

Closing the Governance Gap?

The Dynamics of Corporate Measures
to Respect Human Rights

Oliver Schneider / Andreas Dutzi
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uni-siegen.de



Agenda

1. Introduction
2. Analytical Framework
3. Methodology and Sampling Strategy
4. Analysis and Discussion
5. Conclusions and Final Remarks

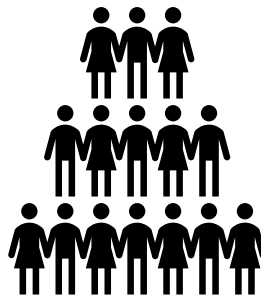
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Introduction

Human Rights post WWII, pre Globalization



State



Citizens



- Minimum requirements
- Resulting from WWII crimes (Stohl & Stohl, 2010)

- States as main guarantors for Human Rights
- States as main gatekeepers for Human Rights
- States as main Human Rights violators

What happened during Globalization?

Globalization and Human Rights

- Growing internationalization due to search for competitive advantages
 - Especially: search for cheap labor
- Corporations based in one country and operating in other countries
- Differing regulatory environments (Governance Gaps)



- Increasing corporate power
- Increasing corporate complicity in Human Rights abuses
- Limited corporate accountability



- Increasing awareness for a corporate responsibility to respect Human Rights (e.g. OECD Guidelines, Global Compact, UNGP)
- Acknowledgement of necessity to supplement international and national law with private Governance
- Key Concept: Due Diligence

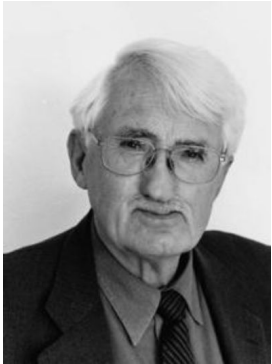
Research Question and Connection to Risk Governance

- Respecting Human Rights, according to the UNGP, is risk based and as well strategic as operational
 - Equals Risk Governance Concept
- Measures actually used by corporations to proclaim respect for Human Rights are not yet investigated
 - International frameworks are vague and voluntary -> differing interpretations have to be expected
- RQ: „How are corporations governing human rights in multinational environments?“ and „What are the dynamics behind the measures used?“

2

Analytical Framework

The Corporation as Discursive Arena and Discursive Actor



J. Habermas:

- Societal action is performed communicatively and, at best, problems are solved through collective reasoning (practical discourses), which are discrete at moral (universal), ethical (relative to moral) or pragmatic (relative to a given end) level
 - Not incentives and sanctions, but rational conviction shall lead to mutual agreement about an issue (discourse ethics) -> open question: **what is rational?**

Key takeaway: within societies, there are different levels of practical discourses

A. Grandori:

- Corporations are microsocieties, constituted not only via contracts but also via human beings acting towards a shared end

Key takeaway: social action, and therefore, by definition, practical discourses are taking place within corporations



R. E. Freeman

- Corporations interact with a variety of stakeholders
- Through their acting agents, corporations participate in wider social action

Key takeaway: corporations are, by definition, participants in practical discourses



The Corporation as Discursive Arena and Discursive Actor

A. Measures and engagement

1. Which governance measure is used?
2. What is the objective of the measure?
3. With whom, if any, does the corporation engage in order to execute the measure?

B. Intersection between different levels of discourse

1. What is the original level of discourse a measure is created or used within?
2. Is there any reference to another level of discourse?

3

Methodology and Sampling Strategy

Methodology

- Analytical Framework indicates that terms like respect are filled with reason through communication
- QCA of empirical corporate communication
 - Reports (annual, integrated and standalone sustainability and/or human rights)
 - Website information
 - Policies
- Inductive-interpretive approach – development of a generalizable typology of measures and theory about the social dynamics embedded within them (structured QCA/grounded theory)
- Coded manually using MAXQDA

