

Oversight and Accountability in the Social Auditing Industry – the Role of Social Compliance Initiatives

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Abstract

The Rana Plaza collapse has led to increased awareness of abusive working conditions in the garment industry. Much attention has been paid to the role and responsibility of retailing companies. The responsibility of social auditing companies, however, has often been overlooked. What systems are in place to detect and address poorly executed or inadequate auditing that fails to detect violations of workers' rights? In practice, there is little oversight or sanctions if social auditors deliver substandard audits. This article explores how social compliance initiatives can play a role in improving verification of audit quality and ensuring accountability.

On April 24th 2013, the Rana Plaza building complex in Dhaka, Bangladesh, collapsed killing 1,134 people and injuring around 1,800 including children and pregnant women (Center for Policy Dialogue, 2014, p. 12). Two factories in the building had gone through the audit process of the Business Social Compliance Initiative (BSCI). This initiative was launched in 2003 by the Foreign Trade Association (FTA) in its own words “in response to the increasing business demand for transparent and improved working conditions in the global supply chain” (BSCI,

¹ As legal advisor at the European Center for Constitutional and Human Rights, the author was involved in the filing of the complaint to the Business Social Compliance Initiative described in this article.

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2015a). In response to the tragedy, the BSCI managing director put out a disclaimer: “It's very important not to expect too much from the social audit” (Al-Mahmood and Wright, 2013). This raises the question: what exactly can be expected from third-party social audits and what are the consequences when this is *not* delivered? In particular, what role should social compliance initiatives play in verifying quality and ensuring accountability?

Already in 2005, notable public failings in the social auditing system had been recognized. At that stage, workers' rights alliance organization, the Clean Clothes Campaign, published an analysis called “Looking for a quick fix” in which it identified troublesome aspects of audits (such as “cheating and sloppy auditing”), while warning against excessive reliance on audits and highlighting the need for transparency and accountability (Clean Clothes Campaign, 2005). Even though the problems with audits have been known for a long time, they are not likely to disappear any time soon. On the contrary, audits remain a favored tool of corporate social responsibility (CSR) and “sustainable” manufacturing. For example, according to BSCI, “Audits are the most reliable tool available to achieve transparency for what happens in factories” (BSCI, 2015b). They are a convenient mechanism for retailers to demonstrate to the public that they are doing something about social compliance in their supply chain.

If social auditing is not going away, it seems we should then be asking, how do we at least address poorly executed or inadequate auditing that fails to detect violations of workers' rights? In practice, social auditors do not face any liability claims for their services. This situation was acknowledged by a spokesperson of the German certification firm TÜV Rheinland (Dohmen, 2016). This is problematic, as brands tend to point to audit reports in order to justify their purchases in factories that suddenly collapse or are destroyed in a fire (Burckhardt, 2014, p. 126). While audit reports are frequently produced, it is not clear who takes responsibility for their content or impact. As the reports are not generally made public, there is no way for interested or independent parties to oversee the audit process or determine its accuracy. Workers, in particular, the assumed beneficiaries of the whole auditing enterprise, have no means of verifying such reports or holding auditors accountable.

In the summer of 2016, the biggest trial to date against a financial auditing firm took place in the United States against PricewaterhouseCoopers (PwC). The charge was that the auditors failed to identify a fraud. At stake in this case was what exactly auditors should do to fulfill their duties. In its defense, PwC insisted that, while missing the fraud, it had complied with accounting standards set down by the Public Company Accounting Oversight Board (PCAOB) (McKenna, 2016). Cases such as these usually settle (and often for an undisclosed sum) before the court can make any findings on auditor liability - and this case was no exception (McLannahan, 2016; Fisher, 2017). Nevertheless, these cases serve a public accountability function. PwC is obliged to defend itself and account for how it adhered to the minimum required professional accounting standards. The case allows the industry, experts, academics and affected interest groups to debate about whether these minimum standards are sufficient and to advocate for change. In addition, financial auditing firms anticipate this kind of legal scrutiny and are compelled to act carefully and document their processes and findings to guard

against liability. As the OECD notes, the risk of litigation such as this limits the extent or frequency with which biased or inaccurate financial auditing occurs (OECD, 2001, p.12).

The lack of similar cases against social auditors is less a testament to the quality of social audits, than the willingness and capability of affected parties to initiate proceedings.³ The repressive environment in manufacturing facilities will deter most workers from taking any conspicuous steps to address a lack of accountability (HRW, 2015). Just like factory owners, workers are also interested in maintaining orders from buyers. Workers also fear losing their jobs for speaking out against inadequate audit reports and inhumane working conditions. Currently, auditing companies are not held accountable for the content of their reports: not by the contract parties (i.e. brands or factory owners), nor by workers who supposedly benefit from the auditing efforts, nor by governments (Terwindt and Saage-Maaß, 2016).

Terwindt and Saage-Maaß concentrate on the importance of strengthening mechanisms to hold social auditors legally liable for deficient social audits. This can be done through criminal or civil (tort) means. And while this is an essential part of the accountability framework, it has its limitations. Tort liability only extends to personal injuries; criminal liability will only apply to conduct of auditors amounting to a crime. This article is therefore primarily concerned with the role that social compliance initiatives can and should play in improving the verification of audits and ensuring accountability. Social compliance initiatives are platforms or organizations, comprising retailers, labor representatives, civil society organizations, universities or some combination thereof. They issue a code of conduct to promote better working conditions in factories in global retail supply chains and facilitate a system of compliance control. Their oversight role is necessary to cover the full gamut of social auditing responsibilities and working conditions that legal liability may not reach.

In particular, these oversight bodies are essential in preventing the issuing of inaccurate, flattering audit reports that conceal dangerous working conditions while still conveying to the public that the retailer and manufacturer are taking corporate social responsibility seriously. By playing this sterilizing public relations function, social auditing and certification schemes could frustrate more fundamental solutions addressing the working conditions in the manufacturing sector by giving the impression that something is being done.

This article will examine how the social auditing industry and private auditing schemes operate and recap some of the criticisms of social audits. It will focus on the particular criticism that social auditing firms are incentivized to lower their standards and the quality of audits, which leads to inadequate and unduly complimentary audit reports that conceal genuine working

³ A unique example of a lawsuit against an auditing company is a claim filed in April 2015 in Canada against Bureau Veritas for having audited a factory in the collapsed Rana Plaza building without noting the obvious risk to building safety. A judge dismissed the claim in July 2017 for failing to disclose a recognized cause of action against Bureau Veritas and the retail companies sourcing from the factory. The Court found the plaintiffs failed to establish that Bureau Veritas had the necessary duty of care towards the factory workers; their audit's scope was narrow and did not include building safety; and they did not have sufficient control over the workplace conditions. (Rochon & Genova LLP, 2016; Islam, 2017; *Das v. George Weston Limited*, 2017 ONSC 4129, particularly para 59).

conditions. Social compliance initiatives therefore have to play an essential oversight role, as intermediaries between the auditing firms and their retail clients, that counter some of the pressure to produce favorable reports. In this regard, the article introduces a case study of a particular social audit conducted by TÜV Rheinland of Phantom Apparel Ltd. – a factory located in the Rana Plaza building. The case study illustrates the shortcomings of the audit process and considers a complaint made against the auditors to their social compliance initiative, BSCI. It follows the steps taken by the BSCI in response and highlights the need for the verification and accountability procedures of social compliance initiatives to be more systematic and transparent and the sanctions more severe in order for the system to prevent inaccurate audit reports. It also highlights the need for auditors to check that the problems they have picked up are in fact corrected. The article suggests some ideas for improving verification and accountability by social compliance initiatives with reference to the financial auditing industry.

