org/EN/istituzionale/presentazione.aspx>.

action plans, the implementation of which is also inspected by social auditors in follow-up visits. One such assessment scheme is headed by the non-profit organization Social Accountability International (SAI), which oversees the SA8000 certification system. The SA8000 standard is an auditable certification standard that encourages organizations to develop, maintain and apply socially acceptable practices in the workplace.

In a digital simulation of the fire, the research group [Forensic Architecture](#), based at Goldsmiths, University of London, recently showed that if the factory's lax safety standards had been identified and acted upon, hundreds of lives could have been saved. The simulation details the lack of stairs, emergency exits, fire extinguishers and fire alarms in the factory – safety deficits which the social auditors should have noticed.

Using photos, videos and witness testimonies, the forensic experts reconstructed the exact dimensions, architecture and layout of the building and simulated the events on the night of the fire. In consultation with international fire safety experts they also simulated how the fire would have progressed if better safety measures had been in place. Based on this information and analysis, the Forensic Architecture team comes to a clear conclusion: small changes in fire safety precautions would have drastically reduced the impact of the fire.

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## **OECD complaint against RINA in Italy**

On 11 September 2018, exactly six years after the factory fire, ECCHR together with an international coalition of human rights, labor and consumer organizations, including the Affectees Association from Pakistan, filed a complaint against RINA to the OECD National Contact Point (NCP) at the Ministry for Economic Development in Rome.

The OECD complaint is the one of the legal avenues that ECCHR and its partners are pursuing in this case. The OECD Guidelines oblige companies from state parties – including RINA in Italy – to uphold human rights in their business activities abroad. ECCHR argues that by failing to detect and act upon safety and labor violations in the Ali Enterprises factory, RINA has contributed to the deaths of 258 workers.

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## **Criminal investigations into the auditing company in Italy**

The Affectees Association is represented in Italy by Italian lawyers Stefano Bertone and Marco Bona from Turin, with whom ECCHR also cooperates. In September 2015, an official request for mediation was brought to RINA by lawyers Bona and Bertone on behalf of 180 affected families. After an initial meeting, the talks were not pursued as RINA rejected the possibility of compensation.

The members of the Affectees Association are also represented by Bona and Bertone in criminal proceedings. In 2014, Bona and Bertone submitted a report on the factory fire and the role of RINA to the Italian state prosecutor in Turin. The prosecutor opened criminal investigations (case number 1003/16/45) into the matter and ordered an independent assessment by fire experts. In early 2016, the case was transferred to the prosecutor in Genoa because RINA's headquarters are located there.

In March 2016, ECCHR sent a [letter](#) to the prosecutor's offices (*Procura della Repubblica*, Genoa), emphasizing the state duty to uphold human rights. ECCHR highlighted the importance of the criminal investigation in Genoa to clarify the role and responsibility of RINA for issuing the SA8000 certificate and failing to note obvious shortcomings in fire safety measures and the high risk for the health and safety of the workers at Ali Enterprises.

In September 2018, the judge in the criminal proceedings against RINA heard the arguments of the two parties and will now decide whether the proceedings will continue.

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## **State duty to investigate human rights abuse by corporate actors**

There is a State's duty to investigate human rights violations committed by corporations in international law.<sup>2</sup> Therefore, the United Nations Guiding Principles on Business and Human Rights adopted by the Human Rights Council

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<sup>2</sup> Ruggie, J. "State Responsibilities to Regulate and Adjudicate Corporate Activities under the United Nations' core Human Rights Treaties. Prepared for the mandate of the Special Representative of the United Nations Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises", paragraph 12-17.

in 2011 emphasize that “*States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.*”<sup>3</sup>

It is explicitly noted in the commentary to the Guiding Principles that prosecutors are in a unique position to enforce such expectations to respect human rights due to their ability to open criminal investigations on the basis of the nationality of those held responsible.<sup>4</sup> States are further encouraged to address accountability obstacles, such as the diffuse attribution of legal responsibility among members of a corporate group under domestic criminal and civil laws.<sup>5</sup>

National and international jurisprudence indicates an increasing trend towards holding corporate actors liable for human rights abuses. This trend started with the Nuremberg trials, where high-ranking corporate officers were convicted for collaborating with and benefiting from the Nazi regime’s crimes on the basis of international criminal law. In the mid-1990s, litigation on the basis of the Alien Tort Statute in the United States further strengthened this trend, establishing that companies and their executive officers can be held accountable before US courts for human rights abuses they were involved in abroad.

Today, the idea of transnational corporate liability is also recognized in European countries such as the Netherlands, the United Kingdom, Switzerland and Germany, where a number of complaints concerning overseas human rights abuses by corporate actors have been pursued on the basis of domestic criminal and civil laws.

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## **ECCHR amicus brief to the High Court of Sindh in Karachi**

In addition to the Italian authorities, the Pakistani authorities can also play a role in clarifying the responsibility of RINA and similarly situated companies. On 9 May 2014, ECCHR submitted an amicus curiae brief to the High Court of Sindh in Karachi (Pakistan). The brief concerned criminal proceedings against the owners of the Ali Enterprises factory. In the brief, ECCHR called on the High

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<sup>3</sup> Ruggie, J. “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises: Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework”, Principle 2.

<sup>4</sup> Ibid., Commentary to Principle 2.

<sup>5</sup> Ibid., Principle 26 and Commentary.

