

## National Contact Point for the OECD Guidelines

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

### FINAL STATEMENT

1. This Final Statement is issued by the Italian National Contact Point <sup>1</sup> (hereinafter also "NCP"), at the conclusion of the proceedings started with the specific instance submitted on the 11<sup>th</sup> September 2018 by Ali Enterprises Factory Fire Affectees Association (AEFFAA); National Trade Union Federation (NTUF); Pakistan Institute for Labour Education and Research (PILER); European Center for Constitutional and Human Rights (ECCHR); Stichting Schone Kleren Kampagne/Clean Clothes Campaign; Campagna Abiti Puliti and Movimento Consumatori (MC) (hereinafter also "the Complainants") *versus* RINA Services S.p.A. (hereinafter also "the Company", or "RINA").

### The OECD Guidelines and the NCP tasks

2. The OECD Guidelines for Multinational Enterprises (hereinafter also the "Guidelines") are the most comprehensive set of non-binding recommendations, jointly addressed by adhering Governments to the enterprises for a responsible conduct, with the aim to maximize the positive impact that multinationals can have on sustainable development and on a long-lasting social progress and to encourage an open, competitive and transparent environment for international investment.
3. The "specific instance" is a non-judicial grievance mechanism, under the NCP responsibility, to settle issues between one or more stakeholder(s) and one or more enterprise(s), through consensual procedures, related to the alleged non-observance of the Guidelines in areas such as human rights, workers' rights, transparency and environmental protection. The ultimate goal of this mechanism is to find an agreement between the parties. In other words, it is about transforming critical situations into opportunities for economic, environmental and social progress.

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<sup>1</sup> The NCPs are the institutional tools created by the Governments to contribute to the effective implementation of the Guidelines; the NCPs have the task of promoting and disseminating the Guidelines, raising the awareness of companies and managing the "specific instances" mechanism (see below). The Italian NCP was established by the law 273/2002, art. 39 and subsequent Ministerial decree. The NCP is located within the Ministry of Economic Development - Directorate General for Industrial Policy, Innovation and Small and Medium-Sized Enterprises (DGPIIPMI).



4. When a specific instance is submitted to the NCP, it carries on an initial assessment on the issues raised to decide if the case merits further examination. In this specific instance the Initial Assessment of the case is published attached to this Final Statement.
5. If the case merits further examination, the NCP offers its good offices to the parties and if the parties accept the proposal of good offices, the NCP facilitates the access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in dealing with the issues.
6. At the conclusion of the procedure, if the parties reach an agreement, the NCP issues a report. If, as in this case, no agreement is reached, or if a party is unwilling to participate in the procedure, the NCP issues a Final Statement.

### **The Parties of the specific instance and the case**

7. The Complainants. This specific instance has been submitted on the 11<sup>th</sup> September 2018 by, a group of NGOs which operates mainly for the defence of human and labour rights in the textile sector, namely:
  - a. the Ali Enterprises Factory Fire Affectedes Association (AEFFAA), the self-organization of the families of victims of the Ali Enterprises fire and survivors of the fire;
  - b. The National Trade Union Federation, an organization representing six trade unions and federations, an informal sector organization and a Migrants Workers Front;
  - c. the Pakistan Institute for Labour Education and Research (PILER), an educational and research organization on labour related issue;
  - d. the European Center for Constitutional and Human Rights (ECCHR) an independent, non-profit legal and educational organization dedicated to enforcing civil and human rights worldwide;
  - e. the Stichting Schone Kleren Kampagne, Dutch NGO that hosts the International Office of the Clean Clothes Campaign, the largest alliance of trade unions and NGOs, aimed at improving the working conditions in the textile sector worldwide;
  - f. the Campagna Abiti Puliti, the national coalition representing the Clean Clothes Campaign in Italy;
  - g. the Movimento Consumatori (MC) an Italian national consumer association with over 30 thousand members, working to implement consumers' rights and to achieve equal rights of economic citizenship
8. The Company. The respondent is RINA Services S.p.A., an Italian enterprise operating internationally through a global network of 3,700 professionals, in 170 offices in 65 countries, specialised in technical and social auditing and certifications across several sectors, accredited to carry out SA8000 certification by Social Accountability Accreditation Services.
9. Alleged violation of the Guidelines. In addition to contributing to the violation of several international treaties (Article 6 International Covenant on Civil and Political Rights; Article 6 International Covenant on Economic, Social and Cultural Rights, ILO Convention 155, 187), according to the Complainants the Company allegedly breached the following recommendations of the Guidelines:
  - Chapter II (*General Policies*), II, A.10, A.11;
  - Chapter IV (*Human Rights*);
  - Chapter V (*Employment and Industrial Relations*), 1c, 1d
10. The issues raised focus around the validity, effectiveness and impact of the SA8000® Standard and Certification, both in general and specifically in the case examined.

