Corporate challenges and counter strategies in the implementation of human rights impact assessments

Doctoral thesis

Submitted to the Faculty of Mathematics and Management of Ulm University
For the academic degree of Doctor of Management and Economics Dr. rer. pol.

submitted by
Sara Anna Siakala
2022
Abstract

Companies today face rising societal expectations and institutional pressure regarding their human rights responsibility. While there is a rich debate with regard to a justification for direct corporate human rights responsibilities and the definition of corporate human rights duties, there is dearth of empirical research that has investigated the challenges that companies face when managing human rights responsibilities in business practice and the strategies they apply to counteract these challenges. By drawing on empirical data collected through 12 semi-structured interviews and a document analysis, this qualitative multiple-case study examines the challenges and counter strategies of eight European companies that implement human rights impact assessments (HRIA) as envisaged by the United Nations Guiding Principles on Business and Human Rights.

The results reveal that, depending on the respective HRIA implementation step and whether the human rights data are collected within the company, from first tier suppliers or n-tier suppliers, companies face different challenges and apply different counter strategies. The findings suggest that when examining the HRIA requirements, companies are primarily confronted with the challenge of varying national corporate human rights due diligence laws, abstract human rights provisions, and conflicts between the national laws and international human rights law. They try to overcome these challenges by exchanges with other companies, consulting external experts, using handouts, examining the implementation of other companies and asking politicians for further specification. Despite these counter strategies, the majority of the companies indicated that they are in a state of uncertainty as to whether they are sufficiently fulfilling their human rights responsibility.

The human rights data collection within the company and first tier supply chain is challenging according to the findings because of limited human rights knowledge of employees. Two companies reported counteracting this knowledge deficit by means of human rights training. The findings suggest that access to (informative) human rights
data in the first tier supply chain can be challenging, when the negotiating position with first tier suppliers is weak. Companies try to strengthen their negotiating position with first tier suppliers by declaring HRIA as a binding award criterion and by participating in industry/multistakeholder initiatives. The effectiveness of the latter counter strategy depends, according to the findings, on the specific design of that initiative. The findings indicate that participation in an industry/multistakeholder initiative brings further benefits to companies, such as efficiency gains through the standardization of approaches and the sharing of collected data, but is also connected to new challenges, such as the difficulty to achieve consensus due to different opinions and interests among the participants. The companies diverged on whether the collection of human rights data via industry/multistakeholder initiatives influences the data quality with respect to accuracy, completeness and topicality. A recurrent theme with respect to the data collection in the n-tier supply chain was the difficulty in identifying n-tier suppliers in complex supply chain networks which are characterized by a large number of globally dispersed, constantly changing suppliers, spread across up to eight different tier levels. Access to human rights data in the n-tier supply chain is challenging according to the findings because of generally missing contractual relationships with n-tier suppliers.

The findings further suggest that in the last HRIA implementation step it is challenging for companies to assess whether the identified impacts in fact constitute a (potential) human rights violation and to determine the severity of those impacts. In the supply chain it can also be challenging for companies to assess the actual human rights situation because the information value of the assessment basis can be restricted. Furthermore, the results indicate that companies have difficulties in assessing their own responsibility in the supply chain on the basis of an area of responsibility which differentiates between ‘contribution’ and ‘direct link’.
# Table of Contents

Abstract ................................................................................................................................. I

Table of Contents .................................................................................................................. III

List of Abbreviations ........................................................................................................... VI

List of Tables ......................................................................................................................... VIII

List of Figures ....................................................................................................................... IX

1 Introduction ........................................................................................................................ 1

1.1 Research aim and research approach ........................................................................... 5

1.2 Contribution of the study ......................................................................................... 8

2 Theoretical foundations ................................................................................................... 10

2.1 Definition of key terms ............................................................................................... 10

2.1.1 Human rights ......................................................................................................... 10

2.1.2 Human rights responsibility versus human rights duty ....................................... 17

2.1.3 Adverse human rights impacts ............................................................................. 17

2.1.4 The corporate human rights responsibility ......................................................... 18

2.1.5 Human Rights Impact Assessments ..................................................................... 24

2.2 Theoretical paradigm ................................................................................................. 25

2.3 The historical evolution of human rights and of the UNGP ......................................... 27

2.4 The Human Rights Impact Assessments provisions of the UNGP ............................... 32

3 Literature review .......................................................................................................... 37

3.1 Overview of the Business Human Rights literature ................................................... 40

3.1.1 Normative and conceptual Business Human Rights literature ............................. 40

3.1.2 Empirical Business Human Rights literature .................................................... 48

3.2 Interim conclusion ..................................................................................................... 52

3.3 The corporate human rights implementation challenges and counter strategies in the empirical Business Human Rights literature .................................................................. 53

3.4 Conclusion and derivation of the research questions ................................................. 60

4 Research design ............................................................................................................. 64
4.1 Research method .............................................................................................................. 64
4.2 Evaluative criteria ............................................................................................................ 71
4.3 Case selection method ..................................................................................................... 76
4.4 Data collection method .................................................................................................. 78
4.5 Data collection execution ............................................................................................... 86
4.6 Data analysis method ..................................................................................................... 89

5 Findings ................................................................................................................................ 96
5.1 Individual case basis ....................................................................................................... 96
  5.1.1 Case C 1 ....................................................................................................................... 96
    5.1.1.1 Findings research question one ............................................................................... 99
    5.1.1.2 Findings research question two ............................................................................. 100
    5.1.1.3 Findings research question three ........................................................................... 103
  5.1.2 Case C 2 ..................................................................................................................... 104
    5.1.2.1 Findings research question one ............................................................................. 108
    5.1.2.2 Findings research question two ............................................................................. 109
    5.1.2.3 Findings research question three ........................................................................... 113
  5.1.3 Case C 3 ..................................................................................................................... 115
    5.1.3.1 Findings research question one ............................................................................. 117
    5.1.3.2 Findings research question two ............................................................................. 119
    5.1.3.3 Findings research question three ........................................................................... 122
  5.1.4 Case C 4 ..................................................................................................................... 124
    5.1.4.1 Findings research question one ............................................................................. 127
    5.1.4.2 Findings research question two ............................................................................. 128
    5.1.4.3 Findings research question three ........................................................................... 132
  5.1.5 Case C 5 ..................................................................................................................... 133
    5.1.5.1 Findings research question one ............................................................................. 135
    5.1.5.2 Findings research question two ............................................................................. 137
    5.1.5.3 Findings research question three ........................................................................... 139
  5.1.6 Case C 6 ..................................................................................................................... 140
    5.1.6.1 Findings research question one ............................................................................. 142
    5.1.6.2 Findings research question two ............................................................................. 144
5.1.6.3 Findings research question three ................................................................. 145
5.1.7 Case C 7 ............................................................................................................ 147
  5.1.7.1 Findings research question one ................................................................. 149
  5.1.7.2 Findings research question two ................................................................. 151
  5.1.7.3 Findings research question three .............................................................. 154
5.1.8 Case C 8 ............................................................................................................ 155
  5.1.8.1 Findings research question one ................................................................. 157
  5.1.8.2 Findings research question two ................................................................. 160
  5.1.8.3 Findings research question three .............................................................. 162
5.2 Aggregated case basis ..................................................................................... 163
  5.2.1 Findings aggregated on a case basis research question one ....................... 164
  5.2.2 Findings aggregated on a case basis research question two ....................... 166
  5.2.3 Findings aggregated on a case basis research question three ................. 172

6 Discussion ............................................................................................................. 176
  6.1 Discussion of findings ..................................................................................... 176
  6.2 Critical review ................................................................................................. 192

7 Conclusions .......................................................................................................... 196

8 References ............................................................................................................ 202

Appendix .................................................................................................................. 227
## List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>BHR</td>
<td>Business and human rights</td>
</tr>
<tr>
<td>B2B</td>
<td>Business to business</td>
</tr>
<tr>
<td>B2C</td>
<td>Business to consumer</td>
</tr>
<tr>
<td>CFSI</td>
<td>Conflict-free sourcing initiative</td>
</tr>
<tr>
<td>CHRB</td>
<td>Corporate Human Rights Benchmark</td>
</tr>
<tr>
<td>CSR</td>
<td>Corporate Social Responsibility</td>
</tr>
<tr>
<td>e.g.</td>
<td>For example</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessments</td>
</tr>
<tr>
<td>ESIA</td>
<td>Environmental and Social Impact Assessments</td>
</tr>
<tr>
<td>ESG</td>
<td>Environment, Social, Governance</td>
</tr>
<tr>
<td>etc.</td>
<td>And the rest</td>
</tr>
<tr>
<td>et seq.</td>
<td>And in the following pages</td>
</tr>
<tr>
<td>FDI</td>
<td>Foreign direct investment</td>
</tr>
<tr>
<td>HRDD</td>
<td>Human Rights Due Diligence</td>
</tr>
<tr>
<td>HRIA</td>
<td>Human Rights Impact Assessments</td>
</tr>
<tr>
<td>ICT</td>
<td>Information and communications technology</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>i.e.</td>
<td>That is</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organization</td>
</tr>
<tr>
<td>IRMA</td>
<td>Initiative for Responsible Mining Assurance</td>
</tr>
<tr>
<td>JAC</td>
<td>Joint Audit Cooperation</td>
</tr>
<tr>
<td>KPI</td>
<td>Key Performance Indicator</td>
</tr>
<tr>
<td>NAP</td>
<td>National Action Plan on Business and Human Rights</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
</tr>
<tr>
<td>PSCI</td>
<td>Pharmaceutical Supply Chain Initiative</td>
</tr>
<tr>
<td>RMI</td>
<td>Responsible Minerals Initiative</td>
</tr>
<tr>
<td>SAQ</td>
<td>Self-Assessment Questionnaire</td>
</tr>
<tr>
<td>SIA</td>
<td>Social Impact Assessments</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>SIM</td>
<td>Social Issues in Management</td>
</tr>
<tr>
<td>SMEs</td>
<td>small and medium-sized enterprises</td>
</tr>
<tr>
<td>SCDD</td>
<td>Supply Chain Due Diligence</td>
</tr>
<tr>
<td>SSCM</td>
<td>Sustainable Supply Chain Management</td>
</tr>
<tr>
<td>TFS</td>
<td>Together for Sustainability</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
</tr>
<tr>
<td>UNCTC</td>
<td>Centre of Transnational Corporations</td>
</tr>
<tr>
<td>UNGC</td>
<td>United Nations Global Compact</td>
</tr>
<tr>
<td>UNGP</td>
<td>United Nations Guiding Principles on Business and Human Rights</td>
</tr>
<tr>
<td>UNPRR</td>
<td>Protect, Respect and Remedy: a Framework for Business and Human Rights</td>
</tr>
<tr>
<td>VAP</td>
<td>Validated Assessment Program</td>
</tr>
</tbody>
</table>
List of Tables

Table 2.1 The UNGP’s tripartite corporate human rights responsibility.................21

Table 4.1 Departments of interviewees and positions of interviewees.................87

Table 5.1 Corporate challenges in the HRIA provision examination.........................165

Table 5.2 Corporate counter strategies in the HRIA provision examination..........166

Table 5.3 Corporate challenges in the human rights data collection within each company.................................................................167

Table 5.4 Corporate challenges in the human rights data collection in the first tier supply chain.................................................................169

Table 5.5 Corporate counter strategies in the human rights data collection in the first tier supply chain.................................................................170

Table 5.6 Corporate challenges in the human rights data collection in the n-tier supply chain.................................................................171

Table 5.7 Corporate counter strategies in the human rights data collection in the n-tier supply chain.................................................................172

Table 5.8 Corporate challenges in the human rights impact assessments.............174

Table 5.9 Corporate counter strategies in the human rights impact assessments.................................................................175
List of Figures

Figure 2.1 Cause...........................................................................................................22
Figure 2.2 Contribution.................................................................................................23
Figure 2.3 Direct link...................................................................................................23
1 Introduction

Companies today face rising societal expectations and institutional pressure regarding their human rights responsibility (Shavin, 2019, p. 142; Bauer and Umlas, 2017, p. 315; McCorquodale et al., 2017, p. 221; Carasco and Singh, 2008, p. 347 et seq.; Ruggie, 2007a, p. 8 et seq.). The social responsibility1 of companies has been a topic of discussion since the early years of the 20th century (Cragg, 2012, p. 9), but the debate about the role companies should assume with respect to human rights has evolved and expanded considerably since the 1990s (Obara, 2017, p. 250). The historical view has been that States are responsible for the human rights of individuals within their territory (Brenkert, 2016, p. 286) and that companies have only indirect human rights duties (Ruggie, 2007a, p. 12), meaning legal obligations provided under national law (Cragg, 2010, p. 3; Ruggie, 2007a, p. 12). In the course of industrialization and globalization2, with the rising power of companies,3 the recurrence of corporate human rights violations4 and governments repeatedly proving their inability or unwillingness to regulate business conduct,5 scholars began to challenge the effectiveness of the State-centric view; see for instance Wettstein (2015, 2012a); Cragg et al. (2012); Cragg (2010); Kobrin (2009); Monshipouri et al. (2009, p. 123 et seq.); Ruggie (2006); Sorrell (2004, p. 137); Muchlinski (2001); Smith (1994, p. 36 et seq.); Blumberg (1993: vii and p. 205). As Wettstein (2012a, pp. 22 - 23) argues:

1 ‘Social responsibility’ is defined by Jones (1980, pp. 59 - 60) as “an obligation to constituent groups in society other than stockholders and beyond that prescribed by law”.

2 Following the definition of Visser et al. (2010, p. 209) globalization means “a trend or process whereby economies and societies become more connected across national and geographic boundaries”. For a description of the globalization process see for instance Cassel (2001, p. 265 et seq.).

3 On the rising power of companies see Chapter 3.1.1.

4 Prominent examples are the collapse of the Rana Plaza building in Bangladesh (Buhmann, 2018, p. 30), child labour in Nike’s supply chain (Sievers, 2011, pp. 131 - 147) and the execution of activist Ken Saro Wiwa in Nigeria (Kolstad, 2012, p. 276).

5 Scholars refer in this context to a ‘regulation vacuum’ or ‘regulation gap’. This means that regulations are either not established or not enforced (Arnold, 2016, p. 270).
“In a world in which both the nature of problems and the patterns of influence have changed dramatically, holding on to traditional state-centrism in regard to the distribution of responsibility might ultimately prove counterproductive.”

Over the past twenty five years scholars and practitioners thus have attempted to expand the human rights concept by including companies (Obara, 2017, p. 250). The attempt led to a significant rise in the business and human rights (hereinafter BHR) scholarship. So far BHR scholars have spawned a primarily normative and conceptual scholarship (Deva et al., 2019, p. 202 and Chapter 3 of this thesis) focusing mainly on a justification for direct corporate human rights responsibilities and on defining the corporate human rights duties; for the former see for instance Arnold (2016, 2010); Werhane (2016); Cragg (2012, 2010, 2004); Bishop (2012); Wettstein (2012a, 2008); Kobrin (2009); Hahn (2009); Mayer (2009); Maack (2009); Hartman et al. (2003); Santoro (2000); for the latter see for instance Arnold (2016, 2010); Wood (2012); Wettstein (2012a); Bishop (2012, 2008); Santoro (2010, 2000); Hahn (2009); Maack (2009); Nolan and Taylor (2009); Brenkert (2009); Hsieh (2009, 2004); Campbell (2006); Sobczak (2003); Muchlinski (2001); Santoro (2000); Donaldson (1989, p. 85 et seq.). Contrary to the rich normative and conceptual scholarship, the empirical BHR research is very limited; cf. literature review in Chapter 3; Schrempf-Stirling and van Buren (2020, p. 38); Deva et al. (2019, p. 202) and Arnold et al. (2015, p. viii). The limited empirical BHR literature (altogether only 29 publications) explores what human rights violations are linked to corporate activities (see for instance Boudreaux

6 The BHR scholarship examines the human rights responsibility of companies. It is a multidisciplinary field covering different academic disciplines such as law, political science, philosophy and management (Schrempf-Stirling and van Buren, 2020, p. 28). This thesis analyses the topic from a management discipline perspective.

