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## **Complaint regarding Social Audit Report BSCI 7-01/09 of Phantom Apparel Ltd.**

Audit initiated by a BSCI Member  
Auditing company name: TÜV Rheinland India Pvt. Ltd.  
Audit date: 16, 17, 18 June 2012

Complaint submitted by:  
European Center for Constitutional and Human Rights  
Activist Anthropologist Bangladesh  
Clean Clothes Campaign  
medico international

6 July 2015

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## 1. Introduction

On April 24<sup>th</sup> 2013, the Rana Plaza building complex in Dhaka, Bangladesh, collapsed causing death to 1,134 persons and injuring around 1,800 including children and pregnant women.<sup>1</sup> One of the garment factories in this building complex was Phantom Apparel Ltd. In June 2012, this factory was audited by TÜV Rheinland upon request of a member of the Business Social Compliance Initiative (BSCI) and a “BSCI Social Audit Report” was issued. BSCI was launched in 2003 as an initiative of the Foreign Trade Association (FTA) in its own words “in response to the increasing business demand for transparent and improved working conditions in the global supply chain.”<sup>2</sup>

This complaint alleges the failure of audit company TÜV Rheinland to identify major non-compliances with the BSCI Standards at the Phantom Apparel Ltd. factory. According to the Global Social Compliance Programme (GSCP), a violation can be qualified as a “major non-compliance” (as opposed to “minor non-compliance”),<sup>3</sup> when a breach represents a danger to the workers and those on-site, constitutes a material breach of code requirements, constitutes a systematic violation of a code requirement, or represents a danger to the local environment. The audit report, dated 16/17/18 June 2012 (audit report number BL-18/12), failed to identify the following violations of the BSCI Code of Conduct:

- The audit report failed to identify the lack of valid building permits
- The audit report failed to identify risks to the building structure and wrongly described the building as having “good construction quality”
- The audit report failed to identify the presence of child labor
- The audit report failed to identify the lack of proper documentation of workers’ registration
- The auditors also failed to identify the lack of awareness among workers of their rights and the existence of the BSCI grievance mechanism

The breaches of the Code of Conduct at Phantom Apparel thus fulfilled all criteria to be qualified as a major non-compliance and warranted the utmost attention of the social auditors.<sup>4</sup> Complainants allege that TÜV Rheinland failed to exercise proper skill and care in the execution of the audit. The organizations filing this complaint therefore expect that the BSCI Steering Committee, as the “scheme holder,” take action as part of its internal review in which it assesses the quality of the BSCI auditing companies.

During the past twenty years, social audits have not been able to significantly improve working conditions.<sup>5</sup> Academic research has further documented that as a stand-alone measure, without integration in the management structures and the presence of a trade union, Codes of Conduct and audits are not likely to lead to any improvements.<sup>6</sup> Social audits frequently have methodological shortcomings.

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<sup>1</sup> Center for Policy Dialogue, Second Independent Monitoring Report (February 2014), p.12. Available at <http://cpd.org.bd/index.php/post-rana-plaza-monitoring-a-civil-society-initiative/> [accessed 10 April 2015].

<sup>2</sup> BSCI, “About BSCI”, *BSCI Website*. Available at <http://www.bsci-intl.org/about-bsci> [accessed 10 April 2015].

<sup>3</sup> Global Social Compliance Programme (GSCP), “Welcome to the Global Social Compliance Programme”, *GSCP Website*. Available at <http://www.gscpnet.com/> [accessed 10 April 2015]. BSCI joined the GSCP Partner Organisations Network; BSCI, “BSCI joins GSCPs Partner Organisations Network”, *BSCI Website*. Available at <http://www.bsci-intl.org/news-events/bsci-joins-gscp%E2%80%99s-partner-organisations-network> [accessed 10 April 2015].

<sup>4</sup> Global Social Compliance Programme, Reference Tool for Auditing Competence (Version 2, October 2014), Glossary of terms general. Available at <http://www.gscpnet.com/working-plan/step-3-auditing-competence.html> [accessed 10 April 2015].

<sup>5</sup> E.g. G. Burckhardt, *Todschick. Edle Labels, billige Mode – unmenschlich produziert*, Wilhelm Heyne Verlag, (München, 2014), p.116

<sup>6</sup> Locke, Rissing, Pal, “Complements or Substitutes? Private Codes, State Regulation and the Enforcement of Labour Standards in Global Supply Chains,” *British Journal of Industrial Relations*, 2013, Vol. 51, 519-552; Locke, Kochan, Romis, Qin,

They tend to be snapshot observations. Announced visits have the additional problem that factory owners can manipulate the appearance of the working conditions. Unfortunately, fake documentation is not an exception either.<sup>7</sup> Further, most audits fail to substantially integrate workers in the assessment and subsequent improvement efforts. According to one critic, factory auditing has become a profit-driven industry of its own, which favors quick standardized checklists, instead of thorough inspections.<sup>8</sup> In addition, conflicts of interest are inevitable as auditing companies are interested in keeping their clients in an increasingly competitive market.<sup>9</sup> The submitting organizations therefore do not believe that social audits as currently conducted and promoted by BSCI have the potential to produce better results. Still, when social audits are conducted, it is expected that responsibility is assumed for the way in which they are done and the consequences that these audits have.

Without a fundamental change to the BSCI auditing approach, complainants are thus skeptical of the credibility and effectiveness of the social audits to improve working conditions in the long term. For the purpose of this report, however, complainants analyze BSCI's own promises, logic, and principles to assess whether the specific social audit conducted at Phantom Apparel Ltd. adhered to BSCI's own standards. According to BSCI, "Audits are the most reliable tool available to achieve transparency for what happens in factories."<sup>10</sup> BSCI therefore claims to use only "external, experienced and independent auditing companies to perform audits."<sup>11</sup> It also says to strive for maintaining the "quality" and "integrity" of its audits.<sup>12</sup> Complainants submit that a BSCI auditor following best practices, e.g., by holding confidential worker interviews, conducting a robust inspection of the facility, verifying the validity of documentation, checking producer records for irregularities, etc. would have learned of the major non-compliances. Complainants conclude that in the audit of Phantom Apparel Ltd., the TÜV Rheinland auditors failed to adhere to these professional standards.

The credibility of BSCI, one of the "cornerstones" of its approach,<sup>13</sup> is at stake. Economists have long established that the probability of uncovering non-compliances through audits is a prerequisite for a credible system.<sup>14</sup> The credibility of the system is particularly important as the characteristics that are audited pertain to the production *process* and cannot be controlled by independently inspecting the product after it has entered the market.<sup>15</sup> For outsiders, it is thus inherently difficult to detect deficient audits. Indeed, a tragic incident like the Rana Plaza collapse was needed to draw attention to the weakness of the scheme. Despite the BSCI audits many of the former workers of Phantom Apparel (including children) are now dead or seriously injured as the factory was housed in the Rana Plaza building. Many have not even received adequate compensation. None of the audits performed at the factory have led to appropriate warnings or action by the suppliers or BSCI member companies to

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"Beyond corporate codes of conduct: Work organization and Labour Standards at Nike's suppliers," *International Labour Review* 2007

<sup>7</sup> G. Brown, 'The record of failure and fatal flaws of CSR factory monitoring', *ISHN*, (February 2013); According to the Fair Labor Association, fake records on wages were found at 40 percent of suppliers, Annual Report 2010, p.5.

<sup>8</sup> G. Brown, 'The record of failure and fatal flaws of CSR factory monitoring', *ISHN*, (February 2013).

<sup>9</sup> Brown, Garrett, 'The record of failure and fatal flaws of CSR factory monitoring', *ISHN*, February 2013

<sup>10</sup> BSCI, "Why are audits important", *BSCI Website*. Available at <http://www.bsci-intl.org/why-are-audits-important> [accessed 10 April 2015].

<sup>11</sup> BSCI, "The BSCI Approach to Good Working Conditions", *BSCI Website*. Available at <http://www.bsci-intl.org/about-bsci/bsci-approach/bsci-approach-good-working-conditions> [accessed 10 April 2015].

<sup>12</sup> BSCI, "BSCI Integrity Programme", *BSCI Website*. Available at <http://www.bsci-intl.org/bsci-integrity-programme> [accessed 10 April 2015].

<sup>13</sup> BSCI, "The BSCI Approach to Good Working Conditions" and "BSCI Integrity Programme" (see note 11 and 12).

<sup>14</sup> G. Jahn, M. Schramm and A. Spiller, "Zur Glaubwürdigkeit von Zertifizierungssystemen: Eine ökonomische Analyse der Kontrollvalidität", (presented at Institut für Agrarökonomie, Georg-August Universität Göttingen, Diskussionsbeitrag 0304, November 2003), p.3.

<sup>15</sup> These are so-called "Potemkin characteristics," G. Jahn, M. Schramm and A. Spiller, (see note 14) p.4.

address the instances of non-compliance. The biggest industrial disaster thus happened on BSCI's watch, while the victims have no means of redress. In order to stay true to its mandate BSCI thus needs to act, sanction the audit company that issued the deficient audit report, fundamentally change its audit approach, and guarantee the quality of its audit reports in the future by providing garment workers with a direct legal remedy in case of deficient audits.

### 1.1 Submitting organizations

The **European Center for Constitutional and Human Rights (ECCHR)** is an independent, non-profit legal organization dedicated to protecting civil and human rights. ECCHR also works to ensure that transnational companies are held to account for their operations in other countries where their operations lead to or are complicit in gross human rights violations. The **Activist Anthropologist Bangladesh** are working directly with the survivors and family members of deceased and missing workers of Tazreen and the factories at Rana Plaza. They support legal intervention and seek justice and accountability. The **Clean Clothes Campaign** is dedicated to improving working conditions and supporting the empowerment of workers in the global garment and sportswear industries. The Clean Clothes Campaign is an alliance of organizations in 16 European countries. **Medico international** is an aid and human rights organisation that fights for social change. In solidarity with socially excluded and marginalised people in the global South, medico works to promote living conditions fit for human beings, which maximise health and social justice.

### 1.2 Requests

Neither the Foreign Trade Association (FTA) nor TÜV Rheinland contributed to the Rana Plaza Donors Trust Fund, which was established by the International Labour Organization after the Rana Plaza tragedy to meet the claims of the survivors and families of deceased.<sup>16</sup> According to the Framework Contract, it would have been possible – in case of a breach of duty by the Auditing Company – for the FTA to impose a limited timeframe in which to remedy the situation concerned or to suspend the Contract.<sup>17</sup> The FTA should have used this possibility to request reparation from TÜV Rheinland. While buyers have contributed to the fund, no auditing companies have done so, even though they are similarly a part of the garment industry and profiting from the orders that they receive. Thus, in 2012, TÜV Rheinland revenues were €1.53 billion and 1, 6 billion in 2013.<sup>18</sup> In 2011, 48% of its revenue was made outside Germany. Complainants expect that the FTA take action to ensure accountability.

#### 1.2.1 Investigation as part of the BSCI Audit Integrity Program

This complaint brings to the attention of the FTA, BSCI Secretariat and the BSCI Steering Committee important information regarding the performance of one of the auditing companies that carries out audits on the basis of the BSCI Standards. BSCI has both internal and external quality reviews as part of its “Audit Integrity Program.”<sup>19</sup> The BSCI Integrity Programme claims to “reinforce the credibility of

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<sup>16</sup> “The Rana Plaza Donors Trust Fund”, Rana Plaza Arrangement Website. Available at <http://www.ranaplaza-arrangement.org/fund> [accessed 10 April 2015].

<sup>17</sup> FTA Framework Contract (See note 19), Section 6, Paragraph 1.

<sup>18</sup> [http://www.tuv.com/en/corporate/about\\_us\\_1/press/news\\_2/newscontent\\_cw\\_153792.html](http://www.tuv.com/en/corporate/about_us_1/press/news_2/newscontent_cw_153792.html) (last accessed 17 June 2014); TÜV Rheinland, data and facts, 2012;

[http://www.tuv.com/media/01\\_presse\\_2/all\\_languages\\_pressemeldungen/Fact\\_sheet\\_2012.pdf](http://www.tuv.com/media/01_presse_2/all_languages_pressemeldungen/Fact_sheet_2012.pdf) (last accessed 19 June 2014)

<sup>19</sup>The Framework Contract between the Foreign Trade Association (FTA) and CISE (Centro per l'innovazione e lo Sviluppo Economico), signed 14 June 2013, Section 2, paragraph 7. Available at:

[http://www.fc.camcom.it/download/CISE\\_Relazione\\_Allegato\\_2.pdf?chk=1j7z4d93pn&DWN=11806](http://www.fc.camcom.it/download/CISE_Relazione_Allegato_2.pdf?chk=1j7z4d93pn&DWN=11806) [accessed 10 April 2015]. This contract was signed after the Rana Plaza collapse. For the purposes of this complaint, it is assumed that the contents of the earlier FTA Framework Contracts were similar.