11. Created by SAI in 1997, “[t]he SA8000 Standard is the world’s leading social certification program. It provides a holistic framework allowing organizations of all types, in any industry, and in any country to demonstrate their dedication to the fair treatment of workers.”<sup>2</sup>

### **Position of the Complainants**

12. The position of the Complainants and the specific allegations are fully reported in the Initial Assessment of the case, which is published attached to this Final Statement and to which we refer to for further details.
13. In brief, the Complainants charged RINA with having issued a SA 80000 certification to the Ali Enterprises textiles factory located in Baldia Town, Karachi, Pakistan that was devastated by a killing fire less than one month after the issue of the certification.
14. According to the Complainants, the above-mentioned circumstance contributed to the disaster, in that the seriousness of this accident was determined by a series of safety deficiencies in the factory that were not mentioned in RINA’s audit report and were hardly compatible with the SA8000 certificate.
15. In addition, according to the Complainants, other circumstances, omitted in the audit report, had contributed to the seriousness of the accident: at the moment the fire broke, at about 6.30 p.m., the working time was completed by half an hour and yet over 1,000 workers were still in the factory.
16. Furthermore, this number was much higher than the expected 400 workers recorded in the Audit Report; besides, the official list of deceased persons included 10 people aged between 15 and 17.
17. The Complainants also stated that, by issuing the SA8000 certificate on the basis of a deficient and incorrect audit report, RINA had failed to conduct human right Due Diligence, according to Chapter II A10 and Chapter IV, §5 of the Guidelines and to the Due Diligence Guidance for Responsible Supply Chain in the Garment and Footwear Sector. RINA should have taken into account specific sector risks and country risks factors, and the assessment methodology should have been adjusted when actual findings did not correspond to the risks (e.g. unannounced visits to the factory).
18. Consequently, the Complainants asked the NCP to facilitate a constructive dialogue with RINA on the critical steps it should take to align with the OECD Guidelines. These proposed steps can be summarized as follow:
  - a. In terms of disclosure, RINA should make publicly available - at least to the workers and the relevant trade unions and government agencies - the audit reports and the related documents concerning the Ali Enterprises factory and the future audited organizations. RINA should also include in its future audits the purchasing practices of its clients’ buyers.
  - a. In terms of participatory methodologies, RINA should include off-site workers and trade union observations in the social audits.

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<sup>2</sup> <https://sa-intl.org/programs/sa8000/>



- b. RINA should also “contribute to the accountability towards third parties through inclusion by RINA of third party beneficiary rights for workers in the audit procedure and contracts”.
- a. In order to avoid conflicts of interest RINA should account for the relations with its clients and service providers; it should establish a payment system for social audits that avoids such conflicts of interest, and refuse to perform factory audits that are paid for by the factory owner.
- b. RINA should also review and strengthen its own internal quality review procedures;
- c. As for the remedy for the Ali Enterprises disaster, RINA should provide a financial relief and an apology to the victims and their families.