Court to broaden the scope of the proceedings and order investigations into the potential responsibility of KiK, RINA and their managers for failing to prevent the factory fire.

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## **Certified safety or reckless reports?**

Disregard of core labor, health and safety standards in the workplace seems to be a structural feature of the textile manufacturing industry in South and Southeast Asia. Factory fires and building collapses have occurred and continue to occur in Bangladesh, Pakistan, the Philippines, and Cambodia.

Auditing companies play a key role in this system of worker exploitation and endangerment. In the absence of effective factory inspections by state authorities, which often lack adequate resources or political will to conduct robust inspections, monitoring of labor, health and safety standards at the workplace is conducted by commercial companies.

These companies are usually contracted by local factory owners or by international brands and retailers to audit factory conditions and issue a certificate of compliance with private corporate social responsibility standards such as SA 8000. International textile brands and retailers increasingly require such certificates as a precondition for a commercial relationship. Yet, factory fires and building collapses occur even in factories that have recently obtained such certificates.

Private audits have therefore been heavily criticized. First, they have been criticized for methodological shortcomings. In many cases, private audits follow a box-ticking approach and do not involve interviews with workers outside of the factory, where they could talk freely about working conditions. Factory owners are often notified about the date of the audit, which enables them to manipulate factory conditions.

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## **Conflicts of interest in the social audit industry**

Second, private auditing practices in developing countries seem to be prone to corruption and involve conflicts of interest. Auditing companies are part of an increasingly competitive market in which economic incentives tend to push towards keeping auditing standards, costs and efforts low. Moreover, when suppliers are interested in receiving a certificate without making the relevant

investments, they have an incentive to seek out lenient auditors. In fact, private auditing and certification seems to be largely a window-dressing exercise. While international textile brands and retailers require their suppliers to obtain certification, they also exert price pressures on them, thereby forcing them to engage in practices leading to labor rights abuse. This contradiction results in manipulated or poorly conducted audits.

At the same time, audits enable international brands to present themselves as good corporate citizens unaware of any problems in their supply chains. This undermines the drive for hard-law regulation and the competitive advantage of companies investing in serious efforts to make their supply chains more sustainable.

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## **The role of the scheme manager: Social Accountability International**

After the fire at Ali Enterprises, an investigation was initiated by the non-profit organization SAI. It oversees the SA8000 certification scheme, and was responsible for accrediting the auditing company RINA. After the news reports about the fire at Ali Enterprises, SAI undertook an independent investigation and issued a report analyzing the performance of the RI&CA auditors subcontracted by RINA. SAI also ensured that unannounced fire safety inspections were conducted at its SA8000 certified factories in Pakistan, and it temporarily suspended the issuance of SA8000 certificates.<sup>6</sup> While necessary, this was hardly sufficient.

Social compliance initiatives can play an important role in ensuring the accountability of social auditors. These oversight bodies generally have some kind of grievance mechanism for workers to express complaints about the working conditions in a factory. This should be distinguished, though, from a mechanism addressing substandard audits. Given their role in the auditing system, scheme managers have a number of possibilities at their disposal to confront sloppy audit reports, ranging from excluding companies from their pool of accredited auditors, to demanding higher standards during accreditation, and investigating complaints by trade unions or civil society organizations about sloppy audits.

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<sup>6</sup> Social Accountability International, “Q & A: Ali Enterprises Fire in Karachi, Pakistan”, 7 December 2012, available at: <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=1342#.V7b5t6IUCUk>.

ECCHR already drew attention to the responsibility of auditing scheme managers in its [complaint](#) with the Business Social Compliance Initiative for a deficient audit conducted by TÜV Rheinland at a factory in the Rana Plaza building complex.

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## Outlook

Due to the outsourcing of production in the textile industry since the 1990s and the increased emphasis on labor and human rights, international retailers have been requiring audit certificates from factory owners as a precondition for a commercial relationship. These workplace inspections have thus far been performed by private audit firms.

Among the multitude of initiatives to foster corporate social accountability, certification schemes have long appeared as the most alluring. However, catastrophes ranging from the factory fires at Ali Enterprises in Pakistan and Tazreen in Bangladesh, as well as the collapse of the Rana Plaza building, have tragically revealed a number of flaws in the current practice of private certification: Independent and diligent audits seem rare to find and require, at best, a sort of “checklist compliance.” Certifiers are financed by the very same businesses they have to judge and are bound by contradictory incentive structures. Ultimately, certificates generate a high level of trust while incurring almost no legal risk.

Despite these well-known shortcomings, the continuing practice of social audits is too often understood as an effective means to monitor working conditions. Retailers can thus claim to meet their corporate social responsibility through relying on audit reports. No incentives are given to undertake effective measures such as structural change in purchasing practices, like paying suppliers higher prices, contribute financially to necessary investments, or allow for more flexible deadlines. Social audits are thus part of the problem rather than the solution because they provide minor remedies while fortifying a neo-liberal system of exploitation, and legitimizing the harmful endemic features of global supply chains.

Harsh criticisms notwithstanding, for the moment, social audits seem here to stay. Therefore, new legal and regulatory pathways are necessary to challenge the performance and integrity of both auditors and certifiers. In several proceedings, ECCHR has accordingly drawn attention to the responsibility of the whole range of international actors involved in the model of social audits: [social compliance initiative](#) (BSCI), [the auditing firms](#) (RINA and TÜV Rheinland) and the [retailer commissioning audits](#) (KiK Textilien).

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**Correct as of: November 2018**

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