

**RESEARCH REPORT:**  
**BUSINESS AND HUMAN RIGHTS: SOCIAL AUDITING AND COMPLIANCE**  
**STANDARDS**

Human Rights Resource Centre, July 2014

**A. INTRODUCTION**

1. There has been growing awareness and interest in the international community regarding business and human rights. The momentum has been building around the adoption of the United Nations Guiding Principles on Business and Human Rights (**UNGP**) by the Human Rights Council on 6 June 2011. The **UNGP** has set in place an authoritative global standard that defines the respective roles of governments and business in ensuring governments' responsibility to protect, business entities' responsibility to respect human rights, and victims' rights for redress. The **UNGP** has also brought with it an opportunity to re-think auditing and certification practices on compliance standards.
2. Various quarters have been concerned with the use of voluntary initiatives, including the use of social auditing practices, to assess a business enterprise's human rights performance.<sup>1</sup> These concerns reflect much of the anxiety felt by many in the international community following on from the Rana Plaza incident in Dhaka, Bangladesh, on 24 April 2013, where 1,130 people were killed due to the collapse of the eight-storey building that housed five factories.<sup>2</sup> As such, understanding the landscape in which social auditing practices can be developed at this time would seem key to the development of any such new standards for local (or indeed, international) markets.
3. This research paper considers a set of standards, known as the Business & Human Rights International Standard for Certification (**BHRISC 2011**), and its potential for enhancing private sector corporate alignment with the **UNGP** in Indonesia, as well as globally.<sup>3</sup> The research was conducted by the Human Rights Resource Centre (**HRRC**), upon the production of the BHRISC 2011 by the staff of PT Moores Rowland, Indonesia. Due to the proprietary nature of the standard, further inquiries should be directed to PT Moores Rowland, Indonesia.<sup>4</sup>

**B. CURRENT LANDSCAPE OF CERTIFICATION AND SOCIAL AUDITING SCHEMES**

4. "Certification," by definition, is the act of confirming the characteristics of a person, organization or thing. It can pertain to skills required or the value of a product. In order to be certified, some form of external review, education, assessment or audit is usually provided.

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<sup>1</sup> See for instance Christopher Albin-Lackey. "Without Rules: A Failed Approach to Corporate Accountability." *Human Rights Watch* (2013) Webpage. Accessed 21 June 2014. <http://www.hrw.org/world-report/2013/essays/112459> and Shift. "From Audit to Innovation: Advancing Human Rights in Global Supply Chains." *Shift* (August 2013). PDF. Accessed 26 June 2014. <http://www.shiftproject.org/publication/audit-innovation-advancing-human-rights-global-supply-chains>

<sup>2</sup> Sustainability Initiatives and Standards. "Voluntary social audits and certifications in the garment supply chain after the Rana Plaza collapse." (19 May 2013). Webpage. Accessed 23 June 2014. <http://sustainability-initiatives-and-standards.com/2013/05/19/voluntary-social-audits-and-certifications-in-the-garment-supply-chain-after-the-rana-plaza-collapse/>

<sup>3</sup> The following report is based on a literature review conducted during the period 1995 - 2014 on the issues of certification, social auditing, fair trade, and the United Nations Guiding Principles on Business and Human Rights.

<sup>4</sup> Moores Rowland. "Moores Rowland." Website. Accessed 7 July 2014. <http://www.moore-rowland.com/>

Certification is usually undertaken by an accredited certifier, who obtains accreditation via a professional agency, international organization, non-profit organization or government department. According to Mutersbaugh, the key elements of certification include: (i) a set of public standards that are produced by an agency independent of producing and/or marketing agents (in organic coffee, for example, standards are set by government agencies such as the USDA or NGOs such as the IFOAM); and (ii) third party verification in which an independent certifying agency checks to see that producers and/or marketers adhere to those standards.<sup>5</sup>

5. Since the early 1990s, there has been a rapid expansion of certified production forms, characterized by the use of external, third party accreditation and certification processes.<sup>6</sup> While there have been some efforts at harmonization both at the transnational (ISO, GATT) and regional levels, the institutional development of certification frameworks still appears as an “uneven process in which certification has coalesced into forms unique to each commodity chain.”<sup>7</sup> Nevertheless, certification has the potential to provide a basis through which business enterprises (and in particular, small and medium sized enterprises) can consider tangible and practical ways in which to improve their business practice and be rewarded financially for it. If undertaken with proper consideration and caution, incentivising good behaviour, by linking it to market-led initiatives which reward such behaviour, could have the potential to shift corporate practices for the better and improve the lives of workers and communities who are directly impacted by those practices.
6. Bearing this in mind, it is worth taking a look at perhaps one of the most developed and most successful forms of certification in the social enterprise space to date, and to consider the evidence as to its merits, namely, Fair Trade Certification.