### **Position of the Company**

19. The position of the Company and the reply to specific allegations are fully reported in the Initial Assessment of the case, which is published attached to this Final Statement and to which we refer to for further details.
20. The Company expressed its deep sympathy for the relatives of the victims of the tragedy while rejecting any liability for the accident and any consequence thereof, and asked the NCP to close the case.
21. As to the allegation of breach of the Guidelines and, in particular of the Human Rights Due Diligence recommendations RINA stated that:
  - a. it did not breach those recommendations and duly performed its duty to audit the management system of the factory under the SAAS accreditation rules; including the choice of RI&CA as qualified local technical partner;
  - b. there was no causal connection – cause, contribution, incentive - between its conduct and the accident or any alleged violation of the Guidelines;
  - c. it was committed to responsible conduct, adhered to several national and international CSR network and had an enhanced approach to sustainability, promotion and defence of human rights.<sup>3</sup>
22. As to the impact of the certification on the fire, the Company declared that:
  - a. a SA8000 audit is not aimed at fully guaranteeing the structural integrity and fire safety of a building;
  - b. in case any non-conformity is detected during the audit, a period is given to the applicant organisation to implement the necessary corrective actions;
  - c. in any case, the responsibility for the (voluntary) compliance with the requirements for certification is upon the client organisation, not the certification body;
  - d. there was no contract nor any other link between the certifier and the client’s buyers, therefore RINA could not have been expected to collaborated with the buyers. “
23. As to the Complainants’ request of dialogue, RINA stated that:
  - a. the specific issues raised in the instance would not contribute to the purposes and the effectiveness of the Guidelines,

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<sup>3</sup> In addition to: repudiation of all discrimination; implementation of a whistleblowing platform; commitment to integrity and transparency; adoption of anti-corruption and conflicts of interest control model and appointment of a Control Body to oversee it; yearly compliance audits using a risk-based approach; establishment of a Corporate Compliance Board and Risk and Control Committee; membership of the International Federation of Inspection Agencies.



- b. the Complainants addressed general concerns which could not be solved by a single certifier, nor under the NCP's good offices;
  - c. the NCP procedure was not the proper venue to deal with the request for financial relief;
24. The Company declared its openness to dialogue with the Complainants, provided that the discussion:
- a. would not address liabilities for the accident (which RINA totally rejected, anyway);
  - b. would be limited to the matters which could be addressed to a single certification body.

### **Initial Assessment and results**

25. Due to the complexity of the case, the NCP considered appropriate to seek legal advice from international law experts of the ISGI - Institute for International Legal Studies of the Italian National Research Council (CNR).
26. In its Initial Assessment of the case, which is published attached to this Final Statement, the NCP concluded that the issue raised was *bona fide* and relevant to the implementation of the Guidelines and that, therefore, it merited further examination.
27. Indeed, the NCP considered that:
- a. The Complainants appeared to have interest and legal standing in supporting the claim against RINA, before the Italian NCP, for the fire occurred in Ali Enterprises;
  - b. The specific instance seemed material and substantiated;
  - c. It could be found a link between the enterprise's activities and the issues raised;
  - d. None of the parallel proceedings and cases identified interfered with the specific instance or could be jeopardized by the further consideration of the case by the Italian NCP;
  - e. The procedure before the NCP might lead to a fruitful dialogue and its offer of good offices might help to address the case and facilitate agreements between the parties.
28. In particular, the NCP considered that the issues raised by the Complainants and reported to the points 73 to 103 of the Initial Assessment merited further examination.
29. Having acquired the favourable opinion of the NCP Committee and taking note of the comments of the Parties, the NCP sent the Parties the final version of the Initial Assessment, by letter prot. n. 078394 of 08-04-2019, and informed them about the conclusion of this phase of the procedure.
30. The NCP decided not to publish the Initial Assessment, in the belief that this could favour an agreed solution of the case.
31. In the same letter prot n. 078394 of 08-04-2019 the NCP offered its good offices to the Parties "in an attempt to reach a shared solution to the case", in the form of a Conciliator procedure.
32. All the Parties accepted to enter into the Conciliation procedure and signed the Terms of Reference proposed by the NCP.
33. Later, by letter prot. n. 0107216 of 10-5-2019 the NCP informed the Parties that they had all accepted its offer of good offices according to the Terms of Reference and that, therefore, the conciliation procedure would take place. The NCP proposed Professor Tullio Treves, a high-profile Italian jurist and magistrate, as Conciliator and the parties agreed with the proposal.