1. The emergence of the social auditing industry and compliance initiatives

The social auditing industry grew in the 1990s as a result of increased consumer awareness about exploitative labor conditions in “sweatshops” that supplied major retailers like Nike and the Gap (Brown, 2015). Ideally, poor labor conditions should be addressed through government regulation and inspection, together with pressure from organized labor groups like independent trade unions or workers’ organizations (AFL-CIO, 2013, p. 4). These protections were (and continue to be) limited in the developing countries where garments were being produced, due to a lack of resources and political will—governments were not incentivized to police labor standards because this would increase production costs and potentially drive away the investment of large multinational enterprises (Clean Clothes Campaign, 2005, p. 55). Without state regulation of working conditions but with increased consumer pressure to address sweatshops, retailers were incentivised to implement their own voluntary codes of conduct to address worker exploitation. Labor advocates called for enforcement of these codes, which led to some companies using private firms to inspect workplaces (Ibid, p. 12). These were often accounting or auditing firms, such as PwC, that were already performing auditing services for retailers. By 1999, PwC was performing more than 6,000 factory audits a year (AFL-CIO, 2013, p. 17).

Over time, research emerged criticizing the appropriateness of accounting audit firms engaging in this type of work. It was argued that these firms lacked expertise in the social field and could not be removed enough from their client’s corporate interests to give an independent evaluation of labor standard compliance. Traditional accounting firms like PwC began to feature less in the industry and specialized third-party social auditors, and other for-profit quality-control testing, inspection and verification firms began to dominate the industry (O’Rourke, 2000; AFL-CIO, 2013, p. 25). Currently, the vast majority of all social audits are conducted by for-profit firms, all competing for market share in the CSR certification and social audit industry, which is estimated to be valued at anywhere between US\$15 and 80 billion annually (Brown, 2015; AFL-CIO, 2013, p. 4, quoting Wilshaw, 2011).

In-house social audits, procured directly at the instance of the retailer, were not seen as legitimate, independent efforts to ensure compliance with labor standards and so initiatives involving multiple brands or multiple stakeholders from the U.S. and Europe began to form, creating “civil regulation in the absence of government regulation” (AFL-CIO, 2013, p. 17).⁴ These initiatives or collective platforms, made up of members from the industry, labor representatives, NGOs or academics, established standardized codes of conduct based on International Labor Organization (ILO) core principles and devised systems of monitoring compliance that were largely carried out by accredited private third-party auditors (O’Rourke, 2006, pp. 901-902).⁵

One such collective platform or social compliance initiative, BSCI, established by the FTA in 2003, is the focus of this article’s case study. The FTA was founded in 1977 as a business association to represent the foreign trade interests of European retailers, brands and importers – to promote international trade and global commerce. It now has over 1900 corporate members. Over time, the FTA’s scope evolved to include “sustainability in the global supply chain” (FTA, 2017). The BSCI was introduced as a supply chain management system “that supports companies to drive social compliance and improvements within factories and farms in their global supply chain.” BSCI seeks to implement principal international labor standards (BSCI, 2015a).

BSCI is the largest social compliance initiative, with membership of many large international companies such as Adidas, Puma, El Corte Ingles, Metro Migros and Otto. In comparison, multistakeholder initiatives such as the Ethical Trading Initiative (ETI), Social Accountability International (SAI), or Fair Labor Association (FLA) have less than 100 member companies (GSCP, 2013, p. 4). Officially, the BSCI maintains that it is not designed to replace any of the multistakeholder initiative verification systems, but it serves a very similar function and there have been instances of brands choosing to join BSCI over other less retailer-dominated initiatives like the Fair Wear Foundation (Merk and Zeldenrust, 2005, p.14).

BSCI works with SAI-accredited auditors to conduct inspections on the basis of the BSCI Code of Conduct. SAI is a global NGO established in 1997 to promote socially responsible workplaces in the international supply chain. It is comprised of a “diverse group of stakeholders, including brands, suppliers, governments, trade unions, non-profits and academia” (SAI, 2017). SAI is the publisher and owner of the SA8000 voluntary workplace standard, promoted as the “gold standard of social auditing” (AFL-CIO, 2013, p. 33). It has an “independent accreditation body,” the Social Accountability Accreditation Services (SAAS)

⁴ In the textile and apparel industry alone, there are over 10 different multibrand/multistakeholder initiatives attempting to improve labor conditions and fill the regulatory gap in the garment-manufacturing supply chain. See, for example, the list compiled by company Verité (date unknown).

⁵ There are retailer-dominated initiatives like BSCI, Worldwide Responsible Accredited Production (WRAP), Initiative Clause Sociale (ICS) and the Global Social Compliance Programme (GSCP); and those which, at least initially, had greater input from civil society and organized labor, including Social Accountability International (SAI), Fair Labor Association (FLA), Ethical Trading Initiative (ETI), Fair Wear Foundation (FWF) and Worker Rights Consortium (WRC). However, even among more (originally) labor-oriented initiatives, Anner (2011, pp. 7-8) argues that there is great variation in how much they are influenced by corporate interests versus organized labor and NGOs.

that declares whether third-party audit firms are qualified to monitor and award supplier factories with an SA8000 certification (SAI, 2016). SAI-accredited social auditors that operate in the textile, garment and apparel industries include 22 firms that currently service over 1200 facilities and over 500 000 workers (SAAS, 2016b; SAAS, 2016c). Calculated in terms of share of total supplier facilities audited in this industry, the most frequently featured firms include: SGS, Bureau Veritas, RINA, TÜV Rheinland, BSI, ABS Quality Evaluations, TÜV Nord, Intertek, LSQA and IQ Net Ltd.

These audit firms also regularly outsource the actual physical inspection of the supplier facilities to local firms. It has been said that in “many ways, the CSR industry’s reliance on subcontracting of inspection and verification replicates the structure of the very global corporations it is supposed to monitor. Accountability is frequently lost in the ‘CSR supply chain’” (Brown, 2015, p. 1).

1.1 What are the problems with social auditing?

Despite the developments in the CSR industry, it has not been able to deal adequately with the power imbalance between labor and corporate interests, and there has been growing inequality and deteriorating working conditions (Cairola, 2015, p. 11). As O’Rourke observed, despite their efforts, NGOs and private initiatives cannot duplicate national labor inspectorates—“they cannot track the moving targets of factories that make up the global supply chains” (2006, p. 907). Social audits are increasingly criticized for not being effective in improving working conditions in the garment industry (e.g. Burckhardt, 2014, p. 116). Academic research has documented that as a stand-alone measure, without integration in the management structures and the presence of a trade union, codes of conduct and audits are not likely to lead to any improvements (Locke, Rissing and Pal, 2013; Locke, Kochan and Romis, 2007). Some of the problems observed with the system include its checklist approach to labor issues; methodological shortcomings in the inspection process; and the failure of the system to involve workers sufficiently in the audits.

More fundamental critique comes from academic research that has argued that social audits reproduce a logic of measurement and quantification that deviates attention away from actual improvements on the work floor (Le Baron and Lister, 2015). Sociologists Le Baron and Lister argue that auditing produces standardized metrics, measurements and rankings that create the appearance of independent supply chain monitoring but end up concealing the real problems in global supply chains (Ibid, p.908). In reality, the entire supply chain model as it currently operates depends on exploitative working conditions and CSR initiatives only work to make improvements at the margins (Holdcroft, 2015, p.96). Ultimately fundamental and sustainable change will be achieved when workers are empowered to enforce their own rights.