### Fair Trade Certification

7. Fair trade is “a certification scheme that attempts to build an alternative trade network between the global North and South by linking socially and environmentally conscious consumers in the North with disadvantaged producers engaged in socially and environmentally sustainable agriculture in the South.”<sup>8</sup>
8. The Fair Trade Labelling Organizations International (**FLO**) regulates fair trade certified products internationally.<sup>9</sup> The **FLO** produces standards designed to “tackle poverty and empower producers in the poorest countries in the world.”<sup>10</sup> The key objectives of the standards are to: (i) ensure that producers receive prices that cover their average costs of sustainable production; (ii) provide an additional Fair Trade Premium which can be invested

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<sup>5</sup> Tad Mutersbaugh. "Just-in-space: Certified rural products, labor of quality, and regulatory spaces." *Journal of Rural Studies* 21, no. 4 (2005): 389-402. 390.

<sup>6</sup> Ibid., 395.

<sup>7</sup> Ibid., 395.

<sup>8</sup> Joni Valkila and Anja Nygren. "Impacts of Fair Trade certification on coffee farmers, cooperatives and laborers in Nicaragua." *Agriculture and Human Values* 27, no. 3 (2010): 321-333. 321. (Hereafter, **Valkila and Nygren**). See also Murray, D.L., and L.T. Reynolds. "Globalization and its antinomies: Negotiating a Fair Trade movement." In *Fair Trade: The challenges of transforming globalization*, edited by L.T. Reynolds, et al., 3–14. London: Routledge, 2007; and Renard, M.C. "Fair Trade: Quality, market and conventions." *Journal of Rural Studies* 19, no. 1 (2003): 87–96.

<sup>9</sup> There are, however, a number of national organizations, not-for-profit organizations and private entities that have sought to operate in the “fair trade” space, and both benefit or capitalize from it. Starbucks, for instance, has developed its own “preferred providers” system for coffee growers, which capitalizes on fair trade principles, while not being officially recognized by the FLO.

<sup>10</sup> Per the statement made on the FLO’s website: <http://www.fairtrade.net/standards.html> [Last accessed 20 June 2013].

in projects that enhance social, economic and environmental development; (iii) enable pre-financing for producers who require it; (iv) facilitate long-term trading partnerships and enable greater producer control over the trading process; (v) set clear core and development criteria to ensure that the conditions of production and trade of all Fair Trade certified products are socially, economically fair and environmentally responsible.<sup>11</sup> Today, there are over 1.2 million certified fair trade farmers in 66 different countries. Fair trade products are now sold in 120 countries.<sup>12</sup>

9. The benefits pertaining to fair trade certification have been the subject of much academic discussion and consideration, particularly as it pertains to the coffee industry. Some research tend to suggest that fair trade “improved producers resilience to adverse shocks, reduced livelihood vulnerability, and improved the organizational skills of small coffee producers, labourers and their associations.”<sup>13</sup> There remains, however, a dearth of real evidence to either support or dismiss the claims made by fair trade proponents:

“[T]he efficacy of fair trade has not been adequately tested... Impact studies mostly consist of case analyses based upon qualitative interviews and participant observations. They typically overlook the effects of fair trade on plantation workers and fail to make comparisons with similar producers lacking access to fair trade marketing.”<sup>14</sup>

10. Emerging research utilizing quantitative methods suggests that there was a positive correlation between participation in fair trade cooperatives and income, access and use of healthcare facilities, and an indirect positive correlation between participation in fair trade cooperatives and educational attainment.<sup>15</sup> It argues that, while fair trade is not a panacea for Third World poverty, from a social policy perspective, fair trade’s contribution toward “building a better world” cannot be cynically dismissed.<sup>16</sup>
11. Based on our review of the current literature, therefore, the evidence to date does point to some potential positive impact pertaining to fair trade certification. It seems as yet too early to make a conclusive determination as to the relative merits of this form of certification: indeed, perhaps such a determination will always remain elusive. What does seem clear is that the process of embedding fair trade initiatives in the global market has brought about healthy and important discussion and debate about the relative merits of such schemes and their place within that market. This may, over time, prove important to understanding the relationship between consumer-driven initiatives to support producers from the South and the wants, needs and desires of those producers themselves.

