

Ali Enterprises Factory Fire Affectees Association (AEFFAA)
National Trade Union Federation (NTUF)
Pakistan Institute of Labour Education and Research (PILER)
European Center for Constitutional and Human Rights (ECCHR)
Stichting Schone Kleren Campagne / Clean Clothes Campaign (CCC)
Campagna Abiti Puliti
Movimento Consumatori

The complainants

-and-

RINA Services S.p.A.
Multinational enterprise

SPECIFIC INSTANCE COMMUNICATION

To
The Italian OECD National Contact Point
Ministry of Economic Development
Directorate General for Industrial Policy, Competitiveness and SMEs
Division VI - International policies, promotion of corporate social responsibility and the co-
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I. The Parties

1. The complainants

The Ali Enterprises Factory Fire Affectees Association (AEFFAA) is the self-organization of the families of victims of the Ali Enterprises fire and survivors of the fire. They have been entertaining several court cases in Pakistan, Germany and Italy to achieve justice and compensation for their tragic loss. They were also part of the negotiations around the ILO compensation fund.

The National Trade Union Federation is a trade union which has been working with the victims of the Ali Enterprises Factory Fire since the very beginning. They are accompanying the AEFFAA in their struggle and also participated in the ILO compensation fund negotiations.

The Pakistan Institute for Labour Education and Research (PILER) is a educational and research organization on labour related issues. PILER has obtained a first agreement with the German brand which was sourcing from the factory on immediate relief and was leading the negotiations on the ILO compensation fund.

The European Center for Center for Constitutional and Human Rights (ECCHR) is an independent, non-profit legal and educational organization dedicated to enforcing civil and human rights worldwide. For the past three years, ECCHR has been supporting the lawsuit by working with various Pakistani partner organizations and 190 affected family members on the legal action arising from the fire in Ali Enterprises. In Italy, ECCHR is also providing legal expertise in the preliminary criminal proceedings against RINA.

Stichting Schone Kleren Kampagne/Clean Clothes Campaign hosts the International Office of the Clean Clothes Campaign. The International Office is a network organization facilitating a broad network of over 195 partners in over 28 countries. The 195 organisations are a global alliance dedicated to improving working conditions and empowering workers in the global garment and sportswear industries.

Campagna Abiti Puliti is the national coalition representing the Clean Clothes Campaign in Italy. It has been working for more than 15 years in coordination with the global CCC alliance

to improve working conditions and empower workers in the global garment, shoe and sportswear industries with a particular focus on Italian brands.

Movimento Consumatori (MC) is a national consumer association with over 30 thousand members working for more than 30 years to implement consumer rights and to achieve equal rights of economic citizenship as enshrined in the Italian Constitution. It is member of the National Council of Consumers and Users (CNCU), established at the Ministry of Economic Development.

The Ali Enterprises Factory Fire Affectees Association, the NTUF, PILER, ECCHR, CCC, Campagna Abiti Puliti and Movimento Consumatori (hereafter ‘the complainants’) focus jointly on political and regulatory action to provide access to remedy of the victims of the Ali Enterprises factory fire and create better working conditions for workers in the garment sector. The complainants engage with both governments and companies in order to incentivize companies taking up their responsibility to improve workplaces and raise employment standards in their supply chain.

2. The company

RINA is an internationally active company specialized on technical as well as social auditing and certifications across energy, marine, certification, transport, infrastructure and industry sectors. Since 2001, RINA has been accredited to carry out SA8000 certification by Social Accountability Accreditation Services, which is the accreditation agency of Social Accountability International (SAI), the US –based organization that established the SA8000 standard. For the audit of the Ali Enterprises factory, RINA claims to have engaged a subcontractor (RI&CA, Regional Inspection & Certification Agency, Pvt. Ltd, Pakistan, Karachi).

II. Jurisdiction

Italy is an OECD member country and has established a National Contact Point (hereafter ‘NCP’) with responsibility for promoting and securing compliance with the OECD-Guidelines for multinational enterprises (hereafter ‘the Guidelines’) by foreign multinational companies operating in Italy and by Italian multinational companies overseas in non-adhering countries. The present case concerns an Italian company (RINA S.p.A.) operating globally

and has subsidiaries and business partners overseas including in non-adhering countries such as Pakistan.

The Italian NCP has anticipated precisely such scenarios and has established clear procedures: ‘The Italian NCP is activated when the dispute relates to events that have happened in the Italian territory or committed by an Italian company operating abroad’. In the case of RINA S.p.A. therefore the Italian NCP has primary responsibility.

1. The OECD-Guidelines for Multinational Enterprises

The Guidelines are described as ‘recommendations addressed by governments to multinational enterprises operating in or from adhering countries’¹. They prescribe the responsibilities for companies in their own operations as well as the operations of their business parties and aim to prevent irresponsible and damaging business practices.

