

# Effective Human Rights Due Diligence Ten Years After Rana Plaza?

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When Amin Amirul Haque, leader of the Bangladeshi trade union National Garment Workers Federation ([NGWF](#)), won the [International Nuremberg Human Rights Award in 2015](#) he came to Germany seeking support for his fight for better working conditions in the garment industry in his home country. Two years earlier, the collapse of the Rana Plaza building leading to the death of 1135 workers and more than 2000 injuries sent shockwaves through Germany when clothes made for Primark, Kik, or Benetton were found in the rubbles. Lawmakers and politicians promised to do everything possible to improve the working conditions in global supply chains. The German [Act on Corporate Due Diligence Obligations in Supply Chains](#) (Lieferkettensorgfaltspflichtengesetz, LkSG) of 2021 was a result of these promises.

Exactly ten years after the Rana Plaza disaster, Haque turned to Germany again and submitted [a complaint](#) on behalf of NGWF to the Federal Office for Economic Affairs and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA) which oversees implementing the LkSG against two major international companies, IKEA and Amazon. The complaint was lodged with the support of two German non-governmental organisations, [FEMNET](#) and the European Center for Constitutional and Human Rights ([ECCHR](#)), and argues that IKEA and Amazon failed to exercise due diligence under the LkSG by refusing to sign the Accord on Fire and Building Safety in Bangladesh (Bangladesh Accord) and its successor, the International Accord for Health and Safety in the Textile and Garment Industry (International Accord). This first-ever publicly known complaint lodged under the LkSG raises several key legal questions and provides the BAFA with the chance to set a strong precedent for its supervisory duties.

In this post, we explore the relationship between the Accord and human rights due diligence and argue that joining the Accord is essential for fulfilling the due diligence obligations under the LkSG. We argue that Amazon seems to have violated the LkSG prima facie while IKEA's claim would have to be assessed in-depth by BAFA.

## The Bangladesh Accord and its successors

The [Bangladesh Accord](#) is a legally binding agreement between global brands, retailers, and unions to ensure safe and healthy working conditions for garment workers in Bangladesh. It was created in response to the Rana Plaza building collapse in 2013 and numerous other deadly factory fires in Bangladesh with the goal to create a safe working environment for workers. In order to achieve its goal, the Accord established and implemented mechanisms for conducting factory

inspections, monitoring remediation, providing safety training, and resolving safety complaints.

After the expiry of the Bangladesh Accord in mid-2021, garment brands and global unions agreed to the new and expanded International Accord which came into force on 1 September 2021. Like its predecessor, the [International Accord](#) is a binding agreement between companies and trade unions aimed at improving the health and safety of workers in the textile and garment industry. The agreement incorporates the same components as the earlier Accord, including freedom of association, transparency, financial feasibility of remediation, safety committee training, worker awareness programs, and an independent complaints mechanism. The signatories of the agreement commit to the health and safety work already implemented by the [RMG Sustainability Council](#) (RSC) in Bangladesh and to expand the work to other countries based on feasibility studies.

The International Accord incorporates core features of [human rights due diligence](#) requiring signatory companies to identify and manage the human rights risks associated with their operations and to ensure the safety of their workers. The Accord facilitates an [inspection program](#) to identify risks and assess the adequacy of safety measures to ensure a safe workplace. The RSC is mainly responsible for carrying out initial inspections to assess fire, electrical and structural safety standards, as well as follow-up inspections to monitor remediation and potential new issues. The RSC also conducts inspections in response to safety complaints and incidents. As part of the remediation plan, the RSC's Chief Safety Officer (CSO) identifies the corrective actions required to bring a factory into compliance with building, fire and electrical safety standards. Once the corrective actions are identified, signatory companies require their suppliers to implement these corrective actions according to a defined schedule. The Accord also ensures that workers can raise concerns about health and safety risks safely and confidentially and includes provisions for establishing a [worker complaint process and mechanism](#). The RSC implements the complaints mechanism. Finally, key aspects of the program are publicly available and regularly updated online. This includes an aggregated list of all suppliers in Bangladesh and sub-contractors, written Inspection Reports, public statements by the CSO, and quarterly Aggregate Reports summarizing industry compliance data, findings, remedial recommendations, and progress on remediation and training.

While the International Accord is not without flaws, it is generally agreed that it constitutes best practice in the garment industries and may reduce adverse impacts on human rights by improving the working conditions in the industry.