It is one thing that audits are not effective in improving working conditions. An even more serious concern, though, is that they may be part of the problem. Social auditing and certification schemes could frustrate more fundamental solutions addressing the working conditions in the manufacturing sector by giving the impression that something is being done

(Holdcroft, 2015, p.97). Factory Ali Enterprises in Pakistan had received an SA 8000 certificate only three weeks before a devastating fire that killed 260 workers and left another 32 injured. The lack of adequate fire safety measures (no sufficient fire exits, no functioning fire alarm or fire extinguishers) should have been noted by the audit firm RINA. Instead of implementing such necessary improvements, the certificate communicated to retailers that the factory adhered to core labor standards. This was also an illustration of the subcontracting phenomenon in social auditing noted above. While RINA was the accredited monitoring body responsible for the audit, it relied on local firm Renaissance Inspection and Certification Agency (RI&CA) to inspect the facility (AFL-CIO, 2013, p. 32).

Regardless of its inability to act as a substitute for genuine labor empowerment, and its potential to mask problems in the supply chain, CSR is now firmly entrenched and so much has been invested in it that companies are likely to continue to use this framework of incremental change for the foreseeable future (Holdcroft, 2015, 98). Given this reality, it is necessary to investigate accountability measures in order to avoid misplaced legitimization of abusive supply chains. Negligent audits and unreliable audit reports should be mitigated or prevented by increasing the accountability of social auditors through the bodies ostensibly responsible for monitoring them – social compliance initiatives. After tragedies like the collapse of Rana Plaza or the factory fire at Ali Enterprises in Pakistan, retailers should not be able to point to audit reports that failed to identify those risks.

Social compliance initiatives are essential in combating the inherent conflict of interest between third-party auditors, multibrand/ multistakeholder initiatives, and their member companies. Conflicts of interest are inevitable as auditing companies are interested in keeping their clients in an increasingly competitive market. If they apply high standards and consistently refuse to grant certifications, suppliers and retailers may simply opt for another accredited third-party auditor. The market therefore creates incentives that tend to push towards keeping auditing standards, costs, and efforts low (Jahn, Schramm and Spiller, 2003, p. 9). Moreover, when suppliers are interested in receiving a quality-assurance label without doing the relevant investments, there is an economic incentive to seek out lenient auditors (ibid, p. 11). A special responsibility therefore lies with the social compliance initiative to counter the negative incentive structure for auditors. In particular, the probability of detecting deficient audits has to be increased. This means improving the “verification” process already implemented in varying ways by different social compliance initiatives. Further, auditing companies must suffer negative consequences if they deliver a deficient audit. This means holding these companies to account and imposing sanctions when they do not meet the requisite standards.

Another essential part of the auditing process is the auditor’s proposal of a “corrective action plan” that addresses the defects identified by the auditor during the social audit. Once this is done, the factory or retailer is responsible for implementing the plan. The auditors must then verify within e.g. three months that the plan was indeed implemented. This often does not occur because neither the factory owner nor the retailer may be willing to put up the necessary investment. This was the case with the fire at the Tazreen factory in Bangladesh in 2012, which killed 112 workers. A BSCI audit report accurately noted health and safety issues, but no action

was taken to fix this (Clean Clothes Campaign, 2013, p. 50). Social compliance initiatives should play a role in ensuring that auditors follow up scrupulously with the implementation of these plans, and importantly that the retailers are held accountable if they do not participate in the implementation process.

2. Case study: the complaint to BSCI about an audit at Rana Plaza

The problem of misleading, unduly positive audit reports is highlighted by the case study of TÜV Rheinland's social audit of a factory at Rana Plaza. This case study explores the discipline and accountability function that social compliance initiatives could, but often fail to, play in addressing deficient audits.

In July 2015, a coalition of Bangladeshi activists and the Rana Plaza Survivor Group in collaboration with European NGOs submitted a complaint to BSCI drawing its attention to its responsibility for an audit report written under its auspices. As an accredited BSCI auditing company, in June 2012, TÜV Rheinland conducted an audit at factory Phantom Apparel Ltd. in the Rana Plaza building in Bangladesh. The audit was commissioned by the factory owner. The complaint was submitted with the expectation that the BSCI Secretariat would investigate and evaluate the audit as part of its internal quality review of audit reports (BSCI, 2015e). With its "Audit Integrity Program" BSCI claimed to "reinforce the credibility of BSCI audits by verifying the quality of auditors' results" (Ibid.). The complaint thus simply requested a control on the quality in this particular instance. The relevant question for such an investigation would be whether the auditors had conducted the audit diligently or whether the minimum professional standards for social auditing were violated.

In order to determine whether or not that particular auditing team failed to discharge its duty of care, it is relevant to know what minimum standards could reasonably have been expected from them. There were a number of possible guidelines applicable and relevant to the TÜV team for that particular audit, such as the BSCI Guidelines and the SAAS requirements for auditors.⁶ These professional standards are arguably those that were minimally applicable to the TÜV auditors at that time and they express in some detail how auditors should proceed. While these standards are not necessarily sufficient or ideal, they should at the very least be observed; they also form the basis for determining whether the audit was conducted negligently.

The list below represents a non-exhaustive sample of the expectations on the TÜV auditors, based on the guidelines referred to above:

1. Take the circumstances in the country and local context into account;

⁶ See, for example, the BSCI Guidelines; the FTA framework contract (in order to analyze the obligations imposed on BSCI Auditing Companies, an example of this agreement was analyzed (FTA and CISE, 2013)); SAAS requirements for auditors (BSCI only works with auditors that are SAAS accredited) (DeRuisseau, 2010), Sedex guidelines (co-developed by TÜV) - Sedex (Supplier Ethical Data Exchange) is a non-profit membership organization claiming to be "dedicated to driving improvements in ethical and responsible business practices in global supply chains" (Sedex, 2016); the Sedex "Best Practices Guidance" (Sedex, 2012); and the Reference Tool for Auditing Competence of the Global Social Compliance Programme.

2. Apply professional skepticism and constant verification of documentation and information;
3. Go beyond a checklist approach and do a comprehensive review;
4. Have an adequate and competent team, who have been sufficiently trained; and
5. Display sensitivity to the vulnerability of workers.⁷

Ultimately, there was no shortage of standards applicable to TÜV. The question is, were they applied? Was there any independent investigation to verify whether they were applied? And was there accountability for any non-compliance detected?

2.1 The allegedly substandard BSCI audit of the Phantom Apparel factory

The complaint against TÜV lists several instances of the factory's non-compliance with the BSCI Code of Conduct which went unnoticed by the auditors in June 2012 and the supervision of the corrective action plan devised by the auditor and implemented between September and December 2012.⁸ Showing his critical assessment of the factory, the auditor specifically added in the remarks section that "They have a long way to go for SA-8000 requirements." At the same time though, the audit report noted that "the building and machine layout is process based, good construction quality, duly approved" (Item B 9.0 Working Condition). The collapse of the building raised the question whether the auditor could and should have noted the risks to the building structure (such as the construction of extra floors, the reversal to industrial use, and the heavy machinery on the top floors) and that the audited factory thus possibly did not comply with BSCI Code of Conduct rule number 6 on Workplace Health and Safety.

While the auditor did not identify the risks to building safety in the report, this alone cannot lead to the conclusion that the audit was negligent. Auditors do not generally guarantee that their reports are correct. Instead, the question is whether the audit was conducted with sufficient care. Applying the minimum standards identified above, an investigation for accountability would need to determine whether the auditor had, for example, the required "competence regarding industrial safety" (BSCI Framework Agreement, 2013, Section 2, Paragraph 2). Scholars have found that a lack of competence is actually a greater danger to the quality of audits than a lack of independence (Lesage, 2010). It is recognized that while a single auditor need not possess all required skills, the team has to combine the necessary expertise. It is the responsibility of the person assembling the team to ensure that the required skills are there (ISO 19011 Expert, 2015). And, if there was not a sufficiently competent audit team, whether the written statement ("good construction quality") violated the minimum professional standard that "auditors should not assess conditions beyond the substantive areas where they have competence" (GSCP, 2014, Section 1).