### **Conciliation procedure**

34. As agreed by the NCP and the Parties, the first meeting of the Conciliation procedure took place on the 25th June 2019, in Rome, at the Ministry of Economic Development.



35. At the end of the first meeting, the Parties accepted the proposal of the Conciliator of leaving aside the issue of assessing the liability of the Company for the fire accident and of its tragic consequences, having acknowledged that this issue was not essential nor useful for the achievement of an agreement.
36. Against this background, and in a spirit of cooperation and deep comprehension of the difficult and tragic events, the Parties also accepted the Conciliator's proposal of focusing the dialogue on the following three elements, that could become the main items of the Terms of Settlement of the Conciliation:
  - a. the possibility of a humanitarian gesture to be made by RINA (the Company) in favour of the families of the victims; without any implication concerning liability or any direct link to that issue;
  - b. the practicability of an engagement of RINA to proactively pursue improvements of the existing certification systems especially within the appropriate international fora, in particular SAI and SAAS;
  - c. the feasibility of a number of initiatives by the Company, without prejudice to its position as a competitor in the market, to improve its due diligence practices and policy.
37. In the two-day meeting held in Rome on 12-13 September 2019, a plenary discussion as well as direct separate conversations, enabled the Conciliator to gather and examine the submissions of the Parties and their responses to its questions.
38. As the liability assessment was not anymore an issue of discussion, both parties accepted to focus the dialogue on the humanitarian gesture that could be offered to the families of the victims, as a gratuitous allowance and not, in any case, as a compensation for the tragedy and the pains suffered.
39. During the discussion, the point related to the humanitarian gesture proved to be the most hampering, as the Parties held substantially different views regarding the nature, the beneficiaries and the amount of the "gesture". The Claimants considered adequate a cash transfer of the order of 4 million US dollars, to be distributed to the families of the victims. The Company, on the other hand, proposed that it should consist of specific initiatives, such as scholarships, up to a value of 50.000 to a maximum of 100.000 US dollars that would have benefited the people affected by the tragic events.
40. The Company totally refused to consider any form of compensation to be transferred directly to the victims and their families, as it would have alluded to its eventual liability.
41. After the end of this consultation, the Conciliator submitted the draft Terms of Settlement to the Parties, asking them to make comments and propose eventual changes in view of the preparation of the final version. Both Parties complied with this request and the Conciliator, on the 2nd March 2020, submitted the final text of the Terms of Settlement to the Parties, giving them time for their signature until the 23rd March 2020.
42. Within the deadline decided by the Conciliator (23rd March), the ToS were signed by the Complainants but not by the Company. The latter explained the reasons of its decision not to sign the ToS in a letter of 23rd March 2020, written by RINA's Chief Executive Officer. In particular, in RINA's view, the amount of the "humanitarian gesture" finally proposed by the Conciliator (i.e. 400.000 USD) went far beyond the budget the Company could dedicate to voluntary donations.
43. Taking note of the situation, on 9th April 2020, with regret, the Conciliator announced to the Parties that the conciliation procedure would end without agreement.