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<sup>11</sup> Ibid.

<sup>12</sup> Rathuca Dragusanu and Nathan Nunn. “The Impacts of Fair Trade Certification: Evidence from Coffee Producers in Costa Rica” (Draft as at 28 February, 2014). Available online at: [http://scholar.harvard.edu/files/rdragusanu/files/draft\\_august\\_2013.pdf](http://scholar.harvard.edu/files/rdragusanu/files/draft_august_2013.pdf).

<sup>13</sup> Valkila and Nygren, at p. 322. See also: Bacon, C. “Confronting the coffee crisis: Can Fair Trade, Organic and Specialty Coffees Reduce Small Scale Farmer Vulnerability in North Nicaragua?” *World Development* vol. 33 (2005): 497-511; MacDonald, K. “Globalising justice within coffee supply chains? Fair Trade, Starbucks, and the transformation of supply chain governance.” *Third World Quarterly* volume 28 (2007): 793-812; and Raynold, L.T. “The globalization of organic agro-food networks.” *World Development* vol. 32 (2004): 725-743.

<sup>14</sup> Witkowski, Terence H. “Fair Trade Marketing: an Alternative System for Global Development.” *Journal of Marketing Theory and Practice* vol.13 (Fall, 2005): 22 – 33, at p. 29, as quoted in Arnould, E.J., Plastina, A. and Ball, D. “Does Fair Trade Deliver on Its Core Value Proposition? Effects on Income, Educational Attainment and Health in Three Countries.” *Journal of Rural Studies* Vol. 28, no. 2, (2009): 186 – 201, at p.197 (Hereafter, **Arnould, Plastina and Ball**).

<sup>15</sup> Arnould, Plastina and Ball, at pp.197-199.

<sup>16</sup> Arnould, Plastina and Ball, at p.199.

## Social Auditing & Compliance Standards

12. The particular concerns relating to fair trade certification tend to become more complex when considered in terms of addressing the social impacts and labour conditions of business enterprises more generally. These kinds of schemes, which provide an alternative to compliance with national laws in the field of business and human rights, are generally known as “social auditing.” Social auditing is an umbrella term which includes certification, and whose aims are quintessentially the same, namely, to conduct a formal review, by an independent party, of a company’s endeavours, and to make an assessment of the merits of those endeavours which can be independently verifiable.
13. Prior to the adoption of the **UNGP** in 2011, several industry initiatives were launched to provide platforms for socially acceptable practices in the workplace. These initiatives have generally based their standards on principles of international human rights norms as described in the International Labour Organization conventions, the United Nations Convention on the Rights of the Child, and the Universal Declaration of Human Rights. Examples of these initiatives include Social Accountability International (**SAI**), the Fair Labour Association (**FLA**), the Business Social Compliance Initiative (**BSCI**, for European companies), the Worldwide Responsible Accredited Production (**WRAP**), and the UK-based Ethical Trading Initiative (**ETI**).<sup>17</sup> Such standards have been utilised by a multiplicity of stakeholders in a variety of contexts. Perhaps the most well-known and debated of these has been in relation to preventing human rights abuses in buyer-driven, transnational supply chains.
14. In the academic literature, this has brought about two separate but interlinked debates in the field of consumer studies. On the one hand, a school of thought has emerged that largely discounts the merits of auditing and compliance standards, arguing that the global buyers maintain their authority over suppliers by controlling the means (e.g. marketing and design) and modes (e.g. factory equipment) of production and hence also, the possibility of compliance with such standards. In effect, social auditing becomes another means of social control, which cannot be expected to change the more systemic problems associated with buyer-driven market imperatives that dictate the way in which factories operate.<sup>18</sup>
15. On the other hand, a related literature on transnational networks (sometimes referred to as “global civil society”) shares the same assumptions, but asserts that it is precisely the information *from* such factory audits that can be utilised to “name and shame” companies that mistreat “their” employees. According to this school of thought, it is the quality of information that can be captured by compliance models that make the social auditing process meaningful and significant:

“Without external monitoring, claims of corporate social responsibility may simply be a new marketing ploy. In order for consumers to be able to ‘hold companies accountable,’ they need accurate information, provided by independent monitors, who are not simply working on behalf of the companies themselves.”<sup>19</sup>

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<sup>17</sup> Sustainability Initiatives and Standards. "Voluntary social audits and certifications in the garment supply chain."