BSCI audits by verifying the quality of auditors' results."<sup>20</sup> The submitting organizations expect that the BSCI Secretariat will investigate and evaluate this complaint as part of its internal quality review.<sup>21</sup>

### 1.2.2 Change in the BSCI approach

As a tool towards transparent and improved working conditions, the BSCI scheme intervenes in a market with asymmetrical access to information. Its credibility is therefore dependent on its capacity to guarantee the quality of its audits. At the same time, economic and institutional analysis has established that commercial auditing companies are part of a market in which competition creates incentives that tend to push towards keeping auditing standards, costs, and efforts low.<sup>22</sup> Moreover, when suppliers are interested in receiving a quality label without doing the relevant investments, there is an economic incentive to seek out lenient auditors.<sup>23</sup> If audits are relied upon to obtain information about working conditions, a special responsibility thus lies with the scheme holder, BSCI, to counter the complex negative incentive structure for auditors. In particular, the probability of detecting deficient audits has to be increased. Further, auditing companies must suffer negative consequences if they deliver a deficient audit.

More monitoring, though useful, is not enough to address the deficiencies in this system. The monitoring currently performed in BSCI audits is supposed to be little better than in-house monitoring by brands. Research has demonstrated that social audits differ in the quality and credibility of verifying standards.<sup>24</sup> Real external verification of the audit results and BSCI standards would have to be done by a body that is independent from BSCI and the brands sourcing from the audited factories. An independent auditor should not be paid either by the buyer or the supplier.<sup>25</sup> Real verification in addition would require the representation of stakeholders with different interests throughout the whole system.<sup>26</sup> The current BSCI "development-oriented approach" with producers towards better working conditions should be combined with an integral participation of workers, trade unions, and local NGOs. The BSCI business initiative cannot, under its current model, deliver such an approach.

The current BSCI model is detrimental to obtaining the claimed transparency about working conditions. Transparent reporting and accountability to external stakeholders such as unions, NGOs and consumers are key factors for effectiveness and credibility. Real transparency would involve that audit results are published, as it is the case with the ACCORD reports. The social audits conducted by BSCI provide companies with a justification for their purchasing policies. Deficient audits thus have a real impact. If a social audit report wrongly fails to signal instances of non-compliance, brands may continue to source from factories while measures that are urgently needed to protect workers are not implemented. Therefore, if fundamental changes in the BSCI approach cannot be achieved, complainants request the dissolution of BSCI.

### 1.2.3 Third-party beneficiary rights for factory workers

Complainants request that a simple and direct legal remedy is provided to those factory workers that social audits are intended to benefit. Changing the incentives for the audit industry could simply and

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<sup>20</sup>BSCI, "BSCI Integrity Programme", (see note 12).

<sup>21</sup>BSCI "BSCI Integrity Programme", (see note 12).

<sup>22</sup>G. Jahn, M. Schramm and A. Spiller (See note 14), p.9.

<sup>23</sup>G. Jahn, M. Schramm and A. Spiller (See note 14), p.11.

<sup>24</sup>Clean Clothes Campaign, "Looking for a quick fix: How weak social auditing is keeping workers in sweatshops," Clean Clothes Campaign, Amsterdam, 2005.

<sup>25</sup>Clean Clothes Campaign, 2005, (See note 24), p.60.

<sup>26</sup>J. Merk and I. Zeldenrust, "The Business Social Compliance Initiative (BSCI). A Critical Perspective," Clean Clothes Campaign, 1 June 2005, p.10-11.

aptly be achieved by increasing the likelihood of liability. This can easily be done, for example, by creating third party beneficiary rights in the Framework Contract entered into by the FTA and the auditing companies. This contract should contain a clause explicitly conferring third-party beneficiary rights to those workers that the auditing cycle is intended to benefit.<sup>27</sup> A similar clause could be included in the contracts between BSCI members and the Auditing Companies when an audit is requested. A non-performance or deficient audit constitutes a breach of the obligations of the Auditing Company under these contracts.<sup>28</sup> It is requested that for such a breach of contract a legal remedy is directly available to workers in the audited factory. In addition, complainants suggest a reversal of the burden of proof. If major non-compliances were not identified, auditors would have to prove that relevant professional standards were adhered to.<sup>29</sup>

#### 1.2.4 Access to Audit Reports

BSCI claims that audits conducted are transparent and independently assessed.<sup>30</sup> Therefore, the submitting organizations request access to all audit reports that monitored compliance with BSCI standards in the factories in Rana Plaza, especially also if a so-called “Duplicate” Audit of Phantom Apparel Ltd. took place. According to the BSCI Framework Contract, this is allowed. Producers consent to passing data to third parties in situations where non-governmental organizations or complainants are in dialogue with BSCI.<sup>31</sup> Complainants further request access to the contract between the BSCI member and TÜV Rheinland upon which the Social Audit at Phantom Apparel was based.

#### 1.2.5 Exclusion of TÜV Rheinland from the pool of BSCI Auditing Companies

Consistent with the need to create proper incentives for auditing companies to increase their due diligence in performing audits, deficient audits need to be sanctioned. One obvious sanction would be the exclusion of TÜV Rheinland from the pool of BSCI Auditing Companies. The publication of deficient audit reports would be a further simple step towards accountability. Undoubtedly, the tragedy of the Rana Plaza collapse, despite the BSCI audit, has already led the Foreign Trade Association to investigate the auditing procedures of TÜV Rheinland. At the very least, therefore, complainants expect that the BSCI Steering Committee disclose which steps were taken against TÜV Rheinland for failing to identify the instances of major non-compliance at Phantom Apparel Ltd.

#### 1.2.6 Obligations for BSCI participating companies: sanction for non-compliance

The BSCI members play an important role in the incentive structure for audit companies. BSCI members request audits to be done. In their role as the client of auditing firms, the brands, retailers, and importers are in the position to set the standards for quality audits. As the buyers, BSCI members are in a position to respond to the audit results and support the improvement of the working conditions. Finally, the purchasing practices of retailers have a significant influence on working conditions. While

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<sup>27</sup>In the Framework Contract, third party beneficiary rights are acknowledged for the FTA, BSCI Participants, suppliers and audited producers for any (non-)performance, act or omission by a subcontractor. The submitting organizations request that workers of audited producers are included in this group of beneficiaries as well as for audits conducted directly by the Audited Company. (See note 19), Section 1, paragraph 6.

<sup>28</sup> E.g. a violation of §3 under (2) of the Framework Contract, if the auditor did not have the relevant competence or under (8) if the results of an audit were not completely and verifiably documented (See note 19).

<sup>29</sup> Since the Rana Plaza tragedy, BSCI has introduced new requirements in the acceptance procedure for auditing companies, particularly restricting the use of sub-contractors for audits. Complainants, however, request that BSCI do more to ensure that workers have a means of redress in case auditors negligently fail to identify instances of non-compliance with the BSCI Standards and thus put the lives of workers at risk. BSCI, “New acceptance procedure for BSCI auditing companies”, *BSCI Website*, <http://www.bsci-intl.org/news-events/new-acceptance-procedure-bsci-auditing-companies> [accessed 10 April 2015].

<sup>30</sup>BSCI, “Monitoring – Assessing the level of Compliance”, *BSCI Website*. Available at <http://www.bsci-intl.org/our-work/monitoring> [accessed 10 April 2015].

<sup>31</sup>FTA Framework Contract (See note 19), Annex 3, §6.

international textile brands and retailers require their suppliers to obtain certification, they also exert price and time pressures on them, thereby pushing them to engage in practices leading to poor working conditions. Manipulated or poorly conducted audits are a result of this contradiction. 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 competitive advantage of companies investing in serious efforts to make their supply chains more sustainable.

BSCI should oblige the buyers to change their purchasing practice. It is an inherent contradiction to focus on improvements within garment factories without addressing the pressures put on factories through the purchasing practices. Buyers should work in a partnership with their suppliers and build long-term relations in which they support better working conditions by giving longer delivery deadlines and fair prices for the products. Furthermore, buyers should reward those factories with better working conditions by securing their contracts and orders. The race to the bottom for the cheapest prices should be replaced by responsible purchasing policies.

Given that BSCI has more than 800 member companies, it bears a responsibility for the working conditions in a large number of supply chains.<sup>32</sup> To be at all meaningful, the marketing advantage that comes with the participation in such labels must be backed with actual and ongoing investments in the improvement of working conditions. To start with, costs should not be externalized from the participating company to its suppliers. There has to be a fair share of the burden in order to meet compliance. Further, given the conflicts of interests inherent in the employment of commercial auditing companies, BSCI should oblige retailers to not rely solely on audit reports to fulfill their due diligence. This can be ensured by sanctioning BSCI member companies for the non-compliance of their suppliers.

### **1.3 Structure of the complaint**

In what follows, the complainants first describe the factual situation in factory Phantom Apparel, as described by former workers, as well as the procedure of the BSCI audit and the background of auditing company TÜV Rheinland. Further, the circumstances surrounding the collapse of Rana Plaza are summarized on the basis of various newspapers and reports from NGOs and the Bangladeshi government. Based on these facts, it is subsequently shown in section 3 that factory Phantom Apparel Ltd. did not comply with several of the rules of the BSCI Code of Conduct and Guidelines. The Auditing Company TÜV Rheinland, however, did not identify these instances of non-compliance in its “BSCI Social Audit Report.” In order to demonstrate the negligence of these auditors, in section 4, complainants list the professional standards and widely recognized best practices that social auditors can be expected to adhere to. Finally, in section 5, it is shown that the BSCI Auditors of TÜV Rheinland failed to observe these professional standards during the audit of 16/17/18 June 2012. Section 6 concludes that BSCI should respond to this lack of quality and professionalism in its auditing procedures and provide a robust mechanism of redress.

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<sup>32</sup> In comparison, multi-stakeholder-initiatives such as the Ethical Trade Initiative, Social Accountability International, or the Fair Labor Association have less than 100 member companies. Global Social Compliance Programme, “Slideshow presentation,” September 2013, p.4. Available at <http://www.gscpnet.com/information-resources/gscp-information-kit.html> [accessed 10 April 2015].



## 2. Facts

### 2.1 The collapse of the Rana Plaza building complex

On April 10<sup>th</sup>, 2006, the owner of Rana Plaza, Mr. Sohel Rana, obtained a permit to construct a six-storied building for commercial purposes from Savar Municipality. The construction started in 2007. On March 25<sup>th</sup>, 2008, on the basis of another application, Savar Municipality granted a permit to construct four additional floors and the building was approved as an industrial structure. The permit was provided in violation of relevant building regulations.<sup>33</sup> First, the Municipality failed to observe that the building project did not comply with the “Detailed Area Plan,” which lays out zonings for residential, commercial, and industrial use. Second, before giving its approval, the Municipality should have ensured that the building complies with architectural and structural standards of the Bangladesh National Building Code and the Dhaka Metropolitan Building Construction Rules.<sup>34</sup> Third, the municipality only approved the layout, but not the infrastructural integrity.<sup>35</sup> No permission was obtained from RAJUK, the Bangladeshi government agency in charge of construction safety.<sup>36</sup>

The Rana Plaza building was built in violation of its original design and the applicable construction laws.<sup>37</sup> One of the reasons for the collapse was that the building was designed for six floors, but four extra floors were constructed afterwards.<sup>38</sup> Furthermore, the Rana Plaza building was initially designed for commercial purposes and not for industrial use.<sup>39</sup> Finally, according to the Report of the investigation committee commissioned by the Ministry of Home Affairs, the use of heavy garment factory machinery at the upper floors of the building was not considered in its structural design; and thus the weight and vibration of these machinery contributed to the collapse.<sup>40</sup> Other factors responsible

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<sup>33</sup> D.M. Sabet, A. Tazreen, “Building construction laws and their enforcement: Looking beyond Rana Plaza”, University of Liberal Arts Bangladesh, Center for Enterprise and Society, Current Events Analysis Series, (2013). Available at: [http://www.ulab.edu.bd/CES/documents/Building\\_Code\\_Analysis-hi.pdf](http://www.ulab.edu.bd/CES/documents/Building_Code_Analysis-hi.pdf) [accessed 10 April 2015]; S.Z. Al-Mahmood, C. Passariello, “Bangladesh Victims Demand Payback,” *The Wall Street Journal*, (24 October 2013). Available at: <http://www.wsj.com/articles/SB10001424052702304069604579153553776683312> [accessed 23 February 2015].

<sup>34</sup> D.M. Sabet, A. Tazreen, (see note 33).

Since the collapse, Bangladesh Police has arrested the Mayor of Savar Municipality, Mr. Refayet Ullah, who is accused of negligence in monitoring the construction process of Rana Plaza and approving a faulty building design. S.Z. Al-Mahmood, C. Passariello, (see note 33).

The Mayor was listed in the charge sheet of the Bangladesh Anti-Corruption Agency for violation of the National Building Code, Ruma, P. “Bangladesh charges 18 over garment factory collapse”, *Reuters*, (16. July 2014). Available at <http://www.reuters.com/article/2014/07/16/us-bangladesh-ranaplaza-idUSKBN0FLIC020140716> [accessed 10 April 2015].