7 Normative studies focus on “putting forward a particular position relating to what standards, values, behaviour and actions should be like” (Schrempf-Stirling and van Buren, 2020, p. 34). In conceptual studies the “[f]ocus lies on the development of propositions, hypotheses or relations between different constructs based on a literature review. No new empirical data are retrieved” (Schrempf-Stirling and van Buren, 2020, p. 34).

8 Empirical studies focus on the analysis “of new collected empirical data used to make theoretical and/or practical contributions” (Schrempf-Stirling and van Buren, 2020, p. 34).
and Schang (2019); Davitti (2019); Gonzalez and Valencia (2019); Farah and Abdallah (2019); Azarova (2018) and Awori et al. (2018)), why companies implement human rights measures (see for instance Hofmann et al. (2018); McCorquodale et al. (2017); Obara (2017) and Arkani and Theobald (2005)), the impacts of human rights measures on rights holders, on companies and on macro factors (see for instance Hofmann et al. (2018); Salcito and Wielga (2018); Janney et al. (2009); Blanton and Blanton (2006) and Arkani and Theobald (2005)), and the implementation of corporate human rights responsibilities in business practice. The latter research string analyses primarily what human rights are (not) addressed by companies (see for instance Preuss and Brown (2012); Ruggie, (2007d)), what human rights measures are implemented by companies (see for instance MacLeod and Dewinter-Schmitt (2019); Hofmann et al. (2018); McCorquodale et al. (2017); Obara (2017) and Kamminga (2015)) and whether factors such as size, sector and region influence the human rights engagement of companies (see for instance Cui and Jo (2018); Hamann et al. (2009) and Ruggie (2007d)). The question regarding what challenges companies face when implementing human rights responsibilities in business practice and the strategies they apply to counteract these challenges (hereinafter counter strategies)9 received—with only five publications hitherto—very little attention in the empirical BHR research. Against this background scholars such as Obara (2017, p. 273) argue that it is time to understand the challenges that prevent companies from a meaningful participation in human rights respect, by reflecting the developed human rights responsibilities in the context of actual business practice.

With only one qualitative study, that of McCorquodale et al. (2017), notably the challenges that companies face when implementing human rights impact assessments (hereinafter ‘HRIA’) as envisaged by the United Nations Guiding Principles on Business and Human Rights (hereinafter ‘UNGP’) and the strategies they apply to counteract these challenges, remains a poorly empirically explored and

9 In this study ‘counter strategies’ refer to both single and combined approaches, and short-term as well as long-term oriented approaches as long as they aim to overcome the HRIA implementation challenges.
understood topic. The empirical findings of McCorquodale et al. (2017) are deemed to be limited, given that a differentiation between the three varying HRIA implementation steps of examining the HRIA provisions, collecting the human rights data and assessing the human rights impacts is missing. In each of these three process steps, companies could face different challenges and apply different counter strategies. McCorquodale et al.’s (2017) study, however, does not allow for such differentiated insights. Equally limited are the insights from that study with regard to supplier relationships, given that they focus on business relationships in general and not on supplier relationships in particular. Supplier relationships are moreover not differentiated according to first tier and n-tier supplier relationships. It is the aim of this study to redress the existing gap in the empirical BHR literature and by doing this to allow for a refined understanding of the corporate HRIA implementation challenges and counter strategies.

Expanding empirical knowledge in this field is important not only to complement and advance the existing BHR literature, but to lay the ground for progress in the human rights respect of companies. As argued by Obara (2017, p. 272), the more we know about how companies implement their human rights responsibility “the better placed we are to encourage a respect for human rights by the business sector.” In an era when many companies represent large and powerful multinational\(^{10}\) actors with far-reaching human rights impacts\(^{11}\) this seems to be of great significance.

The study is organised as follows: Chapter 1.1 describes the research aim and approach. This is followed in Chapter 1.2 by a specification of the contribution of this study. Chapter 2 lays the theoretical foundation of the study. Chapter 2.1 defines the key terms, beginning with a definition of human rights in Chapter 2.1.1 and followed in Chapter 2.1.2 by a definition of the human rights responsibility versus human rights

---

\(^{10}\) This study follows the understanding of the United Nations and defines a ‘multinational company’ as “an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries”; cf. United Nations (2003a, p. 7).

\(^{11}\) This aspect is discussed in more detail in Chapters 3.1.1 and 3.1.2.
duty. The subsequent chapters define adverse human rights impacts (2.1.3), the corporate human rights responsibility (2.1.4) and Human Rights Impact Assessments (2.1.5). Chapter 2.2 outlines the epistemological underpinning of this study which is followed in Chapter 2.3 by a summary of the historical evolution of human rights and of the UNGP. Chapter 2.4 outlines the HRIA provisions of the UNGP which define the corporate human rights responsibility for the empirical part of this study. A summary of the literature review is provided in Chapter 3, beginning with an overview of the BHR literature in Chapter 3.1, which is subdivided into the normative and conceptual BHR literature (3.1.1) and the empirical BHR literature (3.1.2.). Chapter 3.2 provides an interim conclusion which is followed in Chapter 3.3 by a summary of findings on corporate human rights responsibility implementation challenges and counter strategies from previous empirical BHR studies. Chapter 3.4 closes with a conclusion and the derivation of the research questions. The research design is described in Chapter 4, beginning with a description of the research method (4.1) and followed by a description of the evaluative criteria in Chapter 4.2, the case selection method in Chapter 4.3, the data collection method in Chapter 4.4, the data collection execution in Chapter 4.5 and the data analysis method in Chapter 4.6. The findings are presented in Chapter 5, first on an individual case basis (5.1) and subsequently on an aggregated case basis (5.2). The findings are discussed in Chapter 6.1 and critically reviewed in Chapter 6.2. Finally, the study concludes with a summary and recommendations for future research in Chapter 7.

1.1 Research aim and research approach

This explorative empirical study aims to gain truthful and rich insights into the challenges that companies face when implementing HRIA in business practice and the strategies they apply to counteract these challenges.
The UNGP\textsuperscript{12} define the corporate human rights responsibility for the empirical part of the analysis. The UNGP have been selected for three reasons. First, the UNGP define the corporate human rights responsibility in operational terms (Ruggie, 2011a, p. 4). Second, the UNGP define the corporate human rights responsibility of all companies, irrespective of factors such as size, location, industry, structure and ownership (United Nations, 2011, p. 1, Commentary on General Principles), and third, the UNGP represent the currently most authoritative text in the area of business and human rights (Nam, 2019, p. 227).

This study aims to explore the corporate HRIA implementation challenges and counter strategies by differentiating between the three process steps of: (1) examining the HRIA provisions, (2) collecting the data required for the HRIA, and (3) assessing the human rights impacts. Following the corporate human rights responsibility as defined by the UNGP, the study focuses on adverse human rights impacts that: the company causes through its own activities, contributes to through its own activities in its business relationships,\textsuperscript{13} and that are directly linked to the company’s operations, products and services by its business relationships without cause or contribution on its part; cf. United Nations (2011, p. 17, Guiding Principle No. 17(a)). The study focuses on business relationships of first tier and n-tier suppliers\textsuperscript{14} providing direct and indirect material,\textsuperscript{15} and including both services as well as goods. The focus with

\textsuperscript{12} The UNGP do not represent an international treaty (Darcy, 2017, p. 14) and do not create any new legal obligations (United Nations, 2011, p. 1), thus having the character of an international soft law instrument. This study employs the notions of ‘hard law’ and ‘soft law’ in accordance with international law terminology. ‘Hard law’ hence refers to legally binding and ‘soft law’ to non-legally binding measures (Buhmann, 2016, p. 699). The fact that a soft law is not legally binding does not mean, however, that it is entirely voluntary since it can be enforced through other mechanisms such as societal opinion or political pressure (Kobrin, 2009, p. 360); from this perspective obligations are rather morally than legally mandatory.

\textsuperscript{13} ‘Business relationships refer to those relationships a business enterprise has with business partners, entities in its value chain and any other non-State or State entity directly linked to its business operations, products or services. They include indirect business relationships in its value chain, beyond the first tier’ (United Nations, 2012, p. 5).

\textsuperscript{14} ‘First tier suppliers’ are direct suppliers that the company has a contractual relationship with, whereas “n-tier suppliers” refer to all the remaining suppliers within a supply chain.

\textsuperscript{15} Direct material refers to all production-related supplies and indirect material to all remaining products and goods that a company uses (Mueller and Siakala, 2019, p. 55).
respect to rights holders is limited to employees, which can be either the company’s own employees or employees of the company’s first tier and n-tier suppliers. Given that companies which are owned or controlled by the State are subject to special regulations, the focus of this study is restricted to private companies.

The specific research questions this study seeks to answer are the following:

1. What are the corporate challenges and the counter strategies in examining the HRIA provisions of the UNGP?

2. What are the corporate challenges and the counter strategies in collecting the human rights data as envisaged by the UNGP?

3. What are the corporate challenges and the counter strategies in assessing adverse human rights impacts as envisaged by the UNGP?

To answer these research questions, this study applies a qualitative\textsuperscript{16} multiple-case study research method. Primary data are collected via semi-structured interviews and a document analysis. The data are analysed on the basis of a systematic, inductive, category-driven text analysis method. All methodological decisions are explicitly described and justified in Chapter 4.

By answering the above defined research questions, the study makes a fourfold contribution which is outlined in detail in the next chapter.

\textsuperscript{16} On the difference between qualitative and quantitative research see Chapter 4.1.
1.2 Contribution of the study

The contribution of this empirical organisational level study is fourfold: first and foremost it complements and advances the small body of empirical BHR research on implementation with little knowledge on the challenges that companies face when implementing HRIA as envisaged by the UNGP and the strategies they apply to counteract these challenges. The literature review in Chapter 3 shows that a theory that would help to understand the research object has yet to be developed. The study is consequently placed on the ‘nascent theory’ continuum. By differentiating between the three varying HRIA implementation steps and between the human rights data collection within the company, from first tier suppliers and n-tier suppliers, this study explores this topic in much greater depth than previous empirical BHR studies have done. By providing differentiated insights into the corporate HRIA implementation challenges and counter strategies, this study thus complements and advances the empirical BHR literature on implementation and thereby lays the ground for theory development in this research area.

By comparing the findings to the implementation challenges and counter strategies discussed in the Sustainable Supply Chain Management (SSCM) and the Corporate

---

17 Schrempf-Stirling and van Buren (2020, pp. 35 - 36) define organisational-level research as follows: “[it] uses the corporation as the unit of analysis; here scholars focus on corporate practices and policies.” The focus thus is the corporate person and not individual persons within the corporate person.

18 A theory “aims to explain the reality on the basis of regularities and to make predictions” (Klein, 2020, p. 104). It is understood as “a system of different hypotheses or laws which describe connections” (Klein, 2020, p. 104). A theory hence explains “what causes what, and why under which circumstances” (Ridder, 2020, p. 23). Put differently, it provides explanations for specific causal relationships (Ridder, 2020, p. 18) which can be limited by time and/or space (Bacharach, 1989, p. 500). A theory must allow verification of its predictions (Ridder, 2020, p. 6) and must be sufficiently consistent to be refuted (Bacharach, 1989, p. 501).

19 The stage at which there is no theory yet that would help to understand the research object and ‘rich descriptions’ are the aims of the study, is classified by Ridder (2020, p. 21) as ‘nascent theory’. Further information is provided in Chapter 4.1.

20 SSCM is defined by Seuring and Mueller (2008, p. 1700) as “the management of material, information and capital flows as well as cooperation among companies along the supply chain while taking goals from all three dimensions of sustainable development, i.e., economic, environmental and social, into account which are derived from customer and stakeholder requirements.”
Social Responsibility (CSR) literature, this study also provides a human rights-specific nuance to these respective literature domains.

Third, given that this study focuses on the implementation of the corporate human rights responsibility as envisaged by the UNGP, it provides knowledge on the workability of the UNGP in business practice. This may be of value both for scholars and practitioners who are engaged in the conceptual evolution of the UNGP.

Last but not least the insights may be of value for companies that (aim to) implement HRIA and for policy makers who are in the process of developing national BHR action plans and statutory corporate human rights provisions.

---

21 Mueller et al. (2009, p. 510) define CSR as “the responsibility of companies towards their social and ecological environment.” For an overview of CSR definitions see Dahlsrud (2008).
2 Theoretical foundations

This chapter provides the theoretical underpinning of this study. Chapter 2.1 first defines the key terms, followed in Chapter 2.2 by a description of the epistemological underpinning of this study. Chapter 2.3 summarizes the historical evolution of human rights and of the UNGP. Finally, Chapter 2.4 summarizes the HRIA provisions of the UNGP which define the corporate human rights responsibility for the empirical part of the analysis.

2.1 Definition of key terms

This chapter defines the key terms of this study. It begins with a definition of ‘human rights’ in Chapter 2.1.1. This is followed by a definition of the human rights responsibility versus human rights duty in Chapter 2.1.2, adverse human rights impacts in 2.1.3, the corporate human rights responsibility in 2.1.4 and finally, in Chapter 2.1.5, the human rights impact assessments.

2.1.1 Human rights

A right can be defined as “a claim against someone whose recognition as valid is called for by some set of governing rules or moral principles” (Feinberg, 1970, p. 257). The idea of rights thus includes both a subject that has claims (Kobrin, 2009, p. 355) and a duty bearer who has corresponding obligations to the rights holder (Santoro, 2000, p. 145). The recognition of claims in turn depends on governing rules or moral principles (Feinberg, 1970, p. 257). Human rights represent a special category of rights “designed to protect fundamental human interests” (Cragg, 2012, p. 19) and that all people are entitled to just because they are human beings (Clohesy, 2004, p. 43). Considering the fact that human beings can be physically harmed and have basic needs such as for
nutrition and shelter (Arnold, 2016, p. 263) human rights define the essential conditions for a life with dignity (Donnelly, 2007, p. 14). In other words:

“human rights secure the moral minimum necessary (...) to live a liveable, dignified life as human beings” (Wettstein, 2009b, p. 137).


“a human right, by definition, is something that no one, anywhere, may be deprived of without a grave affront to justice.”

Because of their importance, human rights in the view of Cragg (2010, p. 9) are predominant and thus have priority over all other moral and non-moral principles. This implies that only compromises between varying human rights violations are acceptable, but other considerations such as economic interests, cannot justify human rights violations (Fasterling and Demuijnck, 2013, p. 802).

Human rights can be differentiated according to moral, political and legal conceptions (Arnold, 2010, p. 378), the latter two also being referred to as institutional human rights (Toft, 2020, p. 6). The moral conception defends the view that human rights are moral values or principles (Cragg, 2010, p. 7) which are mandatory for all rational agents (Arnold, 2010, pp. 378 - 379). The three basic moral

---

22 Sen (2004, p. 328) defines freedoms as “descriptive characteristics of the conditions of persons”.

23 Some differentiate between the terms ‘ethics’ and ‘morals’ in the following way: Both focus on what is right or wrong, but whereas ethics is concerned with general principles of proper actions (what ought to be done), morals address the question whether a specific action satisfies established ideas of right or wrong (Robson and McCartan, 2016, p. 209). Following the approach of Robson and McCartan (2016, p. 209) in this study both terms refer to ‘proper’ conduct.
values on which human rights are grounded are freedom, equality\(^{24}\) and dignity\(^{25}\) (Cragg, 2010, p. 13). The advantage of the moral conception of rights is that it does not depend on legal frameworks or political agreements (Arnold et al., 2010, p. 573), thus existing “\textit{independently of, any legal or institutional rules}” (Feinberg, 1973, p. 84).

The political conception assumes that human rights are political demands (Arnold, 2010, p. 379). From this perspective human \textit{rights} are the result of “\textit{political agreements and are binding on those (…) who are party to the agreement}” (Arnold, 2010, p. 379). The political and moral conceptions can be linked in that political bodies can make agreements about human rights that are based on moral rights (Arnold, 2010, p. 379).

