

Social audits are not human rights due diligence

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On 11 September 2012, the factory Ali Enterprises in Karachi, Pakistan, burnt down, leading to 259 deaths and many people injured. The incident and particularly the lack of fire safety measures in the factory was analyzed by the London-based group Forensic Architecture in a computer simulation. It highlights that with adequate fire safety measures, all workers would have been able to exit the factory in time.

On 13 March 2015, four Pakistani filed a civil lawsuit in Dortmund, Germany, against one of the main buyers in the factory, KiK Textilien und non-food GmbH. According to the plaintiffs, KiK bears responsibility for the deaths and injuries of the factory workers due to the inadequate fire safety measures at its supplier. They argued that KiK would be liable for its own negligence in securing a safe workplace for the workers and vicariously liable for the negligence of the owners of Ali Enterprises because the relationship between KiK and the factory was „akin to employment“. This case is one of the rare cases ever brought to German courts for the alleged involvement of German corporations in human rights violations outside of Germany. Due to an extremely short statute of limitations, in January 2019, the court dismissed the case before it could consider the merits.

The lack of adequate fire safety measures at the Ali Enterprises factory also raises the question whether social audits actually make factories safer for the workers or whether flattering reports conceal bad working conditions. KiK had the factory audited three times between 2007 and 2011. Furthermore, the factory received the SA8000 certificate only three weeks before it burnt down. This was not the first time that auditors failed to detect risks at the workplace. Until now, however, there have hardly been legal steps against auditing companies, despite allegations of substandard audit reports. To strengthen legal liability, it is important to recognize that social auditors have a duty of care vis-a-vis the workers of the factories that are the supposed beneficiaries of social audits. The fact that auditors frequently fail to detect risks to the workplace also raises the question whether social compliance initiatives are taking their role seriously to ensure oversight and accountability of social audits.

Social audits are not due diligence. According to the UN Guiding Principles Reporting Framework, human rights due diligence is: *“An ongoing risk management process...in order to identify, prevent, mitigate and account for how [a company] addresses its adverse human rights impacts. It includes four key steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed.”* At best, audits can be a step in due diligence measures. Still, past incidents like the Ali Enterprises fire show, that audits without oversight and accountability cannot be relied upon to detect risks to the workplace. Furthermore, audits all too often fail to lead to an implementation of corrective measures, even if risks are detected. Any law reform obliging companies to perform due diligence should take these lessons into account.

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