<sup>35</sup> K.R. Chowdhury, “Tammoy housing violated building rule for Rana Plaza”, *Dhaka Tribune*, (30 May 2013). Available at <http://www.dhakatribune.com/law-amp-rights/2013/may/30/tanmoy-housing-violated-building-rule-rana-plaza> [accessed 10 April 2015]; Odikhar “Broken dreams: A Report on the Rana Plaza Collapse” (19 June 2013), p.3-4. Available at [http://1dgy051vgyxh41o8cj16kk7s19f2.wpengine.netdna-cdn.com/wp-content/uploads/2013/06/Fact-finding\\_RMG\\_Rana-Plaza\\_Eng.pdf](http://1dgy051vgyxh41o8cj16kk7s19f2.wpengine.netdna-cdn.com/wp-content/uploads/2013/06/Fact-finding_RMG_Rana-Plaza_Eng.pdf) [accessed 10 April 2015].

<sup>36</sup> S.Z. Al Mahmood, J. Burke, S. Neville, “Bangladesh Building collapse: anger amid desperate search for survivors”, *The Guardian*, (26 April 2013). Available at <http://www.theguardian.com/world/2013/apr/25/bangladesh-building-collapse-anger-search> [accessed 10 April 2015];

<sup>37</sup> Mr. Sohel Rana has been accused of violating sub-sections 3a, 3b, and 3c of the Building Construction Act 1952, FIR and Ejahar, Savar Police Station Case No. 53(4)13 (translation of the charges, on file with ECCHR).

D. M. Sabet, and A. Tazreen, (see note 33); Interview by ECCHR with the architect of the design of the building, Dhaka, 22 May 2014; Report submitted to C Q K Mustaq Ahmed, Senior Secretary, Ministry of Home Affairs on 22 May 2013, in: “Bangladesh factory collapse blamed on swampy ground and heavy machinery”, *The Guardian* (23.05.2013), available at <http://www.theguardian.com/world/2013/may/23/bangladesh-factory-collapse-rana-plaza> [accessed 10 April 2015].

<sup>38</sup> D.M. Sabet, A. Tazreen, (See note 33). Interview by ECCHR with the architect of the design of the building, 22 May 2014, Dhaka.

<sup>39</sup> Interview with the architect of the design of the building, 22 May 2014, Dhaka.

<sup>40</sup> Report submitted to C Q K Mustaq Ahmed, Senior Secretary, Ministry of Home Affairs on 22 May 2013 (See note 37). There were three heavy duty generators inside the building. Researchers of the Activist Anthropologist have worked with survivors of Rana Plaza, produced floor-plans that mark the location of generators inside the building. These floor-plans produced retrospectively corroborated this. The Activist Anthropologist research exercise took place at Arapara, Savar, Dhaka on 17 February 2015.

for the collapse were the marshland on which the building was constructed, the inferior combination of cement and sand, the thin subfloors and the undersized columns.<sup>41</sup>

The eight-storied building, with a ninth floor under construction, was located in the Savar district of Dhaka, Bangladesh, and hosted five garment factories: New Wave Bottoms Ltd., Phantom Apparels Ltd., Ether Tex. Ltd., Phantom Tec Ltd. and New Wave Style Ltd. On the 23<sup>rd</sup> of April 2013, cracks in the walls emerged. Workers were sent home, while Mr. Rana requested an inspection from an engineer. Despite the warning of the engineer, Sohel Rana pronounced publicly that the building had been verified and found to be safe.<sup>42</sup> The next day, the day of the collapse, workers were asked to return to their places, but some workers still refused to return to their workplace, as they feared the risk of an unstable building. However, the managers of Phantom Apparel threatened the workers with withholding their monthly salary.<sup>43</sup> As it was the end of the month, the workers could not take this risk of losing a paycheck.<sup>44</sup>

Contrary to the situation in the garment factories, bank employees of the BRAC branch on the second floor of the building were not sent back to work.<sup>45</sup> After being informed of the cracks in the walls, the BRAC management promptly suspended the activities of the branch.<sup>46</sup> The owner of Phantom Apparel Ltd. did not use the interval on the 23<sup>rd</sup> of April to communicate with buyers in order to extend deadlines and release the factory from the pressure to continue the production. Instead, some former workers of Phantom Apparel claim that they were even physically assaulted to enter the building.<sup>47</sup> When less than an hour later the electricity went out and the generators turned on, the building started to collapse.<sup>48</sup> The collapse caused death to 1,134 persons and injured around 1,800, mostly women, some of them pregnant.<sup>49</sup> In addition, there still are between 77 and 144 unidentified buried bodies and around another 98 workers remain missing (exact number unfortunately unknown due to incomplete registration records).<sup>50</sup> It is estimated that only 636 workers present at the factories in Rana Plaza on the day of the collapse survived without any injury.<sup>51</sup> Among the deaths, 39 (3.81%) workers were between 13 and 17 years of age.<sup>52</sup> Also at the Phantom Apparel factory, there had been child workers among the

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<sup>41</sup> Report submitted to C Q K Mustaq Ahmed, Senior Secretary, Ministry of Home Affairs on 22 May 2013 (See note 37).

<sup>42</sup> J. Burke, "Majority of Bangladesh garment factories `vulnerable to collapse`", *The Guardian*, (3 June 2013). Available at <http://www.theguardian.com/world/2013/jun/03/bangladesh-garment-factories-vulnerable-collapse> [accessed 10 April 2015]; J. Motlagh, "The Ghosts of Rana Plaza", *VQR*. Available at <http://www.vqronline.org/reporting-articles/2014/04/ghosts-rana-plaza> [accessed 10 April 2015].

<sup>43</sup> Recorded interview by Activist Anthropologist with survivors, 16 October 2013, Palpara, Savar, Dhaka; See also: J. Burke, (See note 42).

<sup>44</sup> Series of recorded interviews by Activists Anthropologist with survivors that took place between 24 April 2013 and March, 2015.

<sup>45</sup> W.B. Habib, M.F. Rahman „Murder, not accident”, *The Daily Star*, (24 April 2014). Available at <http://www.thedailystar.net/flashback-19971> [accessed 10 April 2015].

<sup>46</sup> W.B. Habib, M.F. Rahman (see note 34).

<sup>47</sup> Interview on file with the Activist Anthropologist, 24 April, 2013 at Enam Medical College and Hospital, Savar, Dhaka; see also M. Strasser, "A Year after Bangladesh's Deadly Factory Collapse, Western Companies Slow to Compensate Victims", *Newsweek*, (24 April 2014). Available at <http://www.newsweek.com/year-after-bangladeshs-deadly-factory-collapse-western-companies-slow-compensate-248506> [accessed 10 April 2015].

<sup>48</sup> M. Strasser, (see note 47)].

<sup>49</sup> Center for Policy Dialogue (See note 1), p.12.

<sup>50</sup> Center for Policy Dialogue (See note 1), p.12.

<sup>51</sup> Center for Policy Dialogue (See note 1).

<sup>52</sup> Bangladesh Garments Workers Solidarity , *24th April: Outcries of A Thousand Souls*. A Compilation of Rana Plaza Workers Carnage, Dhaka, 2014, p.176; N. Dean, M. Rashid, "Bangladesh's Rana Plaza tragedy lives on for the child workers who survived", *The Telegraph*, (24 April 2014). Available at <http://www.telegraph.co.uk/news/worldnews/asia/bangladesh/10783733/Bangladeshs-Rana-Plaza-tragedy-lives-on-for-the-child-workers-who-survived.html> [accessed 10 April 2015].

employees.<sup>53</sup> The survivors and the families of the deceased deserve compensation and, further, workers who were with Phantom Apparel longer than 11 months are eligible for severance pay. However, because of a lack of long-term registries documenting the workers in Phantom Apparel, at least some of the former workers or their families were not able to claim for their full legal benefits.<sup>54</sup>

## 2.2 The BSCI Social Audit Report

Less than a year before the collapse of Rana Plaza, TÜV Rheinland India Pvt. Ltd. issued a “BSCI Social Audit Report” concerning Phantom Apparels Ltd., dated 16/17/18 June 2012. TÜV Rheinland is a global provider of technical, safety, and certification services. It was originally founded in 1872 and has its headquarters in Cologne, Germany. It is now present in 69 countries worldwide and employs around 18,000 people.<sup>55</sup> The company is a member of the International Federation of Inspection Agencies (IFIA). TÜV Rheinland claims on its website that “for many people, ‘TÜV’ is rightly synonymous with neutrally tested quality and safety.”<sup>56</sup> Its Mission Statement describes TÜV’s core responsibility as the duty to “make life safer.”<sup>57</sup> “*Safety, quality, health, efficiency and compliance are the results of our work [...]. This applies to our operations in all markets, be they local or global.*”<sup>58</sup> TÜV Rheinland is currently one of the 19 Auditing Companies accepted by BSCI.<sup>59</sup> This acceptance procedure concludes with signing a so-called Framework Contract between the Foreign Trade Association and the Auditing Company, which arranges the procedures for the audits and the relationship between BSCI and the Auditing Company.<sup>60</sup> It is further required by BSCI that its auditing companies are accredited by the Social Accountability Accreditation Service.<sup>61</sup>

As an accredited BSCI auditing company, TÜV Rheinland was contracted to perform an audit at Phantom Apparel by one of the BSCI member companies. The lead auditor on the 16<sup>th</sup>, 17<sup>th</sup>, and 18<sup>th</sup> of June 2012 was an employee of TÜV Rheinland India Pvt Ltd, which is a wholly owned subsidiary of TÜV Rheinland AG<sup>62</sup> and thus expected to adhere to TÜV Rheinland’s binding Code of Conduct and Company Policy.<sup>63</sup> The audit at Phantom Apparel was conducted on the basis of the 2009 BSCI

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<sup>53</sup> Interviews by Activist Anthropologist with former workers of Phantom Apparel confirm that there were child workers at Phantom Apparel. The interviews took place on 13 December 2014, Arapara, Savar, Dhaka.

<sup>54</sup> Recorded interviews by Activist Anthropologist with two widows of former workers of Phantom Apparel, 6 December 2014, Dhaka.

<sup>55</sup> TÜV Rheinland, “Philosophy and brand”, *TUV Website*. Available at [http://www.tuv.com/en/corporate/about\\_us\\_1/facts\\_figures\\_1/general\\_key\\_facts/general\\_key\\_facts.html](http://www.tuv.com/en/corporate/about_us_1/facts_figures_1/general_key_facts/general_key_facts.html) [accessed 10 April 2015]; [http://www.tuv.com/en/corporate/about\\_us\\_1/philosophy\\_brand/philosophy\\_brand.html](http://www.tuv.com/en/corporate/about_us_1/philosophy_brand/philosophy_brand.html) (accessed 10 April 2015); TÜV Rheinland, “TÜV at a glance 2014,” *TUV Website*. Available at [http://www.tuv.com/en/corporate/about\\_us\\_1/facts\\_figures\\_1/general\\_key\\_facts/general\\_key\\_facts.html](http://www.tuv.com/en/corporate/about_us_1/facts_figures_1/general_key_facts/general_key_facts.html) [accessed 10 April 2015].

<sup>56</sup> TÜV Rheinland, “The brand: TÜV Rheinland. Precisely Right”, *TUV Website*. Available at [http://www.tuv.com/en/corporate/about\\_us\\_1/philosophy\\_brand/the\\_brand\\_1/the\\_brand.html](http://www.tuv.com/en/corporate/about_us_1/philosophy_brand/the_brand_1/the_brand.html) [accessed 10 April 2015].

<sup>57</sup> TÜV Rheinland, “About Us”, *TUV Website*. Available at [http://www.tuv.com/media/corporate/aboutus\\_5/pdf\\_1/Our\\_Mission\\_Statement.pdf](http://www.tuv.com/media/corporate/aboutus_5/pdf_1/Our_Mission_Statement.pdf) [accessed 10 April 2015].

<sup>58</sup> TÜV Rheinland, “About Us,” (See note 57).

<sup>59</sup> At the time of the Rana Plaza collapse, BSCI was working with 15 Auditing Companies, BSCI, “Links”, *BSCI Website*. Available at <http://web.archive.org/web/20130420150843/http://www.bsci-intl.org/resources/links> [accessed 10 April 2015].

<sup>60</sup> BSCI, “Auditor”, *BSCI Website*. Available at <http://www.bsci-intl.org/join-us/auditor> [accessed 10 April 2015] and FTA Framework Contract (See note 19).

<sup>61</sup> BSCI, “Auditor”, (See note 60).

<sup>62</sup> Also the financial reports are fully consolidated; TÜV Rheinland, Financial Report 2013, p.146. Available at [http://www.tuv.com/en/corporate/about\\_us\\_1/publications/corporate\\_report/corporate\\_report.html](http://www.tuv.com/en/corporate/about_us_1/publications/corporate_report/corporate_report.html) [accessed 10 April 2015].