Through appropriate legal regulations, moral and political rights can be made a legal requirement and hence become legal rights (Arnold, 2010, pp. 378 - 379). Legal rights need to be distinguished between international and national law.\(^{26}\) The traditional model of international law is based on the idea that it governs relationships between States (Steinhardt, 2015, p. 29 et seq.). From a traditional perspective, States thus are the only subjects of international law, hence the sole entities who have the ability to have rights and duties (Steinhardt, 2015, p. 30; Wettstein, 2012a, p. 7; Wawryk, 2003, p. 55). From this perspective international law does not raise legal obligations for companies (Steinhardt, 2015, p. 29). When a company violates an international human rights law, then the State (although not directly responsible for the adverse

\(^{24}\) Equality does not mean that all human beings are equal, but that despite differences of any kind (for instance in terms of nationality, gender, age, colour, religion, etc.) all individuals are equal as human beings, possessing dignity and being entitled to human rights (United Nations, 2003b).

\(^{25}\) Despite plenty of definitional efforts, no consensus has been reached yet on the question of what the notion ‘dignity’ actually means (Hahn, 2012, p. 48). Henkin (1998, p. 231) assumes that the principle of human dignity within the human rights idea probably derives from Immanuel Kant. Aiming to grasp the meaning of dignity, Kant (1797, p. 186) reflects in his work ‘The Metaphysics of Morals’ that: “a human being (…) is not to be valued merely as a means to the ends of others or even to his own ends, but as an end in himself, that is, he possesses a dignity (an absolute inner worth) by which he exacts respect for himself from all other rational beings in the world”.

\(^{26}\) The main method of creating law at the international level is a treaty between States (Bilchitz, 2016, p. 205).
impact) may be held responsible for not having prevented the violation (McCorquodale, 2009, p. 387). From the traditional perspective, companies consequently can be reached by international law only in the indirect way of domestic law (Steinhardt, 2015, p. 29; Muchlinski, 2012, p. 151). The Nuremberg trials established responsibility for human rights abuses under international law also for non-state actors, yet only for individual natural persons (Khoury and Whyte, 2017, p. 3; Steinhardt, 2015, pp. 29 - 30) and solely for particularly serious offences such as acts of genocide\(^\text{27}\), crimes against humanity\(^\text{28}\) and war crimes\(^\text{29}\) (Clapham, 2006, p. 29). In the last decades scholars such as Lopez Latorre (2020), Rivera (2017), Bilchitz (2016) and Clapham (2006) began to challenge the traditional perspective. This led to an ongoing debate about a conceptual evolution of the international human rights law which includes companies and –at least for some scholars– is not limited to particularly serious offences.

Outside the legal debate there is dissent among scholars over the question of whether human rights are universal claims, whether they are restricted to civil and political rights, or also include socio-economic rights, and whether they allow an interpretation solely as entitlements or also as ideals. The moral or cultural relativisms theory claims that there are no “\textit{universally valid or transcultural moral standards}” (Velasquez, 2000, p. 344). Therefore, an act can only be assessed on the basis of the moral standards dominant in that specific culture (Velasquez, 2000, p. 344). In other words: what is right or wrong depends upon what the respective culture classifies as right or wrong (Bowie, 2005, p. 455). According to Relativists the interpretation of human rights as universally valid denies cultural differences (Grey and Grey, 2011, p. 785; Pegg, 2003, pp. 4 - 5), despite the fact that “\textit{no culture’s ethics are better than

\begin{footnotes}{
27 ‘Genocide’ is defined as “\textit{acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group}” (United Nations, 2012, p. 6).
28 ‘Crimes against humanity’ are defined as “\textit{widespread and systematic attacks against civilians that include murder, enslavement, torture, rape, discriminatory persecution, etc.}” (United Nations, 2012, p. 6).
29 ‘War crimes’ are defined by international humanitarian law (United Nations, 2012, p. 6) .
\end{footnotes}
This leads to the conclusion that there are no universal rights (Pegg, 2003, p. 4; Donaldson, 1996, p. 48) and that what can be classified as a human right is culture-dependent (Brenkert, 2016, p. 279). Examples of Relativists are Rorty and Walzer (Brenkert, 2016, p. 279). Scholars, such as for instance Wettstein (2012a, p. 4, 2009b), Cragg (2004, p. 121), Sen (2004, p. 349), Donnelly (2003, p. 10), Franck (2001), Donaldson (1996) and Enderle (1996, p. 54) challenge this position by arguing that human rights apply to all cultures, thus being universally valid. Wettstein (2009b, p. 144) as an example argues that human rights are the most vital universal moral rights and transcend cultural differences. Cultural traditions in his view may be different, but that does not mean that cross-cultural understandings of human rights are impossible (Wettstein, 2009b, p. 144). Put differently, people can have different moral views and make various moral judgments and still have the same underlying morality or ethics (Brenkert, 2016, p. 280), given that specific acts “are wrong no matter where they take place” (Donaldson, 1996, p. 53). The United Kingdom as an example has the rule to drive on the left side of the road while in the United States it is to drive on the right side, but the underlying principle of driving in a way that reduces the risk of harm, remains consistent (Hoffman and McNulty, 2009, p. 550).

Those defending a universal position may support either an expansive or a restricted view, defined as Expansivists and Restrictivists respectively (Brenkert, 2016, p. 279). According to Restrictivists there are only few human rights (Brenkert, 2016, p. 281). As outlined by Brenkert (2016, p. 280), for Restrictivists “anything that could be said to be an individual right for all individuals, of basic importance, inalienable, and not dependent on recognition by governments must be fairly limited in nature”. Different Restrictivists recognize varying human rights. Werhane (1985 cited by Brenkert, 2016, p. 281) as an example classifies two dozen rights as human rights, Donaldson (1989, 30

---

30 Some hold the view that human rights are only Western values with limited applicability to non-Western societies, such as in East Asia that—in contrast to individual rights—attach importance to social harmony, discipline and order (Arnold and Hartman, 2005, pp. 210 - 211). From the East Asian perspective individual rights shall not impair the harmony of the community (Arnold and Hartman, 2005, p. 211); see also Pegg (2003, pp. 4 - 5).
p. 81) describes ten and Locke recognizes only the rights to life, liberty and property (Brenkert, 2016, p. 281). Despite these differences, all Restrictivists have in common that they recognize solely specific civil and political rights (Sen, 2004, p. 316). Due to this, Restrictivists are confronted with the critique that by this not all relevant ethical dimensions are considered (Brenkert, 2016, p. 285). Wettstein (2012a, p. 30) as an example claims that the sole consideration of liberty rights falls short as socio-economic rights, such as the right to food and an adequate standard of living, are equally important. He explains that human beings can have liberty rights but still suffer or die from starvation or sickness (Wettstein, 2012a, p. 30). For Wettstein (2012a, p. 30) “liberty without the existence of any real opportunities makes a mockery of human freedom.” Socio-economic rights in his view thus “are the very condition to make use of one’s liberty in the first place” (Wettstein, 2012a, p. 31). This is in line with O’Neill (2000, p. 134) who states that “without minimal standards of subsistence, agency itself fails, and so the point of (...) liberty rights is gone.” Clohesy (2004, p. 49) also sees economic and social rights as a necessity to realize civil and political rights, but for him this is equally true in reverse. Without civil and political rights as a freedom of expression, people according to him are for instance not free in trying to change their employment conditions (Clohesy, 2004, p. 49). The general interdependence between human rights is also emphasized by the United Nations (2003b) who state that “[t]he realization of one right often depends, wholly or in part, upon the realization of others.”

By including socio-economic rights Expansivists hold a more expansive view of human rights (Sison, 2018, p. 225). Some Expansivists allow for a different interpretation of rights, not solely as entitlements, but also as aspirational goals or ideals (Sison, 2018, p. 225; Brenkert, 2016, p. 285). From this perspective human rights are things we might intend to realize, but failing to do so does not necessarily lead to conviction or punishment since human rights can be legally or morally voluntary (Brenkert, 2016, p. 31)

31 Socio-economic rights are also referred to as second generation human rights (Wettstein, 2012a, p. 29) and are explained in more detail in Chapter 2.3.
Brenkert (2016, p. 305), De George (2010 cited by Brenkert, 2016, p. 285) and Enderle (1996, p. 54) are among those who criticize such an excessive use of the term ‘rights’. For Brenkert (2016, p. 285) this approach raises the risk that the notion of ‘rights’ becomes so vague that in the end anything could be declared as a right. According to him it is not surprising that human rights –from this perspective– have been extended to aspects such as ethical education or health itself (Brenkert, 2016, p. 285). He believes that some in fact tend to “claim a right to everything” (Brenkert, 2016, p. 305).

In summary, human rights protect fundamental human interests. They define the minimum conditions for a life with dignity. Human rights need to be distinguished by a legal, political and moral perspective. In contrast to Relativists, Restrictivists and Expansivists agree that human rights are universally valid. Whereas Restrictivists limit human rights to specific civil and political rights and interpret rights as entitlements, Expansivists also recognize socio-economic rights with some allowing an interpretation of rights as ideals as well.

For the reasons outlined in Chapter 1.1, in this study the corporate human rights responsibility is prescribed by the UNGP. This study therefore follows the UNGP’s understanding of human rights and defines them as internationally recognized human rights which are universally valid and inalienable entitlements including at a minimum the civil, political, economic, social and cultural rights expressed in the International Bill of Human Rights32 and in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work; cf. United Nations (2011, p. 13, Guiding Principle No. 12).33 Depending on the specific situation, companies may need to consider additional standards that the United Nations have developed regarding the

32 The International Bill of Human Rights consists of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR); cf. Chapter 2.3.
rights of vulnerable groups, i.e.: “indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families” (United Nations, 2011, p. 14, Commentary on Guiding Principle No. 12). In armed conflict areas the UNGP expect to consider international humanitarian law (United Nations, 2011, p. 14, Commentary on Guiding Principle No. 12).

2.1.2 Human rights responsibility versus human rights duty

In the UNGP, the word ‘duty’ is used in the first pillar (addressing the State) and the word ‘responsibility’ is used in the second pillar (addressing companies). According to Ruggie (2013, pp. 90 - 91) this differentiation indicates the corporate responsibility to be extra-legal or non-legal, thus to be distinct from legal duties. As outlined by the United Nations (2011, p. 14, Commentary on Guiding Principle No. 11) “[t]he responsibility (…) to respect human rights is distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions.” The corporate ‘responsibility’ thus refers to social rather than legal duties (Joseph, 2016, p. 231). This study follows the view that the UNGP define the non-legal corporate human rights responsibility, but uses both terms, hence ‘responsibility’ and ‘duty’, interchangeably, following the argumentation of Arnold (2017, p. 315) that a consistent conceptual basis for a differentiation between these two notions is missing.

2.1.3 Adverse human rights impacts

In human rights language a human rights violation is understood as a breach of “a legal provision or some other formal human rights standard” (Taylor et al., 2009, pp. 6 - 7) thus reducing “the ability of an individual to enjoy his or her human rights” (United Nations, 2012, p. 15). The UNGP speak of ‘adverse human rights impacts’ and seem to determine that these are equivalent to ‘human rights violations’
Adverse human rights impacts are differentiated according to actual and potential impacts; the former are those that have occurred or are occurring, whereas the latter may occur but have not yet done so (United Nations, 2012, p. 15). Potential adverse human rights impacts are a subject for prevention and mitigation, whereas actual impacts require remediation (United Nations, 2011, p. 18, Commentary on Guiding Principle No. 17). ‘Prevention’ means ensuring that adverse impacts will not occur (United Nations, 2012, p. 7). ‘Mitigation’ means that the probability of adverse human rights impacts occurring is reduced (United Nations, 2012, p. 7). Remedies may take different forms such as an apology, the assurance that the violation cannot recur and (financial) compensation (United Nations, 2012, p. 64). The United Nations (2012, p. 64) stress the necessity to comprehend which form of remedy is seen by the affected rights holders as effective.

2.1.4 The corporate human rights responsibility

For reasons outlined in Chapter 1.1, in this study the corporate human rights responsibility is defined by the UNGP. The UNGP differentiate between three distinct human rights responsibilities: to respect human rights, to protect human rights and to realize human rights.\(^{34}\) Respecting human rights means not infringing upon them (United Nations, 2012, p. 10). Put simply this means “to do no harm” (Ruggie, 2008a, p. 9). The State as an example can refrain from infringing upon human rights by not

\(^{34}\) The threefold manner of duties underlying the UNGP can be traced back to the typology developed by Henry Shue (1996, p. 52) who differentiated between duties to (1) avoid depriving, (2) duties to protect from deprivation, and (3) duties to aid the deprived.
torturing its citizens (Hsieh, 2017, p. 300), the company respectively by not torturing its employees. ‘Protecting human rights’ means protecting rights holders against other actors (including companies) from infringing upon their rights (United Nations, 2012, p. 10). This responsibility may be realized by the State by passing for instance domestic laws that mandate workplace conditions in line with the International Labour Organization (ILO) conventions (United Nations, 2012, p. 13). 35 The duty to fulfil requires adopting measures that enable the enjoyment of human rights (United Nations, 2012, p. 10). Taking as an example the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond someone’s control (Article 25, first sentence, Universal Declaration of Human Rights), this means the establishment of a social safety net including for instance unemployment insurance, health insurance and old age security.

According to the UNGP, the State has a duty to respect, protect and realize human rights (United Nations, 2012, p. 10; United Nations, 2011, p. 1);36 the duty on the part of the State thus is threefold. The corporate responsibility in turn is limited to respecting human rights (United Nations, 2011, p. 13, Guiding Principle No. 11). It is important to understand that this is “not merely a passive responsibility” (Ruggie, 2008a, p. 17, para 55), but requires omissions as well as actions (Ruggie, 2011a, p. 14, Commentary on para 13). Respecting the right to non-discrimination as an example requires the adoption of corresponding hiring policies, training employees, etc. (Ruggie, 2008b, p. 27). The responsibility to respect human rights applies to all companies irrespective of their size, location, industry, structure and ownership (United Nations, 2011, p. 15, Guiding Principle No. 14) and irrespective of whether the State is able or willing to fulfil its own human rights duties (United Nations, 2011,

35 The United Nations treaty bodies have affirmed that enacting laws to prevent and address human rights violations by third parties is the State’s minimum obligation to meet its duty to protect (Ruggie, 2007f, p. 22).
36 Under international law each State has the legal obligation to respect, protect and fulfil those human rights which are covered in the international human rights conventions it ratifies (United Nations, 2012, p. 10).
p. 13, Commentary on Guiding Principle No. 11). It is a responsibility which exceeds compliance with domestic laws (United Nations, 2011, p. 13, Commentary on Guiding Principle No. 11).

The UNGP differentiate between three types of involvement in adverse human rights impacts: a company may cause adverse human rights impacts through its own activities, it may contribute to adverse human rights impacts through its own activities, or the impacts may be directly linked to its operations, products or services by its business relationships without cause or contribution on its part; cf. United Nations (2011, p. 17, Guiding Principle No. 17(a)). The former case refers to direct impacts and the latter two cases to indirect impacts. Indirect impacts mean that the human rights violation is carried out by another party and not the involved company, but some (relevant) relationship between the company and the human rights violator exists (Brenkert, 2016, p. 301). Indirect impacts thus require a nexus element. The UNGP differentiate with respect to indirect impacts between ‘complicity acts’ and ‘direct links’. For the UNGP the nexus element regarding complicity acts is that the company contributes to the adverse human rights impacts; cf. United Nations (2011, p. 18, Commentary on Guiding Principle 17 (a)). Other factors such as for example geographical proximity, market power or control (via for instance a contractual relationship), as initially deliberated by Ruggie (2007e, p. 10), are waived in the UNGP. Also, the nexus element for direct links is not defined in the UNGP.

