



Social audit liability

HARD LAW STRATEGIES TO REDRESS WEAK SOCIAL ASSURANCES

Executive summary

The worldwide impact of the COVID-19 pandemic has been catastrophic for workers and communities. We now have a pivotal opportunity to rebalance deep inequalities of power and wealth in global supply chains and forge a path towards a [just recovery](#). This demands transformative action by states and companies to put human rights firmly at the heart of business.

Crucially, this requires robust corporate human rights due diligence¹ and effective access to remedy for victims of corporate abuse. The inadequate model of [social audits](#)² that companies have increasingly deployed to manage human rights issues in their supply chains is not a substitute for human rights due diligence. Reasons include that social audits do not ensure [meaningful](#) company engagement with rights-holders—the bedrock of human rights due diligence—and the [well-documented](#) failure of social audits to detect human rights abuse.

The social audit industry has rightly come under increasing scrutiny for its role in sustaining tolerance of abuse in company supply chains. It is time the social audit industry is held to account for false or negligent claims which hide the truth of abuse against workers. This report outlines legal strategies to seek accountability and remedy when a social audit firm harms human rights, and highlights that new laws and regulations must not equate social audits with human rights due diligence, or see them as a plausible substitute.

¹ Under the United Nations [Guiding Principles on Business and Human Rights](#) (UNGPs) at Principle 17, human rights due diligence is the process by which companies identify, prevent, mitigate and account for their adverse human rights impacts. According to the UNGPs, human rights due diligence should cover adverse impacts that a business “may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships”. Principle 18 calls on companies to undertake meaningful consultation with potentially affected stakeholders, at regular intervals. Under Principle 22, companies should remediate the adverse impacts they cause or contribute to.

² For the purpose of this report, social audits are a voluntary process carried out to assess and verify a company’s compliance with specified labour and/or environmental standards. This report is concerned with third-party social audits carried out by companies (“social audit firms”).

Dangerous factory conditions and widespread abuse have been exposed in numerous workplaces with compliance statements from social audit firms. Cases include:

- | The repeated failure of social audit firms to report on forced labour risks at rubber glove factories in Malaysia, subsequently exposed by [investigative journalists](#) in 2018 and, at another factory, by [state labour inspections](#) in 2020.
- | The 2013 collapse of the [Rana Plaza building](#) in Bangladesh, which killed 1,132 people and injured thousands more; multiple social audit firms failed to report on structural defects.
- | The 2012 disaster at [Ali Enterprises factory](#) in Pakistan, which was declared safe by a social audit firm just weeks before a factory fire killed over 250 workers trapped behind barred windows in a building with only one useable fire exit.

“ *While RINA certified the factory as safe, in reality it was a death trap that cost the life of my son and over 250 others,*”

[Saeeda Khatoon](#), Chairperson of the Ali Enterprises Factory Fire Affectees Association

Bringing legal claims against social audit firms is, so far, a barely-tested strategy to create legal accountability for the industry. To date, only two legal claims have been brought:

- | A [criminal complaint](#) filed in 2014 in Italy against the Italian firm, RINA,³ that issued social certification to Ali Enterprises factory in 2012; and
- | A tort [lawsuit](#) filed in 2015 in Ontario, Canada, against a French firm, Bureau Veritas, for its alleged negligent audits of factories in the Rana Plaza building.

Neither claim resulted in a finding of liability. However, social auditors do not operate in a legal vacuum. This report outlines innovative approaches for [social auditor liability](#), offering an avenue for victims to access legal remedy. As examples, French law appears to provide a favourable strategy in tort for those affected to sue a social audit firm under the social audit contract. German law offers a way to argue that a social auditor has a delegated legal duty to safeguard workers. Certain common law tort theories provide a basis for establishing a social auditor’s duty of care to affected workers, from which negligence liability can follow. The United States (US) Trafficking Victims Protection Reauthorization Act is a potential route for victims of forced labour to sue a social auditor for benefitting from labour exploitation.

Another possible area of litigation is a consumer claim against a certification scheme. A [lawsuit](#) in Washington State in the US against Rainforest Alliance indicates the viability of legal claims, although such claims would not result in remedy for affected workers and communities.

³ RINA’s response to these allegations is accessible [here](#).

Nonetheless, efforts to secure the legal accountability of social audit firms face limitations in existing legal frameworks and systemic [barriers to access remedy](#). These include:

- | the dangers and difficulties those affected face when collecting evidence;
- | difficulties in establishing the causal link between the audit and harm suffered; and
- | sub-contracted audits and challenges specific to transnational litigation.

Addressing these challenges requires contractual and legal reform, in addition to safeguards against reprisals for victims taking legal action. Negotiations around [mandatory Human Rights and Environmental Due Diligence](#) (mHREDD) laws and a [Legally Binding Treaty](#) on business and human rights offer vital opportunities to ensure victims of abuse have effective access to legal remedy, including for claims against social audit firms and where claims have a transnational component.

States should establish robust civil and criminal corporate liability regimes and reject social audits and certifications as proof of human rights due diligence. In turn, social audit firms, in their capacity as companies, must be subject to mHREDD laws and corresponding liability regimes.

At the same time, securing social auditor liability should not deflect from efforts to hold brands and suppliers accountable for human rights abuses. Companies should not solely rely on social audits and certifications. Instead, they should adopt a transformative approach to human rights due diligence which goes beyond social auditing.

Recommendations

- | **Lawyers and legal advocates** are encouraged to build on our research and support efforts to hold social audit firms to account for human rights harm.
- | **Governments** should address the barriers to justice which sustain corporate impunity. At a minimum, they should enact mHREDD legislation and robust civil and criminal liability regimes, including a reversed burden of proof for civil claims, to ensure victims' access to legal remedy. Governments should ensure all companies, including social audit firms, are subject to these laws and held liable for human rights abuse. Governments should stipulate in mHREDD legislation that social audits and certifications do not equate to human rights due diligence. Finally, governments must ensure those challenging corporate abuse are protected against reprisals.
- | **Companies including social audit firms** should respect human rights in accordance with the United Nations Guiding Principles on Business and Human Rights (UNGPs), ensuring effective human rights due diligence through the meaningful engagement of rights-holders. Companies should protect those reporting on corporate abuse, and taking legal action, against reprisals. Companies should introduce contractual reform to grant affected rights-holders third-party rights and remove confidentiality restrictions to disclosing audit reports and contracts.