<sup>63</sup> TÜV Rheinland’s Code of Conduct provides policy guidelines which are “binding for all employees of companies belonging wholly or partly of 51 % or more to TÜV Rheinland Holding AG.” TÜV Rheinland, “Code of Conduct for TÜV Rheinland”, *TUV Website*. Available at [http://www.tuv.com/media/corporate/aboutus\\_5/pdf\\_1/codeofconduct-EN.pdf](http://www.tuv.com/media/corporate/aboutus_5/pdf_1/codeofconduct-EN.pdf) [Accessed 10 April 2015]; TÜV Rheinland, “Company Policy on Values and Responsibility”, *TUV Website*. Available at [http://www.tuv.com/media/corporate/aboutus\\_5/pdf\\_1/company\\_policy.pdf](http://www.tuv.com/media/corporate/aboutus_5/pdf_1/company_policy.pdf) [Accessed 10 April 2015].

standards and involved three so-called “mandays” of onsite and 0.5 manday of offsite work.<sup>64</sup> The audit was based on the BSCI Audit Questionnaire, which consists of three parts: A. Master Data; B. BSCI Mandatory Social Requirements; C. Best Practice for Industry (voluntary implementation but auditing is mandatory). Regarding part B, the auditor can fill out a checklist, where the assessment is as follows:

2 = Good (No deviation from requirements)

1 = Improvements Needed (Deviation from requirements)

NA = Not Applicable (Requirements do not match to the company structure)

The resulting judgment is either “good”, or “improvements needed” or “non-compliant.” Below the checklist, the auditor can fill out additional remarks.

In the case of Phantom Apparel, the audit of part B resulted with an assessment of “improvements needed” followed by a mandatory corrective action plan. Between September and December 2012, the auditor approved the implementation of the Corrective Action Plan.<sup>65</sup> In the remarks section of part B, the audit report stated that “the building and machine layout is process based, good construction quality, duly approved”. (Item B 9.0 Working Condition). The audit report also stated that “the company has obtained legal approvals from competent authority as required by law” (Item B 2.0, Documentation). And the report noted that “There was no child labour or young labor identified during document review, plant tour and worker interviews” (Section B 5.0 Child labor/ young employees). While some issues were initially flagged regarding the workers’ registration, these were noted to have been solved on 30<sup>th</sup> of October 2012. The audit of part C resulted in the assessment that the factory was not yet ripe for a SA8000 certification. The auditor specifically added in the remarks section that “They have a long way to go for SA-8000 requirements.”

According to the audit report, the audit had been initiated by a BSCI member. As part of the BSCI approach, BSCI members are obliged to conduct audits for a large number of their producers.<sup>66</sup> In contrast to systems like SA 8000, however, the BSCI audits are not part of a certification scheme. Instead, the BSCI approach is so-called “development-oriented.”<sup>67</sup> Even though BSCI claims it does not provide a formal certificate, the factory profiles and audit results are kept in a database, which BSCI members are encouraged to rely upon for their supplier decisions as BSCI claims that sharing auditing results is beneficial for BSCI members.<sup>68</sup> That BSCI participants rely on the data provided in the database was confirmed by the German retailer ADLER in the following statement in which they explain their decision to accept products from a factory in Rana Plaza: “*Metro and ADLER only accepted the ready products in a special case, because the factory could present the BSCI certificate. This was provided by TÜV Rheinland in 2012.*”<sup>69</sup> Clearly, ADLER mistakenly assumed that BSCI audits lead to a certificate.

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<sup>64</sup> BSCI Phantom Apparel Ltd Social Audit Report, number BL-18/12, page 3, on file with ECCHR.

<sup>65</sup> BSCI Audit Report, (See note 64).

<sup>66</sup> “Our participants commit that within 3 1/2 years, after having joined BSCI, they have to involve at least 2/3 of their producers in the BSCI auditing system”, BSCI, “Participants”, *BSCI Website*. Available at <http://www.bsci-intl.org/join-us/enterprise/regular-member> [accessed 10 April 2015].

<sup>67</sup> BSCI, “The BSCI Approach to Good Working Conditions”, (see note 11) Audits resulting in a designation “Good” are repeated every three years. Non-compliances are followed by a Corrective Action Plan and a Re-Audit within twelve months. BSCI, “Monitoring – Assessing the Label of Compliance”, *BSCI Website*. Available at <http://www.bsci-intl.org/our-work/monitoring> [accessed 10 April 2015].

<sup>68</sup> BSCI “Participants,” (See note 66).

<sup>69</sup> E-Mail by ADLER in April 2014 to a consumer, in: Gisela Burckhardt, *Todschick. Edle Labels, billige Mode – unmenschlich produziert*, Wilhelm Heyne Verlag, (München, 2014), p.126. Translation by author.

### **3. Major non-compliances with the BSCI Code of Conduct at factory Phantom Apparel Ltd. not identified in the BSCI Social Audit Report**

Complainants identify the following instances of non-compliance with the BSCI Code of Conduct which went unnoticed by the BSCI auditors in June 2012 and the supervision of the corrective action plan between September and December 2012.<sup>70</sup>

#### **3.2 The faulty building structure violated Rule 6 on Workplace Health and Safety**

The BSCI Code of Conduct rule number 6 on Workplace Health and Safety stipulates that factories “shall provide a safe and healthy workplace environment and shall take effective steps to prevent potential accidents and injury to workers’ health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the workplace environment, and bearing in mind the prevailing knowledge of the industry and of any specific hazards.” The flaws in the construction of the Rana Plaza building already existed during the audit of June 2012. The factory owners of Phantom Apparel Ltd. thus failed to provide a “safe and healthy workplace environment:” and they similarly failed to take “effective steps to prevent potential accidents and injury to workers’ health:” thus violating Rule 6 of the BSCI Code of Conduct.

#### **3.3 The invalid building permits and lack of workers’ registration violated Rule 1 on Legal Compliance**

The BSCI Code of Conduct rule number 1 requires “Compliance with all applicable laws and regulations, industry minimum standards, ILO and UN Conventions, and any other relevant statutory requirements whichever requirements are more stringent.” This provision, for example, calls for compliance with the National Building Code, the Detailed Area Plans, as well as industry minimum standards for building structures. This provision also calls for compliance with the Bangladesh Labor Act (2006), which legally binds employers to properly document information about workers and maintain this information for any inspection from authorized bodies.<sup>71</sup> The lack of valid permits approving the extra floors and the industrial use of the Rana Plaza building constitutes a violation of Rule 1 of the BSCI Code of Conduct. If confirmed, the incompleteness of a register with the relevant information on all workers at Phantom Apparel Ltd. also violated Rule 1.

#### **3.4 The presence and long working hours of child workers violated Rule 7 on Prohibition of Child Labor**

The BSCI Code of Conduct rule number 7 prohibits child labor and restricts work for so-called young workers: “Child labour is forbidden as defined by ILO and United Nations Conventions and/or by national law. Of these various standards, the one that is the most stringent shall be followed.”<sup>72</sup> According to BSCI, child workers are those under the age of 15 and young workers are between 15 and

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<sup>70</sup> Even though BSCI launched a new Code of Conduct in 2014, the analysis in this complaint is based on the old BSCI Code of Conduct of 2009 as this is the Code that was in force during the 2012 Audit at Phantom Apparel.

<sup>71</sup> Bangladesh Labor Act (2006), Chapter II, 'Appointment and terms and reference of employment,' section 5) Appointment letter and Identity Card, 6) Service book, 7) Service book forms, 8) Service book entry and 9) Workers registers and Card distribution. According to section 9(1) of Chapter 2, “The employer of every establishment shall maintain a register of workers, to be available to the Inspector at all times during working hours.” It is specified in §2, that the following information should be documented in the register: (a) the name and date of birth of each worker in the establishment; (b) date of appointment; (c) the nature of his work; (d) the periods of work fixed for him; (e) the intervals for rest and meals to which he is entitled; (f) the days of rest to which he is entitled; (g) the group, if any, in which he is included; (h) where his group works on shifts, the relay to which he is allotted; and (i) such other particulars as may be prescribed by rules;

<sup>72</sup> The BSCI Code of Conduct adds that this provision should be read in accordance with ILO Conventions 10, 79, 138, 142 and 182 and Recommendation 146.

17 years old.<sup>73</sup> In accordance with ILO Convention 138, for some countries there is the exception of the minimum age of 14. Indeed, at the time of the audit, the law in Bangladesh set the minimum age at 14.<sup>74</sup> The Labour Act in Bangladesh permits children aged 12 and 13 to perform light work with certain restrictions, such as not to interfere with their school attendance.<sup>75</sup> Slightly more restrictive, Article 2.3 of the ILO Convention 138 - Minimum Age Convention, 1973 calls on its members to establish a minimum age of 15 years and while Article 7 allows for “light work” for children between 13 and 15, it also requires the non-interference with school attendance.

BSCI does not mention these exceptions of “light” work for those below 14 or 15 years old. Instead, BSCI takes a strong position on child labor and allows suppliers only to employ “persons who are at least at or above the applicable minimum age for working.”<sup>76</sup> It takes instances of child labor seriously as is visible from a report in the BSCI newsletter “Footprint” in which it describes its response after identifying a case of child labor in China, where the child in question was hired with a fake ID: “following the BSCI methodology in such cases, the child was immediately removed from the factory floor, paid in full and sent back to the family with all travel costs taken care of.”<sup>77</sup> Thus, if confirmed, the very presence of child workers at Phantom Apparel Ltd. aged 13 violated Rule 7 of the BSCI Code of Conduct as did the long working hours of those aged 14 when it interfered with their school attendance.<sup>78</sup>

### **3.5 Lack of awareness among workers of BSCI Complaint Mechanism and their right to remove themselves from a dangerous work situation violated Terms of Implementation of Code of Conduct**

According to BSCI, workers at factories which produce for BSCI participants can file complaints with the BSCI. To facilitate this, it is contractually arranged that all producers and factories which supply to BSCI participants must allow BSCI auditors to distribute complaint cards to their workers.<sup>79</sup> These cards are said to provide instructions on how workers can submit complaints and notify auditors of non-compliance with BSCI standards.<sup>80</sup> Once BSCI complaints have been submitted, according to BSCI they are reviewed by the BSCI Secretariat.<sup>81</sup> The BSCI Code of Conduct stipulates that factories should appoint an employee responsible for handling complaints related to BSCI issues and document and

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<sup>73</sup> BSCI, “Management Manual,” January 2009, section 2.2.5. under B.5 Child labour/ young employees, Available at [http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCYQFjAA&url=http%3A%2F%2Fwww.boco-scm.com%2Fde-DE%2Fdownload%2Ffile%2Ffid%2F9439&ei=bp9sVIPBYKHO\\_vagXA&usg=AFQjCNGe9aqtLatb1j6j3wpsLU1xW0rG&bvm=bv.80120444.d.ZWU](http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCYQFjAA&url=http%3A%2F%2Fwww.boco-scm.com%2Fde-DE%2Fdownload%2Ffile%2Ffid%2F9439&ei=bp9sVIPBYKHO_vagXA&usg=AFQjCNGe9aqtLatb1j6j3wpsLU1xW0rG&bvm=bv.80120444.d.ZWU) [accessed 10 April 2015].

<sup>74</sup> Bangladesh Labour Act 2006, Article 2, definitions, under lxiii, and article 34. Bangladesh enacted the Labour Act in 2006, which includes a chapter on child labor. Until a reform on June 16, 2013, the Act established 14 as the minimum age for work; Article 2, definitions, under lxiii, and article 34 of the Labour Act 2006; Chapter III “Employment of adolescent”.

<sup>75</sup> Bangladesh Labour Act 2006, Article 44.

<sup>76</sup> BSCI Management Manual, (See note 73), section 2.2.5. under B.5 Child labour/ young employees.

<sup>77</sup> BSCI, “BSCI Footprint,” n°7, November 2013, Available at: [https://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCcQFjAA&url=http%3A%2F%2Fwww.bsci-intl.org%2Fsystem%2Ffiles%2Fbsci\\_footprint\\_07.pdf&ei=bMzLU5XFHcXZ4QTQkIHOCg&usg=AFQjCNGQCISskf1hhc5RX09RJ8M2IKZ39A&sig2=Ht9mulbiswqpnhzGegeXCQ](https://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCcQFjAA&url=http%3A%2F%2Fwww.bsci-intl.org%2Fsystem%2Ffiles%2Fbsci_footprint_07.pdf&ei=bMzLU5XFHcXZ4QTQkIHOCg&usg=AFQjCNGQCISskf1hhc5RX09RJ8M2IKZ39A&sig2=Ht9mulbiswqpnhzGegeXCQ) [accessed 10 April 2015].

<sup>78</sup> Interviews by Activist Anthropologist with former workers of Phantom Apparel confirm that there were child workers at Phantom Apparel. The interviews took place on 13 December 2014, Arapara, Savar, Dhaka.

