



National Contact Point for the OECD Guidelines

Specific instance submitted to the Italian NCP on the 11th September 2018 by Ali Enterprises Factory Fire Affectedes Association (AEFFAA); National Trade Union Federation (NTUF); Pakistan Institute for Labour Education and Research (PILER); European Center for Constitutional and Human Rights (ECCHR); Stichting Schone Kleren Kampagne/Clean Clothes Campaign; Campagna Abiti Puliti and Movimento Consumatori (MC) versus RINA Services S.p.A.

INITIAL ASSESSMENT

1. This document contains the Initial Assessment (hereinafter also "IA") made by the Italian National Contact Point (hereinafter also "NCP") on the specific instance submitted on the 11th September 2018 by Ali Enterprises Factory Fire Affectedes Association (AEFFAA); National Trade Union Federation (NTUF); Pakistan Institute for Labour Education and Research (PILER); European Center for Constitutional and Human Rights (ECCHR); Stichting Schone Kleren Kampagne/Clean Clothes Campaign; Campagna Abiti Puliti and Movimento Consumatori (MC) (hereinafter also "the Complainants") versus RINA Services S.p.A. (hereinafter also "the Company", or "RINA").

The OECD Guidelines and the NCP tasks

2. A specific instance is a request to the NCP to offer its good offices to contribute to the shared resolution of issues relating to the implementation of the OECD Guidelines for Multinational Enterprises (hereinafter also the "Guidelines") in specific cases.
3. The Guidelines are recommendations of responsible business conduct addressed by adhering Governments to the multinational enterprises operating in or from their territories.
4. To disseminate the Guidelines, each adhering Government is bound to establish a National Contact Point that has the task to manage a non-judicial mechanism for settling disputes between an enterprise and a stakeholder, arising from an alleged breach of the Guidelines.
5. Through the offer of the NCP's good offices, this mechanism is aimed at finding a concrete solution to the case, agreed by the parties and in accordance with the Guidelines and applicable laws.
6. The Initial Assessment is the preliminary examination the NCP has to carry out to determine whether the issue raised in a specific instance merits further examination. Whereas the case merits further examination, the NCP offer its good offices to help the interested parties to solve the issue. Whereas the case doesn't merit further examination, the NCP communicates its decision to the parties, publishes its conclusion and, therefore, concludes the procedure.
7. The effectiveness of the specific instances procedure depends on the behaviour in good faith of all parties involved.
8. The 2011 version of the OECD Guidelines for multinational enterprises is applicable to this case.



9. The OECD Due Diligence Guidance for Responsible Business Conduct, issued in 2018, as well as the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, issued in 2017, illustrate how to implement in practice the due diligence requirements as defined in the 2011 OECD Guidelines for multinational enterprises.¹

Submission of the specific instance – Alleged violations of the Guidelines

10. The Complainants, a group of NGOs which operate mainly for the defence of human and labour rights in the textile sector, submitted a specific instance against RINA Services S.p.A., an Italian company operating internationally, specialised in technical and social auditing and certifications across several sectors. Since 2001, RINA has been accredited to carry out SA8000 certification by Social Accountability Accreditation Services.
11. RINA Services S.p.A. is charged with having issued a SA8000 certificate to the Ali Enterprises textiles factory, located in Baldia Town, Karachi, Pakistan, just 20 days before it was devastated by a fire (11th September 2012) that killed 260 workers and injured 32 of them. The Complainants hold that the fire deaths and injuries were mainly caused by the lack of a functioning alarm system and of a sufficient number of exits and that RINA has contributed to the violation of several internationally recognized human rights and obligations (right to life; obligation to eliminate the worst forms of child labour; obligation to contribute to the elimination of all forms of forced or compulsory labour; right to a safe work place and human working conditions). Moreover, RINA allegedly did not fulfil its obligation to exercise a human rights due diligence.
12. In addition to contributing to the violation of several international Covenants (Article 6 International Covenant on Civil and Political Rights; Article 6 International Covenant on Economic, Social and Cultural Rights, ILO Convention 155, 187), the Company allegedly breached the following recommendations of the Guidelines:
 - Chapter II, A.10, A.11;
 - Chapter IV;
 - Chapter V, 1c, 1d.

The Initial Assessment phase

13. As part of the specific instance procedure, the Initial Assessment is intended to determine whether the issue raised in the specific instance merits further examination. Namely, the NCP must determine whether the issue raised is *bona fide* and relevant to the implementation of the Guidelines on the basis of the following criteria, set forth in the Guidelines:²
 - a. the identity of the party concerned and its interest in the matter;
 - b. whether the issue is material and substantiated;
 - c. whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance;
 - d. the relevance of applicable law and procedures, including court rulings;

¹ “The objective of the OECD Due Diligence Guidance for Responsible Business Conduct (Guidance) is to provide practical support to enterprises on the implementation of the OECD Guidelines for Multinational Enterprises by providing plain language explanations of its due diligence recommendations and associated provisions. (...)” *OECD Due Diligence Guidance for Responsible Business Conduct*, Foreword, p. 3

² Commentary of the Implementation Procedures of the OECD Guidelines, § 25.



- e. how similar issues have been, or are being, treated in other domestic or international proceedings;
 - f. whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.
14. By letter protocol n. 0335156 of 14-09-2018, the NCP informed the Company of the reception of the specific instance and, at the same time, confirmed the reception of the case to the Complainants.
 15. By letter prot. n. 0363084 of 15-10-2018, at the request of the Company, the NCP granted RINA a postponement of the deadline to submit its reply (31st October 2018 instead of 15th October). On 31st October 2018 the Company submitted its reply note to the NCP.
 16. By letter dated 12th November 2018 the NCP forwarded the reply to the Complainants, giving a deadline expiring on 22nd November to submit their counter-reply and asking them some supplementary information on the judicial proceedings they had mentioned in their reply. The Complainants asked for a delay and the NCP accepted; therefore they submitted their counter-reply on 30th November.
 17. By letter dated 30th November 2018 the NCP forwarded the counter-reply to the Company, giving a deadline expiring on December 11th. At the request of the Company, the NCP granted Rina Services a postponement of the deadline to submit its response until the 18th December 2018. On that date The Company submitted its counter-reply.
 18. During the process the NCP met the parties as follows. On 5th October 2018, at the request of the Company, the NCP met RINA to provide some technical clarifications on the specific instance procedure. A delegation of Ali Enterprises Factory Fire Affecteds Association (AEFFAA) - in the framework of the "Week of Justice"³ - asked to meet the Italian NCP to bring a testimony about the accident. The NCP accepted to meet the delegation on the 4th December 2018. Following this meeting, Rina asked as well to meet the Italian NCP, the NCP accepted and on 13th December 2017 the NCP met RINA's delegation who illustrated the certification process. The NCP made clear to both parties that during these meetings there would be no discussion on the merit of the complaint.
 19. On 20th January 2019 the NCP submitted this draft Initial Assessment to the NCP Committee for comments and on the 4th February 2019 the NCP Committee expressed its favourable opinion on the draft IA.
 20. On 6th February 2019 the NCP submitted this Initial Assessment to the parties for comments, setting the deadline at the 23rd February 2019. Upon request by the Company, the NCP granted to both parties a postponement of the deadline to 6th March 2019. On 6th March 2019 RINA submitted its comments to the draft. On 13th March 2019 the Complainants confirmed that they had no comments to make on the draft and presented some remarks, including on the possible following steps of the proceedings.
 21. On 22nd March 2019 the NCP sent the revised draft Initial Assessment of the case to the NCP Committee to ask for its opinion and on 5th April 2019 the Committee expressed its favourable opinion on it.
 22. The Initial Assessment in this final version was thus adopted by the NCP and communicated to the Parties.
 23. Due to the complexity of the case, the NCP considered appropriate to ask for the legal advice of experts of international law from ISGI - Institute for International Legal Studies of the Italian National Research Council (CNR).