Avoiding complicity is seen as an essential part of the corporate human rights responsibility (Ruggie, 2008c, p. 22) and the UNGP expect companies to consider both the legal and –on the basis of public opinion– the non-legal (or perceived) complicity perspective (United Nations, 2012, p. 5). While the definitions of complicity vary within different legal contexts, for the United Nations (2012, p. 5) the relevant legal understanding of complicity is provided by the international criminal law jurisprudence on aiding and abetting which is defined as “knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime”. Outside legal spheres, the notion of complicity is interpreted in different
ways and not necessarily equivalent to the high legal requirements (Ruggie, 2008c, p. 17). Since the definitions of complicity vary within and between the legal and the non-legal realm, Ruggie (2008a, p. 21) concludes that it is “not possible to specify definitive tests for what constitutes complicity in any given context”.

According to the UNGP, a company is responsible for addressing potential adverse human rights impacts that it causes, or contributes to, through prevention and mitigation and actual adverse human rights impacts that it causes, or contributes to, through remedy (United Nations, 2012, p. 18). If the adverse impacts are only linked to the company’s operations, products or services by its business relationships without cause or contribution on its part, then it is not responsible for the impacts itself (United Nations, 2012, p. 18). As stated by the United Nations (2012, p. 18): “that responsibility lies with the entity that caused or contributed to it”. In cases of a direct link, the responsibility of the company is limited to exerting its leverage and encouraging the actor causing or contributing to the impacts to fulfil its human rights responsibility (United Nations, 2012, p. 18). Table 2.1 summarizes the different cases:

Table 2.1 The UNGP’s tripartite corporate human rights responsibility

<table>
<thead>
<tr>
<th>Company causes or contributes to adverse human rights impacts</th>
<th>Company is directly linked to adverse human rights impacts without cause or contribution on its part</th>
</tr>
</thead>
<tbody>
<tr>
<td>Potential adverse human rights impacts</td>
<td>Actual human rights impacts</td>
</tr>
<tr>
<td>Addressing adverse human rights impacts</td>
<td>Addressing adverse human rights impacts</td>
</tr>
<tr>
<td>Addressing adverse human rights impacts</td>
<td>Using leverage and encouraging the entity that causes or contributes to the</td>
</tr>
</tbody>
</table>

37 The United Nations (2011, p. 21, Commentary on Guiding Principle No. 19) define ‘leverage’ as “the ability to effect change in the wrongful practices of an entity that causes a harm”.
through prevention and mitigation | impacts through remedy | impacts on fulfilling its human rights responsibility

The following graphs illustrate the three types of involvement in adverse human rights impacts, beginning with ‘cause’ in Figure 2.1., followed by ‘contribution’ in Figure 2.2 and ‘direct link’ in Figure 2.3.

![Figure 2.1 Cause. Source: Based on the United Nations (2012, p. 16)](image_url)

An example for this case is a company that forces its own employees to work excessive hours thereby violating their right to rest and leisure which presupposes a reasonable limitation of working hours; cf. Article 24, Universal Declaration of Human Rights.
Figure 2.2 Contribution. Source: Based on the United Nations (2012, p. 16)

An example for this case is a company that sets such tight delivery deadlines that its supplier is forced to demand excessive working hours from his employees to meet the deadline.

Figure 2.3. Direct link. Source: Based on the United Nations (2012, p. 16)

An example for this case is a supplier that forces its employees to work excessive hours despite sufficiently long delivery deadlines and possibly counter to delivery contracts.
To meet their human rights responsibility the UNGP expect companies to conduct a human rights due diligence (hereinafter HRDD) to identify and assess actual and potential adverse human rights impacts, act on the findings, track the effectiveness of actions, and communicate how impacts are being addressed (United Nations, 2011, p. 17, Guiding Principle No. 17). Due diligence represents a common business tool (Sherman and Lehr, 2010, p. 3) that is based on the idea that through the due diligence process a particular goal can be achieved (Fasterling and Demuijnck, 2013, p. 807). The conventional understanding of this goal is the identification of risks that do or might interfere with the aim of profit maximization and enhanced share value (Cragg, 2012, p. 24). In legal regimes due diligence can be traced back to Roman law (Zimmermann, 1996, p. 1009 cited by Bonnitcha and McCorquodale, 2017), referring to the juridical exculpation of the defendant if it can be proven that a certain standard of precaution had been taken (Fasterling and Demuijnck, 2013, p. 807). A company that can prove it has implemented necessary due diligence, consequently can defend itself against civil claims or criminal charges (McCorquodale et al., 2017, p. 203). Under conventional understandings the purpose of due diligence thus is the mitigation of economic and legal risks for the company. In the human rights context due diligence, however, means focusing upon the risks for rights holders (Ruggie, 2010a, p. 17). In other words: a company “must look beyond the protection of its own interest and focus on the interest of those it affects by its actions” (Muchlinski, 2012, p. 149). HRDD thus seeks to prevent negative consequences for the rights holders. Human rights risk and risks to the company are increasingly related, but they need to be distinguished (United Nations, 2012, p. 7). HRDD is also an ongoing process that a company needs to implement in consideration of individual internal and external conditions such as size, sector and operating context (United Nations, 2012, p. 6).

2.1.5 Human Rights Impact Assessments

HRIA represent the first step within the HRDD process and are defined in this study as the process of identifying and assessing actual and potential adverse human rights
impacts; cf. United Nations (2011, p. 19, Commentary on Guiding Principle No. 18). From this it follows that HRIA form part of the HRDD, but they are not the same. Following the understanding of Ruggie (2007b, p. 3) impact assessments are not an ex post evaluation, but an ex ante activity, complemented by ongoing assessments.

HRIA need to be distinguished from environmental and social impact assessments (ESIA) (Ruggie, 2007b, p. 3). While ESIA analyse the direct environmental and social impacts of a business activity, HRIA focus explicitly on human rights impacts (Ruggie, 2007b, p. 3). Furthermore, HRIA examine direct and indirect human rights impacts (Ruggie, 2007b, p. 3). Contrary to ESIA, HRIA thus explicitly focus on human rights, while being not limited to direct impacts.

2.2 Theoretical paradigm

The study applies a ‘realism’ epistemological view, based on altogether four main assumptions. The first assumption is that there is an objective reality which can be explored (Yin, 2018, p. 16). Objectivity means that, in contrast to the individual subjective experience, there is a phenomenon that different individuals agree to (Robson and McCartan, 2016, p. 111). Put differently, “the criterion for objectivity is intersubjective agreement” (Robson and McCartan, 2016, p. 111). This assumption differs from the ‘radical constructivism’ theory of science which assumes that there is not one objective reality to be explored (Ridder, 2020, pp. 64 - 65), but that there are as many realities as there are observers (Robson and McCartan, 2016, p. 24; Lee et al., 1999, p. 183), because each individual constructs his or her own reality (Ridder, 2020, p. 64). As a result, constructivism does not focus on objective facts (Ridder, 2020, p. 65), but on how individuals construct their world (Robson and McCartan, 2016, p. 24). The task of the researcher thus is not to understand the observer’s independent reality, but the multiple subjective constructions of reality (Robson and
Contrary to this, ‘realism’ is committed towards objectivity.

In contrast to ‘positivism’, and ‘naive realism’, the ‘new realism’ believes that what is observed, however, is not simply determined by the research phenomenon itself, but can be impacted (Robson and McCartan, 2016, p. 22). What is observed can be influenced by the researcher as well as by the research object. It can be influenced for instance by the researcher’s and the study participants’ knowledge, values, expectations and beliefs; see for instance Yin (2018, p. 114); Bryman (2012, pp. 39 - 40); Diekmann (2008, pp. 47 - 75); Zalan and Lewis (2004, p. 521); Rosenthal (2003); Davis and Silver (2003, p. 33); Ahern (1999); Sadler (1981, p. 27 et seq.) and Boyd and Westfall (1965, p. 61). When committed to objectivity, different methods are therefore suggested to reduce possible bias and by this to establish validity. From a realist’s point of view, all methods are, however, fallible (Robson and McCartan, 2016, p. 109; Dul and Hak 2008, p. 41). Thus, no method can guarantee validity (Robson and McCartan, 2016, p. 109). Scientific knowledge consequently is deemed to be an approximation (Dul and Hak 2008, p. 41).

The rationale for this epistemological positioning is that this study does not aim to understand multiple subjective views of reality, but the observer independent reality of the corporate HRIA implementation challenges and counter strategies. To gain ideally truthful and rich insights, the phenomenon must be moreover explored in its natural rather than an artificial environment. Realism considers the fact that instead of an artificial laboratory context, real world research needs to take place in the ‘field’ and offers adequate approaches for such “open, uncontrolled situations” (Robson and McCartan, 2016, pp. 24 - 25).

38 For a detailed description see Ridder (2020, pp. 64 - 67) and Robson and McCartan (2016, pp. 24 - 25).
39 The ‘new realism’ is subdivided into different schools of thought, such as ‘scientific realism’, ‘critical realism’ and ‘transcendental realism’, all of which defend specific aspects (Robson and McCartan, 2016, p. 31).
40 ‘Validity’ stands for the accuracy of results, hence whether they capture “the real state of affairs” (Robson and McCartan, 2016, pp. 104 - 105). Put differently, whether what is measured is what has to be measured (Friedrichs, 2002, p. 100). Further details are provided in Chapter 4.2.
McCartan, 2016, pp. 30 - 31). Realism consequently was deemed to be a suitable epistemological foundation to explore the corporate HRIA implementation challenges and counter strategies.

2.3 The historical evolution of human rights and of the UNGP

The threat to fundamental human interests in specific historical situations led to the development of human rights (Cragg, 2012, p. 18). Historically the State represented the greatest threat to the interests that human rights aim to protect (Cragg, 2012, p. 19). Human rights traditionally thus have been perceived as tools for protection against the abuse of political power (Wettstein, 2012a, p. 18). Citizens drafted rights to oblige authorities not to interfere with specific acts of the citizens (Clohesy, 2004, pp. 43 - 44). The so-called ‘first generation’ of human rights includes civil and political rights such as freedom of opinion, freedom from torture and freedom from inhuman treatment (Puncheva-Michelotti, 2010, p. 592).41 The development of the first human rights begins with the Magna Carta (Stohl et al., 2009, p. 610) which was granted in 1215 and emerged from the conflict between England’s King John and a group of barons (British Library, 2020). The Magna Carta declared for the first time that ‘free men’ have the right to justice and a fair trial (British Library, 2020). Given that most people in the year 1215 were seen as unfree peasants, the rights and freedoms of the Magna Carta, however, only applied to a minority of people (British Library, 2020).

Human rights were further developed through the English Bill of Rights in 1689, the American Declaration of Independence in 1776, the French Declaration of the Rights of Man and of the Citizen in 1789 and the Bill of Rights of the United States of America in 1791. By the nineteenth century human rights still were entitled only to a minority of people, namely to those who possessed “the capacity for reason and autonomous moral will” (Baxi, 2003, p. 109). The definitions of ‘reason’ and ‘will’ varied in the

41 Civil and political rights are classified by some scholars as ‘first-generation rights’ and economic, social and cultural rights as ‘second generation rights’ (Graetz and Franks, 2013, p. 98).
historical development, but most of the time, the definitions led to the exclusion of slaves, heathens, barbarians, colonized peoples, indigenous populations, women, children, the poor and the insane (Baxi, 2003, pp. 109 - 110).

The so-called ‘second generation’ of human rights refers to socio-economic rights, such as the right to just and favourable remuneration (Article 23, Universal Declaration of Human Rights) and the right to rest and leisure, which implies a reasonable limitation of working hours (Article 24, Universal Declaration of Human Rights). These rights emerged during the industrialization and class conflict of the nineteenth century when workers of large-scale companies demanded improved working conditions (Stohl et al., 2009, p. 611). Whereas the first generation of human rights thus aims to protect citizens against the abuse of political power (Wettstein, 2012a, p. 18), the second generation demands the use of State power to strengthen the rights of workers (Stohl et al., 2009, p. 611).42

The recognition of human rights in international law begins with the foundation of the ILO. Against the background of industrialization, the exploitation of workers in the industrializing countries and the consequences of World War I, in 1919 the ILO was created as part of the Treaty of Versailles (ILO, 2019a). The establishment of the ILO is grounded on the belief that “universal and lasting peace can be accomplished only if it is based on social justice” (ILO, 2019a).

The ILO defines the ‘International Labour Standards’, which set out the basic principles and rights at work (ILO, 2019b). Since its establishment, the ILO has developed more than 180 Conventions and 200 Recommendations (Windfuhr, 2012,

42 Some scholars moreover advocate for collective rights for particular groups such as ethnic and religious minorities (Preuss and Brown, 2012, p. 290).
According to the ILO (2019b) eight Conventions cover subjects that are considered to represent fundamental principles and rights at work, i.e.:

- “freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labour;
- the effective abolition of child labour; and
- the elimination of discrimination in respect of employment and occupation”.

After World War II the United Nations was founded with the aim of securing international peace and security, to prevent future wars, to protect human rights and to promote social progress and improved living standards in greater freedom (United Nations, 2020). In 1948 the United Nations General Assembly proclaimed the Universal Declaration of Human Rights (hereinafter UDHR) (United Nations General Assembly, 1948). In 30 articles the declaration lays down different rights and freedoms such as the right to life, liberty and security (Article 3), the right to equality before the law (Article 7) and the right to be presumed innocent until proved guilty according to law in a public trial (Article 11); cf. United Nations General Assembly (1948).

Human rights are recognized by the UDHR as “the foundation of freedom, justice and peace” (United Nations, 2003b). Muchlinski (2001, pp. 33 - 34) explains that the rights and freedoms set forth in the UDHR are linked to the atrocities of World War II.

---

43 The international labour standards are either conventions that are legally binding international treaties if ratified by a State, or they are recommendations, which represent non-binding guidelines (ILO, 2019b). If a convention is ratified, it is applied in national law and the respective country is expected to report on its application on a regular basis (ILO, 2019b). According to the ILO (1998) each State has an obligation to respect, promote and realize the fundamental rights, even if it has not ratified the respective conventions.

44 Reaffirming the belief that human rights are the foundation of justice and peace in the world (European Court of Human Rights, 1950), in 1950 the European Union adopted, on the basis of the Universal Declaration of Human Rights, the European Convention on Human Rights.
The aim of the UDHR was to create an institutional framework which would prevent such abuses from being repeated (Cragg, 2012, p. 19). The rights reflect furthermore the aim of protecting societies from the cruelty that accompanied traditional liberal capitalist models as witnessed particularly during the Great Depression in the 1930s (Muchlinski, 2001, pp. 33 - 34). For Baxi (2003, p. 160) the UDHR also reflects the suffering of Hiroshima and Nagasaki.

Without distinction of any kind, such as for instance by colour, gender or religion, every human being is entitled to all the rights and freedoms set forth in the UDHR and no differentiation shall be made based on the political, jurisdictional or international status of a country or territory a person belongs to (United Nations General Assembly, 1948). Whereas the early human rights conception excluded a great majority of people, the UDHR thus is based on the principle of universality and inalienability. The UDHR thus were developed to establish “a global safety net of rights” which applies everywhere to every human being (Franck, 2001, p. 193).

The UDHR is not a legally binding document (Grey and Grey, 2011, p. 782). To ensure that governments promote the rights defined in the declaration, two covenants have been developed: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Aaronson and Higham, 2011, p. 9). The International Bill of Human Rights consists of these two covenants and the UDHR (Aaronson and Higham, 2011, p. 9).

In the years following the proclamation, particularly in the liberal democracies of the developed world, governments took on the challenge to fulfil the freedoms and rights set forth in the UDHR by passing for instance laws against discrimination and by establishing social safety, such as for instance unemployment insurance, health insurance and old age pensions (Cragg, 2000, pp. 205 - 206).