<sup>79</sup> FTA Framework Contract, (See note 19), Annex 3, §3

<sup>80</sup> BSCI Echo, n°8, Winter 2011, p.4, available at: [www.bsci-intl.org/system/files/bsci\\_echo\\_8-1.pdf](http://www.bsci-intl.org/system/files/bsci_echo_8-1.pdf) [accessed 10 April 2015].

<sup>81</sup> BSCI, “Monitoring -assessing the Level of Compliance,” *BSCI Website Archive*. Available at <http://archive.today/XBOvZ#selection-817.92-817.178> [accessed 10 April 2015].

investigate complaints from employees or third parties related to BSCI issues, and reporting on their substance and any necessary corrective measures arising from them.<sup>82</sup>

According to the BSCI Guidelines, factory owners must further “inform all employees about the content of the BSCI Code of Conduct, their rights and obligations.”<sup>83</sup> To ensure that workers understand their rights, the factories should, if necessary “translate the BSCI Code of Conduct into local language(s) and post this in the location visible to all employees.”<sup>84</sup> According to the new Code of Conduct, this explicitly includes the “the workers’ right to exit the premises from imminent danger without seeking permission” and companies are obliged to respect this right.<sup>85</sup> This right is also enshrined in article 13 of ILO Convention 155, which provides protection to workers by assuring that “A worker who has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health shall be protected from undue consequences in accordance with national conditions and practice.”<sup>86</sup>

Many if not all of the former workers of Phantom Apparel Ltd. were not aware of the BSCI Code of Conduct or the corresponding complaint mechanism.<sup>87</sup> Neither were all workers aware of their right to refuse entrance into a building that exposes major cracks.<sup>88</sup> If confirmed, this lack of awareness constitutes a violation of the Terms of Implementation of the Code of Conduct as well as the BSCI Guidelines on Management Practice, Information & Communication.

#### **4. Professional standards for social auditors**

The previous section established that, according to current indications, the factory Phantom Apparel in essential points did not comply with the BSCI Code of Conduct. Still, the auditors of TÜV Rheinland failed to note these non-compliances. This raises the question, whether the audit was conducted according to the expected best practices and minimum professional standards. Complainants submit that the auditors failed to identify the relevant points of non-compliance described in the previous section, because the BSCI auditors did not conduct a thorough and quality inspection of Phantom Apparel Ltd. Complainants allege that the auditors failed to conduct the audit according to the minimum professional standards for social audits.

Setting standards to social auditors is widely recognized to be important.<sup>89</sup> For example, the BSCI Framework Contract calls for high levels of professional integrity, independence and absolute incorruptibility of the auditors, emphasizing the importance of avoiding a conflict of interest.<sup>90</sup> In order to assess whether the TÜV Rheinland auditors adhered to the relevant professional standards, it needs to be established what these standards are. Generally, widespread industry practice and industry guidelines establish what is commonly and reasonably expected from all social auditors. As the social audit at Phantom Apparel Ltd. was conducted by TÜV Rheinland under the auspices of BSCI, it is chosen here

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<sup>82</sup> BSCI Code of Conduct 2009, Terms of Implementation, p.5, Section “Complaints and Corrective Action”.

<sup>83</sup> BSCI Management Manual, (See note 73), Section 2.2.1, B.1 Management Practice, Information & Communication.

<sup>84</sup> BSCI Management Manual, (See note 73), Section 2.2.1, B.1 Management Practice, Information & Communication.

<sup>85</sup> BSCI Code of Conduct 2014, section Occupational Health and safety, p. 6.

<sup>86</sup> ILO Convention C155 - Occupational Safety and Health Convention, 1981, Article 13.

<sup>87</sup> Interviews by Activist Anthropologist with former workers at Phantom Apparel. Not even labor organizers were aware of the complaint mechanism. These interviews took place at the Ganda Area of Savar on 17 February 2015.

<sup>88</sup> Interviews by Activist Anthropologist with former workers at Phantom Apparel. Not even labor organizers were aware of the complaint mechanism. These interviews took place at the Ganda Area of Savar on 17 February 2015.

<sup>89</sup> GSCP, “GSCP Reference tool for Auditing Competence,” *GSCP Website*. Available at <http://www.gscpnet.com/working-plan/step-3-auditing-competence.html> [accessed 10 April 2015].

<sup>90</sup> FTA Framework contract, (See note 19), Section 3, Paragraph 2&3.

to take the standards established by BSCI and TÜV Rheinland as the relevant point of reference. As indicated in the introduction, complainants would favor significantly higher standards for credible and effective audits as well as a fundamental change to the auditing approach. The standards described here are only identified for the purpose of assessing whether the auditors at least adhered to these minimum standards.

While this §4 simply identifies the abstract professional standards, in §5 complainants assess on the basis of Audit Report number BL-18/12 whether the TÜV Rheinland auditors actually adhered to these standards while inspecting Phantom Apparel Ltd. It will be shown that the auditors failed to adhere to these minimum professional standards and widely recognized best practices.

#### **4.1 Sources of professional standards**

##### **4.1.1 BSCI Standards**

The professional standards and auditing best practices recognized by BSCI can be discerned from the BSCI Guidelines, other BSCI investigations, and the FTA framework contract.<sup>91</sup> In addition to the Code of Conduct, BSCI publishes a “Management Manual” which is directed to suppliers, retailers, and auditing companies.<sup>92</sup> BSCI further requires its auditors to be licensed for certification audits in accordance with the SA8000 standard in line with the applicable SAAS rules of procedure.<sup>93</sup> SAAS requirements for auditors are thus also taken into account in this report’s analysis whether the TÜV Rheinland auditors adhered to the relevant standards.<sup>94</sup>

##### **4.1.2 Industry guidelines**

Relevant professional standards can further be drawn from comparable industry guidelines, especially those that were drafted by TÜV Rheinland, such as the Sedex guidelines. Similar to the BSCI, Sedex (Supplier Ethical Data Exchange) is a non-profit membership organization claiming to be “dedicated to driving improvements in ethical and responsible business practices in global supply chains.”<sup>95</sup> TÜV Rheinland is a member of the Sedex Associated Auditing Group (AAG).<sup>96</sup> The Sedex AAG publishes a “Best Practices Guidance” manual for the performance of social audits, which describes in detail how audits should be prepared, executed and reviewed.<sup>97</sup> As member of the AAG, TÜV Rheinland played an active role in developing these best practices on conducting social audits, developing audit report formats, preparing auditing training materials, and most significantly, authoring the Best Practices Guidance described above. Additionally, TÜV advertises itself as performing Sedex Members Ethical Trade Audit (SMETA) audits as part of its routine “social and ethical management” services.<sup>98</sup> As a co-author to this Guidance and member of the Sedex Associated Auditing Group, TÜV Rheinland must

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<sup>91</sup> In order to analyze the obligations imposed on BSCI Auditing Companies, an example of this agreement was analyzed. FTA Framework contract, (See note 19).

<sup>92</sup> BSCI Management Manual, (See note 73).

<sup>93</sup> BSCI, “BSCI System: Rules and Functioning,” Version 3, November 2009, p.8. Available at: <http://www.bsci-intl.org/system-rules-and-functioning> [accessed 10 April 2015].

<sup>94</sup> Social Accountability Accreditation Service, D. DeRuisseau, “Requirements for Bodies Providing BSCI Assessments” procedure 225, 18 June 2010.

<sup>95</sup> Sedex, “About Sedex”, *Sedex Website*. Available at <http://www.sedexglobal.com/about-sedex/>

<sup>96</sup> Sedex, “Associate Auditor Groups”, *Sedex Website*. Available at <http://www.sedexglobal.com/ethical-audits/aag/> [accessed 10 April 2015].

<sup>97</sup> Sedex, “Sedex Members Ethical Trade Audit SMETA 2012 Best Practices Guidance,” 2012. Available at [http://www.sedex.org.uk/sedex\\_website/pdf/smeta\\_best\\_practice\\_guidance.pdf](http://www.sedex.org.uk/sedex_website/pdf/smeta_best_practice_guidance.pdf) [accessed 10 April 2015].

<sup>98</sup> TÜV Rheinland, “Social and Ethical Management,” *TÜV Website*. Available at [http://www.tuv.com/en/greater\\_china/services/management\\_systems\\_gc/sustainability\\_and\\_csr\\_gc/social\\_and\\_ethical\\_management/social\\_and\\_ethical\\_management.html](http://www.tuv.com/en/greater_china/services/management_systems_gc/sustainability_and_csr_gc/social_and_ethical_management/social_and_ethical_management.html) [accessed 10 April 2015].



consider these best practices as both attainable and reasonable.<sup>99</sup> The Sedex standards obtain particular relevance as, according to TÜV Rheinland, the audit in Phantom Apparel was based on both the BSCI and the Sedex standards.<sup>100</sup>

#### 4.1.3 United Nations Global Compact

Lastly, both the FTA and TÜV Rheinland AG are members of the United Nations Global Compact (UNGC) which establishes “ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption.”<sup>101</sup> The UNGC can thus also be drawn upon to establish minimum standards to the BSCI auditors.

### 4.2 Professional standards

From the sources mentioned in the previous section, commonly recognized professional standards can be identified. Social auditors are expected to<sup>102</sup>:

- take the circumstances in the country and local context into account
- apply professional skepticism and constant verification of documentation and information
- go beyond a checklist approach and do a comprehensive review
- have an adequate and competent team, who have been sufficiently trained
- display sensitivity to the vulnerability of workers

#### 4.2.1 The country and local context need to be taken into account

BSCI specifically requires from auditors “competence and experience concerning the country in question.”<sup>103</sup> This also means that auditors have to be well-prepared, know the relevant laws and understand the local context.<sup>104</sup> BSCI focuses on so-called “risk-countries.”<sup>105</sup> It is, therefore, inherent in social audits that they take place in a context where the government does not always fulfill its regulating role. According to the UN Global Compact, when government regulation is weak, businesses have an enhanced duty to respect human rights, as the risks of infringing human rights may be greater because of

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<sup>99</sup>Mandatory modules for any SMETA audit are labor standards as well as health and safety. The so-called 2 SMETA 2-Pillar audit has been developed for auditing against the Ethical Trading Initiative (ETI), Base Code for which the Best Practices Guide offers “Guidance by Clause.” Sedex Members Ethical Trade Audit (SMETA) Best Practices Guidance, Version 4.0, May 2012, Appendix 1. For further guidelines, the SMETA guide refers to the Reference Tool for Auditing Competence for social and environmental compliance assessments: Global Social Compliance Programme, Reference Tool for Auditing Competence, Version 2, October 2014

<sup>100</sup> TÜV Rheinland, “TÜV Rheinland antwortet ARD-Magazin Monitor“, *TUV Website*. Available at [http://www.tuv.com/de/deutschland/ueber\\_uns/presse/meldungen/newscontentde\\_160076.html](http://www.tuv.com/de/deutschland/ueber_uns/presse/meldungen/newscontentde_160076.html) [accessed 10 April 2015].

<sup>101</sup> United Nations Global Compact, “Overview of the UN Global Compact”, available at: <https://www.unglobalcompact.org/AboutTheGC/index.html> [accessed 10 April 2015]; TÜV Rheinland considers its participation in the UNGC as a “strategic step” which has “sealed our advocacy of global compliance with human rights, labor standards, environmental protection, and the fight against corruption.” TÜV Rheinland, Annual Report 2013. Available at: *TÜV Website*, [http://www.tuv.com/media/en/germany/nachhaltigkeit/pdfs/annual\\_reports/tuv\\_rheinland\\_annual\\_report\\_2013\\_responsibility.pdf](http://www.tuv.com/media/en/germany/nachhaltigkeit/pdfs/annual_reports/tuv_rheinland_annual_report_2013_responsibility.pdf) [accessed 7 July 2014]. UN Global Compact, “Participants & Stakeholders”, *UNGC Website*, available at: <https://www.unglobalcompact.org/participants/detail/3822> [accessed 10 April 2015]. TÜV Rheinland, “United Nations Global Compact”, *TÜV Website*, available at: [http://www.tuv.com/en/corporate/about\\_us\\_1/sustainability\\_cw/values\\_and\\_commitment\\_cw/un\\_global\\_compact\\_cw/un-global-comapact.html](http://www.tuv.com/en/corporate/about_us_1/sustainability_cw/values_and_commitment_cw/un_global_compact_cw/un-global-comapact.html) [accessed 10 April 2015].

<sup>102</sup> Non-exhaustive list of reasonable expectations to auditors

<sup>103</sup> FTA Framework Contract, (See note 19), Section 2, §3.

<sup>104</sup> E.g. “Prior to conducting an audit, auditors should: Understand the local context in practice, site / sector / regional issues. Be aware of, and up to date with, appropriate local and national laws”, Sedex Best Practices Guidance, (See note 85), Appendix 1, under 2. Freedom of Association.