The creation of the Guidelines aimed to address such situations and in carrying out this task the Guidelines anticipated a cooperative approach to problem solving: ‘the common aim of the governments adhering to the Guidelines is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimize the difficulties to which their various operations may give rise’.²

In order to do so, the Guidelines state that companies need to carry out risk-based due diligence, to identify, prevent and mitigate actual and potential adverse impacts.³ More concretely, the Guidelines prescribe companies to avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.⁴ However, even when the company has not caused or contributed to the issue, but once made aware of it, it still has a responsibility to act to seek to prevent and/or mitigate it.⁵

¹ OECD Guidelines, Preface, paragraph 1

² OECD Guidelines, Preface, paragraph 9

³ OECD Guidelines, Chapter II, Clause A10

⁴ OECD Guidelines, Chapter II, Clause A11

⁵ OECD Guidelines, Chapter II, Clause A12

2. Human Rights

A commitment to human rights is central to expectations and requirements laid out by the Guidelines. Companies, the Guidelines say, must respect human rights.⁶ This means that they should avoid causing or contributing to adverse human rights impacts, that they should avoid infringing on the rights of others, and that they should address adverse human rights impacts with which they are involved.⁷ The Guidelines cover all human rights, but the Guidelines dedicate specific attention to a number of human rights, including the commitment to the Elimination of the Worst Forms of Child Labour⁸ and contribute to the elimination of all forms of Forced or Compulsory Labour.⁹ The Guidelines also require companies to address such impacts when they occur.¹⁰

Companies must also ‘seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts’¹¹.

Part of the strategy for dealing with the wide-ranging potential impacts of business is termed ‘human rights due diligence’¹². Under these processes businesses must take ongoing steps to investigate, maintain awareness of, and minimize risks to human rights that arise within or in connection with their operations and relationships.

Indeed, in case a business (company) has found it contributes or may contribute to an impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible.

Finally, companies need to provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or con-

⁶ OECD Guidelines, Chapter IV, Clause 1. The Guidelines define human rights by reference to the following core international instruments: the Universal Declaration on Human Rights, Article 23 (1) and (4); The International Covenant on Civil and Political Rights, Article 22; The International Covenant on Economic, Social and Cultural Rights (‘ICESCR’), Article 8 (1) (a), International Labour Organisation Declaration on Fundamental Principles at Work, 1998, *et al.*

⁷ OECD Guidelines, Chapter IV, Clause 1

⁸ OECD Guidelines, Chapter IV, Clause 1, paragraph b

⁹ OECD Guidelines, Chapter IV, Clause 1, paragraph c

¹⁰ *ibid*, Clause 2

¹¹ *ibid*, Clause 3

¹² *ibid*, Clause 5

tributed to these impacts.¹³

3. Parallel proceedings

The role of the defendant in the harms caused by the fire is equally subject to ongoing criminal investigation. This is handled by the Public Prosecutor of Genova and the case number 3240/10. However, although not formally closed, the Public Prosecutor has not performed any meaningful investigative acts on the case since 2014 and it is most unlikely that new and additional steps will be taken in a criminal proceeding.

It is therefore both an opportune timing and venue to reach out to the Italian National Contact Point there is no longer any potential for this specific instance to prejudice the criminal case.

With regard to the only international brand which was sourcing from the Ali Enterprises factory, KiK, there is a civil compensation claim pending before the Landgericht Dortmund. In this claim four representatives of the AEFFAA are asking KiK for pain and suffering compensation. An oral hearing of the case is scheduled for November 29, 2018.

KiK has also been willing to pay 5,15 Mio USD into an ILO compensation fund for the victims and victim's families. After long negotiations between several complainants including PILER, NTUF, AEFFAA and KiK with the facilitation of the ILO and the German government, an agreement between KiK, the ILO, IndustriALL Global Union and Clean Clothes Campaign was signed in September 2016. The agreement covers loss of income, medical costs and allied costs. The funds are being released now as monthly pensions as of July 2018.

III. Description of the case

1. RINA's Certification of Factory Ali Enterprises in Karachi and the Fire

On 11 September 2012 a fire broke out at the Ali Enterprises textiles factory located in Baldia Town, Karachi, Pakistan. As a result, 260 workers died and 32 were injured. The deaths and injuries were mainly caused by the fact that the factory did not have a functioning