44. The duration of the Conciliation procedure was set at six months, but, in consideration of the complexity of the case, it was extended to 31st March 2020. Afterwards, in agreement with the Parties, and due to the COVID-19 pandemics it was exceptionally extended until 20th April 2020.
45. On the 17th April 2020 the Conciliator transmitted its Final Report to the NCP on the steps taken during the conciliation procedure and on its outcomes, including the recommendations mentioned below.
46. Despite the failure in reaching the agreement, but having favourably considered some common positions accepted by both Parties during the procedure, the Conciliator, addressed some recommendations to the Parties that, if followed, would contribute to improve the relationships between them and to attenuate the impact of the unsuccessful conclusion of the Conciliation<sup>4</sup>.

### **NCP's recommendations to the Parties**

47. On the 30/07/2020 NCP sent the draft Final Statement to the NCP Committee for its opinion, on the 28<sup>th</sup> of August 2020 the NCP Committee expressed its favourable opinion on the draft Final Statement. One of the member of the NCP Committee, CGIL- the Italian General Confederation of Labour, asked to introduce the request to the parties to elaborate a Report after one year after the publication of the NCP Final Statement. It also asked the NCP to publish the Final Report of the Conciliator and its annexes. While the first request was accepted by the NCP, the second request, submitted to the Parties in line with the Guidelines, Part II, §36 of the Commentary to the procedure implementation, was not accepted by the Company. Therefore, the Report and its Annexes will not be published.
48. On the 24/09/2020, the Final Statement was transmitted to the Parties giving them the possibility to send their comments. The Parties submitted their comments to the draft Final Statement on the 14/10/2020 The NCP, taking into account the observations made by the Parties, adopted this Final Statement.
49. After careful consideration of the positions of the Parties, of the progress of the conciliation procedure in all its phases and of all its outcomes, taking into consideration the recommendations of the Conciliator, the NCP recommends that:
  - a. the Parties do not dissipate the commitment to dialogue and the goodwill shown in this procedure and continue to seek a shared solution of the case
  - b. the Company make a humanitarian gesture without any implication in terms of liability
  - c. the Company take action to show its sympathy for the tragic event;
  - d. the Company when operating in countries and sectors at risk, such as in the case of the textile sector in Pakistan, carry out a risk-based due diligence effective and adequate to the risks registered, as recommended by the OECD Guidelines;

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<sup>4</sup> The recommendations, of the Conciliator which are auspices for future behaviour in a spirit of compliance with the OECD Guidelines for Multinational Enterprises, are as follows:

- 1) that the Company makes a humanitarian gesture toward the victims of the tragedy.
- 2) that the Company, with the kind assistance of the NGOs involved, meet the representatives of the victims to show sympathy for the tragic event (this was a point in he proposed Terms of Settlement that met no objections).
- 3) that the Company implements and enhances all the commitments announced in the abovementioned letter, including through proactive initiatives within SAI and SAAS, with the aim of improving the certification mechanism with particular attention to the criticalities of the textile sector and of high-risk countries.
- 4) that the Complainants cooperate, in a spirit of good faith, with the Company for the implementation of these recommendations.
- 5) that the Complainants and the Company inform each other and the PCN about the implementation of the above recommendations.



- e. the Company implement and enhance all the commitments announced in the above-mentioned letter from RINA's CEO, including through proactive initiatives within SAI and SAAS, with the aim of improving the certification mechanism with particular attention to the criticalities of the textile sector and of high-risk countries;
- f. the Complainants cooperate in good faith with the Company for the implementation of these recommendations;
- g. the Complainants and the Company keep updated each other and the NCP on the implementation of the above recommendations.

### **Conclusions**

- 50. This Final Statement closes the procedure opened by the submission of the specific instance on the 11th September 2018.
- 51. The NCP will verify the steps taken by the Parties to implement its recommendations and the results achieved after the conclusion of the procedure, by requesting the Parties to send a report to the NCP after one year from the publication of this Final Statement. The NCP will publish this information on its website.

The Director General  
Chair of the NCP  
*Avv. Mario Fiorentino*