<sup>105</sup> BSCI Risk Countries list as of 1 January 2011. A newer document is available since January 2014. The new classification is based on governance factors of the World Bank. Here the document is used that was applicable at the time of the 2012 audit at Phantom Apparel. The old classification based on the Human Development Index of the United Nations and the Corruption Perceptions Index of Transparency International in addition to the field experience of sourcing companies.

the context.<sup>106</sup> It is expected of social auditors to be aware of this context of weak governmental regulation while assessing compliance with local and national legislation. Social auditors are not meant as replacements for inspections done by governments. Auditors are, however, required to verify whether governments are actually doing the necessary inspections in addition to their own inspection.

#### 4.2.2 Skepticism and the need for verification

As it is in the interest of the supplier to make a good impression, it is generally recognized that one of the basic skills of an auditor is the application of professional skepticism.<sup>107</sup> The BSCI Framework Contract calls upon auditors to use their “best effort” to ensure that their data are “accurate.”<sup>108</sup> Similarly, the Reference Tool for Auditing Competence of the Global Social Compliance Programme and the SMETA Best Practices Guidance emphasize the necessity of “verifiable” evidence as the basis for judgment and the importance of determining the “authenticity” of information.<sup>109</sup> “Detection skills” are listed as one of the “core auditor competences,” which means that auditors are able to detect “non-conformities which may have been subject to manipulative practices.”<sup>110</sup> Auditors are, for example, generally required to do a site tour and field observations, during which auditors have to make “appropriate checks,” to verify that things are in practice as they are claimed to be on paper.<sup>111</sup> In the BSCI Declaration of Consent for producers, it is recognized that proper audits include taking pictures of the factory and factory compound, making photocopies of business documents and conducting confidential interviews with employees, who are freely chosen by the auditors.<sup>112</sup> As it is recognized that employment sites may make “special preparations” for the audit, it is best practice to use a mix of announced, semi-announced and unannounced audits to mitigate this risk.<sup>113</sup>

#### 4.2.3 Scope of the audit: comprehensive review

While it is clear that the chosen audit standard in combination with the auditor contract determine the scope of any specific audit, it is expected that auditors do take the complete factory into account. For example, the SAAS makes it clear that the goal of the SA8000 standard is to make sustainable systemic changes, which requires going beyond a “checklist approach.”<sup>114</sup> Similarly, it obliges accredited certification bodies to look at “all parts of a continuous process or premises,” which means that, for example, when there are multiple assembly lines, all must be audited for certification.<sup>115</sup> Likewise, SAAS demands that all shifts (i.e. all crews) are taken into account. In a similar vein, the SMETA Best Practices Guide explicitly clarifies that auditors should include in their perimeter survey “[o]ther production units or facilities on the employment site which are not part of the scope of the audit.”<sup>116</sup>

<sup>106</sup> UN Global Compact Principle 1, see commentary on “determining the scope of responsibility”:

“Pay particular attention to the context in countries where laws are widely known to fall short of international standards and where enforcement may be inadequate,” available at:

<https://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle1.html> [accessed 10 April 2015].

<sup>107</sup> International Accounting Education Standards Board (IAESB), “International Education Standard, IES 8, Competence Requirements for Audit Professionals”, July 2008, Section 1a.

<sup>108</sup> FTA Framework Contract, (See note 12) Annex 1, 1.2.

<sup>109</sup> Global Social Compliance Programme, Reference Tool for Auditing Competence, Version 2, October 2014, Appendix 1, Table A.; Sedex, “Best Practices Guidance” (See note 97) Appendix 1, under 4. Child Labour and Young Workers, section 4.9, p.57.

<sup>110</sup> GSCP, “Reference Tool for Auditing Competence” (See note 109), Appendix 1, Table A.

<sup>111</sup> Sedex, “Best Practices Guidance” (See note 97), Appendix 1, under 3. Health and Safety, section 3.8; see also Fair Wear Foundation, Case Assessment. Available at [http://www.fairwear.org/ul/cms/fck\\_uploaded/documents/complaints/2011/2011/complaint\\_turkey\\_jerags\\_assessmentreport\\_july2011.pdf](http://www.fairwear.org/ul/cms/fck_uploaded/documents/complaints/2011/2011/complaint_turkey_jerags_assessmentreport_july2011.pdf) [accessed 10 April 2015].

<sup>112</sup> FTA Framework Contract, (See note 12), Annex 3, §1 & 2.

<sup>113</sup> Sedex “Best Practices Guidance” (See note 97), Appendix A2.

<sup>114</sup> L. Bernstein, Social Accountability Accreditation Services, Requirements for Gaining and Maintaining Accreditation, (7 December 2007), p.2.

<sup>115</sup> L. Bernstein (See note 114), p.6.

<sup>116</sup> Sedex, “Best Practices Guidance” (See note 97), §7.2 - Tour of the Employment Site.

Thus, it is an auditor's responsibility to meaningfully assess the working and social conditions at facilities in a comprehensive sense.

#### 4.2.4 Adequate and competent team, adequate training and skill

Scholars have found that a lack of competence is actually a greater danger to the quality of audits than a lack of independence.<sup>117</sup> It is recognized that while a single auditor need not possess all required skills, the team has to combine the necessary expertise. It is the responsibility of the person assembling the team to ensure that the required skills are there.<sup>118</sup> At the same time, the "Reference Tool for Auditing Competence" cautions that "auditors should not assess conditions beyond the substantive areas where they have competence."<sup>119</sup> In terms of the necessary skills, the BSCI Framework Contract requires "sector-specific professional experience concerning social audits as well as competence regarding industrial safety and quality inspections," in addition to appropriate psychological skills.<sup>120</sup> Further, auditors are generally required to be familiar with local legislation, regulatory standards and human rights issues.<sup>121</sup> In Bangladesh this would include a thorough understanding of and familiarity with the Bangladesh Labor Law. According to the SMETA Guide, "The auditor's knowledge of specific working conditions and legislation should be reviewed at least annually."<sup>122</sup>

#### 4.2.5 Sensitivity to the vulnerability of workers

The vulnerability of workers in their specific context is recognized and taken into account in the advice and guidelines developed for auditors. For example, SAAS calls upon an NGO and Trade Union consultation as part of the auditing process in order to facilitate different voices to be heard.<sup>123</sup> The SMETA Guidance calls upon auditors to keep in mind that if there are any fears of reprisals, findings should not be reported at the closing meeting but must be reported to the client.<sup>124</sup> Also, interview tips are geared towards fostering candor during all interviews, while being sensitive to the need for a separate location to conduct such interviews and taking care to protect the anonymity of workers.<sup>125</sup>

### **5. The BSCI Auditors did not comply with the minimum professional standards for social auditors**

This section analyzes the BSCI Social Audit Report (report number BL-18/12) of factory Phantom Apparel Ltd. The organizations submitting this complaint believe that credible and effective audits would require a fundamentally different approach, which would put the factory workers at the center of all efforts and support trade unions in order to create a longer term and substantial force for real change. For the purpose of this review of Audit Report number BL-18/12, complainants will adopt, however, a method of analysis which takes the professional standards as advocated by BSCI and TÜV Rheinland as

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<sup>117</sup>C. Lesage, "The Independence and Competence of Auditors", *HEC Website*, 15.April 2010. Available at <http://www.hec.edu/Knowledge/Finance-Accounting/Accounting/The-Independence-and-Competence-of-Auditors> [accessed 10 April 2015].

<sup>118</sup> ISO 19011 Expert, "Evaluating Auditor Competence," *ISO 19011 Expert Website*. Available at <http://www.iso19011expert.com/evaluating-auditor-competence/> [accessed 10 April 2015].

<sup>119</sup> GSCP, "Reference Tool for Auditing Competence" (See note 109), § 1.

<sup>120</sup> FTA Framework Contract, (See note 19), Section 3, Paragraph 2.

<sup>121</sup> For example, the Reference Tool for Auditing Competence echoes the requirement that auditors know "local laws, relevant standards and regulations." GSCP, "Reference Tool for Auditing Competence" (See note 109), §2.2.3; SAAS requires that at least one team member is familiar with local and national labor and human rights issues and legislation, L. Bernstein (See note 102), p.10; See also Social Accountability Accreditation Service, D. DeRuisseau, "Requirements for Bodies Providing BSCI Assessments" procedure 225, (18 June 2010), p.8.

<sup>122</sup> Sedex, "Best Practices Guidance," (See note 97) p.16.

<sup>123</sup> L. Bernstein, (See note 114), p.8.

<sup>124</sup> Sedex, "Best Practices Guidance," (See note 97), Appendix 1, under 9. Discipline, p.70.

<sup>125</sup> Sedex, "Best Practices Guidance," (See note 97), Appendix 1, under 0. Management Systems and Code Implementation.

the basis for assessing whether the auditors adhered to these minimum standards detailed in the previous section. Complainants come to the conclusion that in conducting the audit in June 2012 and the subsequent supervision of the implementation of the corrective action plan, the auditors failed to adhere even to these minimum professional standards. The auditors therefore failed to observe the instances of major non-compliance with the BSCI Code of Conduct at Phantom Apparel Ltd.

## **5.1 The auditors failed to observe the professional standards in the inspection of the building structure**

### **5.1.1 The auditors failed to properly inspect the building structure**

The audit report states that “the building and machine layout is process based, good construction quality, duly approved.” (Item B 9.0 Working Condition). The auditors thus failed to properly inspect the building structure, even though the history of the garment industry in Bangladesh has shown that the collapse of factory buildings is a real and present danger. Knowing the context of the country, the auditors should have been aware of this. The BSCI Code of Conduct explicitly calls upon factories and auditors to bear “in mind the prevailing knowledge of the industry and of any specific hazards.”<sup>126</sup> In 2004, a six storey building (Shankhari Bazar) collapsed.<sup>127</sup> In 2005, the Spectrum Sweater factory collapsed, killing 64 workers, after having added five floors to a four storey building, and after having been repeatedly audited. In 2006, a five storey building with the factory Phoenix Garments collapsed, killing 21 people. In 2010, a five storey building in Begun Bari collapsed, again after having illegally added floors.<sup>128</sup> The construction of extra floors at Rana Plaza was also under way at the time of the audit by TÜV Rheinland at Phantom Apparel. The similarities between the Spectrum collapse and the Rana Plaza tragedy, both located in Savar, are striking as both buildings were built partly on land created from filling up ponds, apparently a regular practice in Bangladesh.<sup>129</sup> An auditor familiar with the circumstances of the Spectrum collapse and the Bangladeshi context should have been attentive to these aspects. It was further well-known that there was a lack of regular supervision by the Bangladeshi government and an insufficient number of building inspectors.<sup>130</sup> This would have warranted further scrutiny.

In accordance with the professional standards recognized for social auditors, it was expected of the auditors during the site tour to check all parts of the premises,<sup>131</sup> including the building construction and its maintenance.<sup>132</sup> The Sedex requirements stipulate that the so-called “perimeter survey” should

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<sup>126</sup> Code of Conduct Rule 6.

<sup>127</sup> D.M. Sabet, A. Tazreen ,(see note 33 ) S. A. Shafi, Keynote Paper, Round Table Discussion on Implementation of National Building Code, (30 June 2010), National Press Club. Available at [http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDgQFjAB&url=http%3A%2F%2Fwww.blast.org.bd%2Fcontent%2Fkey-note%2Fnational-building-code-29June.pdf&ei=YnbrVP1GxPZS-c6AuA0&usq=AFQjCNH7nkmEGFVS\\_Ernix3aO4qt3\\_HbHw&sig2=20vTrjRLsJKnbG9uqHKgk&bvm=bv.86475890.d.d24&cad=rja](http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDgQFjAB&url=http%3A%2F%2Fwww.blast.org.bd%2Fcontent%2Fkey-note%2Fnational-building-code-29June.pdf&ei=YnbrVP1GxPZS-c6AuA0&usq=AFQjCNH7nkmEGFVS_Ernix3aO4qt3_HbHw&sig2=20vTrjRLsJKnbG9uqHKgk&bvm=bv.86475890.d.d24&cad=rja) [accessed 10 April 2015].

<sup>128</sup> D.M. Sabet, A. Tazreen, (See note 33).

<sup>129</sup> S. Ali, “Rana Plaza and Spectrum Sweater Factory”, *The Daily Star*, (17 May 2013). Available at <http://archive.thedailystar.net/beta2/news/rana-plaza-and-spectrum-sweater-factory/> [accessed 10 April 2015].

<sup>130</sup> S. A. Shafi, (See note 127).

<sup>131</sup> L. Bernstein, (See note 114).

<sup>132</sup> According to the Sedex requirements, during the site tour, “[t]he auditor should walk around all areas of the employment site in order to [...] Evaluate Health & Safety” which should include an inspection of the workstations, “building construction, maintenance and certificates” (emphasis added). Sedex, “Best Practices Guidance,” (See note 97), Section 7.2 - Tour of the Employment Site.