⁷ When we refer to "substandard" or "inadequate" audits in this section or elsewhere in this piece, we mean – at the very least – audits that fail to meet these limited minimum standards.

⁸ The audit resulted with an assessment of "improvements needed" followed by a mandatory corrective action plan. Between September and December 2012, the auditor approved the implementation of the Corrective Action Plan (BSCI, 2009).

It is a common requirement across auditing standards for auditors to maintain a good dose of skepticism and that there is a constant need for verification of information (IAESB, 2008, Section 1a). The BSCI Framework Contract calls upon auditors to use their “best effort” to ensure that their data are “accurate” (FTA and CISE, 2013, Annex 1, 1.2). “Detection skills” are listed as one of the “core auditor competences,” which means that auditors are able to detect “non-conformities which may have been subject to manipulative practices” (GSCP, 2014, Appendix 1, Table A). Auditors are, for example, generally required to do a site tour and field observations, during which auditors have to make “appropriate checks,” to verify that things are in practice as they are claimed to be on paper (Sedex, 2012, Appendix 1, under 3. “Health and Safety”, section 3.8; FWF, 2011).

The risk to building safety must also be considered in light of the professional standard requiring an auditor to take the country and local context into account. This also means that auditors have to be well-prepared, know the relevant laws and understand the local context.⁹ BSCI focuses on so-called “risk-countries.” It is therefore inherent in social audits that they take place in a context where the government does not always fulfill its regulating role. The history of the garment industry in Bangladesh has shown that the collapse of factory buildings is a real danger (Ali, 2013; Sabet et al, 2010).¹⁰ It was also well-known that there was a lack of regular supervision by the Bangladeshi government and an insufficient number of building inspectors (Sabet et al, 2010). This raises the question whether this country-specific context was sufficiently taken into account by the auditing team.

In a public statement, TÜV Rheinland claimed that technical controls of building structures were not part of the BSCI-Audit (TÜV Rheinland 2013). Even if an inspection of the building structure was outside of the formal scope of the assigned audit, the question is whether the auditors failed to go beyond their checklist approach (the professed goal of the SA8000 standard (Bernstein, 2007, p. 2)) and failed to do a comprehensive and thorough review as warranted by the minimum professional standards. As TÜV Rheinland acknowledged, regardless of the agreed scope of the specific audit, in case of “obvious” flaws in the building structure (of which there were many indicators, such as the construction of extra floors and the fact that workers already prior to the collapse talked about their concern regarding the building quality¹¹), the auditor would have had to report this immediately to the factory owner and the client. Ultimately, it is not credible that BSCI claims to verify “Workplace Health and Safety” while excluding one of the most pressing and realistic threats to workplace safety in Bangladesh.

The complaint also raised the question whether the auditing team had sufficiently verified that the factory complied with rule number 7 of the BSCI Code of Conduct which prohibits child

⁹ For example, “Prior to conducting an audit, auditors should: Understand the local context in practice, site / sector / regional issues. Be aware of, and up to date with, appropriate local and national laws” (Sedex, 2012, Appendix 1, under 2. “Freedom of Association”).

¹⁰ The BSCI Code of Conduct (Rule 6) explicitly calls upon factories and auditors to bear “in mind the prevailing knowledge of the industry and of any specific hazards.”

¹¹ Interview with former worker at Phantom Apparel by the author, Dhaka, January 2016.

labor and restricts work for so-called young workers. The audit report did not show any indication of how the auditors addressed the risk of child labor. It briefly stated that “there was no child labour or young labour identified during document review, plant tour and worker interviews” (B 5.0 Child labour/ young employees) and on the “Child Labour Record Sheet” it noted “No child labour was found during audit” (BSCI, 2009, p. 39). This contrasts with statements of former workers of Phantom Apparel who confirm that there were child workers among the employees.¹²

Of course, it may very well be that on the day of the audit, the child workers were at home or hidden in the toilet. Such practices are well-known. The relevant question is thus whether, given the notoriety of child labour in Bangladesh, the auditors did enough to detect child labour. According to the minimum professional standards, it is not enough to just review identification documents. Instead, auditors are expected to smartly verify information in a variety of ways, such as looking at the history of an organization, including inquiring into previous grievances, complaints and legal proceedings concerning child labor (Bernstein, 2007, p. 8). Auditors are expected to “err on the side of caution” by assuming that a young looking worker is a child until “verifiable evidence” to the contrary is provided (Sedex, 2012, Appendix 1, under 4. “Child Labour and Young Workers”, section 4.9, p. 57). Section 2.2.5, B5 of the BSCI Management Manual mentions the following documents in order to verify the age of workers: “birth certificates, school certificates, passport/ID card, health certificates, election card, driving license etc.” Again, this raises the question whether the auditors took local context into account and exhibited sufficient skepticism in the verification of documentation.

Finally, the complaint criticized the lack of awareness among workers of the BSCI Complaint Mechanism and their right to remove themselves from a dangerous work situation. According to BSCI, workers at factories which produce for BSCI participants can file complaints with the BSCI. To facilitate this, it is contractually arranged that all producers and factories which supply to BSCI participants must allow BSCI auditors to distribute complaint cards to their workers.¹³ These cards are said to provide instructions on how workers can submit complaints and notify auditors of non-compliance with BSCI standards.¹⁴ The BSCI Code of Conduct stipulates that factories should appoint an employee responsible for handling complaints related to BSCI issues and document and investigate complaints from employees or third parties related to BSCI issues, and reporting on their substance and any necessary corrective measures arising from them.¹⁵ Factory owners must further “inform all employees about the content of the BSCI Code of Conduct, their rights and obligations.”¹⁶ To ensure that workers understand their rights, the factories should, if necessary “translate the BSCI Code of Conduct into local language(s) and post this in the location visible to all employees.”¹⁷ Many if not all of the former workers of Phantom Apparel Ltd. were unaware of the BSCI Code of Conduct and the

¹² Interview with former worker at Phantom Apparel by the author, Dhaka, January 2016; Interviews by Bangladeshi activists in 2014-2015, on file with the author.

¹³ FTA Framework Contract, Annex 3, §3

¹⁴ BSCI, 2011, p.4.

¹⁵ BSCI Code of Conduct 2009, Terms of Implementation, p.5, Section “Complaints and Corrective Action”.

¹⁶ BSCI Management Manual, Section 2.2.1, B.1 Management Practice, Information & Communication.