³ An international week of events related to the fire at the Ali Enterprises factory.



Position of the Complainants

24. The Complainants expose that on 21st August 2012 RINA Services S.p.A. issued a SA8000 safety certificate to the Ali Enterprises textiles factory located in Baldia Town, Karachi, Pakistan, based on the Audit Report approved by RINA's technical committee⁴ and following an audit conducted by the Pakistani service provider Renaissance Inspection and Certification Agency (RI&CA).
25. On September 11th 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.
26. The Complainants mention and attach the video produced in 2017 by Forensic Architecture, an independent research agency based at Goldsmiths, University of London, after investigating the factory fire at Ali Enterprises. According to the Complainants, the video demonstrates that the high number of deaths was caused by the lack of fire safety measures at the factory and that the factory did not comply with the SA8000 standard: among other things, the plant did not have a functioning alarm system and had only one exit for about 1.000 workers. This portrayal of the conditions in the factory is based on worker testimonies as well as official reports by the Federal Investigation Agency of the Sindh Zone, Karachi, of 3rd October 2012 and the later report by the Pakistani Joint Investigation Team. These reports allegedly 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).
27. According to the Complainants, the Audit Report by RI&CA has a variety of deficiencies and, as a whole, it does not document the factual situation at the Ali Enterprises. 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. It does neither provide a site plan nor a description of the several production departments. The Report found the health and safety requirements to be satisfactory: it describes free access to exit-routes and unlocked exit and emergency exit; two exits on each floor; a sufficient quantity of fire extinguishers; duly accomplished fire safety trainings. All these circumstances seem to be denied by the documents provided by the Complainants. The report also fails to mention that the huge factory building did not have an outside emergency stair as required by Pakistani Law; to provide concrete information on the presence of a fire alarm system and to describe other structural defects of the floors and the elevator shaft. In addition according to the Report, 400 workers were working in the factory, whereas testimonies declared that this number was widely exceeded and usually around 1,000 workers were present in the factory.
28. Furthermore, according to the Complainants the Audit Report failed to detect child labour, whereas the official list of deceased persons regarding the Ali Enterprises Factory Fire⁵ includes 10 deceased between 15 and 17 years old.
29. Moreover, the Audit Report claims that shifts in the factory would have been from 9:00 am to 6:00 pm, while, according to the Enquiry Report of the Federal Investigation Agency dating 3rd October 2012 (hereinafter also FIA Report),⁶ the fire broke out around 6:30 pm and over 1,000 workers were present on the site, instead of the 400 detected in the social audit.
30. According to the Complainants the audit report and the certification through RINA contributed - in the sense of Guidelines Chapter II, A 11 and Chapter V 1c and 1d - to the fact that fire safety conditions at the Ali Enterprises factory remained inadequate and that child labour and forced

⁴ Specific Instance, Annex 14 a, p. 12.

⁵ Specific Instance, Annex 11.

⁶ Annex 7 to the specific instance, p. 1.



overtime work were not stopped. If RINA had not issued the certificate, they argue, the factory owners would have been incentivised to take the necessary remedial steps which would have likely altered the course of events; whereas, by granting the SA8000 certificate RINA provided a misleading guarantee to Western buyers and consumers. The Complainants also affirm that, the principal buyer of Ali Enterprises, the KiK GmbH, if alerted to the deficiencies, would have demanded corrective actions to the factory management.

31. The Complainants also state that, 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 Chapter IV, §5 of the Guidelines and to the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector. RINA should have taken into account specific sector risks and country risk factors and the assessment methodology should have been adjusted when actual findings did not correspond to these risks (e.g. unannounced visits to the factory).
32. Finally, according to the Complainants, 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 investigate the facts.
33. The Complainants also inform about a parallel proceedings, i.e. a criminal investigation handled by the Public Prosecutor of Turin against RINA for falsification of documents (Criminal Proceeding RGNR 3761/13 K). In the framework of this investigation, a Technical Advice was commissioned by the Public Prosecutor of Turin and was issued by Mr. Marmo on 2nd December 2015 (hereinafter Technical Advice).⁷ Afterwards, the proceedings were transferred to the Tribunal of Genoa. They also inform of a civil compensation claim pending before the Landgericht Dortmund against the only international brand which was sourcing from the Ali Enterprises factory: KiK Textilien und Non-Food GmbH. They add that KiK has also been willing to pay 5,15 Mio USD to an ILO compensation fund for the victims and victim's families.
34. In the light of the above, the Complainants list their expectations as follow:
RINA must take critical steps to align with the OECD Guidelines. The complainants wish to enter into a constructive dialogue with RINA.
35. In order to achieve such alignment, the Complainants expect from the defendants:
 - a. 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;
 - b. Public disclosure of future audit reports, at least to the relevant trade unions, 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;
 - c. Contribute to the accountability towards third parties through inclusion by RINA of third party beneficiary rights for workers in the audit procedure and contracts;
 - d. 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;
 - e. Enlarge the scope of the audits by including purchasing practices of brands and retailers to the scope of audits and corrective action plans;
 - f. The establishment of a payment system for social audits that avoids conflicts of interest;

⁷ Specific Instance, Annex 12, Procura della Repubblica presso il Tribunale di Torino. Consulenza tecnica relativa all'incendio occorso in data 11/09/201 presso la fabbrica Ali Enterprises sita in Karachi, Pakistan.



- g. The refusal to perform factory audits that are paid for by the factory owner;
- h. A review and strengthening of RINA's own internal quality review procedures;
- i. Provide financial relief and an apology to the victims and their families.

