

The Environment for “Social Auditing” In the PRC Summary of Testimony before the Congressional Executive Committee on China, Dec. 11, 2014

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The April 24, 2013 Rana Plaza factory collapse in Dhaka, Bangladesh, with its death toll of over 1,100 workers, and an abundance of evidence of negligence and indifference on the part of multi-national brands, manufacturers and building owners, poses a stark and tragic challenge to those that assert that international brands and other multinationals are able to effectively police compliance along the labyrinths of their supply chains with even the most elemental norms of occupational health and safety. The Rana Plaza disaster involved clear departures from the most common sense and simple standards of load bearing in building codes, and evacuation procedures.

The Rana Plaza structure had more than the permitted stories, and could not bear its additional illegal weight. After huge cracks appeared in pillars and walls, workers were pressured to remain at work under supervisory assurances from their employers that nothing was wrong, and with threats of job loss.¹ As work continued fulfilling contracts for major European Union and North American brands, the Rana Plaza building buckled and fell on top of thousands of workers. To date, the families of the dead, and the injured workers have not received anything like adequate compensation from any of the many wrongdoers who contributed to this outrage.²

The Rana Plaza collapse illustrates a fundamental flaw in the claim that multinational corporations are able to self-enforce even the

¹Hossain, Farid. “Bangladesh: Owners’ Many Failings Led to Collapse”. *Associated Press*. 23 May 2013. Web. <http://bigstory.ap.org/article/bangladesh-owners-many-failings-led-collapse>

²The Rana Plaza Arrangement. “Rana Plaza Arrangement. Understanding for a Practical Arrangement on Payments to the Victims of the Rana Plaza Accident and their Families and Dependents for their Losses”. 20 Nov. 2013. Web. http://www.ranaplaza-arrangement.org/mou/full-text/MOU_Practical_Arrangement_FINAL-RanaPlaza.pdf

most basic occupational health and safety codes. A current, empirically grounded scholarly assessment of corporate social responsibility (CSR) and social auditing, by Professor Richard M. Locke, makes only a most modest and contingent claim for CSR programs, including social auditing:

...Private initiatives aimed at improving labor standards can succeed when global buyers with their suppliers establish long term, mutually beneficial relations and when various public institutions help to support these... relations...³

In short, absent public, governmental pressure, including state enforcement of corporate, business and labor laws, voluntary corporate policing does not yield much good, and overlooks much evil—as Rana Plaza demonstrates.

Indeed, any independent auditing of the behavior of manufacturers along supply chains depends on clear, comprehensive public legal and regulatory frameworks that establish standards and require basic reporting by manufacturers of compliance with those standards. To “audit” at all, much less to initiate “social audits,” global brands and their lawyers and accountants must be able to investigate public and private records, as well as gather testimony and evidence to establish the facts of compliance or non-compliance with laws and policies. China presents many questions at even this threshold auditing step. This issue—whether China’s environment allows any credible auditing—is one often openly discussed by business and regulators.⁴

Here is a summary list of the major problems of auditing in China:

- Public records concerning corporate identity are often difficult to access in the many jurisdictions of China, and are

³ Locke, Richard M. *The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy*. Cambridge: Cambridge UP, 2013. Print. p. 17.

⁴ Lynch, Sarah. “SEC Judge Bars ‘Big Four’ China Units for Six Months Over Audits”. *Reuters*. 23 Jan 2014. Web. <http://www.reuters.com/article/2014/01/23/us-sec-china-bigfour-idUSBREA0L28D20140123>

often not complete and/or accurate. The brands, far removed, often do not know who may be subcontracting from their prime contractors to fill accelerated “just-in-time” orders, and cannot even (after-the-fact) ascertain the identities of all employers in these complex supply chains. This opacity is most acute where there is child, prison or forced labor in a supply chain.

- Just “which” employer or business entity is responsible for compliance with labor and environmental laws is often in doubt due to a “hugger-mugger” of corporate entities and names that proliferate without much economic rationale precisely to disguise responsibility.⁵ Workers often do not know the real identity of their legal employer.
- Manufacturers in labor intensive sectors like garments or toys often do not accurately report hours of work, pay and occupational health and safety matters, and are not pressed to do so by the authorities.⁶
- The brands themselves indirectly promote a business and regulatory environment in which labor laws and other social laws are not taken seriously by government or employers, with the result that social laws are not rigorously enforced. Local authorities often collude with or allow local employers to evade standards. In the absence of autonomous grassroots worker organizations to pressure supply chain employers to follow wage and hour laws, and other labor standards, employers who comply with the law end up at a competitive disadvantage with employers who avoid standards and thus produce product cheaper. This failure to enforce law evenly sets up fierce economic incentives to flout the law, with acquiescence by local government obsessed with growth targets. Brands often exacerbate this corrosive process. As

⁵ United Mine Workers v. Coronado Coal Co., 259 U.S. 344, 411 (1922). (Chief Justice Taft’s describing an employer’s “attempt to evade his obligation by a hugger-mugger of his numerous corporations...”)