The United Nations Conference on Trade and Development in 1972 marks the beginning of discussions within the United Nations on direct corporate human rights
responsibilities (Hoessle, 2016, p. 5). In 1974 the United Nations founded the Centre of Transnational Corporations (hereinafter ‘UNCTC’) which analysed in numerous research projects the human rights impacts of companies and aimed to develop a legally binding Code of Conduct for companies (Hoessle, 2016, pp. 5 - 6). In 1977 the Commission of the UNCTC published a draft code (Carasco and Singh, 2008, p. 356), which, however, was not adopted, due to different views on whether and how to regulate the activities of transnational companies (Hoessle, 2016, p. 6).

The work on the Code continued and in 1990 the last version was presented, which, however, also failed to receive approval of the United Nations member states (Carasco and Singh, 2008, pp. 356 - 367). The subsequent attempt to develop legally binding norms for companies came from the United Nations Sub-Commission on Promotion and Protection of Human Rights which presented in 2003 the ‘Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights’ (Scheu und Brodská, 2019, p. 15). Given the significant disagreement, the United Nations Human Rights Commission decided not to adopt the norms (Scheu und Brodská, 2019, p. 15).

In 2005 the Harvard Professor John Ruggie was appointed by the United Nations to be the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, and to define during his mandate the corporate human rights responsibility (United Nations, 2005). In 2008 Ruggie and his team published the conceptional framework ‘Protect, Respect and Remedy: a Framework for Business and Human Rights’ (hereinafter UNPRR). To move from the level of general principles and to define concrete guidelines on how to implement the UNPRR framework in practice (Ruggie, 2008d, pp. 1 - 2), three years

---


46 The phrase “other business enterprise” according to the United Nations (2003a, p. 7) includes “any business entity, regardless of the international or domestic nature of its activities, including a transnational corporation, contractor, subcontractor, supplier, licensee or distributor; the corporate, partnership, or other legal form used to establish the business entity; and the nature of the ownership of the entity”.

---

31
later, Ruggie and his team published the UNGP. In contrast to previous attempts, the UNGP represent an international soft law instrument, thus not creating legally binding corporate human rights responsibilities.

The UNGP were adopted by the United Nations Human Rights Council in June 2011 (United Nations, 2011, p. iv). Several scholars evince limitations of the UNGP, but given that they have a remarkably high legitimacy (Windfuhr, 2012, pp. 107 - 112) and represent the currently most authoritative text in the area of business and human rights (Nam, 2019, p. 227), they define the corporate human rights responsibility for the empirical part of this study.

2.4 The Human Rights Impact Assessments provisions of the UNGP

To meet their human rights responsibility the UNGP oblige companies to identify and assess actual and potential adverse human rights impacts (United Nations, 2011, p. 19, Guiding Principle No. 18) that the company causes through its own activities, contributes to through its own activities in its business relationships, and that are directly linked to the company’s operations, products and services by its business relationships without cause or contribution on its part (United Nations, 2011, p. 17, Guiding Principle No. 17(a)).

The aim of the HRIA is to comprehend the specific impacts on rights holders in a certain context (United Nations, 2011, p. 19, Commentary on Guiding Principle No. 18). HRIA generally include the identification of (potentially) impacted rights holders and the recording of how relevant human rights standards are affected (United

47 Fasterling and Demijnck (2013), Kolstad (2012), Bishop (2012), Cragg (2012) and Muchlinski (2012) as an example criticise that the UNGP/UNPRR asks companies to respect human rights solely for reasons of corporate self-interest rather than on moral grounds. Other scholars argue that the UNGP are not equally suitable for all industries. Joseph (2016, p. 229) as an example argues that the UNGP are not adequate for dealing with human rights duties in the media sector; in her view the “one size fits all” is flawed (Joseph, 2016, p. 252).
Nations, 2011, p. 19, Commentary on Guiding Principle No. 18). Relevant human rights standards refer to legal and non-legal provisions such as internal company policies (Ruggie, 2007b, p. 4).

HRIA should take into account the entire business life cycle of corporate activity, for instance from the construction of a factory site through to its closure (Ruggie, 2007b, p. 4). Furthermore, the human rights context in which the corporate activities are embedded needs to be considered (Ruggie, 2007b, p. 4). The human rights context is influenced by factors such as the nationally established human rights requirements, the capacities of the public sector and the availability of essential resources (Ruggie, 2009, p. 14). The risk of being involved with gross human rights violations is particularly high in conflict-affected areas (Ruggie, 2011b, p. 4).

The HRIA should:

“(a) Draw on internal and/or independent external human rights expertise;
(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation” (United Nations, 2011, p. 19, Guiding Principle No. 18 (a), (b)).

Understanding the perspective of potentially impacted individuals is key within the HRDD process (United Nations, 2012, p. 33). To accurately understand their human rights impacts, companies should seek direct consultation with potentially affected rights holders (United Nations, 2011, p. 20, Commentary on Guiding Principle No. 18). Where the consultation of potentially affected rights holders is not possible, companies should consider viable alternatives such as the consultation of

48 The notion ‘stakeholder’ refers “to any individual who may affect or be affected by an organization’s activities” (United Nations, 2012, p. 8).

While involving third parties in the stakeholder consultation process may be helpful to build trust and bridge cultural gaps, a company is ill-advised to delegate the process entirely to external parties, since this reduces its ability to “truly understand the perspectives” of rights holders and to establish “trusting and productive relationships with them” (United Nations, 2012, p. 35).

The most severe human rights violations may be faced by individuals belonging to vulnerable groups49 (United Nations, 2012, p. 84). Therefore, companies should pay special attention to the rights, requirements and challenges of individuals belonging to those groups (United Nations, 2012, pp. 40 - 41).

To support the identification of adverse human rights impacts, companies should either establish their own grievance mechanism or participate in cooperative approaches (United Nations, 2011, p. 31, Guiding Principle No. 29). Grievance mechanisms complement the stakeholder engagement process without, however, substituting it (Ruggie, 2011a, p. 25). Grievance mechanisms can only fulfil their purpose, if the rights holders know that they exist, if they can trust them and are also able to use them (United Nations, 2011, p. 34, Commentary on Guiding Principle No. 31). These are the criteria for designing, assessing and editing grievance mechanisms (United Nations, 2011, p. 34, Commentary on Guiding Principle No. 31; Ruggie, 2011a, p. 27). Ensuring that involved parties cannot impair fair conduct, safeguarding confidentiality and providing information about the handling of cases represent important trust building factors (Ruggie, 2011a, p. 27).

Where the value chain consists of a large number of entities, it may be “unreasonably difficult” to apply the due diligence process for every single one of them (United Nations, 2011, p. 31).
Nations, 2011, p. 18, Commentary on Guiding Principle No. 17). In such cases companies should identify “general areas where the risk of adverse human rights impact is most significant” and set respective priorities for the HRDD (United Nations, 2011, p. 18, Commentary on Guiding Principle No. 17). According to the United Nations (2011, p. 18, Commentary on Guiding Principle No. 17) the risk level depends on what products, services and operations are involved, the individual context and other relevant factors.

Companies are not asked to assess the general human rights record of those entities they have a business relationship with (United Nations, 2012, p. 41). Instead they are asked to assess the risk that these entities may infringe upon human rights when conducting a business activity in conjunction with the company’s own operations, products or services (United Nations, 2012, p. 41). If, for example, the plants of a company are protected by a security firm, the company is not asked to assess the general human rights record of the security firm, but those human rights impacts that (may) occur while the security firm is guarding its plants (United Nations, 2012, pp. 41 - 42).

Companies are expected to address all their adverse human rights impacts, but in those cases where all impacts cannot be addressed at once and where legal guidance is missing, companies should start with those that are most severe (United Nations, 2011, p. 26, Commentary on Guiding Principle No. 24). Once the most severe adverse human rights impacts have been addressed, the company is expected to focus on those with the next greatest severity and so forth until all (potential) human rights violations have been addressed (United Nations, 2012, p. 82). Whereas traditional risk assessments focus on both “the consequences of an event (its severity) and its probability”, in the context of human rights, severity thus is the prevailing factor (United Nations, 2012, p. 7). In specific situations the probability, however, may be important to help prioritize the impacts (United Nations, 2012, p. 7). The probability may be, for instance, relevant in helping to prioritize potential impacts which have the same degree of severity (Goetzmann, 2017, p. 105).
The severity of impacts should be judged according to their “scale, scope and irremediable character” (United Nations, 2011, p. 15, Commentary on Guiding Principle No. 14). ‘Scale’ stands for the gravity, ‘scope’ for the number of (potentially) affected rights holders and an impact is deemed ‘irremediable’ if it is not possible to restore, for those affected, the same or an equivalent situation as that before the rights violations (United Nations, 2012, p. 8). An impact does not need to have more than one of these attributes to be categorized as severe (United Nations, 2012, p. 19).

Since human rights impacts may change over time, HRIA should be conducted on a regular basis and prior to major changes such as the launch of a new product, the adjustment of a policy or the establishment of a new business relationship (United Nations, 2011, p. 20, Commentary on Guiding Principle No. 18).

The above outlined HRIA provisions define the corporate human rights responsibility for the empirical part of this study.

The next chapter summarizes the results of the literature review and, on the basis of gaps identified in the literature and the above defined HRIA provisions, derives the specific research questions this study seeks to answer.
3 Literature review

To understand the existing body of literature in the BHR field and to identify literature gaps which require further exploration, a careful literature review has been conducted. The material to be collected was defined as literature that focuses on the corporate human rights responsibility from a management discipline perspective. Given that companies which are owned or controlled by the State are subject to special regulations, it was decided to include only papers that focus on the corporate human rights responsibility of private companies.

To meet the highest quality demands, it was decided to follow Schrempf-Stirling and van Buren’s (2020) approach and to collect papers which have been published in the top five peer-reviewed academic journals for Social Issues in Management (SIM) scholarship; i.e. the Business and Human Rights Journal, Business and Society, Business Ethics Quarterly, Business Ethics: A European Review, and the Journal of Business Ethics; cf. Schrempf-Stirling and van Buren (2020, p. 32). In addition to this, it was decided to collect all reports which have been disclosed by Ruggie during his mandate as the Special Representative of the United Nations Secretary-General, given that these publications are the precursors upon which the UNGP rest.

The starting point for a systematic BHR debate is generally dated in the mid-1990s, when companies, such as for example Enron, ExxonMobil and Shell, came under public criticism for their role in adverse human rights impacts (Wettstein, 2012a, p. 5). Prior to the 1990s –except for discussions on Apartheid– contributions of scholars were rather “sporadic and fragmented” (Wettstein, 2012a, p. 12). To reduce the risk

---

50 The approach used to conduct the literature review is comparable to those systematic steps applied by Schrempf-Stirling and van Buren (2020) and Seuring and Mueller (2008, p. 1701) in their literature reviews.
51 The BHR scholarship is a multidisciplinary field disseminated across various academic disciplines such as law, political science, philosophy and management; cf. Schrempf-Stirling and van Buren (2020, p. 28) and Chapter 1 of this thesis.
52 Business ethics is concerned with how revenues are generated and whether the company is driven by other values than profit maximization aims (Hoffman and McNulty, 2009, p. 551).
of overlooking relevant publications, the beginning point for the data collection was set to January 1990, thereby following the approach of Schrempf-Stirling and van Buren (2020) in their literature review. The end point for the data collection was set to December 2019. The literature review thus includes papers which have been published between January 1990 and December 2019.


All five selected journals were accessed either directly, through their websites, or through the digital library catalogue of the University of Ulm and searched for the above defined terms in titles, abstracts and keywords.

In total, 454 publications were found. To determine whether these publications satisfy the above defined selection criteria, all titles and abstracts were read. Altogether 159 papers satisfied the criteria and thus were selected. Following the literature review approach of Seuring and Mueller (2008, p. 1701), the references of all selected papers were verified for additional relevant publications. Only two papers

53 To reduce the risk of overlooking relevant publications, the search terms include synonyms for the terms ‘corporate’ and ‘responsibility’.
were found in this manner. According to Seuring and Mueller (2008, p. 1701) a small number is an indication of the validity of the result.

Two literature reviews were identified among the publications: Brenkert (2016) and Schrempf-Stirling and van Buren (2020). The literature review conducted in this study is distinct from these two reviews in three respects. Whereas Brenkert (2016) focused solely on contributions of business ethicists, this literature review covers all management subdisciplines. Furthermore, the time period is different. Brenkert’s (2016) literature review covers papers which have been published prior to April 2016\footnote{Brenkert (2016) does not specify the publication period of those papers which he included in his analysis. Since his literature review was published in April 2016, it can be concluded, however, that the reviewed papers must have been published prior to April 2016.} and Schrempf-Stirling and van Buren’s (2020, p. 33) review includes those which have been published between January 1990 and August 2017. As outlined above, this literature review covers papers which have been published between January 1990 and December 2019 and thus refers to a longer publication period. Contrary to Brenkert (2016) and Schrempf-Stirling and van Buren (2020), this literature review moreover includes all reports which have been disclosed by Ruggie during his mandate as the Special Representative of the United Nations Secretary-General; cf. p. 37.

The following chapters outline the result of the literature review. Chapter 3.1 provides first an overview of the normative and conceptual BHR literature (3.1.1) and then an overview of the empirical BHR literature (3.1.2). Chapter 3.2 draws an interim conclusion and defines, on the basis of the identified literature gaps, the research focus of this study. Chapter 3.3 is dedicated to the research focus and summarizes the insights on the corporate HRIA implementation challenges and counter strategies from previous empirical BHR studies. Chapter 3.4 summarizes the results of the literature review and, on the basis of the identified literature gaps, derives the specific research questions this study seeks to answer.
3.1 Overview of the Business Human Rights literature

This chapter provides an overview of the BHR literature. It begins with an overview of the normative and conceptual BHR literature in Chapter 3.1.1, which is followed by an overview of the empirical BHR literature in Chapter 3.1.2.

3.1.1 Normative and conceptual Business Human Rights literature

The systematic BHR debate begins with a discussion on a justification for direct corporate human rights responsibilities; see for instance Arnold (2016, 2010); Werhane (2016); Cragg (2012, 2010, 2004); Bishop (2012); Wettstein (2012a, 2008); Kobrin (2009); Hahn (2009); Mayer (2009); Maack (2009); Sorrell (2004); Hartman et al. (2003); Santoro (2000). BHR scholars justify human rights responsibilities either on moral grounds or on the enlightened self-interest rationale (also known as the business case). The moral justification can be divided into five main arguments. The first argument refers to the so-called ‘corporate moral agency’. ‘Agency’ is the ability “to act consciously and reflectively” (Brenkert, 2016, p. 282). Moral agency then adds to this ability the moral component. Moral agency requires both the ability to make choices on the basis of moral considerations and the ability to act accordingly (Cragg, 2010, p. 5). It is argued that corporations are moral actors independent of the individuals who constitute a corporation and as such are capable of moral responsibility (Obara 2017, p. 253). As put forward by Arnold (2016, p. 260), companies that have the ability to assess past decisions and current practices, and to compare those to alternative plans, to make decisions upon their maintenance, “are capable of the requisite reflective decision making and are properly understood as moral agents”.

55 On moral agency as a justification for corporate human rights responsibilities see also Werhane (2016).
The second moral justification focuses on impact. Bishop (2012, p. 121) recognizes that the impact of companies on the lives of people is enormous. Similarly, Brenkert (2016, p. 288) states that companies have significant impacts on their employees, their customers and the community. They have a direct influence on the extent to which economic and social rights, in particular labour rights, can be exercised (Muchlinski, 2001, p. 43). Ruggie (2006, p. 7) believes that globalization has increased the possible impact of companies on human rights since today more companies are increasingly operating in countries which are characterized by challenging human rights contexts, such as a lack of rule of law. Bilchitz (2013, p. 127) takes the theoretical standpoint that the logic of human rights requires to impose responsibilities on all agents that have the ability to impact them. In other words: “with the power of corporations to impact the enjoyment of human rights (...) comes the responsibility to protect” (Cragg, 2010, p. 28). As long as there are no disqualifying characteristics, such as for instance impaired decision-making capacity, agents who have impacts on others also have a moral responsibility for those impacts (Brenkert, 2016, p. 288).