¹³ *ibid*, Clause 6

alarm system and had only one exit for about 1.000 workers. Despite these major shortcomings, on 21 August 2012, RINA Services S.p.A. issued the factory a SA8000 safety certificate. This certificate proffers to be one of the leading social certification standards for factories and organizations. The factory certification was preceded by an Audit Report which was approved by RINA's technical committee on 3 August 2012 (RINA B, Annex 14 a, 14 b). It was signed by Dr. Roberto Cavanna. RINA selected and hired the Pakistani service provider RI&CA to conduct the audit. After verification of the Audit Report, RINA certified the facility. It thus fell into RINA's responsibility to assess the audit report on its accuracy and veracity and to decide whether there was sufficient ground for the decision on certification. Accordingly, in the statement following the fire, RINA did not mention RI&CA but instead declared correctly that "RINA certified Ali Enterprises and the affected factory under the SA8000 standard." (RINA website, Annex 16)

In 2017, Forensic Architecture, an independent research agency based at Goldsmiths, University of London, investigated the factory fire at Ali Enterprises and produced a video simulating the factory's architecture analysing the course of the fire and the worker's evacuation paths. The video shows that – contrary to RINA's certificate – the factory did not comply with the SA8000 standard. It is available at: <https://www.forensic-architecture.org/case/outsourcing-risk/> (DVD with the video is enclosed in written submission). The video demonstrates that the clear lack of fire safety measures at the factory caused the high number of deaths. This portrayal of the conditions in the factory is based on worker testimonies (affidavits in annex 1 - 6) as well as official reports by the Federal Investigation Agency of the Sindh Zone, Karachi, of 3 October 2012 (hereafter FIA-Report, Annex 7), as well as the later report by the Pakistani Joint Investigation Team (hereafter JIT report, Annex 8). These reports show that the factory violated not only the SA8000 standard, but also a number of Pakistani laws, including the Factories Act (1934), the Sindh Factories Rules (1975), and the Karachi Building & Town Planning Regulations (2002).

The fire most likely ignited at the ground floor in the passage between the washing area and the main warehouse. Cans of kerosene and iron rods wrapped in cloth were stored there to be used to light the dryers in the washing area. Huge piles of cloth were stored in the warehouse. Since there was no functional alarm system the fire was detected very late. In the main warehouse the fire was first observed by an employee who smelled smoke and then saw a stack of cotton cloth wrapped in white plastic material burning. This led to delayed information of the

fire department as well as a delayed evacuation. The fire could spread in the warehouse very easily due to the large amount of highly combustible materials stored.

Subsequently, the fire travelled to the ceiling of the ground floor which was constructed illegally. Since the ceiling was constructed of wood without any fire protection measurements the flames could cover and burn the whole mezzanine easily and quickly. The fire reached the elevator turning the unprotected elevator shaft into a chimney, which facilitated the fire to first reach the second floor very quickly, which then spread to the first floor. By the time the fire brigade reached the factory site, the fire had reached all floors and the unventilated basement was filled with smoke. The smoke that filled the whole building prevented the workers from seeing their way to the exit and was itself the reason of death for many of them.³

Due to the lack of functional fire extinguishers or other material to combat fire, as well as the absence of trained employees, firefighting from the side of the personnel could not take place. Therefore, fire fighting operations did not start until at least one hour after the fire broke out, only after a sufficient amount of fire trucks had arrived. Since the exit door on the second floor leading to the neighboring building was blocked and the windows were barred, the people on the second floor were forced to try exiting the building over the main stairs which led them to the first floor where the heat was even more intense. Since the two exit doors on the first floor could not be opened due to the fact that the heat had distorted and disfigured them, resulting in no viable safe means of regress from this floor as well. The majority of the people fled to the main stairs which was the only possible way to the ground floor and the only exit door. However, given that the ground floor was filled with the already burning mass of cloth stacks, this ground exit door was also no longer accessible. As the video simulation by Forensic Architecture experts demonstrates, the building thus turned into a burning trap.

2. Procedural and Overall Deficiencies of RINA's Audit and Certification

The Audit Report by RI&CA has a variety of deficiencies and as a whole did not document the factual situation at the Ali Enterprises Baldia factory. Contrary to RINA's certification, the factory Ali Enterprises did not comply with the SA8000 standard in a number of issues. The SA8000 standard is based on the principles of the Universal Declaration of Human Rights (UDHR), the International Labour Organization (ILO) conventions and the applicable national laws and regulations.

The overall deficiency of the report starts with the description of the factory buildings itself. According to the report, two auditors have visited the factory site on 22 June 2012 and from 2 to 5 July 2012 (Audit Report RINA: 1, Annex 14). The factory consisted of three blocks, whereas the Audit Report mentions only one block. It fails to mention the wooden mezzanine floor, which was constructed between ground and first floor without permission and in addition did not meet the requirements of the Pakistani law (Forensic Architecture 2017, FIA 2012: 4). Since the wooden ceiling was immediately visible after the entrance to Block A and impossible to avoid, it has to be assumed that the auditors may have never entered Block A. This was also the conclusion by the fire expert commissioned by the Italian prosecutor (Marmo 2015, Annex 12). Additionally, the Audit Report does neither provide a site plan nor a description of the several production departments. Instead, it only mentions building plans in vague and generic indications. Furthermore, according to a former worker, the photographs provided by RINA on its website after the fire (taken down later on), which were allegedly taken during the auditors' visits, do not include any image of Block A (Affidavit Fahim, Annex 1).