The Sedex Clause on health and safety is highly similar to the BSCI formulation: “A safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.” Sedex, “Best Practices Guidance,” (See note 97), Appendix A1 Guidance By Clause, 3. Health & Safety Code Requirements, 3.1.;

include the “physical construction and layout of the employment site e.g. building structure” (emphasis added).<sup>133</sup> Sedex auditors are also called upon to make appropriate checks that machines are operated in a safe manner, which should have drawn attention to the generators and the impact of the generators on the building safety.<sup>134</sup> The BSCI Framework Contract requires auditors to possess “competence regarding industrial safety.”<sup>135</sup> TÜV Rheinland should thus have selected auditors with the relevant competence to observe potential flaws in building structures. Even without doing special technical or so-called non-destructive tests to verify the particular strength of building materials, several aspects would have been easy to observe for anyone without the relevant engineering qualifications.

First of all, the auditors could and should have observed that several new floors were under construction, whereas the initial building permit and design allowed for only six floors. Secondly, the auditors could and should have noted the fact that industrial usage was contrary to the initial design. Thirdly, the auditors could and should have noted the heavy machinery on the top floors. Fourthly, the auditors could and should have checked the load management of the factory. Finally, the auditors could have noticed the width of the carrying columns. With the adequate training and skill, the auditors would have known which elements were relevant to inspect in such a visual assessment.<sup>136</sup> The auditors did not even note that the mandatory three feet distance between two machines was not maintained.<sup>137</sup> This is a visible marker of non compliance as well as a violation of the Bangladesh Labor Act.<sup>138</sup> Possibly, the auditors did not have the required competence regarding industrial safety. Plainly, the social auditors did neither carefully scrutinize the working environment (e.g. layout), the building construction, or maintenance, nor whether machines were operated in a safe manner. The auditors thus failed to adhere to the professional standards.

In a public statement, TÜV Rheinland claimed that technical controls of building structures were not part of the BSCI-Audit.<sup>139</sup> The BSCI managing director, Mr. Berzau was similarly reported to have said that “his audits aren’t designed to investigate the structural soundness of factory buildings, only factory-floor issues.”<sup>140</sup> Complainants contend that the building safety actually did belong to the proper scope of a BSCI audit. Indeed, it is not credible that BSCI claims to verify “Workplace Health and Safety” while excluding one of the most pressing and realistic threats to workplace safety. Anything else would be inconsistent with the BSCI concern for improved working conditions and a blatant misleading of consumers. The very fact that the auditor actually *did* explicitly comment on the building construction quality further confirms that it was within the scope of the audit (see §5.1.3).

In any case, the inclusion of building safety within the scope of the BSCI Code of Conduct is supported by various BSCI Guidelines. According to the BSCI Manual, the BSCI Code of Conduct is meant to be read in combination with ILO Convention 155, which defines the term workplace as to cover “all places where workers need to be or to go by reason of their work and which are under the direct or indirect

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<sup>133</sup> Sedex, “Best Practices Guidance,” (see note 97), Section 7.2 - Tour of the Employment Site.

<sup>134</sup> Sedex, “Best Practices Guidance,” (see note 97), Appendix A1 3.8 During the site tour.

<sup>135</sup> FTA Framework Contract, (See note 19), Section 3, Paragraph 2.

<sup>136</sup> Interview with BUET engineers by ECCHR, 19 May 2014, Dhaka.

<sup>137</sup> During the research exercise of producing floor-plans, retrospectively survivors have sketched the distance between the sewing machines. The exercise took place at Arapara, Savar, Dhaka on 17 February 2015.

<sup>138</sup> Bangladesh Labor Act 2006, Chapter 5: Health Security System. E.g. §51(a) on cleanliness and §56(2) on overcrowding.

<sup>139</sup> TÜV Rheinland, (See note 100).

<sup>140</sup> S.Z. Al-Mahmood, C. Passariello, P. Rana, “The Global Garment Trail: From Bangladesh to a Mall Near You”, *The Wall Street Journal*, (3 May 2013). Available at <http://www.wsj.com/articles/SB10001424127887324766604578460833869722240> [accessed 10 April 2015].

control of the employer.”<sup>141</sup> This includes the building. Also, the BSCI Implementation Guideline for BSCI Social Requirements, calls upon factory owners to document the “regular inspections of buildings, rooms, workplaces and machines for possible hazard sources” as an indication of their “system to identify specific risks for health and safety of the employees” (emphasis added).<sup>142</sup> Similarly, the new BSCI Code of Conduct of 2014 clarifies that the health and safety requirement includes that “[b]usiness partners shall take all appropriate measures within their sphere of influence, to see to the stability and safety of the equipment and buildings they use including residential facilities to workers when these are provided by the employer as well as to protect against any foreseeable emergency” (emphasis added).<sup>143</sup> As this aspect is not included in the analysis of differences between the Code of 2009 and the Code of 2014, it is assumed that this interpretation was already valid for the 2009 Code.<sup>144</sup>

#### 5.1.2 The auditors negligently failed to observe the obvious dangers to the building structure

Even if the building structure was outside of the formal scope of the assigned audit, the auditors failed to go beyond their checklist approach and failed to do a comprehensive and thorough review. As TÜV Rheinland also explicitly acknowledged, regardless of the scope of the audit, in case of “obvious” flaws in the building structure, the auditor would have to report this immediately to the factory owner and the client.<sup>145</sup> Complainants maintain that the extra construction of floors, the reversal to industrial use, and the heavy machinery on the top floors should, in any case, have drawn the attention of a reasonably careful auditor. The auditors thus negligently failed to observe and report the obvious dangers to the building structure.

#### 5.1.3 The auditors negligently gave a false statement confirming building safety

At the very least, in expressing that “the building and machine layout is process based, good construction quality, duly approved”. (Item B 9.0 Working Condition), the auditor made a negligent statement, going beyond the scope of his competence. The auditor thus violated the minimum professional standard that “auditors should not assess conditions beyond the substantive areas where they have competence.”<sup>146</sup> The statement gave a misleading signal of safety and prevented that any further action was taken to inspect the building more closely either by the factory owner or the buying brands or BSCI. There are no indications that an emergency system was put in place in case cracks appeared. Brands could have been informed on the 23<sup>rd</sup> of April 2013 and postponed production deadlines just like the BRAC management suspended its operations.

## **5.2 The auditors failed to properly verify the documentation and legal compliance**

### 5.2.1 The auditors failed to properly verify the documentation on building safety

The audit report failed to identify the problems in the building permits that were obtained. The audit report states that “the company has obtained legal approvals from competent authority as required by

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<sup>141</sup> BSCI Management Manual, (See note 73), Section 2.2.11, B.11. Occupational Safety and Health, Legal Compliance; Article 3 (c), C155 - Occupational Safety and Health Convention, 1981 (No. 155), Convention concerning Occupational Safety and Health and the Working Environment; The Sedex definition of working environment similarly explains that this includes “layout, temperature and tidiness.” A site tour “is for the audit team to observe physical conditions and current practices in all areas of the employment site and to form a view of how they compare with the applicable standards and codes” (emphasis added). Sedex, “Best Practices Guidance,” (see note 97) Section 7.2 - Tour of the Employment Site.

<sup>142</sup> BSCI Management Manual, (See note 73), Section 2.2.1, B.1 Management Practice, Risk Analysis.

<sup>143</sup> BSCI, “Code of Conduct”, (2014), page 6;

<sup>144</sup> BSCI, “From 2009 to 2014: How the BSCI Code of Conduct Principles Have Changed”, Version 1/2014. Available at <http://www.bsci-intl.org/our-work/bsci-code-conduct> [accessed 10 April 2015].

<sup>145</sup> TÜV Rheinland (See note 100).

<sup>146</sup> GSCP, “Reference Tool for Auditing Competence” (See note 109), §1.

law” (Item B 2.0, Documentation) and “good construction quality, duly approved” (Item B 9.0 Working Condition). In line with the BSCI Implementation Guideline, the auditors should have verified whether there were “regular inspections of buildings”<sup>147</sup> to detect “possible hazard sources.”<sup>148</sup> The auditor was further expected to check “Building licenses and construction approval from appropriate authorities” and “Valid inspection certificates as per local regulations”<sup>149</sup> as well as “Government Inspection Reports, e.g., sanitation, fire safety, structural safety, environmental compliance, etc.”<sup>150</sup> The BSCI Management Manual provides that in preparation for audits the factory should “keep all records of required documentation in a proper and systematic way, traceable for an auditor verifying these documents. All documents provided to the auditor must be valid and representing the real status.”<sup>151</sup> Similar to the BSCI requirement, the Sedex audit specifies that during the site tour, auditors are required to check structural safety certificates.<sup>152</sup>

BSCI operates in “high risk” countries, which signals a lack of regulatory quality and a high risk of corruption. Government regulation of the construction branch in Bangladesh is notoriously weak due to corruption, a limited availability of inspectors, and lack of resources.<sup>153</sup> This should have been known to the auditors. The auditors failed to perform the audit with the necessary skepticism and the need for thorough verification of documentation. In a country where the illegal construction of buildings or extra floors is a real possibility, the verification of proper building permits is not an unnecessary luxury.<sup>154</sup> It is reasonable to expect that social auditors verify the validity of documents, including building licenses, construction approval, and inspection certificates, their conformity to local regulations, and whether they were approved by appropriate authorities.<sup>155</sup> Obviously, auditors are expected to have the relevant detailed knowledge of the health and safety national and local laws to perform such verification.<sup>156</sup> Auditors further are expected to have the skills to detect “document manipulation, fraudulent actions and fraudulent practices.”<sup>157</sup>

Even if the TÜV Rheinland auditors asked for the relevant documents during the June 2012 visit, no thorough inspection or verification was undertaken. The auditors did not demonstrate the necessary “detection skills,” did not take the context into account and thus failed to exercise the proper skill and care required from social auditors. At Phantom Apparel, the TÜV Rheinland auditors failed to effectively verify the validity of the permits issued by the Savar municipality. Similarly, it is unknown if the validity of the occupancy certificate was verified and whether inspection certificates were verified.

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<sup>147</sup> BSCI Management Manual, see note 73, Section 2.2.1, B.1 Management Practice, Risk Analysis. Similarly, the Sedex Best Practice Guidance requires its auditors to verify “whether there are appropriate Health & Safety risk assessments / site inspections carried out on a regular basis, how is this recorded and what actions are taken to minimise the risks / hazards found.” Sedex, “Best Practices Guidance,” (see note 97), Appendix 1, under 3. Health and Safety.

<sup>148</sup> BSCI Management Manual, see note 73, Section 2.2.1, B.1 Management Practice, Risk Analysis.

<sup>149</sup> Sedex, “Best Practices Guidance,” (See note 97), Appendix 1, under 3. Health and Safety, section 3.3.

<sup>150</sup> Sedex, “Best Practices Guidance,” (see note 97), Appendix A3.3.

<sup>151</sup> BSCI Management Manual, (See note 73), p.22-23; The factory owner further has to document the applicable laws and regulations as well as the industrial standards and obtain the official approvals to run operations, machinery, etc., and Section 2.2.11, B.11, Occupational Health and Safety, Legal Compliance, B.11.

<sup>152</sup> Sedex, “Best Practices Guidance,” (See note 97) Appendix 1, under 3. Health and Safety, section 3.8.

<sup>153</sup> Bangladesh ranks 145 on the Corruption Perceptions Index 2014 of Transparency International, “Corruption Measurement Tools”, *Transparency International Website*. Available at <http://www.transparency.org/country#BGD> [accessed 10 April 2015]. Transparency International Bangladesh, “Readymade Garment Sector: Problems of Good Governance and Way Forward”, (31 October 2013), p.29.

<sup>154</sup> Transparency International Bangladesh, (See note 153), pp.29-33.

<sup>155</sup> BSCI Management Manual, (See note 73), Section 2.2.11, B.11, Occupational Health and Safety, Legal Compliance; Article 9 of ILO Convention 155 specifies that “the enforcement of laws and regulations concerning occupational safety and health and the working environment shall be secured by an adequate and appropriate system of inspection” (emphasis added); Sedex, “Best Practices Guidance,” (See note 97) Appendix A3.3.

<sup>156</sup> GSCP, “Reference Tool for Auditing Competence,” (See note 109), Appendix 1, Table A.

<sup>157</sup> GSCP, “Reference Tool for Auditing Competence,” (See note 109), Appendix 1, Table A.

The auditors further failed to adequately corroborate whether the land use clearance for the construction complied with the land use criteria laid out in the “Detailed Area Plan.”

### 5.2.2 The auditors failed to properly inspect the documentation of workers’ registration

In June 2012, the audit report noted that “[i]n some of the personal files copy of ID is not available of the workers. Service book is not updated of some of the workers” (B 2.5). The following improvement was suggested: “The company must give ID card and keep copy in the personal file and update the service book for all the employees.” On the 30<sup>th</sup> of October 2012, the auditor signed off that the factory successfully implemented this corrective action. Given the lack of complete registries after the collapse of Rana Plaza, it seems that the auditors failed to adhere to the professional standard of skepticism to properly verify the presence of the files.