⁶ Locke supra at 36, observing that factory management often engages “in a cat and mouse game in which auditors uncover fabricated documents...”

Professor Locke found:

Suppliers are asked to invest in improved labor and environmental conditions but are pressured to (and rewarded for) producing ever-cheaper goods...⁷

- Auditing firm staff are too often wholly ignorant of the context of industrial relations to know how to interview workers (if workers are even interviewed). In particular, the often junior and inexperienced audit staff relegated to labor auditing cannot begin to engage in the type of sensitive social investigation required to put workers at ease, and to prompt candid and truthful responses from workers. To the contrary, these auditors follow a rote checklist that workers fear must be answered the “right” way to avoid retaliation.⁸
- It takes time and considerable effort for independent worker rights advocates to establish the quality of relationship with industrial and service sector workers in China that permits candid discussions of working conditions. Many of the occupational health and safety practices in factories, mills, mines and transport hubs are appalling. Without some attempt to establish a more organic relationship with rank-and-file workers, auditors simply will not be able to assess whether safety and health standards are being maintained in factories and other work sites—assuming, of course, that the law and regulations are sufficiently developed to yield the comprehensive set standards required to set the framework for safe and healthy workplaces in many industrial environments.
- Corporate management often is compelled to engage law firms and investigators to uncover wrongdoing in its ranks or along supply chains when regular auditing is not sufficient. Yet, China recently imprisoned the principals of a long

⁷ Locke, *supra*, at p. 35.

⁸ Locke, *supra*, at 36-37.

established investigation firm that had for years conducted corporate investigations unimpeded. Basically, the two lead investigators were convicted and imprisoned under a strained interpretation of Article 253 of China's Amendments to Criminal Law (VII) for "stealing or illegally obtaining, by any means, personal information."⁹ Where transparency is lacking, resorting to experienced lawyers and investigators is often necessary for corporate management to assess whether laws or commitments are being violated. Even more so in an opaque environment like China's. Now, lawyers, investigators and social scientists looking at wrongdoing along supply chains face the threat of criminal prosecution and even prison if their inquiries threaten the interests of those violating the law or corporate policy. Frankly, these prosecutions—against the backdrop of intense security over labor issues—undermine the endeavor of social auditing.

The validity of social auditing depends on its independence. CSR programs with a high degree of independence and participation by autonomous labor organizations and networks, such as the Worker Rights Consortium and the Accord¹⁰ in Bangladesh, can contribute

⁹ Dentons. "Conducting compliance investigations in China: A new regulatory environment." 28 Aug 2014. Web. <http://www.dentons.com/en/insights/alerts/2014/august/28/conducting-compliance-investigations-in-china-a-new-regulatory-environment>

¹⁰ Both the Worker Rights Consortium and the Accord are binding agreements to enforce labor standards with robust trade union participation.

Worker Rights Consortium. "The Designated Suppliers Program – Revised". 17 Feb. 2012. Web. <http://www.workersrights.org/dsp/DSP%20Program%20Description.%202012.pdf>

As of this date, the Accord has been signed by 186 apparel companies from Europe, America, Asia and Australia, two global unions (IndustriALL and UNI Global Union), eight Bangladeshi trade union organizations, and four campaign organizations (Worker Rights Consortium, International Labor Rights Forum, Clean Clothes Campaign and Maquila Solidarity Network).

The Accord on Fire and Building Safety in Bangladesh. "Official Signatories." Bangladesh Accord. 9 Dec 2014. Web. <http://www.bangladeshaccord.org/signatories/>

Also see the testimony given by Scott Nova of the Worker Rights Consortium to: US Senate Committee on Foreign Relations "Prospects for Democratic Reconciliation and Workers' Rights in Bangladesh." 11 Feb 2014. Web. <http://www.foreign.senate.gov/hearings/prospects-for-democratic-reconciliation-and-workers-rights-in-bangladesh>. In China, few work rights organizations are part of the auditing process or CSR programs.

much to enforcing labor standards even in the absence of governmental pressure to abide by labor standards. Yet, staging supply chain compliance without sustained robust pressure by grassroots workers and their networks in China will ultimately prove to be akin to staging Hamlet without the Prince of Denmark.