a) Worst Forms of Child Labor (ILO Convention 182, 138)

Furthermore, the RINA Audit Report failed to detect child labor.¹⁴ It rather declared that there was no child labor at Ali Enterprises (RINA B: 6, Annex 14). However, workers stated in their interviews with a trade unionist after the incident that workers from the age of 10 to 16 years were working in the factory (Khan 2015: 8 Annex 19). This is consistent with the official list of deceased persons regarding the Ali Enterprises Factory Fire the High Court of

¹⁴ The worst forms of child labor are to be defined as in the ILO Convention 182 (OECD Guidelines 2011, Commentary 52. Accordingly, "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children" is comprised by the term. As an example, for physically harmful work, the ILO mentions work that requires sitting bent over in one position and especially points out to sewing clothes (ILO, The worst forms of child labour). Children are also exposed to hazardous work when the workplace is unsanitary, poorly lit and poorly ventilated (ibid.). According to the ILO Convention 138, the minimum age for this kind of work is 18 years or 16 years, if the national laws authorize employment from the age of 16 (ILO Convention 138, Minimum Age Convention, Art. 3). The SA8000 Standard in the 2008 version defines, a child as a person less than 15 years of age, unless the minimum age for work or mandatory schooling is stipulated as being higher by local law (SA 8000: 5). Pakistani law prohibits work for children until they are fourteen years old and makes provisions for the work of persons between the age of fourteen and eighteen (Employment of Children Act, 1991).

Sindh Commission, which identified 10 deceased between 15 and 17 years old. (High Court: List, Annex 11)

b) Excessive Overtime and Forced Labor

The Audit Report claims shifts in the factory would have been from 9:00 am to 6:00 pm. Since the fire broke out around 6:30 pm (FIA 2012:8, Annex 7) with the factory in full working mode, it is clear that the effective working hours were longer than reported. According to worker testimonies, the working hours amounted up to 12 hours per day, six days per week (Khan 2015: 5 Annex 19; Affidavit Zahid, Annex 5). RINA's auditors found that there was no forced labor at Ali Enterprises. However, several workers testified that they were obligated to fulfill certain quotas and in case they did not do so they were not allowed to leave (Khan 2015: 4 f., Annex 19; Affidavit Zahid, Jamil Annexes 5, 6). These testimonies are an indication for involuntary overtime which would constitute forced labour.

c) No Indication of Health and Safety Requirements

The Audit Report found the health and safety requirements to be satisfactory (RINA B:9, Annex). In detail it claims that access to exit-routes has been maintained free from any kind of obstruction and exit and emergency exit were kept unlocked. However, on the day of the fire, all **fire-doors** except one were locked (Khan 2015: 6, Annex 19; FIA 2012: 13, Annex 7). On the floor and in the passageways rolls of cloth were stored (ibid.). Furthermore, the Audit Report states that there have been two exits on each floor. In fact, as the video by the Forensic Architecture experts shows, the first and the second floor only had one emergency-exit (see also Affidavit Ahmed, Jamil, Ghani, Annexes 2 -5, FIA 2012:5, Annex 8). The auditors also failed to report that the huge factory building did not have an outside emergency stair as required by Pakistani Law. Instead, the building only had one main internal stair).

The report also claims that **fire extinguishers** were available in sufficient quantity as per requirement of law. It declares that a sufficient number of workers were trained in the use of fire extinguishers. In fact there was only one fire extinguisher present. Moreover, the single fire extinguisher did not work in a previous fire and was not filled since then.

The fire safety **trainings** claimed in the report did not take place, given that company which issued the training certifications shown by RINA, did not even exist (SAI 2013: 16, Annex 18, Khan 2015, Annex 19). Even if the trainings had taken place as documented, the training would have covered not more than ten workers which would be insufficient for a factory of 1.000 workers. RINA provided also an evacuation training certificate, while SAI later found out that the respective training could not have taken place either (SAI 2013: 16, Annex 18). Serious evacuation trainings would have revealed that there were not sufficient emergency exits and escape routes and exits were blocked.

Concerning the presence of a **fire alarm system**, the RINA Audit Report doesn't provide concrete information even though SA8000 certification requires a fully operational early warning and evacuation alarm that can be heard and seen throughout the workplace (SAI guidance: 40 ff.). One of the photos RINA publicly released on their website after the incident, together with a general statement on the issues, showed an object which resembles a loud speaker (RINA picture, Annex 16 a). But as several witnesses testified, the Ali Enterprises factory had no functional alarm system. Indeed, the alarm system was not working in a previous fire in April 2012 and none of the witnesses heard an alarm on 12 September 2012 (Affidavits Ghani, Jamil, Zahid, Ahmed, Annexes 2 - 6).