Sampling Strategy

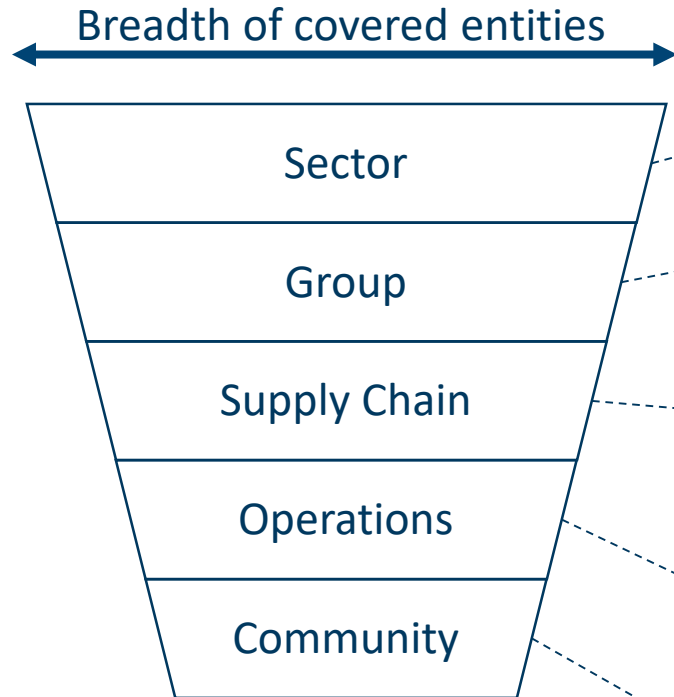
- 20 corporations, randomly selected out of the 30 highest performing corporations in terms of Human Rights due diligence (according to WBA ranking) -> data saturation indicated no more necessity to broaden out sample
- Cross-sectoral, international sample to avoid local optimized theory
- In total: over 85 documents, adding up to more than 6.000 pages of text

Sector	Number of Corporations
Agricultural	5
Apparel	5
Extractives	8
Information and Communication Technology	2

4

Analysis and Discussion

Different Levels of Discourse



Empirical examples:

“We recognize that managing human rights issues in supply chains is complex and working across the industry can help to bring about systemic change. Working with and learning from our peers and other industries means we can share best practice and pool resources.” (BP (2020) Sustainability Report, p. 58)

“This Human Rights Policy (the “Policy”) details the procedures we put in place to protect and uphold human rights wherever we operate. This includes the various mechanisms we use to identify and address any instances of potential infringement that may arise in connection with Burberry’s operations and activities. (Burberry (2021) Human Rights Policy, p. 3)

“Through our program we will engage with our suppliers in managing human rights risks through their supply chains, and in doing this we position ourselves to respond to the evolving human rights landscape across our supply chain. We take this responsibility very seriously and see it as not only critical to the sustainable operation of our business but as the right thing to do.” (BHP (2020) Ethical Supply Chain and Transparency Guide, p. 1)

“Building capability at site and business-level to identify and remedy labour rights and modern slavery issues and support contractors to improve their performance.” (BP (2020) Slavery and Human Trafficking Statement, p. 7)

“Aware of our responsibility in these regions, we developed and implemented our community response plans in consultation with local stakeholders. The community support initiatives include supporting water availability, provision of adequate sanitation, paying for medical suppliers, supporting healthcare systems, providing logistical support for the movement of medical equipment, distribution of food and other essential items and the provision of support services for mental health and domestic abuse. (Anglo American (2020) VPSHR report, p. 2)

Classes of Governance Measures

Classes of measures					
Detection	Prevention			Monitoring	Remediation
	Standardizing	Disciplining	Capacity Building		
Mapping	Management systems	Communication of expectations	Training	KPIs	Action plans
Payroll Checks	Policies/standards/ frameworks	Contractual governance	Social investment	Third-party verification	Working groups
Third-party verification		Warning letters		Reviews	
Risk-ratings		Termination of business relationships		Site visits	
Desk research				Surveys	
Surveys				Interviews	
Risk and impact assessments				Audits	
Document reviews					
Site visits					
Complaint mechanism					
Interviews					
Audits					

The Interplay between Governance Measures and Different Levels of Discourse

Cross-coding between the class of measures and the level of discourse:

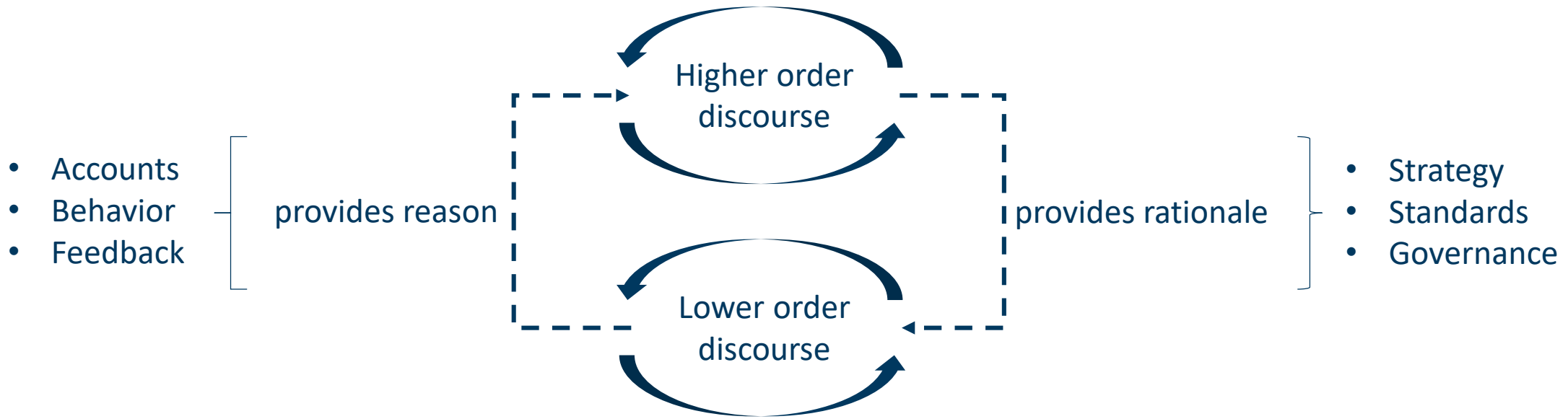
	Local Community	Sector	Operations	Supply Chain	Group
Detection	4	0	26	30	33
Monitoring	0	0	2	17	40
Prevention\Standardizing	0	5	2	7	47
Prevention\Disciplining	0	0	1	22	5
Prevention\Capacity Building	5	0	25	20	6
Remediation	6	0	3	7	3

- Standardization and Monitoring at Group Level
- Detection and capacity building mainly at Supply Chain and Operational level
- Disciplining measures nearly solely at Supply Chain level



Evident interdependencies between the levels of discourse: provision of standards and policies as public signal of mutual agreement in higher order discourse, generation of reason (detection) and export of narratives at lower order discourses

Interdependent Discursivity as Model Driving Human Rights Governance



Empirical example of how higher order discourses provide rationale, while, vice versa, they require lower order reason:

“This policy sets out ten standards for those human rights topics that HEINEKEN considers most significant. These ten standards are based on a global identification of our ‘salient’ human rights issues in our Operating Companies (OpCos) and in their local value chains. The standards in relation to forced labour and respect for human rights in high risk contexts are based on external commitments we made. Our respect for human rights is not limited to these ten standards.”
(Heineken (2018) Human Rights Policy, S. 2)