Position of the Company

- 36. RINA presents itself as a global player operating through a global network of 3,700 professionals, operating in 170 offices in 65 countries, supporting market operators throughout the entire life cycle of their projects.
- 37. The Company expresses its deep sympathy for the relatives of the victims of the tragedy and declares to be willing to cooperate with the Complainants and the NCP to take all necessary steps in the framework of the procedure led by the NCP itself.
- 38. To this end RINA is open to discuss, to the extent possible and only for the matters which can be addressed to a single certification body, in view of the implementation of the OECD Guidelines, but it cannot accept any discussion on possible liabilities for the accident, which are anyway totally rejected.
- 39. According to RINA, the specific issues raised in the complaint would not contribute to the purposes and the effectiveness of the Guidelines, since they address concerns which cannot be solved by a single private company in its role as certification body.
- 40. In addition, RINA points out that a SA8000 audit is not aimed at fully guaranteeing the structural integrity and fire and building safety. Furthermore, in case any non-conformity is detected during the audit, a period is given to the applicant company to implement the necessary corrective actions. In any event, the leverage RINA has on its clients only relies on their voluntary commitment to respect the applicable standard requirements and on the good faith in their management system and behavior.
- 41. Moreover, since there is no contract or any other link between the certifier and the client's buyers, it is amiss to state, as the Complainants do, that RINA should have collaborated with Kik, the main buyer, or "alerted" it for the alleged deficiencies (which are denied).
- 42. RINA states that it duly performed its duties under the rules provided for by the accreditation body and did not breach the OECD Guidelines. Its task was to audit the management system of Ali Enterprises, which underwent the certification process on a voluntary basis, according to the applicable procedure for SA8000. There is no causal connection between RINA's conduct and the accident or the alleged violation of the OECD Guidelines or the Complainants' requests and expectations and Rina's behaviour cannot be considered a contribution to the cause of the fire, nor a facilitation or even an incentive to cause an adverse impact.
- 43. RINA argues that the conduct of Ali Enterprises, allegedly contrary to safety laws and standards, is not proven and it is mainly based on a hypothetical and belated reconstruction of the facts and on unsigned and unclear affidavits (Annex 1 to 6), containing indirect witnesses and speculations. During the audit, RINA has verified the presence of unobstructed emergency paths, illuminated exit signs, absence of raw material, presence of firefighting equipment and adequate number of emergency exits. RINA has also verified the absence of child labour during audit days: the youngest workers included in the list of deceased workers⁸ were aged 15, 16 and 17. Anyhow, the alleged misconduct of Ali Enterprises could have been put in place after the audit and, therefore, couldn't have been detected by the auditors. Also the presence of more than 1,000 employees (instead of 400) in the plant on the day of the fire, even if proven, cannot be attributed to RINA in any way. In any

⁸ Specific Instance, Annex 11.



- case, the responsibility for conformity with the requirements for certification is upon the client organisation, not the certification body.
44. The Company also remarks that no criminal or civil proceedings are pending against it with regard to the Ali Enterprises accident. The criminal proceeding before the Tribunal of Genoa, mentioned by the Complainants, was finally dismissed on 11th December 2018.
45. As for the Human Rights Due Diligence, RINA declares that it has always operated in respect of SAAS accreditation rules; the same applies to the involvement of RI&CA, a local technical partner with demonstrated and consolidated competences, training and experience, whose qualification process and training was based on existing SA8000. The Company chose it as an exclusive partner in Pakistan, to reduce any possible conflict of interest.
46. RINA also highlights its commitment to responsible conduct: adherence to the Global Compact and to other national and international CSR network; enhanced approach to sustainability, promotion and defence of human rights; repudiation of all discrimination; implementation of a whistleblowing platform; commitment to integrity and transparency; adoption of anti-corruption and conflicts of interest control model and appointment of a Control Body to oversee it; yearly compliance audits using a risk-based approach; establishment of a Corporate Compliance Board and Risk and Control Committee; membership of the International Federation of Inspection Agencies.
47. Coming to the specific expectations listed by the Complainants, RINA's position is the following:
- a. RINA is contractually bound not to share private information with any third party unless required by the law (ISO/IEC 17021:2011, § 8.4). In any case "All reports shall be kept confidential, per SAAS's agreement with each accredited Certification Body" (see proc. 200:2007 §6.8).
 - b. The auditor is required to receive useful information from the stakeholders, including local trade unions, but shall not interfere in the relationship between the company and the union representatives; moreover, a certification body's decisions must be based on objective evidence and not influenced by other interests or by other parties. The accreditation bodies and the private clients, not RINA as such, should be involved in this discussion.
 - c. The applicant company has not the sufficient influence to have an impact on brands and retailers purchasing practices, which are therefore outside the scope of the audit.
 - d. RINA has implemented strong measures to reduce the impartiality threats implied by the voluntary nature of the management system certification, including the definition of specific policy procedures, a strict information flows among well-defined functions, the establishment of specific coordination committees, an Ethical Code and a Code of Conduct, a Corporate Compliance Board and a Safeguard of Impartiality Board and Committee for safeguard of impartiality, composed by external stakeholders.
 - e. RINA claims that it adopted a Quality Management System in compliance with ISO 9001 and ISO/IEC 17021-1:2015 standards, which cover its entire set of processes and activities and of a number of instruments to evaluate its performance, including continuous evaluation from Accreditation Bodies.
 - f. RINA contexts any causal relation between the certification to Ali Enterprises and the fire and, therefore, rejects any liability and, excludes any apology or compensation.
48. Moreover, RINA is not persuaded that the NCP's good offices are the right venue to address issues such as the standards revision, the accreditation and certification rules, the auditing techniques which, due to their technical nature, are to be addressed by the relevant competent bodies.
49. In the light of the above, RINA rejects any liability for the accident and any consequence thereof and contests the contents of the instance and the requests of the Complainants; therefore it asks the NCP:



- I. based on the Initial Assessment, to determine that the issue raised in the instance does not deserve further examination and, as a consequence, to close this procedure;
 - II. in the alternative, to assess that there is no ground to conduct a mediation for the reasons thoroughly explained above and in particular: (i) lack of RINA's liability; (ii) absence of violations of the applicable OECD Guidelines; (iii) inconsistency between the Complainants' expectations and the nature of RINA as a single certification company; (iv) inconsistency between the request for financial relief and the scope of this procedure, which is to implement the OECD Guidelines;
 - III. anyway to keep and procure that the Complainants keep strictly confidential – to the extent possible according to the rules provided for in the Handbook for the management of the specific instances submitted to the Italian NCP – all information and documents concerning this procedure, since any disclosure thereof could be prejudicial to RINA's reputation and commercial activities.
50. In addition, the Company highlights the “very serious circumstance occurred on 3rd December 2018” when “part of the Complainants have spoken to the media (newspapers and radio program) about the present procedure, using very offensive expressions against RINA and the activity performed by this latter with regard to Ali Enterprises. Most of the statements are not only prejudicial to RINA's reputation, but they are also completely false”⁹.