The third argument centres on power. The policies of the deregulation of markets, liberalization of the global economy and privatization of the public services, of the Washington Consensus began to spread worldwide in the 1980s (Wettstein, 2012a, p. 6) and to significantly change power relationships and authority (Wettstein, 2010, p. 39). While States are said to be losing some of their power (both at the international and national level) (Wettstein, 2012a, p. 6), the influence and power of companies is rising (Arnold, 2017, p. 311; Santoro, 2010; Wettstein, 2009a; Cassel, 2001, p. 266 et seq.). The power shift can be illustrated amongst others by the fact that today many

---

56 The media reports on a regular basis about adverse human rights impacts caused by corporate activities. The collapse of the Rana Plaza building in Bangladesh in 2013 represents a particularly severe example (Baumann-Pauly and Nolan, 2016, p. 1).
57 Technological innovations in transportation and communication have allowed companies to expand their activities over vast geographical distances (Wettstein, 2009a, p. 197).
58 Weber (1946, p. 180) defines power as the ability of someone “to realize their own will in a communal action even against the resistance of others who are participating in the action.”
companies are economically more powerful than the government of a State (McCorquodale, 2009, p. 387). Sorrell (2004, p. 138) explains that some companies have higher revenues than medium-sized States. Corporate power is further enhanced by the freedom of companies to freely choose their business environment. Today companies are quite free in deciding where they want to do business, creating freedom to choose those (legal) environments which offer the most favourable conditions for profit maximization (Cragg, 2000, p. 209). The ability to move people and assets is a “latent threat” to governments that a company might move its operations somewhere else (Wettstein, 2010, p. 39). Bishop (2012), Wettstein (2012a), Cragg (2010) and Kobrin (2009) are among those who argue that companies are morally responsible for human rights because of the power they hold.

The fourth justification for direct corporate human rights responsibilities refers to a hypothetical social contract between companies and society. This basis of argumentation is defended amongst others by Cragg (2004), Santoro (2000) and Donaldson (1982, 1989). Central to this view is the argument that the hypothetical social contract admits rights and powers to companies provided that they act responsibly (Obara, 2017, p. 254). Cragg (2004, p. 124) exemplifies this view by arguing that to uphold its legitimacy, a company must ensure that it satisfies the societal expectation of reciprocal benefits by contributing (directly or indirectly) to the public good, which includes respect for human rights. This is in line with Santoro (2000, p. 144) who is convinced that since societies allow companies to enjoy privileges they in turn “owe a ‘contractual’ duty to operate in a way that benefits society”. Companies that violate the social contract, according to Donaldson (1982, p. 54), must either change or they “lose their moral right to exist.”

59 For a comparison of GDP and corporate revenue see Trivett (2011) “25 US Mega Corporations: Where They Rank If They Were Countries, Business Insider”.
60 See also Monshipouri et al. (2009, p. 124).
61 Suchman (1995, p. 574) defines, ‘legitimacy’ as “a generalised perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially constructed system of norms, values, beliefs and definitions”. For Mueller et al. (2009, p. 511) social rules or structures can be deemed legitimate when they are accepted by the addressees.
The final moral justification for direct corporate human rights responsibilities refers to the political authority. It is argued that today companies have substantial power and authority in the political system (Kobrin, 2009, p. 350). They have the ability to participate in negotiations, set standards and provide public goods (Kobrin, 2009, p. 350). The fact that companies are increasingly involved in political processes has shifted their core skills from economic to political (Wettstein, 2008, p. 261). For Wettstein (2009a, p. 178) multinational companies have transformed into “a genuinely political actor”. Political authority as argued by Kobrin (2009, p. 350) should be linked to public responsibility. Or as Wettstein (2012b, p. 49) puts it: “the modern corporation has acquired both political authority and political responsibility”.

The second main justification for direct corporate human rights responsibilities assumes that companies have a self-interest in meeting society’s expectations regarding human rights, as this is beneficial to the company itself. It is argued that fulfilling the human rights responsibility protects the company from risks such as reputational damage or sales loss, and creates corporate benefits such as competitive advantage and higher employee motivation; see for instance Bauer and Umlas (2017, p. 290); Ruggie (2013, pp. 90 - 93); Ruggie (2010b, p. 6); Montgomery and Maggio (2009, p. 200); Frankental (2002); Rice (2002) and Chandler (1998, pp. 70 - 72).

Corporate self-interest as a basis for human rights responsibilities is criticized by scholars such as Bilchitz (2013, p. 120 - 121), Fasterling and Demuijnck (2013, p. 809 et seq.), Cragg (2012, pp. 9 and 26) and Kolstad (2012, p. 278). For Cragg (2012, p. 14) self-interest is not a convincing reason since there are many parts of the world where human rights respect is not a societal expectation. In his view a moral foundation moreover provides a stronger justification, because it is unclear how a business can

62 ‘Political’ is defined by Young (2004, p. 377) as “the activity in which people organize collectively to regulate or transform some aspect of their shared social conditions, along with the communicative activities in which they try to persuade one another to join such collective action or decide what direction they wish to take it”.

63 On the political role and responsibility of companies see also Maack (2009), Wettstein (2009a), Scherer et al. (2006).
justify human rights respect in cases where it cannot demonstrate corporate benefits or where it cannot prove that the advantages outweigh the associated costs (Cragg, 2012, pp. 9 and 26). For him, the argument of enlightened self-interest is therefore limited to those situations in which there is no conflict between respect for human rights and the self-interest of the company (Cragg, 2012, p. 15). In a similar vein, Kolstad (2012, p. 278) defends the view that human rights cannot be respected when they serve only the corporate objectives. Other scholars argue that to date there is in fact no evidence that reliably confirms the hypothesis of the business case (Fasterling, 2017, p. 234; Arkani and Theobald, 2005, p. 196). Fasterling (2017, p. 234) as an example states that the business case is only an argument to persuade companies to implement human rights measures rather than representing the contemporary level of empirical evidence. While adverse human rights impacts may create losses for the company, the opposite case, thus a company benefitting from human rights violations, seems equally plausible to him (Fasterling, 2017, p. 234). Giuliani (2016, p. 44) supports this view, by arguing that the violation of human rights is well-enshrined in some companies as it enables them to generate efficiency gains that otherwise would be impossible to realize.

The view that companies have direct human rights responsibilities remains contentious (Arnold, 2016, p. 255). Reasons put forward by scholars against direct corporate human rights responsibilities refer inter alia to the claim that companies represent “mere legal fictions” which cannot be duty bearers (Arnold, 2016, p. 256). Another argument is that human rights responsibilities are “too onerous” (Bishop, 2008, p. 199) or that the only purpose of companies is to improve the economic interests of equity holders while adhering to the law (Arnold, 2016, pp. 256 - 268).64

Based on the assumption that companies have direct human rights responsibilities, numerous BHR scholars attempt to define the respective obligations; see for instance Wood (2012); Wettstein (2012a); Bishop (2012, 2008); Dawkins (2012); Santoro

64 Further arguments are brought forward for instance by Hsieh (2015).
(2010, 2000); Hahn (2009); Maack (2009); Hsieh (2009, 2004); Campbell (2006); Sobczak (2003) and Chandler (1998). This literature can be divided into three main strands. The first one aims to define a limited list of human rights for which companies are responsible, with different scholars making disparate suggestions; see for instance Arnold (2016, 2010); Nolan and Taylor (2009); Brenkert (2009); Muchlinski (2001); Santoro (2000) and Donaldson (1989, p. 85 et seq.). The limitation attempt is based on the consideration that companies should be responsible only for those human rights which can be affected by corporate activities. Brenkert (2009, p. 455) as an example holds the view that since companies cannot violate the right to nationality or the right not to be subjected to arbitrary arrest, they should not be responsible for these rights.

Scholars also address the question of whether the human rights responsibility of companies should be distinct from that of the State; see for instance Arnold (2017, 2010); Hsieh (2017, 2004); Bishop (2012, 2008); Wettstein (2009a); Clapham (2006, pp. 225 - 237) and Donaldson (1989, p. 81 et seq.). Some scholars defend the view that companies and the State should not have the same human rights responsibility. Donaldson (1989, p. 84) as an example argues that businesses and the State have heterogeneous natures, purposes and abilities and therefore should have different human rights responsibilities. Likewise, Campbell (2006, p. 259) declares that despite the major power and wealth of companies, they are not the State and thus they should not have the same human rights duties. Others defend a State-like role for companies, either in general or under specific circumstances such as in conflict areas; see for instance Bilchitz (2013); Murphy and Vives (2013); Kolstad (2012) and Wettstein (2012a).

65 As outlined by Cragg (2012, p. 20) the State has the moral authority as well as the legal and financial capacity to establish and to enforce laws. Furthermore, while the State can reach everyone within its jurisdiction, the reach of corporate rules is limited to those with whom a company engages to pursue its business goals (Cragg, 2012, p. 21). Whereas the purpose of the State is to serve public interests, companies represent private entities pursuing primarily private interests. Companies, however, also provide public goods and thus serve public interests, too (Cragg, 2012, p. 21).
Furthermore, scholars focus on the question of whether companies are responsible for complicity acts and if so, what constitutes a justified accusation of complicity. There is widespread agreement among scholars that companies should not be complicit in human rights violations (Brenkert, 2016, p. 304) without, however, consent on the degree of complicity which –from an ethical point of view– is unacceptable (Kolstad, 2008, pp. 575 - 576).66 Scholars defend different views with respect to factors such as knowledge, contribution and benefits; see for instance Wettstein (2012b, 2010, 2009a); Macdonald (2011); Santoro (2010, 2000); Kobrin (2009); Brenkert (2009); Arnold and Bowie (2007, 2003); Clapham (2004); Ramasastry (2002) and Clapham and Jerbi (2001).

With the publication of the UNPRR in 2008, and the subsequent publication of the UNGP in 2011, the journey for clarity with respect to corporate human rights responsibility has reached an important milestone (Venkatesan, 2017, p. 635). The UNGP complement all three above outlined discussions. First of all, the UNGP define those human rights for which companies bear responsibility. Based on a sample of 320 cases of alleged corporate-related adverse human rights impacts, Ruggie (2008e, p. 2) found that companies can impact virtually all human rights. By for instance impeding access to evidence (United Nations, 2012, p. 13) companies can impact even –at first sight– unrelated human rights such as the right to a fair jury trial (Ruggie, 2008e, pp. 3 and 26). Ruggie (2008a, p. 4) therefore concludes that any limitation “will almost certainly miss one or more rights that may turn out to be significant in a particular instance.” Rather than defining a limited list of human rights, the UNGP instead define the specific responsibilities of companies for all internationally recognized human rights; cf. Chapter 2.1.1.

The UNGP also address the questions on whether companies are responsible for complicity acts, what constitutes a justified accusation of complicity and how far the responsibility reaches when other actors violate human rights, which are directly

66 For further details on complicity see for instance Wettstein (2012b, 2010).
linked to the company’s operations, products and services by its business relationships, without cause or contribution on the company’s part as outlined in Chapter 2.1.4.

Furthermore, the UNGP provide an answer to the question whether the corporate human rights responsibility is distinct from that of the State. In line with Campbell (2006, p. 259) and Donaldson (1989, p. 84) companies according to Ruggie (2008a, p. 16) are not democratic, public interest institutions, but specialized economic organs and as such their duties cannot and should not simply mirror the responsibilities of the State. If corporate responsibilities were to be entangled with State duties, it would be moreover challenging “if not impossible to tell who is responsible for what in practice” (Ruggie, 2008a, p. 4). As outlined in Chapter 2.1.4, according to the UNGP, the State needs to respect, protect and fulfil human rights. The corporate responsibility in turn is limited to respecting human rights; cf. Chapter 2.1.4. While some scholars agree with this view, others defend a State-like role for companies. Wettstein (2012a, p. 29) as an example, believes that the power of large companies must come along with an expanded responsibility for the protection and realization of human rights. Similarly, Bilchitz (2013, p. 131) also sees no reason to conclude that companies lack the responsibility to protect and fulfil human rights. In his view the burden placed upon them, however, needs to be –in a way yet to be determined– lower (Bilchitz, 2013, p. 131).

Consequently, although the UNGP represent an important milestone in the BHR field, the debate among scholars about corporate human rights responsibility continues.

---

67 See also Ruggie (2010a, p. 14).
68 See also Murphy and Vives (2013); Wood (2012); Wettstein (2010); Nolan and Taylor (2009); Wettstein (2009a).
3.1.2 Empirical Business Human Rights literature

Empirical BHR research can be grouped into four main streams. The first stream explores what adverse human rights impacts are linked to corporate activities; see for instance Boudreaux and Schang (2019); Yoboué and Kaufmann (2018); Azarova (2018); Kamminga (2015) and Ruggie (2008e). Some scholars focus on adverse human rights impacts in specific sectors such as mining (cf. Meyersfeld (2017); Murphy and Vives (2013)) or the private security industry (cf. Gonzalez and Valencia (2019); Davitti (2019)). Others focus on the impacts on particularly vulnerable groups such as women; cf. Awori et al. (2018). Still others analyse human rights violations in fragile environments such as in conflict zones (cf. Farah and Abdallah (2019); Azarova (2018)). This research makes it possible to understand what adverse human rights impacts are linked to corporate activities and —the latest since Ruggie’s (2008e) publication— that companies can in fact violate all human rights.

The second empirical BHR stream is dedicated to the question regarding why companies implement human rights measures; see for instance Hofmann et al. (2018);^69^ McCorquodale et al. (2017);^70^ Obara (2017) and Arkani and Theobald (2005).^71^ The findings in these qualitative studies align with the moral grounds and the enlightened self-interest rationale of previous normative BHR publications as discussed in Chapter 3.1.1. Obara (2017, pp. 258, and 264 - 265) as an example interviewed 22 companies and found that they implement human rights measures either because they believe that it is the right thing to do or because they believe that it improves their business performance. The latter was specified in Obara’s (2017, pp. 258, and 264 - 265) enquiry, amongst others, by the ability to recruit and retain high-calibre employees and to protect the corporate reputation.

^69^ Hofmann et al. (2018, p. 117) conducted 27 semi-structured interviews with European companies from five different sectors.

^70^ McCorquodale et al.’s (2017) study is described at length in Chapter 3.3.

^71^ Arkani and Theobald (2005, p. 195) conducted interviews with six companies from the following industries: food and beverages production, communications, mining, oil, process solutions and utilities.
The third empirical BHR research stream focuses on the impacts of human rights measures on rights holders, on the company (with respect to factors such as reputation and sales), and on macro factors such as foreign direct investment (FDI); see for example Hofmann et al. (2018);72 Salcito and Wielga (2018);73 Janney et al. (2009);74 Blanton and Blanton (2006);75 Arkani and Theobald (2005) and Harcourt and Theobald (2005).76 Based on interviews with managers from six companies, Arkani and Theobald (2005) as an example analyse whether the establishment of a corporate human rights policy has positive impacts on the company. While interviewees were cautious over claiming a direct proven link between the human rights engagement and corporate advantages, Arkani and Theobald (2005, p. 196) found a strong tendency among interviewees to believe that corporate human rights measures benefit the company.

Finally, a small number, i.e. 16, empirical BHR publications explore the implementation of corporate human rights responsibilities in business practice; see

72 In their qualitative research Hofmann et al. (2018) analyse (on the basis of semi-structured interviews with European companies from five different sectors) the impacts of a conflict minerals supply chain due diligence (SCDD) on the company. Their data suggest that a SCDD satisfies the information requirements of customers with positive effects on the corporate reputation (pp. 127 - 128). By satisfying customer requirements the interviewed companies also expect to obtain orders and thereby to generate cash flows (Hofmann et al., 2018, p. 128). The interviewed companies indicated moreover that a SCDD improves the financial performance through the mitigation of cost causing risks (Hofmann et al., 2018, p. 128).