<sup>18</sup> See for example, Gary Gereffi, John Humphrey, and Timothy Sturgeon. "The Governance of Global Value Chains." *Review of International Political Economy* 12, no. 1 (2005): 78-104.

<sup>19</sup> Gay Seidman, *Beyond the Boycott: Labor Rights, Human Rights, and Transnational Activism* (New York: American Sociological Association's Rose Series: Russell Sage Foundation Press, 2007), who quotes: Ronen Shamir. "The De-Radicalization of Corporate Social Responsibility." *Critical Sociology* 30, no. 3 (2004): 669–689. As quoted in Richard Locke, Matthew Amengual, and Akshay Mangla. "Virtue out of Necessity? Compliance, Commitment and the Improvement of

16. These academic discussions perhaps shine a light on the complexities involved with the social auditing process. In this regard, three particular recent instances of factory accidents are worthy of note and are discussed in further detail below.

### Concerns Raised by Stakeholders to Social Auditing (Following on from Serious Incidences of Failure to Comply)

17. *Rana Plaza, Bangladesh.* Rana Plaza in Dhaka, Bangladesh, made headline news on 24 April 2013, when 1,130 people were killed due to the collapse of the eight-storey building that housed five factories.<sup>20</sup> It was later revealed that **BSCI** social audits had been performed on two factories: New Wave Style and Phantom Apparels.<sup>21</sup> In its statement issued after the collapse, **BSCI** said that its audits do not include building construction or integrity, instead **BSCI** relies on the local authorities to implement and control national building regulations.<sup>22</sup> **BSCI** was subsequently “slammed” for failing to identify the illegal construction of the building, particularly since BSCI has been “fully aware of the risk of factory collapse” due to the collapse of the Spectrum building in Savar, Bangladesh in 2005, killing 64 workers.<sup>23</sup> Following the Spectrum disaster in 2005, **BSCI** had even reportedly said that “**BSCI** members have increased their efforts to improve the situation” in relation to building safety in Bangladesh.<sup>24</sup>
18. *Ali Enterprise, Pakistan.* The Rana Plaza incident was preceded by two earlier incidents, the first of which took place on 12 September 2012, where a fire in Ali Enterprise in Karachi, Pakistan killed 315 people. RINA, a global certification body based in Genova, Italy, had issued an SA8000 certification to the Ali Enterprises factory on 20 August 2012.<sup>25</sup> (SA8000 certification is discussed in further detail in Part C below). A news article issued shortly after tended to suggest that monitoring and inspection systems look good on paper, “but the actual work is often delegated to largely unsupervised subcontractors eager to drum up more business.”<sup>26</sup> RINA, “as in many other cases,” never visited the Ali Enterprises factory; instead it delegated the job to a local inspector it dealt with by telephone or at meetings outside Pakistan. Khalid Nadvi, an expert on monitoring at the University of Manchester in England, has reportedly said that certification systems like the SA8000, are “very patchy and

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Labour Conditions in Global Supply Chains.” *MIT Sloan Working Paper* No. 4719-08, at p.9. Available online at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1286142](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1286142) [Last accessed 22 June 2014].

<sup>20</sup> Ibid.

<sup>21</sup> Business Social Compliance Initiative (BSCI). "Statement on the Rana Plaza Building Collapse in Bangladesh." (30 April 2013). Webpage. Accessed 23 June 2014. <https://bsci-intl.org/news-events/statement-rana-plaza-building-collapse-bangladesh>

<sup>22</sup> Business Social Compliance Initiative (BSCI). "Statement on the Rana Plaza Building Collapse in Bangladesh."