The identity of the party concerned and its interest in the matter

51. In line with the principle of accessibility, the following elements in NCPs' practice are considered relevant by the Italian NCP with reference to these criteria: 1) the identity of the complainant in terms of mission and activities showing an established interest in the issue; 2) the complainant's ability to provide information about the issues raised; 3) the nature of the complainant's interest.
52. 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.
53. The National Trade Union Federation is an organization representing six trade unions and federations, an informal sector organization and a Migrants Workers Front. Its main aim is to strengthen the voice of democratic trade unions organizations to fully achieve the freedom of associations. This trade union has been working with the victims of the Ali Enterprises Factory Fire since the very beginning.
54. The Pakistan Institute for Labour Education and Research (PILER) is an 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.
55. 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 also provided legal expertise in the preliminary criminal proceedings against RINA.

⁹ Rina's comments to the draft initial assessment



56. 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 organizations are a global alliance dedicated to improving working conditions and empowering workers in the global garment and sportswear industries.
57. 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 5 to improve working conditions and empower workers in the global garment, shoe and sportswear industries with a particular focus on Italian brands.
58. Movimento Consumatori (MC) is an Italian national consumer association with over 30 thousand members, that has been 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.
59. **All the above mentioned, the Complainants appear to have standing and interest in supporting the claim against RINA, before the Italian NCP, for the fire occurred in Ali Enterprises.**

Whether the issue is material and substantiated - Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance

60. This specific instance is submitted against RINA Services S.p.A., an Italian company specialised on technical as well as social auditing and certifications across energy, marine, certification, transport, infrastructure and industry sectors.
61. 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.
62. For the audit of the Ali Enterprises factory, RINA engaged a subcontractor RI&CA (Renaissance Inspection & Certification Agency, Pvt. Ltd.) based in Karachi, Pakistan.
63. On 21st August 2012, based on RI&CA's audit report (Report n° 12 PK 119 MR), RINA issued a SA8000 certificate to the Ali Enterprises factory located in Baldia Town, Karachi, Pakistan.
64. On 11th September 2012 the Ali Enterprises factory was destroyed by a fire that caused the death of 260 workers and 32 injured.
65. In order to assess whether the issue is material and substantiated and whether there seems to be a link between RINA's activities and the issue, it is, beforehand, necessary to identify the scope of RINA's mandate according to the SA8000:2008 standard,¹⁰ both with reference to the OECD Guidelines -

¹⁰ The SA8000 Standard was developed by Social Accountability International (SAI) in 1997. SA8000 is an auditable standard for a third-party verification system, setting out the voluntary requirements to be met by employers in the workplace, including workers' rights, workplace conditions, and management systems. The foundational elements of this Standard are based on the Universal Declaration of Human Rights, the International Labour Organization (ILO) Conventions, UN Convention on the Rights of the Child, and the Universal Declaration of Human Rights. SA8000 is revised periodically as conditions change. Currently, SA8000: 2014 applies, when the Ali Enterprises fire occurred, the SA8000:2008 version applied. A company seeking certification to SA8000 must apply to a SAAS-accredited auditing firm (known as a certification body), such as RINA. Certification Bodies (CBs) assess companies to the SA8000 standard and present a report on compliance to the facilities they audit on the performance criteria that need to be met in order to obtain certification.

In this Initial Assessment reference is also made to the 2013 SA8000 Consolidated Guidance insofar, as clarified in its "Introduction": "This Guidance is intended to provide some interpretation and examples of application of SA8000's requirements for



- including the due diligence requirements on RINA's operations as a multinational enterprise - and to the material scope of audits under SA8000.¹¹ As a general premise, the aforementioned assessment will be done on the basis of the information regarding the factual situation of Ali Enterprises and the tragic fire accident as reported in a number of documents cited in the Initial Assessment and that have been submitted to the NCP by the Parties.
66. According to the OECD Guidelines, enterprises should carry out risk-based due diligence to identify, prevent, mitigate actual and potential adverse impacts and account for how they address those impacts.¹²
 67. Based on Chapter IV on Human rights (§5) enterprises should "Carry out human rights due diligence as appropriate to the size, the nature and context of operations and the severity of the risks of adverse human rights impacts".
 68. The Guidelines concern those impacts which are either caused or contributed to by the enterprises or are directly linked to their operations, products or services by a business relationship.¹³
 69. The OECD Guidelines precisely recalls the concept of "leverage" to be used by an enterprise that is able to have an influence on potential adverse impacts.¹⁴
 70. In the framework of the SA8000 standard, when shortcomings are detected, the certifier has the task and the power to suggest proper correction plans to the company, as provided by the certification mandate.¹⁵
 71. Due diligence, as intended to in the Guidelines, has specific characteristics such as being preventive and commensurate to the risk and also informed by engagement with stakeholders.¹⁶
 72. The risks should be intended as the likelihood of causing or contributing or being directly linked to adverse impacts and enterprises must conduct due diligence commensurate to the severity of the adverse impact (i.e. risk-based due diligence), which should be more extensive when the risk of adverse impact is high.¹⁷
 73. The specific claims raised by complainants concern:
 - a) child labor,
 - b) forced labor,
 - c) health and safety.
 74. According to OECD Guidelines, enterprises should act to contribute to the effective abolition of child labor.¹⁸ Child labor should be interpreted according to international standards, such as ILO 1998 Declaration, ILO Convention 182 (1999), together with ILO Convention 138 (1973) and Recommendation 146 on minimum age for employment.¹⁹

auditors and other users of the Standard. It is not intended to be comprehensive and does not include all matters of interpretation or implementation that arise when applying SA8000 to the workplace"

¹¹ In this sense, see Specific Instance, Annex 10, German NCP, *Final Statement* in the complaint against TÜV Rheinland AG and TÜV Rheinland India, Courtesy English Translation, 26 June 2018, §30.

¹² OECD Guidelines, Chapter II, General Policies, §10.

¹³ OECD Guidelines, Chapter II, General Policies § 11-12 and Commentary on General Policies, § 14; Chapter IV, Human Rights, § 2-3 and Commentary on Human Rights, § 42, 43.

¹⁴ OECD Guidelines, Commentary on General Policies, § 19, 20; Commentary on Human Rights, § 42, 43.

¹⁵ See also <http://www.saasaccreditation.org/certification>: "If corrective actions are issued as a result of the audit, additional time will be needed to put additional procedures in place to correct those processes that need correcting. These corrective actions will need to be verified as effective. Major corrective actions must be cleared with evidence in place before certification may be granted. Therefore, the amount of time needed between applying to be certified and becoming certified could vary between several months and several years".