Interdependent Discursivity as Model Driving Human Rights Governance

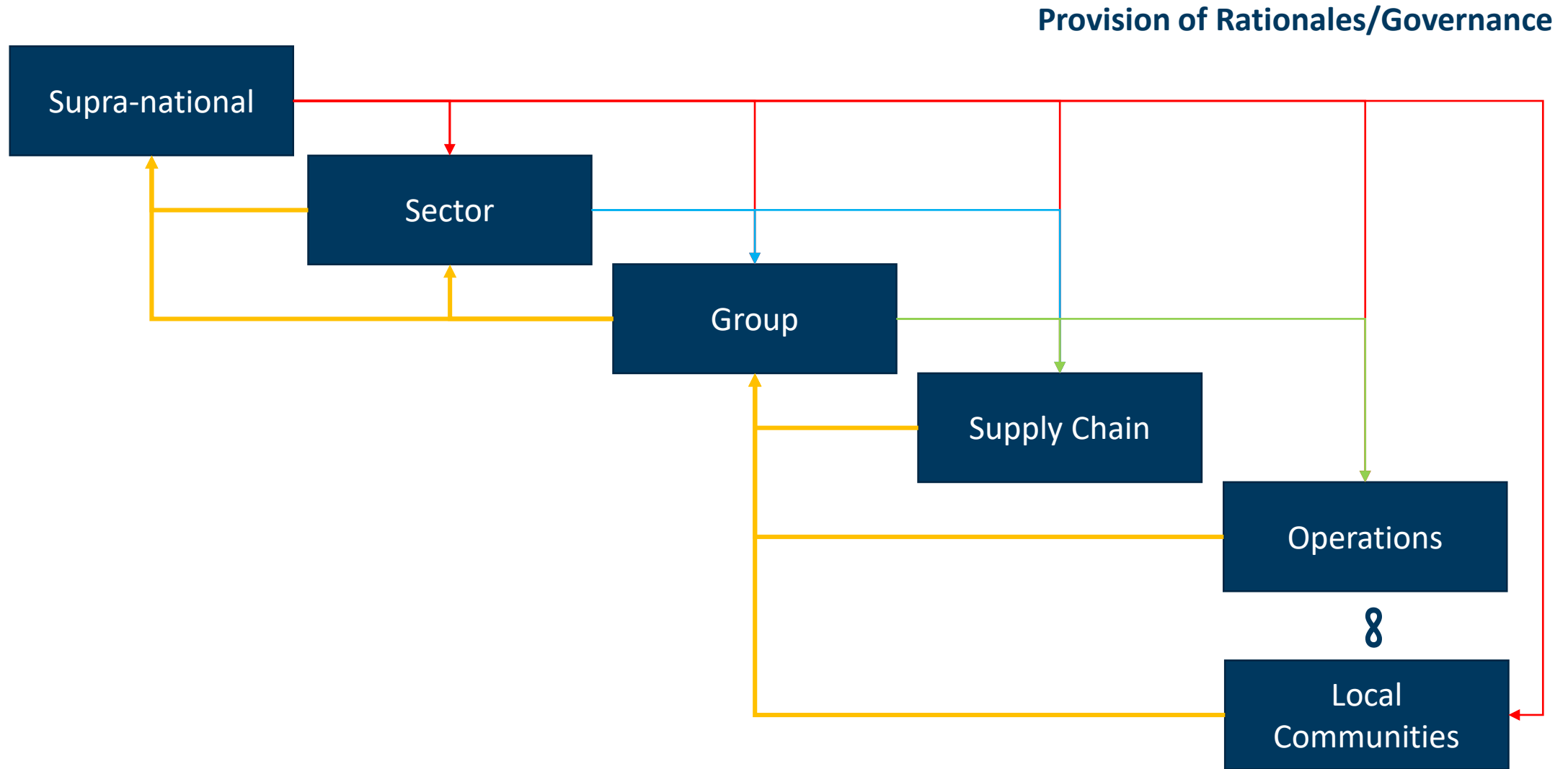
Reference to / Level of Discourse	Local Community	Sector	Operations	Supply Chain	Group
Operations	1	0	0	0	5
Group	0	0	24	40	8
Supra National	4	0	3	9	85
Sector	0	0	0	3	5
Supply Chain	0	0	0	0	1

- Only in limited cases direct reference from higher to lower order discourses
 - Evident e. g. if group policy openly refers to operational risk assessment
- Supports idea of higher order rationales as drivers behind changes in individual conduct

Interdependent Discursivity in the MNE Case

Highest order discourse

Lowest order discourse



5

Conclusions and Final Remarks

Overview and Contributions

Overview

- New rationale, like necessity to respect human rights, in multinational business environment cascades via 5 extralegal levels of discourse: supra-national, sector, group and operations/community
- Corporations use four classes of measures to illustrate respect for human rights: prevention, detection, monitoring and remediation
- High reliance on group-level commitment as catalyst for broader systemic changes

Contributions

- Economic:
 - New understanding of corporate conduct being driven by rationales, rather than pressures
 - Proposed mediating effect of mid-level (like group) agreement on the effectiveness of higher order rationales implementation at subordinate levels (like operations, supply chain)
- Sociological:
 - Evidence for organizations constructing rationality and thereby influencing real-life behavior and perception of people