73 Salcito and Wielga (2018, p. 116) conducted a qualitative research to explore whether the human rights of the local community are respected by two companies that implemented human rights measures. Their study is based on the analysis of documents (contracts and project descriptions), direct observation and interviews with employees, rights holders and other stakeholders.

74 Based on a sample of 175 multinational stock companies Janney et al. (2009, p. 407) analyse in their quantitative study the market reactions to the corporate announcement of joining the United Nations Global Compact (UNGC). Their findings suggest that –except for US-based companies–, investors take a positive view on the announcement of joining the UNGC (Janney et al., 2009, p. 418).

75 Blanton and Blanton (2006, p. 471) analyse in their quantitative study, on the basis of the Political Terror Scale, whether the protection of human rights in a specific country influences the foreign direct investment (FDI). While FDI depends upon two decisions: whether to invest and how much to invest (Blanton and Blanton, 2006, p. 464), their data suggest that human rights protection significantly influences the decision on how much to invest (Blanton and Blanton, 2006, p. 464).

76 On the basis of 229 job application forms, Harcourt and Harcourt (2002, p. 207) analyse quantitatively the impact of the New Zealand Human Rights Act (addressing non-discrimination) on corporate behaviour. They found that 88% of the job application forms violate the Act (Harcourt and Harcourt, 2002, p. 207). Most frequently the violations refer to indications with respect to age, gender, nationality and disability (Harcourt and Harcourt, 2002, p. 207).
MacLeod and Dewinter-Schmitt (2019); Hofmann et al. (2018); Cui and Jo (2018); McCorquodale et al. (2017); Obara (2017); Kamminga (2015); Murphy and Vives (2013); Preuss and Brown (2012); Kemp et al. (2011); Sethi et al. (2011); Montgomery and Maggio (2009); Hamann et al. (2009); Eweje (2009); Ruggie (2007d); Arkani and Theobald (2005) and Kolk and Tunder (2002). The empirical BHR literature on implementation can be subdivided into three main strands. The first stream analyses, on the basis of publicly available corporate documents, which human rights are (not) addressed by companies; see Preuss and Brown (2012) and Ruggie (2007d). Based on a sample of 97 companies which are listed in the FTSE100 index, Preuss and Brown (2012) as an example explore what human rights are incorporated in corporate documents, such as human rights policies and codes of conduct. They found that while some rights, such as the right to form and join trade unions are widely integrated, others, such as the right to social security, are not addressed by a single company (Preuss and Brown, 2012, pp. 295 - 297).

Other scholars examine whether factors as size, sector, region and membership in voluntary initiatives, such as the United Nations Global Compact (UNGC), influence the human rights engagement of companies; see Cui and Jo (2018); Hamann et al. (2009) and Ruggie (2007d). Based on public reports of 100 South African companies, Hamann et al. (2009, pp. 467 - 469) as an example found that while the size of a company does not influence the HRDD, sector and government regulations do have an impact. Their data suggest that the degree of human rights engagement of companies is higher when government regulations exist and that companies from the financial sector in particular display a low degree of human rights commitment (Hamann et al., 2009, p. 467). In addition to this, their data suggest that while leadership commitment is positively correlated to corporate human rights engagement, participation in the UNGC does not have an impact on the human rights performance (Hamann et al., 2009, p. 468).

Empirical research focusing on the implementation of corporate human rights responsibilities explores moreover the concrete measures of companies. This
literature shows that companies develop (either on their own or in cooperation with others via industry or multistakeholder initiatives\textsuperscript{77}) human rights objectives, human rights policies and supplier codes of conduct.\textsuperscript{78} Furthermore, they expect confirmation letters from managers that the human rights policies have been implemented, they provide training for employees, implement HRIA, conduct second party and third party audits,\textsuperscript{79} develop corrective actions plans, establish grievance mechanisms, adapt payment structure as an anti-discrimination measure, provide funding for development programmes, try to identify all suppliers in their supply chains and receive information on the conditions under which purchased goods are being produced. Moreover, they provide improvement support for business partners, include human rights provisions into contracts of employment, supplier contracts and department’s succession plans, and report internally and/or externally about their human rights measures; cf. MacLeod and Dewinter-Schmitt (2019); Hofmann et al. (2018); McCorquodale et al. (2017); Obara (2017); Kamminga (2015); Murphy and Vives (2013); Preuss and Brown (2012); Sethi et al. (2011); Kemp et al. (2011); Montgomery and Maggio (2009); Hamann et al. (2009); Eweje (2009); Ruggie (2007d); Arkani and Theobald (2005) and Kolk and Tunder (2002).

On the basis of data collected through a survey, interviews and a roundtable discussion, McCorquodale et al. (2017) provide specific insights into the corporate HRIA measures. They found that to identify adverse human rights impacts companies most frequently conduct desktop research and studies, including amongst others

\textsuperscript{77} Whereas industry initiatives include companies from a particular industry or several industries (Mueller and Siakala, 2019, p. 143 et seq.), multistakeholder initiatives can include not only companies, but also States, international institutions, investor groups and other civil society groups (Ruggie, 2007a, p. 17). Examples of industry/multistakeholder initiatives in the BHR context are the Fair Labor Association, Social Accountability International and the Voluntary Principles on Security and Human Rights and the Equator Principles (Ruggie, 2008b, p. 36).

\textsuperscript{78} Following the understanding of Kaptein and Schwartz (2008, p. 113) a business code or codes of conduct is defined as: “a distinct and formal document containing a set of prescriptions developed by and for a company to guide present and future behaviour on multiple issues of at least its managers and employees toward one another, the company, external stakeholders and/or society in general”.

\textsuperscript{79} ‘Audits’ are on-site assessments. Whereas second party audits are carried out by employees of the purchasing company, third party audits are carried out by external third parties (Mueller and Siakala, 2019, p. 110).
high-risk country research, a review of legislation, company policies, training records, media reports, industry guidance, best practice documents, sanctions lists and reports of Non-Governmental Organizations (NGOs) (McCorquodale et al., 2017, p. 208). The second most often applied method refers to the execution of audits (McCorquodale et al., 2017, p. 208). Other approaches refer to independent expert reports and grievance mechanisms (McCorquodale et al., 2017, p. 208).

### 3.2 Interim conclusion

The literature review shows that there is a rich normative and conceptual BHR literature focusing on justification for direct corporate human rights responsibilities and on defining the corporate human rights responsibility. None of the analysed normative or conceptual publications focus on the question regarding what challenges companies could face when implementing human rights responsibilities in business practice and the strategies they could apply to counteract these challenges.

Echoing the findings of Schrempf-Stirling and van Buren (2020, p. 38) and Deva et al. (2019, p. 202), the literature review shows that hitherto the BHR field has engaged relatively sparsely in empirical research. The little empirical BHR research (altogether no more than 29 papers)\(^80\) can be grouped into four main streams. The first stream explores what human rights violations are linked to corporate activities. The second stream is dedicated to the question as to why companies implement human rights measures. Third, empirical BHR research analyses the impacts of human rights measures on the rights holders, the company and macro factors. Finally, a small amount of no more than 16 studies explores the implementation of corporate human rights responsibilities in business practice. This research string analyses primarily what

---

\(^{80}\) Schrempf-Stirling and van Buren (2020, p. 38) found only 24 empirical publications in their literature review. The difference can be explained by the fact that this thesis’ literature review covers a longer publication time period and includes all publications published by Ruggie during his mandate as the Special Representative of the United Nations Secretary-General; cf. Chapter 3.
human rights are (not) addressed by companies, what human rights measures are implemented by companies, and whether factors such as size, sector and region influence the corporate human rights engagement. Therefore, the question of what challenges companies face when implementing human rights responsibilities in business practice and the strategies they apply to counteract these challenges hitherto has received only very little attention in the empirical BHR research. This finding echoes Obara’s (2017, p. 273) conclusion that it is time to understand the challenges that prevent companies from a meaningful participation in human rights respect, by reflecting the developed human rights responsibilities in the context of actual business practice. The very few empirical studies (altogether only five publications) that focus on the implementation of corporate human rights responsibilities in business practice and allow insights into the implementation challenges and counter strategies are outlined in the next chapter.

3.3 The corporate human rights implementation challenges and counter strategies in the empirical Business Human Rights literature

McCorquodale et al. (2017, p. 197) collected, through a survey that was completed by 152 respondents, through interviews with 14 people and through a roundtable discussion, data on HRDD measures, implementation challenges and good practices. One of the challenges outlined by McCorquodale et al. (2017) refers to the focus of the HRDD. McCorquodale et al. (2017, pp. 222 - 223) found that hitherto risk management processes focus solely on risks to the company. Changing the focus from risks to the company to risks to the rights holders (as envisaged by the UNGP) was identified as a key challenge by McCorquodale et al. (2017, p. 222).

Another challenge they have identified refers to the consultation of stakeholders. While the UNGP expect the consultation of potentially affected rights holders and other relevant stakeholders (cf. Chapter 2.4) and define ‘stakeholders’ in a comprehensive way as “any individual who may affect or be affected by an
organization’s activities” (United Nations, 2012, p. 8), McCorquodale et al. (2017, pp. 208 - 210) found particularly that companies from the information and communications technology (ICT) sector focus primarily on employees and local communities, thus having a limited view of stakeholders. McCorquodale et al. (2017, p. 210) assume that the consultation of stakeholders in the ICT sector may be particularly difficult since, as indicated by Allison-Hope and Natour (2014, p. 5), there may be “hundreds of millions (or even billions) of users spread across the world.”

Respondents deemed training on what human rights are and how human rights can be violated by corporate activities as an important counter strategy (McCorquodale et al., 2017, p. 214). In addition to this, interviewees stressed the importance of translating human rights for employees without a human rights background (McCorquodale et al., 2017, p. 208). Many respondents also found it helpful to break down the human rights concept in daily operations into specific rights (such as child labour), without, however, confusing this breakdown with a limitation to only some rights (McCorquodale et al., 2017, p. 208).

With regard to complicity acts McCorquodale et al. (2017, p. 222) found that many companies struggle with the question “how far is far enough” in the supply chain. Furthermore, they found that information on third parties’ human rights impacts is not always available (McCorquodale et al., 2017, p. 222). Even via an audit, not all impacts may be identified, since third parties may withhold information (McCorquodale et al., 2017, p. 222). McCorquodale et al. (2017, p. 215) found that the inclusion of human rights clauses into contracts enables the authorization of more in-depth due diligence. According to McCorquodale et al. (2017, p. 216), it is obvious that contractual provisions can facilitate, for instance, inspections. Their data suggest that the terms of the contractual human rights provisions strongly depend on the leverage over third parties (McCorquodale et al., 2017, p. 215). They found that – depending on whether the supplier relies on for instance the company for revenue– leverage over suppliers varies greatly, ranging from significant to very little (McCorquodale et al., 2017, p. 216). Approaching suppliers collectively (via industry
or multistakeholder initiatives) was considered to be more effective than as a single company (McCorquodale et al., 2017, p. 213). Respondents highlighted that collective approaches, however, also have drawbacks since they require the investment of time and resources and agreeing on compromises to achieve consensus (McCorquodale et al., 2017, p. 215).

Based on interviews with senior corporate affairs personnel working at six different companies, Arkani and Theobald (2005, pp. 193 - 199) explore corporate barriers to the implementation of human rights policies. One challenge identified by Arkani and Theobald (2005, pp. 199 - 200) refers to the structural complexity of business operations being globally dispersed among a variety of different (sub-)divisions and suppliers. One of the interviewed companies indicated having more than 10,000 suppliers (Arkani and Theobald, 2005, p. 200). According to Arkani and Theobald (2005, p. 202) the complexity is further amplified by the cultural differences of the global business environment with varying values and associated practices. According to their findings some suppliers operate in cultures not familiar with human rights and within a domestic context with other legal and political demands (Arkani and Theobald, 2005, p. 202). Moreover, Arkani and Theobald (2005, p. 202) found that the implementation and monitoring of human rights compliance systems strongly depends upon line managers at different levels, who are exposed to demands from varying directions causing a high degree of pressure and conflict.

Sethi et al. (2011, pp. 1 - 2) analyse the implementation of a voluntary code of conduct (‘Guiding Principles for Indonesian Operations – People and the Community’) which has been developed by the mining company ‘Freeport-McMoRan Copper & Gold, Inc’. This mining company developed a code of conduct for the protection of human rights, the creation of job opportunities and the economic development of the Papuans (i.e. an Indonesian indigenous community) (Sethi et al., 2011, p. 1). The mining company agreed to the independent consulting company ‘ICCA’ verifying its compliance with the code of conduct by means of an audit (Sethi et al., 2011, p. 8). ICCA conducted a total of three audits (Sethi et al., 2011, p. 8). The first one focused on the company’s
own employees, the second on the employees of the company’s service providing contractors, and the third was a follow-up audit (Sethi et al., 2011, p. 8). Sethi et al. (2011) then conducted a document analysis on the basis of the audit reports and formal responses of the company to the audit results; cf. Sethi et al. (2011, pp. 8 and 12). In addition to this, Sethi et al. (2011, p. 6) conducted interviews with the executives at the company’s headquarter, its mine site workers and leaders of the indigenous community.

Sethi et al. (2011, p. 2) found that the extractive industry has established industry and multistakeholder initiatives such as the Extractive Industries Transparency Initiative (EITI) and the Kimberly Process Certification Scheme (KPCS). The progress of these initiatives, however, has been small due to conflicting interests of the participating parties (Sethi et al., 2011, p. 2). Another challenge noticed by Sethi et al. (2011, p. 9) refers to the human rights knowledge deficits of employees. They discovered that while employees indicated to be suffering from 65 cases of human rights violations, less than half could actually be classified as a human rights violation (Sethi et al., 2011, p. 9).

The company attempted to ensure that all employees (including contract workers and its suppliers’ employees) are adequately knowledgeable in human rights via a human rights training programme. Of those employees that participated in the training only around 40% could show afterwards their complete understanding (Sethi et al., 2011, p. 9). To counteract this challenge, the company decided to improve its human rights training by focusing upon a continuing education programme (Sethi et al., 2011, pp. 12 - 14). In addition to this, the human rights training was made binding for all newly hired employees (Sethi et al., 2011, p. 14). Furthermore, the company displayed information on human rights — in English as well as in the local language — in offices and public areas (Sethi et al., 2011, p. 14). Human rights principles were also printed on the identification cards of employees (Sethi et al., 2011, p. 14). Beyond

81 The services provided included the following: mining equipment, repair services, drilling, truck and bus operations, maintenance of vehicles and roads, port services, custodial services, labour supply, catering, housing and hospitality services; cf. Sethi et al. (2011, p. 17).
82 Employees provided this information when interviewed by ICCA as part of the audit (Sethi et al., 2011, p. 9).
that, the company focused on establishing an atmosphere in which employees would feel comfortable about reporting human rights violations (Sethi et al., 2011, pp. 12 - 14).

In aiming to help companies (particularly those that implement large-scale infrastructure projects) to manage their labour rights impacts, Montgomery and Maggio (2009) developed a HRDD method and applied it to three different companies. On the basis of the ILO core conventions and other related ILO conventions, they first identified those labour rights provisions which in their view were “applicable to large private sector projects” (Montgomery and Maggio, 2009, pp. 201 - 202). Although Montgomery and Maggio deemed the topic of occupational health and safety as important, they excluded it from their framework without justification (2009, p. 201). To facilitate the impact assessment, Montgomery and Maggio translated the – in their view applicable – ILO provisions into specific questions and indicators (2009, pp. 203 - 208).