¹⁶ *OECD Due Diligence Guidance for Responsible Business Conduct* (2018), p. 15-19.

¹⁷ *OECD Due Diligence Guidance for Responsible Business Conduct* (2018), p. 18.

¹⁸ OECD Guidelines, Chapter V, Employment and Industrial relations, §1 lett. c.

¹⁹ OECD Guidelines, Commentary on Employment and Industrial Relations, §52.



75. According to SA8000 standard 2008 (III.8), “child” is to be intended as “any person less than 15 years of age, unless the minimum age for work or mandatory schooling is stipulated as being higher by local law, in which case the stipulated higher age applies in that locality”.
76. Given applicable local laws and reservation made by Pakistan at the time of the ratification of the ILO Minimum Age Convention and considering the scope of SA8000, RINA should have checked whether no under-15 was employed in the factory.²⁰
77. The Complainants argue that child labour was used in Ali enterprise, by relying on the deceased persons’ list (Annex 11 to the specific instance) as well as on witnesses’ declarations (Annex 1-6 to the specific instance). In particular, some of the witnesses declared that children less than 15-years-old were working in the factory and were hidden before auditors’ visits (Annex 19 to the specific instance, p. 3). They affirm that RINA did not detect it.
78. The official list of deceased persons does not contain any deceased under 15 years old, and the Company provided some evidence of the steps the audit team took to check child labour in the factory (Annex 14b to the specific instance, p. 6) such as documentary evidence for proof of age upon recruitment, including copies of such documents as birth certificates, Form “B”, school certificate and/or computerized National Identity Card (for further detail please see the footnote ²¹).
79. On the other side, the official list of deceased persons includes 10 persons between 15 and 17 years old²². SA8000 1.4 requires organizations to ensure that young workers (i.e. under-18, III.9) are not exposed to any hazardous or unsafe conditions in and outside the workplace. To this regard, the Audit report (Annex 14b to the specific instance) makes no reference to the possibly hazardous or unsafe conditions for physical and mental health of young workers, and it only mentions random interviews with workers (p. 6) with no further details.
80. **In the light of the above, the presence of child labor at Ali Enterprise factory is not sufficiently substantiated.**
81. **While the NCP considers there is no clear evidence that RINA adopted particular attention in detecting the risks of unsafe conditions for young workers (under 18) as required by due diligence provisions of the OECD Guidelines, thus, this last aspect merits further consideration.**
82. Forced labour is contrary to internationally recognized rights of workers.²³ The OECD Guidelines, Chapter V (Employment and Industrial Relations), § 1, lett. d, states that enterprises should “Contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to

²⁰ See *infra* on applicable international and domestic law.

²¹ According to Annex 14b to the specific instance (p. 6 et seq.), the audit team checked:

- Company policy on prohibition of child labor and remediation plan,
- Criteria defining minimum age for hiring of each job title, therefore detecting any potential unsafe condition for young workers,
- Medical examinations of all the employees to determine their attitude to specific works,
- Documentary evidence for proof of age upon recruitment, including copies of such documents as birth certificates, Form “B”, school certificate and/or computerized National Identity Card,
- Other documents maintained in personnel file at the time of hiring such as Application Form,
- Employment Contract and Facial Photo of applicant,
- Evidence of delivery of Employment Contract (Appointment Letter) to employee.

²² Specific Instance, Annex 11.

²³ The relevant definition of forced labor is to be found in ILO Convention 29 (1930). Forced labor is defined as the work or service that is exacted from any person under the menace of any penalty and for which the person has not offered himself voluntarily (art. 2 §1). General Comment n. 18 on art. 6 ICESCR on the right to work, includes the right not to be “forced in any way whatsoever to exercise or engage in employment”. Excessive overtime is contrary to internationally recognized rights of workers. In General Comment n. 23, the Committee has set as standard hours of work 8 per day and 40 per week. The same has been confirmed by the ILO in its ILO Work industry convention 1919 n. 1 and ILO Forty-hour week convention 1953 n. 47.



ensure that forced or compulsory labour does not exist in their operations”. According to § 53 of the Commentary of the Guidelines, “Paragraph 1d) recommends that enterprises contribute to the elimination of all forms of forced and compulsory labour, another principle derived from the 1998 ILO Declaration. The reference to this core labour right is based on the ILO Conventions 29 of 1930 and 105 of 1957”.

83. The SA8000: 2008 requires the company not to engage or support the use of forced labor as defined in ILO Convention 29 (1930). Furthermore, personnel shall have the right to leave the workplace after completing the standard workday. According to §7.1 of SA8000 (2008) standard, the company shall comply with applicable laws on working hours and all overtime work shall be voluntary (§7.3). The mentioned standard has to be interpreted, as also the SA8000 Consolidated Guidance²⁴ does, as implying the right of workers to leave the workplace after their regular shift, as well as the related prohibition for companies to lock workplace doors or put barriers to the use of exit doors or work premises (which is also prohibited for safety reasons).²⁵
84. The Complainants refer to witnesses declaring that the working hours in the factory were of 12 hours per day for 6 days per week and that workers were obliged to fulfil certain quotas of production and in case they did not so, they were not allowed to leave (AEFFAA complaint, p. 12 and Annexes, 5, 6 and 19). Instead, the Audit report²⁶ claims that the single-shift in the factory was from 9:00 a.m. to 6:00 pm.
85. As far as SA8000 is concerned, RINA should have carried out all the actions necessary to verify that no forced labor was carried out in Ali Enterprises, including practices like payment of deposits for employment, withholding of personnel salary or benefits or documents.²⁷ These aspects were checked and included in the Audit report. The certifier should also have verified whether the personnel was able to leave the workplace after completing the working day.
86. To assess the above, interviews to workers by the auditors are mentioned in the report’s checklist,²⁸ workers refer to the possibility to exit during working hours²⁹ at certain conditions and that the work in shift was from 9am to 6pm, workers showed a general awareness of their rights.
87. Concordant clues suggest that the fire broke out around 6:30 p.m., after the standard working hours declared in the audit report, and the factory was still fully functioning (FIA report, Annex 7).
88. More in general, according to SA8000 conducting interviews (both inside and outside the facilities) with workers is necessary but pre-audit preparations such as previous consultations with local trade unions, NGOs and community about the general labor situation are further recommended.³⁰
89. **In the light of the above the NCP considers that the claim on forced labour is not sufficiently substantiated.**
90. **Nevertheless, considering the risks in the sector there is no clear evidence that RINA adopted particular attention in detecting excessive overtime in the factory, as required by due diligence provisions of the OECD Guidelines, this last aspect merits further consideration.**

²⁴ SAI, *SA8000 Consolidated Guidance 2013*.