The Audit Report failed to mention other structural defects of floors and the elevator shaft as well, which facilitated the spread of fire, such as the presence of a wooden mezzanine (FIA-Report p. 20, Annex 7; JIT-Report, p. 19, Annex 8). Additionally, the Audit Report failed to mention that the windows were barred, the only emergency exit available on the second floor was permanently locked, another door that lead onto the roof of block A was permanently locked as well (JIT report 2015: 4, Annex 8, FIA report 2012: 13, Annex 7). Apart from the faulty fire and safety situation in the factory, the risk of fire and building safety was aggravated by the overcrowding of the building. According to the RINA Audit Report 400 workers were working in the factory, whereas testimonies revealed that this number was widely exceeded and usually around 1.000 workers were present in the factory (Khan 2015: 8, Annex 19).

IV. Violation of OECD Guidelines for Multinational Enterprises

By issuing the SA8000 certificate on the basis of an incorrect Audit Report, RINA has contributed to the violation of several internationally recognized human rights. The award of the certificate allowed the owners of Ali Enterprises to continue their business as usual without implementing crucial, much needed and possibly life-saving measures.

Thus, RINA contributed to the violation of several internationally recognized human rights:

- the right to life (Article 6 International Covenant on Civil and Political Rights)
- the obligation to eliminate the worst forms of child labor (Guidelines Chapter IV 1 b).
- the obligation to contribute to the elimination of all forms of forced or compulsory labour. (Guidelines Chapter IV 1 c)
- The right to a safe work place and human working conditions (Article 6 International Covenant on Economic, Social and Cultural Rights, ILO Convention 155, 187)

In addition RINA did not fulfill its obligation under the OECD guidelines to exercise Human Rights Due Diligence (Guidelines Chapter II. A. 10).

1. RINA's Contribution to the Violation of Internationally Recognized Human Rights

The audit report and the certification through RINA contributed to the fact that fire safety conditions at the Ali Enterprises factory remained to be inadequate and that child labor and forced overtime were not stopped. Contribution in the sense of Chapter II A 11 and Chapter IV 1b and 1c, of the Guidelines means an activity that causes, facilitates or incentivizes another entity to cause an adverse impact (OECD Guidelines 2001: Commentary 42). If RINA had not approved the audit report and not issued the certificate, the factory owners would have been highly incentivized to stop, prevent or mitigate the potential and effective human rights violations, including by taking the necessary remedial steps which would highly likely altered the course of events.

An audit report documenting the factual situation at Ali Enterprises would have made it difficult for the factory management to remain inactive about the situation of child labor,

excessive overtime work and fire safety hazards. SAI determines that a factory is not fit for certification if the audit reveals major and critical non-conformities to the SA8000 requirements until the non-conformities are effectively closed (SAI 2018). The factory has to implement a corrective action plan and is audited again through a follow-up. Only if the corrective action plan is implemented effectively, certification is granted (ibid.)

Social audits and certifications are often a condition, if not a serious boon, for Asian textile factories to get access to the Western market. The SA8000 standard can be considered as the leading social certification standard and thus as a strong door opener. Roberto Cavanna, the Managing Director of RINA at the time of the fire, stated in his affidavit, that especially the SA8000 standard was demanded by Western brands and retailers (Annex 17). He said this certification standard was a crucial condition for the access to the Western market. Moreover, social certification constitutes a guarantee for consumers worldwide to buy safe products. By certifying Ali Enterprises RINA provided a misleading guarantee to them, which throws a heavy shadow on the credibility of the whole certification system and its capacity to contribute to a safer and fairer industry.

Since the certification is such a crucial condition for being the partner of western companies – as explicitly acknowledged by RINA CEO Cavanna in his deposition - it is highly probable that corrective actions would have been taken if requested as a condition for such certification. It is also possible that the principal buyer of Ali Enterprises, the KiK GmbH, if alerted to the deficiencies, would have demanded corrective action from the factory management in order to end child labor, excessive and forced overtime as well as to establish a functioning fire emergency system.

Instead, the deficient, false and vague report incentivized the factory management to remain inactive about the human rights violations and risks the factory. Issuing the certificate allowed Ali Enterprises to continue employing children¹⁵, to force the workers to work overtime and to work in a factory that did not provide them any safety measures and procedures¹⁶. RINA would have had the option to delay or refuse the certification, conduct additional site assessments, request the termination of child work and of excessive overtime and mandate

¹⁵ therefore violating Chapter V 1 c, II A11

¹⁶ therefore violating the right to a safe work place and human working conditions (Article 6 International Covenant on Economic, Social and Cultural Rights, ILO Convention 155, 187) as well as the right to life (Article 6 International Covenant on Civil and Political Rights). See Chapter II A 11, IV. 2 of the Guidelines.

essential renovations to make the building safe. This would have either prevented the fire altogether or at least the spread of the fire once it broke out, and made it possible for the workers to exit the factory safely. As Forensic Architecture's video shows through a simulation, open exits, free passages and a functioning alarm system would have saved the life of many, if not all, of the workers. None of these issues has been reflected or critically discussed in the audit report, and corrective action has not been made a condition for obtaining the certificate.