¹⁷ BSCI Management Manual, Section 2.2.1, B.1 Management Practice, Information & Communication.

corresponding complaint mechanism.¹⁸ Workers were also unaware of their right to refuse to enter into a building with major exposed cracks.¹⁹

Generally, the information needed to reveal the real problems occurring in a factory such as Phantom Apparel requires participation from the workers who are in the premises on a daily basis. SAAS calls upon an NGO and Trade Union consultation as part of the auditing process in order to facilitate different voices to be heard (Bernstein, 2007, p. 8). It is expected that auditors engage in a systematic corroboration of information in, for example, workers interviews (Sedex, 2012, Appendix 1, under 0. “Management Systems and Code Implementation”). The SMETA Guidance calls upon auditors to keep in mind that if there are any fears of reprisals, findings should not be reported at the closing meeting but must be reported to the client (Sedex, 2012, Appendix 1, under 9. “Discipline”, p. 70). The auditors apparently failed to achieve the necessary candor from workers, failed to inquire about their awareness of the BSCI Complaint mechanism, and failed to distribute the BSCI cards. Despite a picture in the audit report of a “COMPLAIN BOX” (sic), there is no indication that the auditors verified whether the box was known to the workers or used. Instead of observing that workers were not confident to express themselves freely, the auditors certified Phantom Apparel with a “Good” on the issue of forced labor and disciplinary measures.²⁰ This stated lack of disciplinary measures in June 2012 is not credible given the testimonies of former workers that they were forced back into the Rana Plaza building on the morning of the 24th of April 2013.²¹

Given the methodological limitations of social audits, a permanent grievance mechanism is essential to ensure direct input at any time from workers and their organizations in the verification process, and also to balance and supplement the limitations of snapshot monitoring which only allows workers to voice their grievances once in every three years.²² In order to credibly promote the effectiveness of the mechanism, an extensive outreach program is a must. Considering that neither workers nor labor organizers were aware of this mechanism, it seems that not only the auditors failed to identify the lack of awareness among workers, but also BSCI failed to demonstrate its sincerity in the implementation of its mechanism.

2.2 The inadequacy of the BSCI complaint procedure

The complaint to BSCI highlighted these shortfalls and challenged the business platform to take their role as the administrator of the compliance scheme seriously. Each initiative has its

¹⁸ Interviews by Activist Anthropologist with former workers at Phantom Apparel. Not even labor organizers were aware of the complaint mechanism. These interviews took place at the Ganda Area of Savar on 17 February 2015.

¹⁹ Interviews by Activist Anthropologist with former workers at Phantom Apparel. Not even labor organizers were aware of the complaint mechanism. These interviews took place at the Ganda Area of Savar on 17 February 2015.

²⁰ “BSCI Social Audit Report” concerning Phantom Apparels Ltd., dated 16/17/18 June 2012, under B.6, p. 4.

²¹ Interview on file with the Activist Anthropologist, 24 April, 2013 at Enam Medical College and Hospital, Savar, Dhaka; Recorded interview by Activist Anthropologist with survivors, 16 October 2013, Palpara, Savar, Dhaka.

²² Ascoly and Zeldenrust, 2003, p.4. The new 2014 BSCI Code of Conduct even more specifically states the particular advantages in terms of “speed of access and remediation, reduced costs and transnational reach” that such grievance mechanisms could offer. BSCI Code of Conduct 2014, p.4, Section “Workers Involvement and Protection”.

own set of standards (usually a code of conduct) for a social audit as well as standards for the audit exercise i.e. what the auditor(s) exactly has to do *during* the factory visit in order to discharge the duty of care. The BSCI Framework Agreement for auditing companies, for example, calls for high levels of professional integrity, independence and absolute incorruptibility of the auditors, emphasizing the importance of avoiding a conflict of interest (BSCI Framework Agreement, 2013, Section 3, Paragraphs 2-3). In accepting a request to conduct an audit at a garment factory, auditing companies do not generally commit to guaranteeing that their portrayal of working conditions is necessarily fully correct (which would amount to a strict liability standard). Instead, they commit to making a particular level of effort in order to reveal violations of certain working standards. It was thus expected that the FTA would initiate an investigation to assess whether the audit at Phantom Apparel adhered to its requirements.

The FTA did not, however, provide an in-depth written response to the issues raised in the complaint. Instead, representatives from the BSCI and FTA agreed to attend a meeting with the complainants. During the meeting, the BSCI representatives acknowledged that audit reports are of only limited use to those working in global production and supply chains and agreed with the demand that workers should play a more important role in the BSCI framework. They also agreed that the question of responsibility needs to be clarified and that there is a need to discuss sanctions for cases where audits are substandard, including the potential exclusion of a company from the BSCI pool of accredited auditors.²³

However, none of the concrete and systemic information gathering, methodological and verification shortcomings, as set out in the previous section, were addressed in the complaint procedure. Instead of opening an investigation to assess the quality of the audit at Phantom Apparel and take steps to ensure accountability, the FTA merely offered a forward-looking conversation in order to improve social audits in the future. During the meeting, there was a general refusal to discuss the specific audit report, reasoning that it was a confidential document, property of the auditor's client. This excuse is at odds, however, with provisions in the BSCI Framework Contract, in which producers consent to passing data to third parties in situations where non-governmental organizations or complainants are in dialogue with BSCI (FTA and CISE, 2013, Annex 3, Section 6). No remedy was offered to the survivors of the collapse or the family members of deceased workers.

Seemingly unrelated to the complaint procedure, in January 2016, BSCI notified its auditors – though did not, apparently, make a public announcement – that “following a comprehensive review and analysis of a number of factors including leverage, quality, complaints, sanctions and member feedback,” the FTA decided to terminate a number of contracts with certain auditing firms (BSCI, 2016c). While this step is to be applauded if it came as a reaction to sloppy audits, it does not solve the need of proper complaint procedures and investigation of specific instances. Apparently, this termination only affected a few of the smaller domestic

²³ Meeting held on 19 November 2015 at the offices of the ECCHR in Berlin, with Foreign Trade Association Director General Christian Ewert and BSCI Managing Director Darrell Doren. Note on the meeting available on the ECCHR website, https://www.ecchr.eu/en/our_work/business-and-human-rights/working-conditions-in-south-asia/bangladesh-tuev-rheinland.html (accessed 14 Dec. 2016).

firms in Bangladesh. Ultimately, there does not seem to have been a systematic and transparent procedure in place for dealing with complaints against substandard third-party audits.²⁴ If social compliance initiatives take disciplinary action that is not sufficiently rigorous or of a sufficiently high standard, it poses the danger of perpetuating and legitimating the status quo instead of addressing the real problems in the auditing practice. Furthermore, while such disciplinary action is necessary, it remains only a partial form of accountability if it does not offer workers a remedy.

3. Oversight and accountability in financial auditing

In seeking to improve the oversight and accountability functions of the existing, albeit imperfect, compliance initiatives, one could look at comparative bodies in the financial auditing industry. Social audits began as an offshoot of financial audits — the industry was initially dominated by traditional accounting firms, such as PwC (OECD, 2001, p.9). Oversight in the financial auditing industry is far from perfect and there are limits to the comparison due to the inherent differences between financial and social auditing.²⁵ At the same time, the model may shed some light on the shortcomings of the social auditing industry in detecting substandard audits and countering the negative incentive structure.

Oversight in the financial auditing industry differs markedly from social auditing in that the latter is not mandated or regulated by legislation. In contrast, companies are usually obliged by statute to appoint financial auditors to give their opinion on the accuracy of financial accounts.²⁶ In relation to the financial audits of listed companies and banks, current EU legislation even sets requirements for matters such as auditor oversight and audit fees. For example, the legislation recognizes the danger of counterproductive payment structures and potential conflicts of interest.²⁷ Legislation also prescribes the duties of financial auditors (e.g. UK Companies Act 2006, section 498; §323 HGB in Germany).

However, before the financial auditing industry became state-regulated, professional oversight bodies, for example the Institute of Chartered Accountants in England and Wales (ICAEW) in the UK, provided quality control and professional standards in the industry (Ramirez, 2005, p.5). In the UK, fraud and failing limited liability companies, as well as more complicated company structures, drove demand for professionalization of the financial auditing industry. Shareholders relied on auditors to provide accurate information in order to make investment decisions. Auditors were incentivized to regulate themselves to ensure more rigorous standards because this reduced competition (Ramirez, 2005, pp.4-5). Those auditors who met these

²⁴This is not to say that all social compliance initiatives have no procedures for dealing with substandard audits. For example, the SAAS sets out these procedures in its policy documents (SAAS, 2008). But it seems that without state oversight and examples where the initiative has actually taken real disciplinary action as a deterrent to other firms, then the oversight system has little or no effect.