²⁵ SAI, *SA8000 Consolidated Guidance 2013*, I.D. Interpretations, SA8000: 2. Forced and Compulsory Labour, p. 15, §7.

²⁶ Report of Stage 2, Specific Instance, Annex 14b, p. 9/9.

²⁷ It is worth noting that, according to international Courts and tribunals, (e.g. the European Court of Human Rights in the recent case *Chowdury et al v. Greece*) forced labor shall be detected taking into account all the circumstances of the case, including the volume and nature of the work.

²⁸ Report, Specific Instance, Annex 14b, p. 7

²⁹ Report, Specific Instance, Annex 14b, p. 7

³⁰ SAI, *SA8000 Consolidated Guidance*, II. C. Worker Interview Strategy, SA8000: 2. Forced and Compulsory Labour, p. 18



91. According to Chapter V § 4 lett c) of the OECD Guidelines, enterprises should “take adequate steps to ensure occupational health and safety in their operations”. In particular, enterprises are expected to follow prevailing regulatory standards and industry norms to minimize the risk of accidents and injury to health of employees, even where this may not be formally required by existing regulation in the country in which they operate.³¹
92. Furthermore, the right to a safe working environment may be drawn by international human rights instruments, as part of the framework of internationally recognized human rights which is referred to in the OECD Guidelines Chapter IV on Human Rights.
93. According to ILO Occupational Safety and Health Convention (n. 155) of 1981 employers shall be required to ensure that the workplaces under their control are safe and without risk to health (art. 16). ICESCR Article 6 considers the right to decent work as an integral part of the right to work,³² while Article 7 provides for the right of everyone to enjoy “just and favourable conditions of work, which ensure... safe and healthy working conditions”.³³
94. In terms of health and safety, to obtain the SA8000:2008 certificate, according to §3 of SA8000 Standard, companies are requested to provide a safe and healthy workplace environment and to prevent potential accidents and injuries to workers, by minimizing the causes of hazards. Moreover, the SA8000:2008 expressly recalls the ILO Occupational Safety and Health Recommendation, 1981 (No. 164) which contains a reference to “prevention of fires and explosions and measures to be taken in case of fire or explosion”. Companies should also appoint and instruct personnel (§3.3), as well as establish and maintain safety systems, in order to avoid or minimize health and safety risks in the workplace (§3.4).³⁴
95. In the audit report by RI&CA, while some steps are mentioned as fulfilled, it is not clear whether auditors thoroughly addressed the entire spectrum of the health and safety standards.
96. The Audit Report by RI&CA indicate the impossibility to visit the washing department (where the fire allegedly broke out); it also indicates the presence in the factory of two exits per department, the presence of smoke detectors, the presence of fire extinguisher and fire safety buckets in a sufficient quantity as per requirements of law.³⁵
97. The report of the Federal Investigation Agency of Sindh Zone Karachi (Annex 7 to the specific instance) states that the safety measures and the firefighting measures were highly inadequate: no smoke alarms were installed, no attempt was made to extinguish the fire by managers or staff, the hydrants was either nonfunctional or there was no trained staff to use them; no fire alarms were

³¹ OECD Guidelines, Commentary to Chapter V, §57. In the Commentary to Chapter V § 4 it is stated that “(...) multinational enterprises are expected to follow prevailing regulatory standards and industry norms to minimize the risk of accidents and injury to health arising out of, linked with, or occurring in, the course of employment. This encourages enterprises to work to raise the level of performance with respect to occupational health and safety in all parts of their operation even where this may not be formally required by existing regulations in countries in which they operate.”

³² In General Comment n. 18 on art. 6 ICESCR, the right to decent work implies “respect of fundamental rights... in terms of conditions of work safety”, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f18&Lang=en.

³³ ICESCR Art. 7 lett. b). Business enterprises also bear the responsibility to realize just and favourable working conditions according to CESCR General Comment n. 23 (E/C.12/GC/23), §75, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f23&Lang=en.

³⁴ As specified in the SAI, *SA8000 Consolidated Guidance 2013* (p. 34, §16, lett. h.) Training is an integral part of health and safety compliant system and auditors must verify the training activity carried out in the company, including fire drills, instructions and analysis and periodically reviewed risk assessment. Indicators of implementation of an effective risk assessment and mitigation plan for fire safety and evacuation must be assessed by the auditors, such as: clear evacuation routes, unobstructed and clearly marked, exit doors and staircases open and readily opened from the inside, sufficient number of emergency exits for the building structure and employees, early warning and evacuation alarm, fully operational firefighting equipment.

³⁵ Specific Instance, Annex 14b, Report of Stage 1, p. 3/21, Report of Stage 2, p. 7/9.



- installed; several emergency exits were obstructed and there were doors locked and grills on the windows; CCTV cameras installed were very few and did not keep in view security aspects.
98. The FIA Report also states that “[t]hrough the Mezanine Floor was approved in the building plan, it was not a RCC construction rather made of wood, which was one of the main reasons of the spread of fire” (p. 20).
99. Even though structural elements of the building are not in the scope of the SA8000 certification, it is likely that an auditor visiting the factory - should the floor be there - could have registered the presence of a wooden floor in the building, representing a risk for fire safety.
100. Furthermore, it is worth to recall that the Technical Advice - which was issued on the basis of the information provided by the FIA report and several other reports specifically indicated in § 11 of the Report (“Consulted documentation”) - generally stated that “the conditions of the site occupied by Ali Enterprises at the moment of the fire were not entirely conform to the most elementary of both international and Pakistani requirements of fire prevention”.³⁶
101. **In this scenario there are inconsistencies between the audit Report by RI&CA, the FIA Report and the Technical Advice about the health and safety conditions of Ali Enterprise factory.**
102. **The high number of victims of the fire is an indicator that the factory was lacking the basic conditions of a safe working environment, as required by the OECD Guidelines, international law and the SA8000 Standard.**
103. **Thus, the health and safety issue merits further consideration.**
104. **Considering all the above, the complaint seems material and substantiated and it can be found a link between the enterprise’s activities and the issue raised.**

The relevance of applicable law and procedures, including court rulings

105. The Guidelines provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. However, the countries adhering to the Guidelines make a binding commitment to implement them in accordance with the Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises. Furthermore, matters covered by the Guidelines may also be the subject of national law and international commitments³⁷.
106. The Constitution of Pakistan prohibits all forms of slavery, forced labour and child labour³⁸ and makes provision (liabilities, responsibilities) for securing just and humane conditions of work, especially for children and women.³⁹
107. As for child labour, Pakistan has ratified most of the International Labour Organisation (ILO) conventions related to child labour. In particular, it ratified the ILO Minimum Age Convention (n. 138) in 2006, specifying that the minimum age to access work in the territory shall be 14 years, and the ILO Worst Forms of Child Labor Convention (n. 182), according to which “child” is every person under the age of 18 and no child shall be employed in work which by its nature or circumstances is

³⁶ See the conclusions of the Technical Advice, p. 69. Especially, it points out the overcrowding of the facility, the absence of escape routes (one stair for two floors, closed and insufficient emergency exits, barred windows), insufficient firefighting equipment, dangerous wooden mezzanine floor.