RINA as the auditing and certifying body at the Ali Enterprises Factory would have had leverage and the ability to conduct effective countermeasure which could have improved the safety and human rights situation at the Ali Enterprises factory. RINA's leverage resulted from the dependence of Ali Enterprises on obtaining the SA8000 standard. The complainants main contention is that RINA could have decided to postpone or refuse to issue certification after having received the obviously deficient and inconclusive report. It could have worked towards a correct and significant report which reflects better the conformity of the Ali Enterprises factory and would have had the leverage to demand the necessary corrective actions from Ali Enterprises. Beyond the countermeasures that RINA had as a certification body it would have been an additional option to collaborate with the main buyer KiK to exert more pressure on the factory management of Ali Enterprises. But obviously for any ability to react to the actual safety hazards a realistic report on the situation in the factory is the primary condition.

2. Failure to conduct Human Rights Due Diligence

By issuing the SA8000 certificate on the basis of a deficient and incorrect audit report, RINA has failed to conduct human rights due diligence according to Chapter II. A. 10 and IV. 5.

Due diligence is the process through which enterprises should identify, prevent, mitigate and account for how they address their actual and potential adverse impacts on human rights (OECD Guidelines 2011: Commentary 43 ff.). According to the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (hereafter the OECD Garment Guidance), the multinational enterprise should conduct a scoping exercise to identify the most significant risks of harm in its own operations and its supply chain (p.43). The OECD Garment Guidance also explicitly recommends "supplier assessments" for the

identification of each of those risks (p.105, 126, 131, 136). RINA as a company conducting social audits of supplying factories of international brands, is in the business of conducting such supplier assessments. According to the OECD Garment Guidance, the effectiveness of due diligence is measured by the extent to which actual and potential harm is prevented and mitigated (p. 24).

In the following RINA's human rights due diligence obligations will be described in terms of (a) identification of risks; (b) supplier assessments and (c) extent of due diligence. It will be shown that RINA has not been adequately fulfilling any of these due diligence obligations.

a) Identification of risks

According to Chapter II. A. 10 of the Guidelines enterprises should carry out risk-based due diligence. In the OECD Garment Guidance, the term "risk" is understood as any adverse impact on human rights, labor rights and the environment (p. 11). An enterprise is expected to conduct due diligence on its own activities and on its suppliers across its supply chain and other business relationships (OECD Garment Guidance: 11). In order to well assess a factory business, auditors should take into account sector risks and country risk factors.

Geographical and Sector Risks and Country

It is quite clear that in the case of Ali Enterprises both sector-specific as well as country-specific risks realized and that these risks should have been quite obvious for RINA. The risk identification should build on known sector risks (OECD 2017: 43), which are for the garment sector among others: child labor, overtime, forced labor, occupational health and safety (OECD 2017: 48). The Italian NCP report of 2014, which was one of the bases for the Garment Guidance listed the "high flammability of fabrics" as a main sector risk in the textile supply chain (Italian NCP 2014: 25).

Besides the risks for the sector, the OECD Garment Guidance prescribes that country risk factors should be considered (p. 45) RINA's management was, or should have been, well aware of risks in Pakistan as their statement in a Q&A shortly after the fire reveals. On the question why RINA engaged in an allegedly "dangerous and chaotic" country like Pakistan, it was answered that in countries of this type workers can benefit the most from international certification schemes (RINA Q&A, Annex 15). An important fact is that in the province of Sindh where Ali Enterprises was located the government prohibited state controls of working

conditions (Khan 2015: 2). There has been ample commentary by amongst other the ILO Supervisory bodies about the limits of government inspectorates. In their 2018 report the ILO Committee of Experts notes “The Committee notes [...] that ambiguities in the jurisdiction and issues relating to the scope of the labour laws, including the Factories Act, the Shops and Establishment Ordinance, and the Bonded Labour Act, result in workers being exempt in practice from protection through labour inspection.” Since RINA had certified 100 factories in Pakistan until the fire it must be assumed that the enterprise was aware of the absence of state controls. Regarding the risk of child labor, it is a country specific risk in the case of Pakistan. Official statistics indicated that in 2010 and 2011 15.3 % of the male children and 8.8 % of the female children were working (Pakistan Bureau of Statistics 2011).

b) Supplier Assessment

In addition, RINA was in effect under the obligation of conducting what the OECD Garment Guidance calls a “supplier assessment.” The nature and methodology of supplier assessments should correspond to the risks identified above (OECD garment guidance: 51). The OECD stated that the assessment methodology should be adjusted when actual findings do not correspond to the risks that are expected due to the country or sector risk assessment (OECD Garment Guidance: 52).