²⁵ For example, it should be kept in mind that the consequences of financial frauds are limited to economic losses, whereas social audits impinge on the lives and safety of workers.

²⁶ In the EU, laws traditionally require that financial accounts give a “true and fair view” of a company’s financial status (European Union, 1995, §3.11; e.g. UK Companies Act 2006, section 495 (3)(a)) (European Union, 2016).

²⁷ EU Regulation No 537/2014, 16 April 2014, preliminary consideration 7 & 10, Article 4.

standards would be preferred over the outsiders who did not. Like many professions, the auditing industry had an interest in ensuring that their members were the only ones held out to the market as “worthy” of performing an audit. Indeed, professionally accredited auditors were appointed by most quoted companies, before the law mandated it.²⁸ In the US, the boom in business caused by the Industrial Revolution led to the adoption of auditing methods across the country. As in the UK, when companies became publicly traded the dangers of fraud heightened and shareholders began to rely on financial reports for investment decisions (American Institute of CPAs, 2012).

Oversight bodies in the US and UK were only later subsumed into the state’s oversight structures (Bateman and Co Inc, 2002; FRC, 2016; ICAEW, 2016a). For example, the ICAEW is overseen by the statutory body, the Financial Reporting Council (FRC) and the American Institute of Certified Public Accountants (AICPA) issues standards that the Securities and Exchange Commission (SEC) deems authoritative (ibid.).²⁹ These professional oversight bodies developed methods of inspection, investigation, and complaints procedures to ensure that audit firms comply with industry standards in their auditing practices (PCAOB, 2016a; PCAOB, 2016b; ICAEW, 2016b). In both countries, the statutory oversight body – the SEC in the US and the FRC in the UK – can also investigate, discipline and sanction auditing firms and individuals that do not comply with relevant standards and regulations (Hardison, 2015; FRC, 2015).

In summary, the regulation of the financial auditing industry has evolved from a need in the market for shareholders to make investment decisions and to enable them to hold directors accountable for the management of the company. The profession began to regulate itself to signal to the market that it provided a credible service, and for those within the established structures of the profession to reduce competition. The state stepped in later to make standards more uniform and to ensure compliance, usually after failings in the self-regulated system.³⁰

Just as the birth of large complex corporations led to the spread of accounting and auditing practices, so the success of the convoluted supply chain has birthed the social audit industry. Except that social auditing was not so much driven by a need *in* the market system but a need to protect people *from* the market system. It was not supposed to help shareholders or lending institutions and other beneficiaries (such as consumers) of the for-profit system directly, only to mitigate the damage caused to the reputation of these enterprises by “sweatshop” scandals.

In the current competitive auditing market auditing firms do not face strong incentives to professionalize as factory owners (as well as retailers) are mainly interested in paying a low price and obtaining a positive audit report. It thus remains to be seen, whether the reputational risk of retailers will lead to sufficient pressure on social audit firms to professionalize. Retailer

²⁸ By 1886, most quoted companies were audited by members of the ICAEW, even though it was only made a legal requirement to appoint external auditors for limited companies under the 1900 Companies Act, and the requirement that these auditors be professional accountants only came into force under the 1948 Companies Act (Ramirez, 2005, p.5).

²⁹ See also the United Kingdom Companies Act, 1989 and then 2006, incorporating the European Commission’s 8th Company Law Directive.

³⁰ For example, the SEC was only established after the stock market crash of 1929 in the Securities Exchange Act of 1934.

KiK, one of the largest retailers in Germany, that purchased clothing from Rana Plaza, Tazreen and Ali enterprises, is now attempting to create such pressure. It stipulates in its auditing contracts that its auditors are legally liable for the accuracy of their audit reports for a period of three months after the report is issued. KiK explains that this is because it is the one that faces risk later on if the report fails to include dangerous working conditions, and it relies on auditing firms to manage this risk. KiK says it has battled to find auditing firms that will agree to this but eventually found some that would (Barrie, 2017). The more that retailers raise demand (and are willing to pay) for accurate reporting, the more audit firms will be forced to raise their standards. As long as prices between auditors vary substantially and quality is of low interest, more demanding auditors will lose clients.

There are signs that the social audit industry is responding to this need for professionalization. There is now an Association of Professional Social Compliance Auditors (APSCA), founded by nine audit firms, that seeks to “ensure auditors going out and conducting audits are competent and credible”. Their concern is that “currently, you could ask anyone to conduct a social audit and there is nothing stopping them, and no way to verify their qualification” because there is currently no globally recognized qualification. The APSCA acknowledges that with greater emphasis on worker exploitation, more and more businesses feel compelled to conduct a social audit, but there is a tendency to merely “tick a box”. The APSCA therefore seeks to introduce an auditor certification that allows you to check up on the auditor, to ensure they are in good standing, have got the right training and have undergone continuous professional development (Verisk Maplecroft, 2017, p.7). It is unclear, though, whether the system will include an accountability mechanism in the case of negligent audits and reports.

Social compliance initiatives and social audit firms therefore already have an incentive to start becoming more rigorous and reach higher standards. But, as with financial auditing, this process will have to be subsumed under hard law regulation. The self-regulation is happening too slowly, while the lives of workers hang in the balance. Indeed, the speed and strength of self-regulation in the social auditing industry is bound to be far less than in financial auditing. This is because of the more tenuous incentives for retailers to get reliable audit reports. The need of businesses to take action to address abuse in their supply chains is dependent on enough pressure being exerted on them by consumers actually ceasing to purchase their merchandise, and changing their behavior after being exposed to NGO awareness campaigns—in other words it depends on the strength of the link between worker exploitation, reputation and therefore profits. This indirect link is far less effective than shareholders’ need for accurate financial reporting, especially when consumer interest in the issue wanes.

This means that social auditors require even more stringent active state regulation than financial auditing and yet currently it is entirely voluntary. Instead of state-regulated or centralized oversight bodies, the means of verification and oversight available to detect inadequate social auditing practices are currently entirely dependent on the private social compliance initiatives. These social compliance initiatives are restrained in the detection and verification measures they can employ because retailers and auditors can go to competing initiatives – a “threat-of-defection dynamic” (Anner, 2011, p. 3). Unlike financial auditing,

membership in centralized oversight bodies is not mandated, regulated and overseen by statutory bodies.

However, until this state regulation occurs, social compliance initiatives should still take heed of the incipient professionalization of the industry and take on board lessons from financial oversight bodies – if they want to remain relevant. Not to mention that they have an ethical obligation to actually enforce minimum professional auditing standards if they hold themselves out to be performing this function. The financial auditing industry demonstrates how standardization can be an important tool to combat the incentive to pander to audit clients. Implementing uniform social auditing standards is therefore another means of assisting compliance initiatives and auditing firms in combating conflicts of interest. According to the OECD, more stringent uniform standards could help to mitigate the commercial considerations of developing an ongoing business relationship with the client firm, and therefore counteract the incentive to produce flattering audit reports (OECD, 2001, p.11). Auditing firms can stand behind these standards when facing pressure from clients because their discretion to lower them is lessened or removed. Standardization also makes it easier to check if audits have been executed properly (ibid.).