³⁷ OECD Guidelines, Preface.

³⁸ Pakistan Constitution, Part II, Fundamental Rights and Principles of Policy, Chapter 1, art. 11, available at <http://www.pakistani.org/pakistan/constitution/>.

³⁹ Ibid, Chapter 2, Principles of Policy, art. 37(e).



likely to harm health, safety or morals. Such activities shall be identified at the national level, according to the Worst Form of Child Labor Recommendation. Until 2017, the Pakistani Employment of Children Act (1991) prohibited the employment of children under-14 in hazardous works, including weaving, printing and dyeing clothes, while the Factories Act (1934) allows for the employment of children between the ages of 14 and 18 years only at precise conditions. The issue is now regulated by the Sindh Prohibition of Employment of Children Act.

108. As for forced labour, Pakistan ratified the ILO Hours of Work (Industry) Convention No. 1 (1919) in 1921, which limits the hours of work (8 hours a day, 48 hours a week) and provides for adequate (daily and weekly) rest periods. It also ratified the ILO Forced Labour Convention No. 29 (1930) in 1957 and the ILO Abolition of Forced Labour Convention No. 105 (1957) in 1960. Under the Pakistani Factory Act (1934), no adult employee (i.e. 18 years-old) can be required or permitted to work in any establishment in excess of nine hours a day and 48 hours a week.

109. Health and safety working requirements in Pakistan are disciplined by the Factory Act (1934)⁴⁰ and the Sindh Factory Rules (1975)⁴¹ that contain rules on health and safety, ventilation, overcrowding, lighting, precautions in case of fire at workplace. Moreover, the Karachi Building & Town Planning Regulations (2002) describe the certification and permits procedures for the construction of industrial estates, prescribing specific and detailed structural requirements, including measures on safety and security, ventilation fire resistance and precaution.⁴²

110. The International Convention on Economic, Social and Cultural Rights is also relevant on the issue, as well as the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (Safety and Health Chapter, §43 and ff.).

How similar issues have been, or are being, treated in other domestic or international proceedings

111. As far as the NCPs' practice is concerned, it is worth recalling that, in the case *ECCHR et al vs. TÜV Rheinland AG* (German NCP, 2016), the European Centre for Constitutional and Human Rights (ECCHR) and other NGOs, along with survivors of the Rana Plaza Factory collapse, complained against TÜV Rheinland AG and its subsidiary TÜV Rheinland India Pvt. Ltd. for carrying out an inadequate social audit of a factory in the Rana Plaza building in June 2012 and breaching the OECD Guidelines in the process. The German NCP held the case as meriting further examination on the following issues 1) the potential contribution of the firm (a social auditor) to child labour, forced labour and gender-based discrimination; 2) their potential negative impact on freedom of assembly; 3) the firm's due diligence processes with regard to the building safety.⁴³ The Parties' accepted the NCP's offer of mediation, but no agreement was reached within the procedure and in 2018 the NCP issued the final statement containing recommendations to the Parties on the enhancement of social auditing.⁴⁴ The German NCP did not accept the allegation that TÜV India had contributed to the collapse of the factory in Rana Plaza and the human rights violation associated with. It did not find satisfactory the indications that TÜV India had made a careless statement on the safety of the

⁴⁰ Available at <http://www.oit.org/dyn/natlex/docs/ELECTRONIC/35384/118387/F1144884394/PAK35384%20Eng.pdf>.

⁴¹ See the excerpts in contained in the Technical Advice, pp. 26 and ff.

⁴² Available at http://www.sbca.gos.pk/PDF%20Files/Amend%2002%20To%2018/KB_TPR.pdf.

⁴³ German NCP, *Final Statement* in the complaint against TÜV Rheinland AG and TÜV Rheinland India, Courtesy English Translation, 26 June 2018.

⁴⁴ German NCP, *Final Statement* in the complaint against TÜV Rheinland AG and TÜV Rheinland India, Courtesy English Translation, 26 June 2018, §§46 and ff., especially on the possible expansion of social audits to include structural building analysis and building safety to comply with due diligence standards.



- building, nor the complainants demonstration that “the danger of a collapse had been so obvious at the time of the audit”.⁴⁵
112. In the case *Clean Clothes Campaign Denmark and Aktive Forbrugere (Active Consumers) v. PWT Group A/S* (Danish NCP, 2014),⁴⁶ the Danish NCP, in its final statement, concluded that the enterprise (a big buyer) had failed to carry out due diligence in relation to its supplier having regard to workers basic human and labour rights, and to healthy and safe workplace. As for the building structures the NCP declared itself unable to determine whether the inspection at the supplier factory could or should have detected eventual risks.
113. In the case *Uwe Kekeritz et al vs. KiK et al.* case (German NCP, 2013),⁴⁷ the complainants claimed the buyers’ responsibility for the collapse of their supplier’s factory in Bangladesh. One first agreement was concluded engaging one of the enterprises (Karl Rieker) in the adoption of precautionary measures to improve fire protection and safety standards of its suppliers in Bangladesh. As to another enterprise (KiK), in its Final statement, the German NCP recommended a list of non-exhaustive measures to ensure effective fire safety, including comprehensive and unannounced checks of safety standards, undertaken by a trained and reliable staff, employed by the contractor locally or by external auditors.
114. Considering the specific case under exam, the Pakistan Institute of Labor Education and Research (hereinafter PILER), together with civil society organizations, trade unions and individuals filed a Constitutional Petition No. D- 3318/2012 at Sindh High Court for the inquiry and justice for the workers of Ali Enterprise in September 2012. Ali Enterprises owners were arrested for murder and subsequently released on bail.
115. In January 2013, another Constitutional Petition No. D-295/2013 was filed by PILER and other organisations. RI&CA and RINA were mentioned amongst the respondents of the petition for being suspected to have committed blatant fraud because no inspection of the Baldia Factory had taken place and fabricated documents were issued. Therefore, the petitioners requested the Court to pass judgment and orders against the Government of Sindh and the Labour Ministry “to take action and initiate legal proceedings against RI&CA and RINA for issuing false certification as per SA8000:2008, in relation to the Baldia Garment Factory and other Factories in Karachi”.⁴⁸ Last hearing took place on 23rd August 2014. No information about the developments and the results of this Constitutional Petition are available.
116. In March 2015, Pakistani survivors and family members filed a civil claim before the Court of Dortmund (Germany) against KiK Textilien asking for compensation for pain and suffering, which are not covered by the ILO agreement. On 29 August 2016, the court (Landgericht) in Dortmund,

⁴⁵ German NCP, *Final Statement* in the complaint against TÜV Rheinland AG and TÜV Rheinland India, Courtesy English Translation, 26 June 2018, §30.