<sup>23</sup> Clean Clothes Campaign. "BSCI 10th Anniversary Shame over Rana Plaza." (6 June 2013). Webpage. Accessed 23 June 2014. <http://www.cleanclothes.org/news/press-releases/2013/06/25/bsci-10th-anniversary-shame-over-rana-plaza>

<sup>24</sup> Ibid. See also Foreign Trade Association. "European Commerce pushes for improvement of social standards in Bangladesh." (10 April 2006). PDF. Accessed 23 June 2014. <http://www.fta-eu.org/ftapress139.pdf>

<sup>25</sup> Social Accountability International. "Q & A: Ali Enterprises Fire in Karachi, Pakistan." (20 September 2012, last updated 7 September 2012). Webpage. Accessed 23 June 2014. <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=1342#.U6d7542Sw00>

<sup>26</sup> Declan Walsh and Steven Greenhouse. "The Human Price: Certified Safe, a Factory in Karachi Still Quickly Burned." *The New York Times* (7 December 2012). Webpage. Accessed 23 June 2014. [http://www.nytimes.com/2012/12/08/world/asia/pakistan-factory-fire-shows-flaws-in-monitoring.html?pagewanted=all&\\_r=0#comments](http://www.nytimes.com/2012/12/08/world/asia/pakistan-factory-fire-shows-flaws-in-monitoring.html?pagewanted=all&_r=0#comments)

in many cases totally ineffective. Factories often know when the inspectors are coming. You have workers being coached what to say.”<sup>27</sup>

19. *Tazreen Fashions, Bangladesh*. The effectiveness of voluntary audits was also put in question following the burning of the Tazreen Fashions factory on 24 November 2012 in Dhaka, Bangladesh. The fire resulted in the deaths of 111 workers and more than 300 workers were injured.<sup>28</sup> The tragedy had “exposed a glaring disconnect among global clothing brands, the monitoring system used to protect workers and the factories actually filling the orders.”<sup>29</sup> Major brands demand that accredited auditing firms inspect factories so that the brands can control quality and understand how, where and by whom their goods are made. Yet, after the fire, Walmart, Sears, and other retailers said that they did not know that Tazreen Fashions was making their clothing. David Hasanat, chairman of the Viyellatex Group, one of Bangladesh’s highly regarded garment manufacturers, pointed out that global apparel retailers often depend on hundreds of factories to fill orders. Given the scale of work, retailers frequently place orders through suppliers and other middlemen who, in turn, steer work to factories that deliver low costs.<sup>30</sup>
20. The incidences shed light on the very real limitations that are embedded in any such endeavour to capture the full picture of the life of workers inside such factories. Re-casting the discussion in terms of the business enterprises’ *commitment* to standards, rather than *compliance with* them, would tend to go some way toward ameliorating the concerns. Even then, the extent to which such initiatives change practices should perhaps be placed in a greater landscape of commitments. Based on a study of factories in India, Locke et al noted:

“Showing that a commitment-oriented approach to improving labour conditions in global supply chains exists in some factories supplying ABC does not constitute proof of the extensiveness or even robustness of this alternative to the traditional compliance model. Nor do these findings indicate that a commitment-oriented approach is without limitations and should be privileged over state regulation and robust labour unions. In fact, our fieldwork supports the argument that even under the best conditions, private, voluntary regulation is limited in guaranteeing citizenship rights and needs to be one of a many initiatives to improving labour conditions.”<sup>31</sup>

### C. **BHRISC 2011 AS A FORM OF SOCIAL AUDITING**

21. **BHRISC 2011** is the first of this kind of scheme to be developed in Indonesia. **BHRISC 2011** includes features, such as analysis of a business enterprise’s human rights management system, in line with Principles 15, 16 and 17 of the **UNGP**.<sup>32</sup> It also incorporates criteria for remediation, which tend to adopt the effectiveness criteria for non-judicial grievance processes as articulated in Principle 31 of the **UNGP**. In this respect, it can be seen as endeavouring to be innovative and cutting-edge.

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<sup>27</sup> Ibid.

<sup>28</sup> Asian Network for the Rights of Occupational and Environmental Victims, and Asia Monitor Resource Centre. "Tazreen Fire - the Ground Realities." *Asia Monitor Resource Centre* (n.d.) PDF. Accessed 23 June 2014. <http://www.amrc.org.hk/system/files/Tazreen%20Report.pdf>

<sup>29</sup> Jim Yardley. "The Human Price: Horrific Fire Revealed a Gap in Safety for Global Brands." *The New York Times* (6 December 2012). Webpage. Accessed 23 June 2014. <http://www.nytimes.com/2012/12/07/world/asia/bangladesh-fire-exposes-safety-gap-in-supply-chain.html?pagewanted=1&ref=world>

<sup>30</sup> Ibid.

<sup>31</sup> Locke et al, at p. 42.

<sup>32</sup> Refer to ss.1.1 – 1.10 of the BHRISC 2011 and compare with Principles 15 -17 of the UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.