The disciplinary action taken by professional bodies in the financial auditing industry is also a helpful model for comparison. The ICAEW in the UK works by receiving formal complaints about auditors, conducting an investigation and usually having a hearing (ICAEW, 2016b). Thereafter, decisions to fine, suspend or permanently exclude auditors are published (ICAEW, 2016d). The PCAOB in the US conducts its own inspections of public audit firms and responds to tip-offs and complaints about problematic auditing practices (PCAOB, 2016a; PCAOB, 2016b). The Board has inspection staff and enforcement staff that check if audit teams have in fact conducted the procedures that their audit plans set out. If the Board establishes non-compliance, it will impose sanctions of significant fines, suspensions, or permanent barring from professional registration (Ibid). The Board publishes certain enforcement actions it has taken against financial auditing firms and individual auditors.³¹

This is not to say that the financial auditing system is a blueprint for a credible system – also with the more stringent regulations, the financial auditing industry still endures major corruption scandals like those of Enron and WorldCom (Clean Clothes Campaign, 2005, pp. 61-62). Indeed, while many countries have legislation on the books regulating the liability of financial auditors, (e.g. §262g HGB in Germany; Weyershaus 2012) such liability tends to be quite limited, especially towards third parties. Financial auditors have a limited role – they express an opinion as to whether the accounts have been properly prepared; they do not certify their accuracy (McGee, 1996).³² Still, systems of oversight in relation to financial auditing are more developed – which should give pause to the social audit industry. This more systematic, transparent and rigorous oversight and disciplinary system is an indication of the direction that

³¹ The Sarbanes-Oxley Act restricts the publication of enforcement action against registered public accounting firms and their associates except for certain limited circumstances. See explanation and evaluation of these enforcement procedures in Hardison (2014).

³² Indeed, some have argued that because auditing of financial statements was never designed to detect fraud, they have become ineffective at doing so and procedures should be amended accordingly (Coenan, 2017).

social compliance initiatives should move in. If social compliance initiatives take seriously their professed mission to improve working conditions in supply chains, there are measures they can implement to increase accountability. Social compliance initiatives should adopt this approach if they are to remain competitive and relevant. And if, however, the professionalization incentives are currently insufficient to encourage them to do so, the state will have to impose these standards.

4. Oversight and accountability in social auditing: the supervisory and disciplinary role of social compliance initiatives

Multibrand/ multistakeholder initiatives are essential in filling the role that oversight bodies do in financial auditing, namely, among other things, addressing the conflict of interest inherent in the retailer-auditor relationship. But they are themselves under pressure to ensure that their accredited auditing firms liberally certify facilities. These initiatives are entirely voluntary and they need to encourage companies to join and remain as members to retain any legitimacy, and, in some cases, are also dependent on the dues paid by corporate members (AFL-CIO, 2013, p. 34).³³ They are not legislative institutions with the robust independence required to fearlessly hold auditors accountable. But if they are to have any credibility and ultimately compete in an industry that is becoming increasingly professionalized, they must demonstrate the capacity to guarantee the quality of their audits (Jahn, Schramm and Spiller, 2003). Just as professional financial auditing bodies had before they were subsumed in the state structure, the entire social auditing and retail industry has an interest in ensuring that the auditing process is credible or it will not serve its intended function: to indicate to the public that retailers take sustainability in the supply chain seriously. Below are a number of ways in which social compliance initiatives could better fulfill this function.

4.1 Detecting substandard reports

BSCI claims to have both internal and external quality reviews as part of its “Audit Integrity Program” (BSCI Framework Agreement, 2013, Section 2, paragraph 7). The current version of the Audit Integrity Program has an internal quality check that involves a review of a random sample of audits to ensure the questionnaires are “filled out correctly” and a complaints procedure. BSCI states that its external quality review sends independent parties to observe an audit, visit the service provider’s headquarters, perform duplicate audits, onsite review of skills and a desk review of a sample of audits. The BSCI Sanctions Council is tasked with imposing sanctions on non-compliant auditors (BSCI, 2015e). This seems positive. The problem is that upon the complaint against TÜV Rheinland in 2015, there was no willingness to actually do any of this. Also, it is not clear how often these external review systems are deployed or what would trigger them. In the case study, there was no investigation or sanction against TÜV Rheinland, the decision to discontinue contracts with smaller audit firms in Bangladesh was not published, and the disciplinary process was not transparent.

³³ SAI notes, however, that the majority of its funding comes from “Foundation & government grants, individual donations” as opposed to corporate membership dues (SAI, 2012).

This issue seems to apply to compliance initiatives outside of the BSCI case study more generally. At the moment, social compliance initiatives' detection of inadequate social audits is variable and non-standardized. The initiatives differ in their procedures depending on how much corporate retailers influence their policy and verification measures (Anner, 2011). Take for example the FLA, a compliance initiative of universities, civil society organizations and companies (FLA, 2017). Anner notes that the organization avoided adopting labor-oriented verification tools as corporate interests would not tolerate them. Labor participants initially insisted on more thorough means of increasing union activity but were effectively vetoed by corporate members (Ibid., pp. 11-12).

Particularly problematic were the results of a survey conducted by WRAP, another social compliance initiative. It describes itself as an “independent, objective, non-profit team of global social compliance experts”.³⁴ WRAP's own report documenting the results of a survey it conducted with various “social compliance stakeholders” found that many respondents did not have faith in the certification process in general and WRAP's methodology in particular. They complained of inconsistent audit results, discrepancies, facilities getting certificates that are not in fact compliant, and a general lack of trust in the system. The respondents questioned the integrity of WRAP's audits, and the audit firms and individual auditors it uses and accredits. They asked “who is watching the auditors?” and suggested implementing better verification methods like conducting shadow audits to validate the WRAP auditor's report (WRAP, 2014, p. 14). In response, WRAP says it plans to increase its own internal auditors and performing more post-certification follow-ups (2014, p. 17). It remains to be seen how thoroughly the compliance initiative will change its methods – particularly in areas like worker organization.

As a final example, SAAS, the accrediting body of the SIA claims that it assesses auditors *up to* nine times a year (but doesn't give a minimum), which includes visits to their headquarters and regional offices, and between 2 to 6 audit site visits a year (SAI, 2012). It is not clear exactly what these visits entail and to what extent SAAS audits their auditors. In response to the Ali Enterprises tragedy, SAAS reported that it visited RINA, Bureau Veritas and SGS at their offices and “several verification sites” in Pakistan in 2009, 2010 and 2012. Little detail or clarity about the inspections was provided. A standardized, consistent and transparent approach to verification, instead of ad hoc interventions, may improve the ability of compliance initiatives to detect inadequate auditing.

Thus, existing systems to detect sloppy audit reports vary between different compliance initiatives and they are not necessarily able to reliably uncover and rectify problematic practices. In the case of Ali Enterprises, the deficiency of the SA8000 certificate was only revealed when the lack of fire safety measures led to the death of 260 workers. Inaccurate audit reports could more easily be detected if audit reports are made public, such as is done with the ACCORD³⁵ reports in Bangladesh (Terwindt & Saage Maaß 2016, check). This could reveal

³⁴ WRAP certifies facilities based on compliance with their “12 principles.” It trains and uses “monitoring partners” to inspect factories (WRAP, 2017).

³⁵ The Accord on Fire and Building Safety in Bangladesh was signed on 15 May 2013. It is a five year legally binding agreement between global brands and retailers, as well as trade unions, that regulates building health and safety in the garment

current practices, such as factories that have only one department audited, while the whole factory benefits from the certificate.³⁶ Social compliance initiatives can make it a requirement that its audit results are made public. This would enable workers and their organizations to highlight possible discrepancies between the actual conditions in factories and the report. This presupposes adequate grievance mechanisms and worker awareness of such mechanisms. Multibrand and multistakeholder initiatives generally have some kind of grievance mechanism for workers to express complaints about the working conditions in the factory (for example, FWF, 2016). The case study, however, highlighted that, despite an auditor obligation to spread such information, this awareness was lacking.