⁴⁶ The complainants claimed that the Company had failed to carry out a proper due diligence to assess whether its textile supplier whose factory was located in the Rana Plaza, complied with its obligation to ensure fair and favourable working conditions, as well as health and safety at the workplace. The Danish offered its good offices to the parties. In the lack of a parties’ agreement, the Danish NCP issued a final statement

⁴⁷ It regarded the alleged responsibility of C&A, KiK, and Karl Rieker (buyers) for the 2012 factory fire in the Tazreen factory in Bangladesh, which caused 112 deaths and injured 300. The high number of casualties was exacerbated by poor fire safety and a lack of emergency exits. The complainants alleged that the companies had not observed the general policies and human rights provisions of the OECD Guidelines. The factory had been verified by the Business Social Compliance Initiative (BSCI) in 2011 and deemed unsuitable for safe production, but this situation had not been addressed. By accepting the case, the German NCP submitted the aspects of the complaint against C&A to the Brazilian NCP, since the contracting party of Tazreen Fashion was, at the time of the fire, a Brazilian affiliate of C&A.

⁴⁸ See <http://rcchr.com.pk/wp-content/uploads/2015/04/Memo-of-Constitutional-Petition-295.pdf>.



Germany, accepted the jurisdiction, but, on 10th January 2019, it dismissed the case because of the expiration of the statute of limitation.⁴⁹

117. Coming to the abovementioned Criminal Proceedings RGNR 3761/13 K against RINA, the charge and the specification of falsification of documents were submitted by AEF FAA to the Public Prosecutor of Turin on this specific case in 2012. As already recalled, a Technical Advice, commissioned by the Public Prosecutor of Turin, was issued on 22nd December 2015. Afterwards the Criminal Proceeding was transferred from Turin to Genoa for procedural reasons. On 11th December 2018 the Judge for preliminary investigations finally dismissed the case, holding, among other things, that it was extremely difficult to argue in the proceedings any causal link between the issuance of the SA8000 certification and the event.⁵⁰ Anyhow, it is worth recalling that the mentioned Italian proceeding was a criminal one dealing with falsification of documents, whereas the procedure before the NCP is a non-judicial one and it is not aimed at finding liabilities (whether criminal or civil) of the company, but rather at offering good offices to try to compose issues arising on the alleged breach of the OECD Guidelines.

118. **The NCP considers that none of the parallel proceedings and cases listed above interfere with the specific instance or could be jeopardized by the further consideration of the case by the Italian NCP.**

Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines

119. The accident occurred and the victims registered are indicative of the severity of the impact for workers, families and the community involved in Karachi. The NCP regrets what happened.

120. The risks in the textile and garment sector are widely spread and the risks on health and safety at work are particularly serious in Pakistan.⁵¹

121. The Italian NCP pays particular attention to the sector since the Rana Plaza accident in Bangladesh. It made several actions under the Action Plan on Bangladesh including awareness raising, dissemination of international tools and agreements, participation to specific projects to improve working conditions, and in 2014 it published the *“Report on responsible business conduct in the textile and garment supply chain: Recommendations of the Italian NCP on implementation of the OECD Guidelines for Multinational Enterprises”*.⁵²

122. The NCP also participates to the activities at the OECD, where in 2017 the “OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector” was adopted and subsequently an implementation plan has been put in place.⁵³

123. In this scenario social certifications – such as SA 8000 - assume a particular importance to effectively monitor compliance of production sites with labour and social standards and norms; social audits, organised by private-sector companies, are widely spread among international brands and will

⁴⁹ See <https://www.business-humanrights.org/en/german-court-dismisses-lawsuit-against-kik-over-liability-for-fire-at-factory-in-pakistan-in-2012>.

⁵⁰ The case was dismissed on the ground that the certifier has no power to impose health and safety requirements, given the voluntary nature of the certification process, and that it is impossible to prove that, if the certificate had not been released, the tragedy would not have happened. See RINA Reply to the Claimants’ submission of November 29th 2018, Annex 4, Tribunal of Genoa, Order of Dismissal, p. 4, 6.

⁵¹ See ILO Country Reports available at <https://www.ilo.org/islamabad/areasofwork/safety-and-health-at-work/lang--en/index.htm>

⁵² Available at [https://pcnitalia.mise.gov.it/attachments/article/2035843/Rapporto_PCN_Italiano_tessile-abbigliamento_IT_DEF_con_autori%20\(23\).pdf](https://pcnitalia.mise.gov.it/attachments/article/2035843/Rapporto_PCN_Italiano_tessile-abbigliamento_IT_DEF_con_autori%20(23).pdf).

⁵³ <http://mncguidelines.oecd.org/responsible-supply-chains-textile-garment-sector.htm>.



- remain an important and widely-used tool for monitoring and auditing global supply chains as it is stressed, among others, in the OECD Due Diligence Guidance for Responsible Business Conduct.⁵⁴
124. Furthermore, social certification issuing from audits are recognised as a tool for accountability of companies in local and international markets towards global brands and consumers,
125. Thus, accountability and effectiveness of social audits and certifications are crucial to the purpose of the effective implementation of the Guidelines.
126. More specifically, the SA8000 certificate that was granted to Ali Enterprises is an attestation⁵⁵ to an organization's compliance to the SA8000 Standard based on the UN Declaration of Human Rights, ILO and other international human rights and labour norms and national labour laws. It is aimed at providing ongoing and reliable assurance that an organization is upholding social performance expectations, while also continuously improving their management systems to address and prevent social and labour risks.
127. **Based on these premises, the NCP considers that the procedure before the NCP may lead to a fruitful dialogue and that its offer of good offices may help to address the case and facilitate agreements between the parties.**

Conclusions

128. **The NCP concludes that the issue raised merits further examination and it is ready to offer its good offices. This consideration closes the Initial Assessment phase of the procedure.**
129. **This Initial Assessment does not imply any conclusion on the breach of the OECD Guidelines by the Company.**
130. **The present Initial Assessment is not published since the NCP considers that this approach can favour an agreed solution of the case.**

Rome, 8th April, 2019

The Director General
Chair of the OECD NCP
Stefano FIRPO

⁵⁴ Par. 2.2. p. 26.

⁵⁵ Valid for three years, subject to six months successful surveillance audits ascertaining the ongoing maintenance of the system.