The audit report states under the section “Child Labour”: “during the audit at the factory, staff (workers) was interviewed at random”. The report does not indicate whether the visits have been announced or unannounced. Thus the RINA technical committee could not assume that the visits were unannounced and it knew that there were no offsite interviews. Since child labor is a sector risk and a country risk factor as well in Pakistan the superficial audit report could not be considered in any case a sufficient risk identification in accordance with OECD risk identification standards of the OECD Garment Guidance. According to the SAAS guidelines, 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.¹⁷ It is no secret that factory owners may employ

¹⁷ L. Bernstein, Social Accountability Accreditation Services, Requirements for Gaining and Maintaining Accreditation, (7 December 2007), p.8.

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.¹⁸ 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. 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.”¹⁹

The Audit Report section on forced labor does not reveal how the result that there was no forced labor was obtained. Consultations with trade union representatives are not mentioned. The report mentions only the pre-emptive involvement of S.I.T.E. Association, which it declares to be a trade union. In fact the S.I.T.E. Association is a representative body of industries located in the area where Ali Enterprises was located (<https://site-association.org/>, last accessed on 19 July 2018), which can under no circumstances be qualified as a genuine union representing workers freely and independent. Concerning the sector risk of forced overtime labor the assessments also should rely heavily on interviews with workers, management and other stakeholders (OECD Garment Guidance p.126). As the Italian NCP and the OECD Garment Guidance point out, trade unions play a central role in monitoring (Garment Guidance p. 127; Italian NCP 2014: 25). This has also been pointed out by the German NCP in the specific instance of TÜV. In its final statement the NCP states: „Issues that should be looked at in this context could include, for example, due diligence, qualification of the auditors and the time given to these to conduct an audit, and ways in which a faithful account of the situation can be obtained from important interlocutors (such as employees or trade union representatives).“

For the identification of adverse impacts on occupational health and safety unique country factor risks, for example low quality of state inspections, are particularly relevant (OECD 2017: 135). The audit report mentions in the health and safety section the factory would be subject to annual inspection from local labor department and that no issue of non-compliance was raised in the inspection report. This contradicts the above mentioned findings of trade unions and press that in the province of Sind state inspections were prohibited. As for the oth-

¹⁸ G. Brown, ‘The record of failure and fatal flaws of CSR factory monitoring’, *ISHN*, (February 2013).

¹⁹ Sedex, “Best Practices Guidance,” Appendix 1, under 4. Child Labour and Young Workers, section 4.9.

er risks, assessment teams should include the participation from workers and trade unions (OECD 2017: 136), which has not happened as depicted above. According to the guidance for the assessment of the structural integrity and fire and building safety of a site technical inspection is necessary (OECD 2017: 56). As shown above a thorough technical inspection was not documented in the audit report. This would have required at least a floor plan, which was not presented in the audit report.

c) Extent of Due Diligence

The extent of due diligence is determined by the likelihood and severity of the enterprises' adverse impacts (OECD 2017: 26). And as outlined before, child labour, forced overtime and fire and building safety are salient human rights risks in the Pakistani textile sector. Especially the specific risk of fire and building safety is by the deadly nature of the risk completely irremediable.

Recognizing the crucial role of social audits for the garment sector in Pakistan, certification can lead to the running of a factory and thus lead to the continuous violation of the workers' rights if they are not detected but rather concealed by the certificate. The door opening effect of social audits in combination with the certification bodies being private service providers depending on their clients incentivizes flawed and faked audits. The likelihood of the certification enterprise's adverse impacts is thus rather high.

The extent of RINA's human rights due diligence obligation would have clearly encompassed a number of obvious improvement in the auditing methodology of its subcontracts and its own auditors. A more effective audit would thus have consisted of unannounced visits since according to former workers also at Ali Enterprises it was a widespread practice to hide children or sent them home when auditors or visitors are expected (Affidavit Ghani, Mehmood, Annexes A 2, 4). In addition, interviewing sufficient workers outside the factory in a context which workers consider safe would have been necessary, since interviews inside the factory always carry a high risk that workers are selected with the help of management, are scripted by management and/or self censor themselves out of fear of reprisal leaving out the more critical observation. SAI itself recommends, but not requires, interviewing away from the workplace (SAI 2004). It is also recommended to arrange follow up visits or investigation, even beyond the routine auditing schedule (ibd.).