4.2 Sanctions dealing with negligent audits

The Phantom Apparel case study demonstrated that sanctions are not strictly imposed on auditing firms – at least not the large international outfits. And if they are, it is not necessarily done transparently and with worker or public input. In the case of Ali Enterprises in Pakistan, the multistakeholder initiative SAI, responsible for the administration of the SA8000 certificate that accredited the auditing company RINA, did look into the matter. After the news reports about the fire at Ali Enterprises, they performed an independent investigation and issued a report analyzing the performance of the RI&CA auditors. SAI also ensured that unannounced fire safety inspections at its SA8000 certified factories in Pakistan were conducted and temporarily suspended the issuance of SA8000 certificates. In addition, RINA, in agreement with SAAS, reduced the scope of its accreditation and thus stopped issuing SA8000 certificates in Pakistan (SAI, 2012). RINA is still, however, an accredited certification body in numerous other jurisdictions (SAAS, 2016d). The SAAS Board of Directors also disallowed subcontracting of audit inspections, but only in Pakistan (SAI, 2012).³⁷ While these measures are positive, they are not sufficient.

Assuming a deficient audit has been detected, there are a number of ways that compliance initiatives could respond given their role in the auditing system, even if they do not do so zealously now. One of the most important measures would be to exclude companies from their pool of accredited auditors. BSCI has an enormous membership base – 1900 corporate members. If an auditing firm, like TÜV Rheinland, faced the threat of losing this kind of market share, it would be strongly incentivized to ensure its audits were thorough. In this respect large, corporate-based social compliance initiatives have an enormous capacity to raise standards. At the same time, as long as retailers can sign up for outfits with lower standards or cheaper audit procedures, smaller, more labor-based initiatives are more likely to face the threat of defection if they impose more stringent disciplinary measures.

industry in Bangladesh. It is operated by the Bangladesh Accord Foundation and conducts inspections by building engineers based on Bangladesh national building codes of its signatories' factories. The premises will be evacuated and production will cease if the building is found to be dangerous. The reports are published on the Accord website (Accord, 2017).

³⁶ Conversation auditor in Pakistan, 2 December 2017.

³⁷ It should be noted, however, that after the Rana Plaza tragedy the BSCI has announced it will no longer allow subcontracting. See <http://www.bsci-intl.org/news/new-acceptance-procedure-bsci-auditing-companies> (accessed 21 Dec. 2016).

Social compliance initiatives could also demand higher standards during accreditation and thoroughly investigate complaints with genuine worker involvement. Compliance initiatives often also have the contractual possibility of obliging auditing companies to undertake reparations. For example, according to the BSCI Framework Agreement, it is possible – in case of a breach of duty by the Auditing Company – for the FTA to impose a limited timeframe in which to remedy the situation concerned or to suspend the Contract (BSCI Framework Agreement, 2013, Section 6, Paragraph 1).

Compliance initiatives could also actively increase auditor liability by enshrining third-party beneficiary rights for factory workers. In this way, a simple and direct legal remedy is provided to those factory workers that social audits are intended to benefit. This can easily be done, for example, by creating third party beneficiary rights in the contract that auditing companies sign to perform audits. A non-performance or deficient audit (i.e. lack of competence of the auditor or lack of complete or verifiable documentation) constitutes a breach of the obligations of the auditing company under these contracts. In addition, the compliance initiative could decide to create a reversal of the burden of proof: if an auditor fails to identify major non-compliances, the auditor would have to prove that relevant professional standards were adhered to.

Aside from the verification and accountability mechanisms social compliance initiatives could employ, they could also improve the structural conditions of audits. They could ensure that payment for the audit goes through the initiative and not directly from the manufacturer or retailer – as is required by the FairWear Foundation (FWF, 2012, p. 7). This would combat some of the conflict of interest concerns. Compliance initiatives could insist that all subcontractor factories are also part of the manufacturer's audit. They could broaden the audit's scope by scrutinizing the purchasing practices of the retailer – do they require unreasonable deadlines that perpetuate the overworking and inhumane treatment of workers? Are they paying untenable, exploitative prices for their products that aggravate the plight of the workers at these factories? Has the retailer made adequate investments in the monitoring, safety and workplace conditions of the factory? These measures may ensure that the implementation of Corrective Action Plans is not made impossible.

A more rigorous, systematic and transparent system of detection and sanction could take the form of increased disciplinary measures by the compliance initiatives themselves. Or it could take the form of civil legal liability created by the compliance initiative's contractual arrangements. If, however, the professionalization incentives are not strong enough to encourage a swift move in this direction, then these requirements should be codified through state regulation. Regardless of the route taken there is an urgent need for social compliance initiatives to play their supervisory role in a manner that represents a true threat to third party auditors to ensure they do their job with precision and care in a context where necessary safety measures are not implemented due to a misleading audit report.

5. Conclusion

With its focus on an immanent analysis of the standards for social auditing and the verification and accountability mechanisms of social compliance initiatives, this article risks reproducing a “managerial discourse”, which serves only the “report and certification order” (Fütterer, 2017). The current power asymmetry between workers and lead firms in the global value chains of the textile industry should be fundamentally changed in order to improve working conditions substantially. The article draws attention to a profession that for too long has been beyond scrutiny for its role in legitimizing those global value chains: the social audit industry. It highlights what should be self-evident: as long as social audits are done, there should be accountability. This is needed to ensure that flattering audits do not conceal and legitimize abusive working conditions in the supply chain.

The Rana Plaza collapse has led to increased awareness of abusive working conditions in the garment industry. Much attention has been paid to the role and responsibility of retailing companies. The role and purchasing politics of lead firms are certainly important in order to improve working conditions along the supply chain. The responsibility of social auditing companies, however, has often been overlooked. For example, even though several brands have contributed to the Rana Plaza Trust Fund which was established by the International Labour Organization to meet the claims of the survivors and families of deceased, none of the auditing companies that conducted social audits in the factories in the building did so, even though they are similarly a part of the garment industry and profit from the precarious conditions in these workplaces that necessitate their involvement.

The Phantom Apparel case study illustrated how social audits can fail to expose dangerous workplace conditions. It also showed that social compliance initiatives do not have a systematic and transparent way of handling complaints against auditing firms, investigating substandard auditing practices and sanctioning companies that do not meet minimum standards. They currently do not sufficiently control social auditing firms to ensure their auditors are adequately trained and competent and that they are incentivized to thoroughly detect and report on labor conditions, despite the demand for cheap and flattering audits.

Compliance initiatives are peculiarly placed to play a crucial oversight role for social auditing firms. The financial auditing industry demonstrates the importance of strong, oversight bodies to counter the likelihood of flattering audit reports to appease clients. These bodies should have transparent and strict disciplinary procedures to hold auditors accountable for substandard audits. They should also be responsible for enforcing a standardized and uniform system of auditing standards that prevent auditors from concealing problematic workplace practices. Social compliance platforms can and should do more to ensure proper systems of verification and accountability including transparent and consistent handling of disciplinary matters. To be meaningful, such measures should go beyond detecting and punishing instances of fullblown bribery, and should be subject to a substantive and uniform set of minimum professional standards.

In addition to the lessons from the financial auditing industry, there are other possible measures social compliance initiatives could take including contractual mechanisms at their disposal to allow affected third parties to hold auditing firms liable for negligent or substandard auditing methods or reports; or to compel firms to pay reparations to those affected by a workplace hazard not detected by the auditor. Social compliance initiatives could also impose structural changes to the price, payment mechanisms and scope of the audit process to pick up core causes of the production of misleading audit reports. Without adequate measures of oversight and accountability, private social compliance initiatives should be abandoned and the state must regulate social auditing practices.

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