22. **BHRISC 2011** requires businesses to develop a human rights management system: this could create a relationship between the certifier and business enterprise that could potentially shift practices within companies in line with the **UNGP**. The development of a strong human rights management system within which a certifier could have input to monitor and develop that system, may prove to have a positive impact on companies in Indonesia. What needs to be further determined is how the certifier would establish a seemingly mutually reinforcing relationship, whereby s/he could work together with the enterprise in question towards the goal of doing better.
23. Several questions remain with regard to the use of this platform for certification purposes. While such a shift toward a commitment to human rights may be enhanced by the relationship with an external auditor, where that relationship proves influential, it would be that *relationship*, and not the standards themselves, bringing about the shift in practices. Key then, would be to determine how to ensure that relationship develops, and what safeguards need to be in place when determining whether or not to move forward with such a scheme.
24. The added value **BHRISC 2011** brings to the field of business and human rights need to be studied further. Certification has become a crowded space, with several local, transnational and international organizations now operating to offer inspection and monitoring processes to a vast array of producers. Perhaps the most well-known standard of this kind in Asia is the SA8000, produced by **SAI**.<sup>33</sup> A comparative table below shows the differences and similarities between the two documents:

	<b>SA8000</b>	<b>BHRISC</b>
<b>Purpose and scope:</b>	To provide a standard based on international human rights norms and national labour laws that will protect and empower all personnel within a company's scope of control.	To provide a means of assessing compliance by a business enterprise with human rights principles as espoused in the <b>UNGP</b> and of major human rights laws and norms.
<b>Reference to human rights instruments:</b>	Includes 16 ILO Conventions and the UDHR, ICCPR, ICESCR, UNCROC, CEDAW and CERD	Includes 8 ILO Conventions/instruments and UDHR, ICCPR, ICESCR and the <b>UNGP</b>
<b>Core Areas Covered:</b>	Includes child labour; forced and compulsory labour; health and safety; freedom of association; discrimination; disciplinary practices, working hours; remuneration; and management systems	Includes all the same areas as SA8000 with some divergences in criteria, and additionally includes reference to: a human rights management system (based on the <b>UNGP</b> ); land management; environmental management and impacts related to security.
<b>Basis of the audit:</b>	Refers to guidance to the standard to be provided by <b>SAI</b> to assist with auditing procedures.	Refers to guidance to the standard to be produced by the accrediting body.

25. Perhaps one primary distinction between the two standards is that the SA8000 does not explicitly reference the **UNGP**, whereas the **BHRISC 2011** does. Nevertheless, **SAI** does provide its auditors with training to implement the **UNGP** and the SA8000 standard appears to endeavour to complement the **UNGP**. As has been noted by Edwin Koster, **SAI's** Authorized European Representative:

<sup>33</sup> Social Accountability International. "About SAI." Webpage. Accessed 22 June 2014. <http://sai-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=1365>

“In line with the Guiding Principles, SA8000 requires organizations to conduct periodic risk assessments to identify and prioritise areas of actual or potential risk. Actions to address these risks should be prioritized according to their severity of where a delay in responding would make it impossible to address.”<sup>34</sup>

26. Given the various existing standards, while there is on-going interest and desire to further develop the mechanisms pertaining to existing compliance measures, there appears to be little reason to introduce further standards:

“[E]ven if one could afford to design and implement a rigorous monitoring system, it is not at all clear that a factory “audit” would be the most appropriate method of collecting, let alone communicating, up-to-date information about factory conditions... operations are often impacted by unreliable power grids, late arrivals of key inputs and materials, and even delayed (and changed) orders from their buyers. All of these extra-factory variables can impact working hours and working conditions within the factories but none of them would appear in a traditional factory audit, no matter how rigorous it is designed or implemented.”<sup>35</sup>

27. While the **UNGP** provides a valuable common platform on which to build authoritative benchmarks against which progress can be assessed, Professor Ruggie has said that the **UNGP** simply marks “the end of the beginning” and more granular work is required for governments, businesses, and other stakeholders to turn the **UNGP** into rules and tools for specific industry sectors and operating contexts, different scales of operations.<sup>36</sup> As things now stand, there is no international mechanism that ensures compliance with the **UNGP**, nor a process that measures the degree of its implementation. Legal obligations vary across countries in their applicability and enforcement. Human Rights Watch has referred to the “world’s dearth of binding human rights rules for companies.”<sup>37</sup> Given that businesses are expected to comply with the **UNGP** largely on a voluntary and self-accountability basis, certifying and measuring compliance with these guiding principles may be problematic.