3. Failure to provide Access to Remediation

Negative impacts of business conduct are to be addressed through prevention or mitigation, while actual impacts are to be addressed through remediation (OECD 2011: Commentary 42). The appropriate preventive actions for RINA would have been to refuse signing the audit report since it did not provide them with thorough and flawless risk identification. As shown above, approving the report and issuing the SA8000 certificate instead, did not cease, prevent or mitigate the harm.

When Ali Enterprises factory burned down, with the loss of life and severe injuries as a result and the actual adverse impacts of RINA omission to perform adequate human rights due diligence occurred, this should have been addressed through remediation. Despite repeated efforts by the complainants in reaching out to RINA, both in writing as orally, RINA failed to perform any remedial action and especially to disclose all the relevant information to facilitate human rights advocates and external independent parties to exercise their investigative role to establish the facts. Confidentialities duties owed to certified companies and Accreditation Body used to deny full transparency further undermined the possibility of RINA of being compliant with its responsibility to ascertain the truth and accelerate access to remedy for the victims. In fact RINA has never approached the victims and their families. There has been neither a personal apology nor financial relief.

4. Conclusion

The Guidelines are not ‘optional’ or ‘aspirational’ but are minimum standards of conduct required of a global corporation. RINA has failed to meet these standards through providing the Ali Enterprises Factory with a SA8000 certificate, while basing this decision on faulty and inadequately done audit reports, which neglected serious fire safety short coming in the factory as well as the fact that both forced overtime as well as child labor was employed in this factory. By giving the impression to the factory owner as well as the buying brand KiK that no preventive measure to insure the safety of workers were needed in the factory, RINA contributed to the serious human rights violations which occurred through the fire on September 11, 2012. RINA also did not fulfill its human rights due diligence obligations. It hereby violated the OECD guidelines.

Furthermore, RINA has not sufficiently contributed to an effective remedy for the victims and

the family. These actions are flagrant abuses of the Guidelines and are not compatible with expectations which the Guidelines seek to establish. In fact RINA has never approached the victims and their families. There has been neither a personal apology nor financial relief.

V. The Complainants' Expectation

RINA must take critical steps to align with the OECD Guidelines. The complainants wish to enter into a constructive dialogue with RINA with the aim to end RINA's serious breach of the OECD Guidelines.

In order to achieve such alignment, the complainants expect from the defendants

1. publication of the RINA's audit report of Ali Enterprises, and any corrective action plans as well as the results of RINA's own investigation after the Ali Enterprises fire.
2. public disclosure of future audit reports, at least to the relevant trade union, workers at the audited factory and relevant government agencies. This should include the removal of any contractual barriers between RINA and its clients and service providers to such public disclosure, the setting-up of a publicly accessible and easily searchable website in cooperation with an expert third party such as Fair Factories. Relevant precedent for this practice can be found in the Bangladesh Accord.
3. contribute to the accountability towards third parties through inclusion by RINA of third party beneficiary rights for workers in the audit procedure and contracts,
4. make participatory methodology, especially inclusion of off-site worker- and trade union observations, a standard feature of the social audit performed by RINA and its subsidiaries,
5. enlarge the scope of the audits by including purchasing practices of brands and retailers into the scope of audits and corrective action plans,
6. the establishment of a payment system for social audits that avoids conflicts of interest,
7. the refusal to perform factory audits that are paid for by the factory owner,
8. A review and strengthening of RINA's own internal quality review procedures,
9. provide financial relief and an apology to the victims and their families.

The complainants regard the ‘good offices’ approach of the OECD process as an eminently suitable vehicle for bringing about a resolution in this case, and to this end the complainants would welcome the opportunity to engage in constructive discussions with the RINA.

The complainants understand that the NCPs seek to resolve complaints by facilitating conciliation or mediation between the complainant and RINA. The complainants welcome the opportunity to engage in such a process and look forward to securing a positive, negotiated, and mutually beneficial solution.

In the event, a negotiated agreement proves impossible to achieve, then the complainants will request that the NCP makes a determination and issues an appropriate final statement clarifying whether or not the Guidelines have been breached in this case. The complainants recognise that the NCP may wish to consult, advise, or otherwise engage with other parties where this is viewed as appropriate.

Disclosure

The complainants are aware that information provided to the NCP will be shared with the company. The complainants are content for all information shared in the process to be publicly available.

VI. References

- Affidavit of Mohamed Fahim **(A1)**
- Affidavit Ghani **(A2)**
- Affidavit Ahmed **(A3)**
- Affidavit Mehmood **(A4)**
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- Roberto Cavanna, Managing Director of RINA Services S.p.A. at the time of the auditing **(A 17)**

- Social Accountability International (2013), Report Addendum on Fire Safety in Pakistan **(A18)**

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- Zehra Khan (2015), Expert Opinion based on interviews with more than 100 workers of Ali Enterprises **(A19)**