### 5.3 **The auditors failed to properly inspect the working hours and presence of child workers**

The audit report does not show any indication of how it has addressed the concern with regards to child labor. It briefly states that “there was no child labour or young labour identified during document review, plant tour and worker interviews” (B 5.0 Child labour/ young employees) and on the “Child Labour Record Sheet” it says “No child labour was found during audit.”<sup>158</sup> Here, the auditor failed to go beyond the checklist approach. Given the notoriety of child labour in Bangladesh, the auditors should have taken the context into account and have applied a more skeptical approach to detect the alleged existence of child labour as well as the long working hours of those of 14 and 15 years. Workers of Phantom Apparel claim to have spent the night in the factory and worked all weekend during the month of the collapse.<sup>159</sup> It is unlikely that the situation was different during the June 2012 audit. To verify the working hours of child workers, the auditors should have checked the salary sheets and the production output registry. Instead, the auditors certified the factory with a “Good” for “B.3 Working Time.”<sup>160</sup> According to UNICEF, 7.4 million children between 5 and 17 are working in Bangladesh.<sup>161</sup> The auditors should have been familiar with this context. While certainly not the only country where child labour is an issue, in Bangladesh, the textile industry has often been in the lights of criticism for the use of child labour.<sup>162</sup>

The lack of serious investigation emerging from the audit report violates the minimum professional standards that, for example, call on social auditors to “err on the side of caution” by assuming that a young looking worker is a child until “verifiable evidence” to the contrary is provided.<sup>163</sup> Even the guidelines of the UN Global Compact emphasize the importance of “adequate and verifiable mechanisms for age verification” to achieve the abolition of child labour.<sup>164</sup> Clearly, it is not enough to just review the ID. Instead, auditors are expected to smartly verify information in a variety of ways, such as looking at the history of an organization, including inquiring into previous grievances, complaints and legal proceedings concerning child labor.<sup>165</sup> The BSCI manual mentions the following

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<sup>158</sup> Audit Report, (See note 64), Child Labour Record Sheet”, p. 39.

<sup>159</sup> Interviews by Activist Anthropologist with survivors, 13 October 2013, Palpara, Savar, Dhaka.

<sup>160</sup> Audit Report, (See note 64), p.4.

<sup>161</sup> UNICEF, “Fact sheet, Child Labour in Bangladesh”, updated June 2010. Available at [http://www.unicef.org/bangladesh/Child\\_labour.pdf](http://www.unicef.org/bangladesh/Child_labour.pdf) [accessed 10 April 2015].

<sup>162</sup> J. Melik, “The harsh necessity of child labour”, , *BBC news*, (29 May 2009). Available at <http://news.bbc.co.uk/2/hi/business/8054960.stm> [accessed 10 April 2015].

<sup>163</sup> Sedex, “Best Practices Guidance,” (See note 97), Appendix 1, under 4. Child Labour and Young Workers, section 4.9, p.57.

<sup>164</sup> UN Global Compact, Principle 5, *UNGC Website*, available at: <https://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle5.html> [accessed 10 April 2015].

<sup>165</sup> L. Bernstein, (See note 114), p.8.



documents in order to verify the age of workers: “birth certificates, school certificates, passport/ID card, health certificates, election card, driving license etc.”<sup>166</sup>

It is no secret that factory owners may employ staff to generate multiple sets of financial, wage and hour records, or so-called “shadow factories” or the threatening of workers to obtain desired answers.<sup>167</sup> To get around such manipulative practices, in industry guidelines auditors are given tips on how to get around the fact that workers may have been trained for their answers in the audit, such as the advice that it is good practice to ask their date of birth rather than their age.<sup>168</sup> It is also suggested that auditors “[c]heck hiring and termination records for the previous 12 months to check if any pattern of sacking young workers prior to audit.”<sup>169</sup> The auditors should have been more sensitive to the vulnerability of workers. Given that the audit at Phantom Apparel probably had been announced in advance, the auditors should have taken even more care during the visit that no “special preparations” were made in advance.<sup>170</sup> The auditors thus did not adhere to the minimum professional standards to detect child labor, one of the core concerns of the BSCI Code of Conduct.

#### **5.4 The auditors failed to properly verify workers’ knowledge of their rights and the BSCI complaint mechanism**

On the morning of the 24<sup>th</sup> of April, despite their fears, the workers returned to their workplaces. Possibly, they were not familiar with their right to exit the premises without seeking permission in cases of imminent danger. Nor did the workers attempt to utilize the BSCI complaint mechanism to draw attention to their concerns. Potentially such a call from the workers in Dhaka could have enabled the relevant BSCI participants to postpone their deadlines and offer the needed time for a proper inspection of the Rana Plaza building. However, trade unions and local NGOs working with former workers maintain that nobody had ever heard of BSCI, less received a card.<sup>171</sup> If there were appointed managers at Phantom Apparel in charge of the BSCI complaint mechanism, they were not known or effective.

BSCI recognizes the vulnerability of workers as it aims to provide an “additional communication channel for workers and companies”, for which they provide workers with the official BSCI Complaint Card.<sup>172</sup> Auditors are mandated to distribute these cards. “Substantive worker participation” has generally been recognized to be the best means to ensuring systemic change.<sup>173</sup> It is expected that auditors engage in a systematic corroboration of information in, for example, workers interviews.<sup>174</sup> According to the SAAS, 30% of the time should be set aside for worker interviews.<sup>175</sup> This practice of interviews is also favored by BSCI, as was exemplified in its investigation in Turkey in which “[w]orker

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<sup>166</sup> BSCI Management Manual, see note 73, section 2.2.5, B.5 Child labour/ young employees.

<sup>167</sup> G. Brown, ‘The record of failure and fatal flaws of CSR factory monitoring’, *ISHN*, (February 2013).

<sup>168</sup> Sedex, “Best Practices Guidance,” (See note 97), Appendix 1, under 4. Child Labour and Young Workers, section 4.9, p.57.

<sup>169</sup> Sedex, “Best Practices Guidance,” (See note 97), Appendix 1, under 4. Child Labour and Young Workers, section 4.9.

<sup>170</sup> BSCI introduced so-called Random Unannounced Checks (RUCs) to check the compliance with standards at producers only in 2014. BSCI, “Monitoring – Assessing the level of Compliance”, (See note 30). However, the Random Unannounced Check was already part of the 2013 Consent Form for Producers, which is annexed (§3) to the Framework contract between the Foreign Trade Association (FTA) and CISE (Centro per l’innovazione e lo Sviluppo Economico), signed 14 June 2013. It is not clear what the standard practice in 2012 was. In contrast, the SAAS requires a minimum of one unannounced visit in any three year certification, L. Bernstein, (See note 114), p.8.

<sup>171</sup> Interviews by Activist Anthropologist with labor organizers working with survivors of Rana Plaza, 3 March 2015, Dhaka.

<sup>172</sup> FTA Framework Contract, (See note 19), Annex 3, §3.

<sup>173</sup> L. Bernstein, (See note 114), p.2.

<sup>174</sup> Sedex, “Best Practices Guidance”: “Auditor seeks to confirm documents and management interview by worker testimony. Discrepancies should be noted, taking care to protect the anonymity of workers.” (See note 97), Appendix 1, under 0. Management Systems and Code Implementation.

<sup>175</sup> L. Bernstein (See note 114), p.8.

interviews were conducted in the absence of any staff or management representatives, and after assuring the respondents total confidentiality of the views that they expressed.”<sup>176</sup>

In the audit at Phantom Apparel, however, the auditors apparently failed to achieve the necessary candor from workers, failed to inquire about their awareness of the BSCI Complaint mechanism, and/ or failed to distribute the BSCI cards. Despite a picture in the audit report of a “COMPLAIN BOX” (sic), there is no indication that the auditors verified whether the box was known to the workers or used. Further, the TÜV Rheinland auditors could and should have verified if workers are generally familiar with their rights, and particularly also with their right to remove themselves from a dangerous situation. The auditors thus failed to be aware of the low literacy rate and pay due attention to the importance of their awareness of their rights. Instead of observing that workers were not confident to express themselves freely, the auditors certified Phantom Apparel with a “Good” on the issue of forced labor and disciplinary measures.<sup>177</sup> This stated lack of disciplinary measures in June 2012 is not credible given the testimonies of former workers that they were forced back into the Rana Plaza building on the 24<sup>th</sup> April 2013.<sup>178</sup> Similarly indicative of the auditors’ failure to have candid conversations with the workers is the assessment that there was no discrimination at the Phantom Apparel factory (“Good”).<sup>179</sup> Given the widespread harassment of female workers in the textile industry in Bangladesh, this is not a credible audit result.<sup>180</sup> The auditors thus failed to be sensitive to the vulnerability of the workers and failed to fulfill the obligations of BSCI auditors.

Given the methodological limitations of social audits, a permanent grievance mechanism is essential to ensure direct input at any time from workers and their organizations in the monitoring/verification process, and also to balance and supplement the limitations of snapshot monitoring which only allows workers to voice their grievances once in every three years.<sup>181</sup> In order to credibly promote the effectiveness of the mechanism, an extensive outreach program was a must. Considering that neither workers nor labor organizer were not adequately aware of this mechanism, it seems that not only the auditors failed to identify the lack of awareness among workers, but also BSCI failed to demonstrate its sincerity in the implementation of its mechanism.

## 6. Conclusion: failure of the BSCI approach

"It's very important not to expect too much from the social audit," said Lorenz Berzau, BSCI's managing director.<sup>182</sup> Complainants maintain that it is not too much to expect that the BSCI audits are credible and done according to professional standards. The quality of audits is the Achilles heel of certification

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<sup>176</sup> Fair Wear Foundation, “Case Assessment” Available at [http://www.fairwear.org/ul/cms/fck-uploaded/documents/complaints/2011/2011/complaint\\_turkey\\_jerags\\_assessmentreport\\_july2011.pdf](http://www.fairwear.org/ul/cms/fck-uploaded/documents/complaints/2011/2011/complaint_turkey_jerags_assessmentreport_july2011.pdf) [accessed 10 April 2015].

<sup>177</sup> Audit Report, (See note 64), under B.6, p. 4.

<sup>178</sup> Interview on file with the Activist Anthropologist, 24 April, 2013 at Enam Medical College and Hospital, Savar, Dhaka; Recorded interview by Activist Anthropologist with survivors, 16 October 2013, Palpara, Savar, Dhaka.

<sup>179</sup> Audit Report, (See note 64), under B.8, p. 4.

<sup>180</sup> Research Initiative for Social Equity, Society, “Recent and Typical Worker Harassment – Collected Cases,” *RISE Society Website*, 5 April 2014. Available at <http://risebd.com/2014/04/05/recent-and-typical-worker-harassment-collected-cases/> [accessed 10 April 2015].

<sup>181</sup> Ascoly and Zeldenrust, “Challenges in China: Experiences from Two CCC Pilot Projects on Monitoring and Verification of Code Compliance”, SOMO, 2003, p.4, available at: [http://somo.nl/publications-en/Publication\\_346](http://somo.nl/publications-en/Publication_346) [accessed 10 April 2015].

The new 2014 BSCI Code of Conduct even more specifically states the particular advantages in terms of “speed of access and remediation, reduced costs and transnational reach” that such grievance mechanisms could offer. BSCI Code of Conduct 2014, p.4, Section “Workers Involvement and Protection”.

<sup>182</sup> S.Z. Al-Mahmood, T. Wright, “Collapsed Factory was built without Permit”, *The Wall Street Journal*, (25 April 2013). Available at <http://www.wsj.com/articles/SB10001424127887323789704578444280661545310> [accessed 10 April 2015].

schemes.<sup>183</sup> It is expected that the BSCI Secretariat and the BSCI Steering Committee take appropriate and meaningful steps in response to the listed violations of professional standards during the audit of Phantom Apparel Ltd. The auditors at Phantom Apparel failed to observe major non-compliances. Deficient and low quality audits that failed to adhere to the relevant standard of care should constitute a breach of contract for which a legal remedy is directly available to workers in the audited factory.

Auditing companies performing social audits have a responsibility towards workers in the audited factory to verify competently and with care whether their workplace adheres to the relevant standards. The deficient audits at Rana Plaza were not the first audits that failed to protect those on the work floor. A BSCI audit found evidence of safety violations at the factory Tazreen Fashions in Bangladesh, that later was caught in a fire, leading to the death of more than 119 workers. Even though the audit mentioned the safety risks, the report was put in BSCI's confidential database, and no follow-up was given. Taking seriously the mandate to contribute to transparent and improved working conditions, these failures to protect workers should lead to a change in the BSCI approach. Without a fundamental change in the philosophy and agenda of BSCI, the social audits risk ending up as little more than a cosmetic exercise that does little to actually improve the lives of those on the work floor. If a fundamental change is not achievable, complainants request BSCI to at least halt the perpetuation of an ineffective scheme that overpromises and underperforms.

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<sup>183</sup> G. Jahn, M. Schramm and A. Spiller, (See note 14), p.8.