28. Where the **UNGP** emphasizes that businesses establish processes, **BHRISC 2011**, aside from requiring the establishment of these processes, goes forward and requires companies to address numerous human rights impacts that BHRISC has already identified. This would require the certification bodies to look into, for instance, allowing 30-minute rest periods for every four hours of work (2.20, Chapter 5, **BHRISC 2011**); allowing workers to use toilet facilities whenever necessary (2.21); and that the business enterprise not ask applicants questions regarding their marital status, intent to have children, or number of dependents (2.28), to name a few. Additionally, it includes sections on certifying a business enterprise’s land management and the environmental management and their impacts, which appear ambitious. While ensuring protection against these impacts would be valuable, caution has to be exercised in promising to do too much, especially in a landscape that is not always adequately regulated by binding rules.

29. Certifying that a company’s business practices complies with human rights principles is tricky because human rights cover an immense range of rights. Human rights certification thus should be approached with care because it can give businesses a false sense of security that a

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<sup>34</sup> Edwin Koster. "The SA8000:2014 Standard Alignment with UN Guiding Principles on Business & Human Rights." *Social Accountability International* Webpage. Accessed 22 June 2014. <http://sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=1591>

<sup>35</sup> Locke et al, at p.14.

<sup>36</sup> Ibid.

<sup>37</sup> Christopher Albin-Lackey. "Without Rules."



company, once meeting the parameters of the standard, does not need to do more regarding human rights. As wide-ranging as the **BHRISC 2011** already is, it does not, for example, address freedom to manifest belief through religious symbols<sup>38</sup> or prohibit children, regardless of age, from being employed in work “*harmful to their morals*” or health or dangerous to life or likely to *hamper their normal development*.”<sup>39</sup>

30. **BHRISC 2011**, while perhaps providing a constructive and innovative step towards alignment with the **UNGP**, should be considered in light of the intention of the original drafters of the **UNGP**. The **UNGP** encourages the move from *compliance-based* approach to *corporate accountability*, a view that is reflected in growing academic literature. Thus, we would recommend further consultation with Professor Ruggie and Shift, with whom the **HRRC** is already engaged on another project, prior to continuing with any further development of **BHRISC 2011**. In addition, we would recommend holding consultations widely, to assess the viability and feasibility of such an initiative, were it determined that the **HRRC** wanted to pursue its association with PT Moores Rowland to undertake further research or awareness-raising pertaining to **BHRISC 2011**.

#### **D. CONCLUSION**

31. The **UNGP** seeks to bring about a normative shift away from compliance-based thinking and toward understanding human rights impacts as part of a corporate journey toward behaving better and toward building a better world. It has provided a common platform around which business enterprises’ responsibilities to address social impacts and labour conditions can now be mobilized. In this respect, the developments since the **UNGP** was adopted would suggest that a space is opening for improving social auditing mechanisms and commitment toward employees’ well-being. A key concern with social auditing and certification is whether the process itself might provide business enterprises with a sense of false security about their human rights impacts. As can be seen from the incidences in Pakistan and Bangladesh discussed above, certification schemes do not prevent disasters from occurring. What seems more important, then, than any particular set of standards, is how the standards are implemented and the relationships they create.

32. The concluding recommendations of this paper are as follows:

- **Further research is required pertaining to the basis for BHRISC 2011 in order for us to understand fully the implications of the certification scheme.**
- **If further research is to be conducted, it should focus on the proper methodology for assessing company compliance in innovative areas of auditing and should include consultations with external, independent experts on social auditing, including Professor Ruggie and HRRC’s partners to ensure that all perspectives are represented in the research.**
- **HRRC does not currently have the human and financial resources to pursue intensive research on BHRISC 2011.**
- **Concerns raised by HRRC’s stakeholders should be addressed prior to proceeding further on the BHRISC 2011 initiative.**

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<sup>38</sup> Universal Declaration of Human Rights. Article 18; and Office of the United Nations High Commissioner for Human Rights. "Framework for Communications: Freedom of Religion or Belief: c) Religious Symbols." Webpage. Accessed 25 June 2014. <http://www2.ohchr.org/english/issues/religion/I3c.htm>

<sup>39</sup> International Covenant on Economic, Social and Cultural Rights. Article 10 (3).