

CASE REPORT _____

OECD complaint against TÜV Rheinland

Rana Plaza audit report: labor rights violations and safety risks overlooked

ECCHR together with those affected by the collapse of the Rana Plaza factory in Dhaka (Bangladesh) and the organizations FEMNET and medico international as well as the trade unions Garment Workers Unity Forum and Comrade Rubel Memorial Center from Bangladesh on 2 May 2016 submitted an OECD complaint against the German certification company TÜV Rheinland. The organizations lodged the complaint – which concerns an inadequate audit report on a manufacturing facility at the Rana Plaza factory complex – with the OECD National Contact Point (NCP) at the German Federal Ministry for Economics.

The audit report by TÜV Rheinland for Phantom Apparel in Rana Plaza

On 24 April 2013, the Rana Plaza building collapsed, killing more than 1,130 people, including at least 39 children. Less than a year before this, TÜV Rheinland examined production facilities at the textile factory Phantom Apparel Ltd – located within the Rana Plaza complex – as part of a “social audit.” One of the people bringing the complaint worked as a seamstress with Phantom Apparel and was just 14 years old at the time of the collapse. She lay under the rubble for nine hours before help arrived. Her spine was badly injured and she still suffers physically and mentally from the effects of the disaster.

The organizations are claiming that TÜV Rheinland and TÜV Rheinland India disregarded professional auditing standards. The audit report failed to reveal serious human rights violations including child labor, discrimination against women, the absence of trade unions and forced overtime. Even if TÜV Rheinland was not tasked with the job of assessing the structural integrity of the

factory, the question arises as to why the construction quality of the building is described in the report as being good.

It can be assumed that the statements in the report were relied on by the factory and building owners as well as the Western textile buyers who sourced goods from the building. As such, the audit report can be seen as the reason why companies did not take any effective measures against child labor, discrimination against women, the lack of trade unions and forced overtime.

ECCHR and its partners therefore believe that through its report, TÜV Rheinland contributed to violations of the workers' human rights and thus violated the OECD Guidelines for Multinational Enterprises.

Social Audits are mere snapshots and thus of little use

TÜV Rheinland conducted the audit on the basis of the auditing standards of the Business Social Compliance Initiative (BSCI). This corporate platform is partly based on the standards of the International Labour Organization (ILO) and its aims include monitoring and improving safety and working conditions in production countries. TÜV Rheinland has said that building safety is not part of these standards but that auditors should nevertheless inform factory operators and those who commissioned the report immediately if there are obvious deficiencies.

ECCHR and the other organizations see the case as symptomatic of the general unsuitability of social audits when it comes to accurately assessing – to say nothing of improving – working conditions. Despite numerous audits, reports and certificates, working conditions in the supply chains of the global textile industry have not improved over the last 20 years.

The social audits often provide a mere snapshot of a work environment that can be easily manipulated by a factory owner, particularly when the audit visits are announced in advance, as they usually are. High levels of corruption mean that fake documents are not uncommon. Maintaining this system means that European buyer companies can appear to be “doing something” while actually reinforcing endemic problems in the supply chain. Ultimately the system creates the appearance of a functioning, independent oversight of the supply chain. This

stops those responsible – factory owners, producers, traders and especially governments – from developing effective mechanisms to improve working conditions.

ECCHR and its partners call on TÜV Rheinland to work with the BSCI to bring about industry-wide and fundamental changes to factory monitoring. The aim must be to develop certifications that are supported by trade unions, that are published and that provide for compensation claims for those affected in the case of accidents arising from deficient audit reports.

States bear the primary responsibility for monitoring workplace safety, imposing sanctions for safety code violations and fostering democratic trade unions. There is thus a need – beyond a fundamental reform of the entire certification system by companies and governments in manufacturing countries – for the German government to introduce binding regulations on liability for audit companies and clear legal due diligence obligations for companies regarding supplier companies.

Companies are also free to introduce guidelines for their production facilities that go beyond local standards. In the view of ECCHR and the other organizations, there is a corporate responsibility to do so arising not least from the UN Guiding Principles on Business and Human Rights.

The Final Statement of the NCP from June 2018 could pave the way for fundamental reforms. The NCP recommends a dialogue with audit companies, industry associations, producers, retailers and trade unions. This dialogue should address topics such as the transparency of audit reports and independent monitoring. ECCHR and its partners are disappointed that no settlement could be found with TÜV Rheinland in the Rana Plaza case but welcome the NCP's Final Statement which marked the end of the proceedings.

OECD complaint as a legal tool: Interventions at National Contact Points for the Guidelines for Multinational Enterprises

Any natural or legal person can lodge a complaint at one of the OECD's National Contact Points (NCPs) concerning a breach of the Guidelines for Multinational Enterprises, regardless of whether the complainant has been personally affected. These OECD Guidelines oblige companies from signatory



states to respect human rights in the course of foreign business operations. A complaint can be made to the National Contact Point in the country where the company is based or where it conducts business. The National Contact Point does not have the power to impose sanctions, but it can arrange mediation between the complainants/victims and the company. If no agreement is reached, the National Contact Point may issue a final report assessing the company's conduct.

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European Center for Constitutional and Human Rights (ECCHR)

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