## **Due diligence obligations under the LkSG**

The LkSG requires all German companies with more than 3,000 employees (1,000 as of 1 January 2024) to exercise due diligence with regard to human rights and environment-related risks in their supply chains. The due diligence obligations include, inter alia, preventive measures and taking remedial actions. The obligations generally only cover the company's own operations and its direct supplier. However,

if the company has “substantiated knowledge” that violations of human rights- or environment-related obligations at indirect suppliers may be possible, the due diligence obligations also extend to indirect suppliers.

As both IKEA and Amazon have subsidiaries or branch offices in Germany and employ well over 3,000 employees the LkSG applies to them. The pertinent human rights risks in the textile supply chain relate to the right to safe working conditions and the collective labour rights as enshrined in the International Covenant on Economic, Social and Cultural Rights as well as core ILO Labour Conventions which are included in the Annex to the LkSG.

In an [open letter](#) to IKEA and Amazon in November 2022 FEMNET and ECCHR stressed that the companies’ failure to sign the Bangladesh Accord, despite its proven effectiveness in improving workplace safety, can be considered a breach of the human rights due diligence under the LkSG. The letter also pointed to concrete human rights risks in the supply chains of Amazon and IKEA and from not signing the Accord. Based on this and the well-known facts about the situation in the textile industry in Bangladesh, it is clear that Amazon and IKEA have substantiated knowledge of the pertinent human rights risks and are therefore obligated to extend their due diligence activities to their indirect suppliers in Bangladesh.

Section 6 LkSG specifies the duty to take appropriate preventive measures without undue delay. *Vis-à-vis* its suppliers, companies need to, inter alia, implement training measures and agree on appropriate control mechanisms to verify compliance with the company’s human rights strategy. Companies also need to review the effectiveness of the preventive measures regularly and if the circumstances require a new assessment. If violations of human rights already occurred, companies are under the obligation to adopt appropriate remedial actions to prevent, end or minimise the extent of this violation as spelled out in Section 7 LkSG. If violations cannot be ended in the foreseeable future, the company must adopt a concept to end or minimise the violation. Such a concept can include joining forces with other companies in sector initiatives and sector standards to increase the company’s leverage to influence the causes of harm. Considering that work-related human rights violations in the Bangladeshi garment industry have occurred in the past and are likely to occur in the future, companies with suppliers in that industry are under an obligation to take both preventive and remedial measures.

## **Joining the International Accord as preventive and remedial measures under the LkSG**

The International Accord requires its member companies to adopt standards and policies which are also required under the LkSG. Joining the Accord can therefore be seen as a preventive and remedial measure in the meaning of Articles 6 and 7 LkSG. However, the legal question which is at the heart of the complaint against IKEA and Amazon does not concern whether these companies could discharge their duties under the LkSG by joining the Accord, but whether they *have to* do so as the Accord is the most effective measure available to global brands with supply chains in

Bangladesh. More generally, how much discretion and leeway do companies have in fulfilling their obligations? The key to the answer is that preventive and remedial measures need to be adequate and effective. If there is only one adequate and effective measure available, the company is obligated to take this measure. In such a case, the due diligence requirements are no longer obligations of conduct, but turn into obligations of result. BAFA would then need to impose the concrete measure on the respective company.

It is doubtful if BAFA will go this far in its first-ever case. Commentators have already assumed that [BAFA will not impose any concrete obligations](#) on IKEA and Amazon. Nevertheless, it is hoped that BAFA develops some general standards which can be applied if global companies refuse to join an internationally recognised collective agreement which provides adequate preventive measures and remedies. It could be argued that if such agreements exist, as in the case of the International Accord, there is a rebuttable presumption that joining the agreement is the only adequate and effective measure. Such a presumption could be rebutted if a company can show that it implements alternative measures which are at least as effective. In the case at hand, IKEA claimed that its [own standards go far beyond the Accord requirements](#) and that it wants to remain independent of international agreements. Amazon has not explained why it decided not to join the Accord. Based on the standard suggested here, Amazon would therefore violate the LkSG prima facie while IKEA's claim would have to be assessed in-depth by BAFA.

## Conclusion

Do human rights due diligence laws contribute to a reduction of adverse human rights and environmental impacts? While it may be too early to answer this question empirically and thoroughly, it is clear these laws will deliver justice only if the implementing authorities take some bold decisions and are ready to transform due diligence requirements into concrete obligations of result.