The HRDD approach developed by Montgomery and Maggio (2009, p. 201) is subdivided into minimum labour rights requirements and best practices, and consists of three process steps: a HRIA, a review and reporting (Montgomery and Maggio, 2009, p. 203). The HRIA is sub-divided into two parts: (1) a data collection prior to a site visit and (2) a data collection via a site visit (Montgomery and Maggio, 2009, p. 203). According to Montgomery and Maggio (2009, pp. 208 - 212) the first part serves as a basis for an efficient and effective site visit. In the first part Montgomery and Maggio (2009, pp. 208 - 212) suggest gathering information on the domestic law provisions, the socio-political and economic context, and the labour rights situation within the company.83

83 Montgomery and Maggio (2009, pp. 208 - 211) deem the following internal company information as relevant: company policies and implementation procedures, contracts of employment, collective bargaining agreements, orientation materials, training programmes, time sheets, payrolls, company records of fines and penalties, cases of job-related illnesses and injuries, grievance mechanisms, records of government inspections by for instance the labour ministry or the health ministry, and legal disputes concerning for instance workplace conditions or unions.
By applying their HRDD method to three different companies that implement large-scale infrastructure projects in the energy sector, Montgomery and Maggio (2009) provide insights into the corporate implementation challenges. Their analysis is based on a document analysis of human resource policies, procedure descriptions and audit reports, and data collected via interviews with the management, employees, contractors, governmental agencies and indigenous peoples’ associations (Montgomery and Maggio, 2009, pp. 214-215).

Montgomery and Maggio (2009, p. 215) found that the information collection process took almost twice the level of effort and time as originally planned, straining relationships with employees and other stakeholders. Furthermore, a large number of contractors and subcontractors made it difficult to receive trustworthy and consistent data. The lack of a clear and complete understanding of the situation also made it difficult for the company to manage the labour issues (Montgomery and Maggio, 2009, pp. 214-215).

Montgomery and Maggio (2009, p. 214) also found that it can be challenging to select a representative sample of interviewees when the workforce is large. Beyond that their data suggest that it can be demanding to find experts that combine human rights knowledge with industry-specific experience and suitable language skills (Montgomery and Maggio, 2009, p. 217). Another challenge they notice refers to domestic laws restricting internationally recognized labour rights such as freedom of association (Montgomery and Maggio, 2009, p. 201). Montgomery and Maggio (2009, p. 202) further recognize that the ILO standards often lack detailed provisions because they are “generally drafted with a fair degree of flexibility”. The specification of the provisions, in their view, is expected to be from national authorities such as ministries (Montgomery and Maggio, 2009, p. 202). In the context of supplier relationships, Montgomery and Maggio (2009, p. 216) mention the difficulty in defining the scope

---

84 According to Montgomery and Maggio (2009, p. 216) the term ‘contractors’ refers to “persons or units providing services to the project”.

58
of responsibility. As a general counter strategy, they stress the importance of incorporating labour rights provisions into delivery contracts (Montgomery and Maggio, 2009, p. 216).

On the basis of data collected through semi-structured interviews with 27 European companies from five different sectors, Hofmann et al. (2018) analyse why and how the ‘OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas companies’ is implemented by corporations, and the barriers to and enablers of implementing a conflict minerals-focused supply chain due diligence (SCDD). Hofmann et al. (2018, p. 117) interviewed the original equipment manufacturers (OEMs), their first tier suppliers (component manufacturers), and second and third tier suppliers (referring to metal traders, metal processors, and refineries).

Hofmann et al. (2018, p. 115) found that it is difficult for companies to identify human rights risks linked to conflict minerals due to non-transparent, globally dispersed supply chains. The complexity arises also through the distance between the supply chain actors when many tier levels are involved (Hofmann et al., 2018, p. 130). One downstream company indicated that between its direct suppliers and the smelters are nine to eleven tiers, and that mapping the supply chain would cause very high costs (Hofmann et al., 2018, p. 131). Companies try to identify all suppliers in the supply chain and to receive information on the conditions under which the purchased goods are being produced, but (sub)-suppliers either do not have the required information or they fear a competitive disadvantage and thus are reluctant to share this knowledge (Hofmann et al., 2018, p. 120). The ability of companies to influence suppliers is reduced by power limitations (Hofmann et al., 2018, p. 129). Leverage over others and trust are therefore identified as important enablers (Hofmann et al., 2018, p. 129). Another important enabler is effective traceability methods (Hofmann

---

85 According to Hofmann et al. (2018, p. 177) the companies operate in the following industries: jewellery, automotive, aerospace and defence, electronics, and technical hardware.
et al., 2018, p. 116). Their findings suggest that the quality of the collected data depends highly upon the level of expertise within the supply chain (Hofmann et al., 2018, p. 130). One company indicated that many suppliers do not understand what they are being asked, since they do not know where, as an example, the Congo is or what the term ‘conflict minerals’ means (Hofmann et al., 2018, p. 125). Another implementation challenge identified by Hofmann et al. (2018, pp. 129 - 130) refers to unclear conflict minerals provisions. Notions such as ‘reasonable efforts’ are not specified and reliable benchmarks to assess the activities of companies do not exist (Hofmann et al., 2018, p. 130).

With respect to counter strategies Hofmann et al. (2018, p. 129) notice that the information exchange between supply chain actors is facilitated through tools and programmes of industry and multistakeholder initiatives, such as the conflict-free sourcing initiative (CFSI). By offering audits of smelters, the CFSI also offers the opportunity to divide the labour among different supply chain actors and thereby to reduce costs (Hofmann et al., 2018, pp. 129 and 136).

3.4 Conclusion and derivation of the research questions

The literature review shows that only five qualitative empirical studies provide insights into the challenges that companies face when implementing human rights responsibilities in business practice and the strategies they apply to counteract these challenges. None of the existing studies has developed a theory on the subject matter. Furthermore, the literature review shows that the challenges companies face when implementing HRIA, as envisaged by the UNGP and the strategies they apply to counteract these challenges, remain largely unknown.

Montgomery and Maggio (2009) conducted their research two years prior to the publication of the UNGP and thus their analysis is not based on the therein specified tripartite responsibility of (1) causing adverse human rights impacts, (2) contributing
to adverse human rights impacts, and (3) being directly linked to adverse human rights impacts without cause or contribution on the company’s part (cf. United Nations (2011, p. 17, Guiding Principle No. 17(a)) and Chapter 2.1.4. Furthermore, Montgomery and Maggio (2009) limit the corporate human rights responsibility not only to labour rights, but also to those labour rights which in their view are ‘applicable’ to large-scale infrastructure projects. This is in stark contrast to the approach underlying the UNGP, which assign responsibility to all internationally recognized human rights; cf. Chapter 3.1.1.

Arkani and Theobald (2005) published their study six years prior to the publication of the UNGP and thus, like that of Montgomery and Maggio (2009), their empirical analysis is not based on the therein specified tripartite corporate human rights responsibility. In addition to this, Arkani and Theobald (2005) look at corporate barriers to the implementation of human rights policies without a specific focus on HRIA. Furthermore, Arkani and Theobald (2005) provide no insights into the strategies that companies apply to counteract the implementation challenges. Beyond that, their study looks at business relationships in general and not at supplier relationships in particular, with the latter moreover not being differentiated according to first tier and n-tier supplier relationships.

Similarly, Sethi et al. (2011) analyse the implementation of a code of conduct without a specific focus on HRIA. Furthermore, like those of Montgomery and Maggio (2009) and Arkani and Theobald (2005), Sethi et al.’s (2011) study is not based on the corporate human rights responsibility as envisaged by the UNGP. In addition to this, Sethi et al.’s (2011) study also does not differentiate between first tier and n-tier supplier relationships.

Hofmann et al.’s (2018) study focuses on the implementation of a due diligence in supply chains, thus excluding direct adverse human rights impacts. Furthermore, Hofmann et al.’s (2018) study analyses the implementation of HRDD in general and not HRIA in particular. In addition to this, Hofmann et al.’s (2018) study is limited to
conflict minerals. Although only recently published, Hofmann et al.’s (2018) study is not based on the corporate human rights responsibility as defined by the UNGP. Consequently, Hofmann et al.’s (2018) study does not differentiate between contributing to adverse human rights impacts and being directly linked to adverse human rights impacts without cause or contribution on the company’s part; cf. United Nations (2011, p. 17, Guiding Principle No. 17(a)) and Chapter 2.1.4.

Among the altogether five identified empirical studies, only McCorquodale et al. (2017) focus on the implementation of a HRDD as envisaged by the UNGP. McCorquodale et al.’s (2017) study, however, analyses the implementation of a HRDD in general without a specific focus on the implementation of HRIA. Furthermore, the study lacks a differentiation between the three varying HRIA implementation process steps of examining the HRIA provisions (1), collecting the human rights data (2) and assessing the human rights impacts (3). In addition to this, McCorquodale et al. (2017) focus on business relationships in general and not on supplier relationships in particular, with the latter moreover not being differentiated according to first tier and n-tier supplier relationships.

In summary, with the exception of McCorquodale et al. (2017), none of the reviewed studies is based on the corporate human rights responsibility as envisaged by the UNGP. One could argue that one explorative study alone is sufficient to provide comprehensive insights into the challenges that companies face when implementing HRIA as envisaged by the UNGP and the strategies they apply to counteract the challenges. The empirical insights of McCorquodale et al. (2017) are, however, limited, given that their study focuses on the implementation of HRDD in general and not on HRIA in particular and also lacks a differentiation between the three varying HRIA implementation process steps of examining the HRIA provisions, collecting the human rights data and assessing the human rights impacts. While in each of the three process steps, companies could face different challenges and could apply different counter strategies, McCorquodale et al.’s (2017) study does not allow for such differentiated insights. Equally limited are the insights from that study with respect to
supplier relationships, given that they focus on business relationships in general and not on supplier relationships in particular, with the latter also not being differentiated according to first tier and n-tier supplier relationships.

The challenges that companies face when implementing HRIA as envisaged by the UNGP and the strategies they apply to counteract these challenges consequently remains a poorly empirically explored and understood topic warranting further exploration. To redress the existing gap in the empirical BHR literature, this study seeks to answer, with a specific focus in business relationships on first tier and n-tier supplier relationships, the following research questions:

1. What are the corporate challenges and the counter strategies in examining the HRIA provisions of the UNGP?
2. What are the corporate challenges and the counter strategies in collecting the human rights data as envisaged by the UNGP?
3. What are the corporate challenges and the counter strategies in assessing adverse human rights impacts as envisaged by the UNGP?

The next chapter describes and justifies the research design which was applied in this study to answer these three research questions.
4 Research design

This chapter describes the research design of this study. It begins with a description of the research method in Chapter 4.1. This is followed by a description of the evaluative criteria (Chapter 4.2), the case selection method (4.3), the data collection method (4.4) and the data collection execution (4.5). The last Chapter (4.6) describes the data analysis method.

4.1 Research method

Data can be analysed on the basis of a qualitative and/or quantitative analysis procedure (Mayring, 2015, p. 21). Qualitative oriented research relies on the analysis of qualitative data (mostly text material) which are collected via for instance interviews or observations (Ridder, 2020, p. 78; Flick et al. 2019, p. 27 et seq.). In quantitative research the collected data are quantified (translated into numerical data) and mathematically or statistically analysed (Ridder, 2020, p. 82; Danermark et al., 2002, p. 178). Quantitative and qualitative research should be understood as complementary approaches with individual strengths and limitations (Barr, 2004, p. 171) both of which can be applied in a meaningful way (Mayring, 2015, p. 21).

Whereas a quantitative as well as a qualitative research approach thus each have their raison d’être (Mayring, 2015, p. 21), in this study the latter was found to be appropriate for the reasons outlined below.

The appropriateness of the research method strongly depends upon the type of research questions being addressed (Robson and McCartan, 2016, p. 77; Diekmann, 2008, p. 19; Barr, 2004, p. 167). Maxwell (2013, pp. 82 - 83) differentiates between ‘process questions’ and ‘variance questions’. Process questions “focus on how things happen” (Maxwell, 2013, p. 82). Variance questions such as ‘how much’ or ‘to what extent’ focus on the measurement of differences to make comparisons (Maxwell, 2013, p. 82). In addition to this, variance questions focus on whether there is a specific causal relationship between variables (Maxwell, 2013, p. 82). Whereas variance
questions suggest the use of a quantitative approach, process questions point towards the use of a qualitative approach (Robson and McCartan, 2016, p. 62; Maxwell, 2013, p. 82).

Whether process or variance questions are derived from the literature depends on the theory building stage. Ridder (2020, pp. 21 - 24) distinguishes between three different theory building phases: nascent, intermediate and mature theory. ‘Nascent theory’, describes a stage at which there is no theory yet that would help to understand the research object (Ridder, 2020, p. 21). At this stage research thus aims to develop a theory or rich descriptions which form a vital foundation for theory development (Ridder, 2020, pp. 18 - 21). In the intermediate theory phase, research seeks to further develop or refine an existing theory and in the mature phase the verification is sought (Ridder, 2020, p. 24). ‘Nascent theory’ stages suggest qualitative and ‘mature theory’ stages quantitative research designs (Edmondson and McManus, 2007, p. 1167). The ‘intermediate theory’ phase can benefit from a combination of qualitative and quantitative approaches (Edmondson and McManus, 2007, p. 1167).

The purpose of qualitative research thus is the exploration of a hitherto poorly researched phenomenon (Barr, 2004, p. 168), in order to understand first connections (explorative qualitative research) (Mueller, 2021, p. 3). Explorative qualitative research thus aims to understand a phenomenon rather than to compare groups or to test causal relationships (Robson and McCartan, 2016, p. 147). In explorative qualitative research comparisons might be made and relationships might develop, but this is not the primary aim of the research and if at all, these would emerge later in the study (Robson and McCartan, 2016, p. 147). Apart from that, qualitative research also seeks to explain in depth why or how things happen (explanative qualitative research) (Mueller, 2021, p. 3; Barr, 2004, p. 167). It can thus be suitable to analyse for instance the peculiarities of outliers (Mueller, 2021, p. 3; Barr, 2004, p. 171) or how and why an innovative programme was (not) successful (Yin, 2018, p. 271). If the findings of a study contradict a theory, qualitative research offers the opportunity to go beyond “speculating” about the reasons for the surprising findings and to analyse previous activities or context-specific impacts that might explain the results (Barr,
Qualitative research consequently can be the beginning of theory generation, but it can also be applied to expand or test existing theories (Ridder, 2020, pp. 82 - 83);\textsuperscript{86} (Barr, 2004, p. 169).

The literature review in Chapter 3 shows that the BHR literature on the corporate HRIA implementation challenges and counter strategies is at the ‘nascent theory’ building stage. A theory that would help to understand the research object consequently has yet to be developed. Quantitative research approaches are applied in either intermediate or mature theory building stages (Edmondson and McManus, 2007, p. 1167) given that quantitative research methods presuppose enough knowledge to predict the answer to the research question before the data collection, either in the form of a hypothesis (Robson and McCartan, 2016, p. 70) or closed-ended questions\textsuperscript{87} (Robson and McCartan, 2016, p. 249; Diekmann, 2008, p. 34). One must therefore already have “a substantial amount of conceptual understanding about a phenomenon” (Robson and McCartan, 2016, p. 102) – a prerequisite which, due to the little existing knowledge in the research area addressed here, was not met. The research questions which have been derived from the literature review (cf. Chapter 3.4) consequently are process questions which aim to explore a hitherto poorly researched and understood phenomenon. Therefore, the explorative qualitative approach was deemed to be the most appropriate research method for this study.

There are different qualitative research methods such as the case study, action research, grounded theory, field research and evaluation research\textsuperscript{88} (Mueller, 2021, p. 6).\textsuperscript{89} All qualitative research methods follow their own procedural rules and logic

\textsuperscript{86} On the individual purpose and limitations of qualitative versus quantitative research see also Danermark et al. (2002, pp. 165 - 193).

\textsuperscript{87} Contrary to open questions, where participants are free to answer what they wish, in closed questions participants are restricted to select an answer from different prescribed alternatives (Robson and McCartan, 2016, p. 252). While some open questions can be integrated in surveys (Robson and McCartan, 2016, p. 252), “asking a wide range of largely open-ended questions (…) is likely to be an inefficient and ineffective procedure” (Robson and McCartan, 2016, p. 249). Surveys are most effective when based on standardized closed questions (Robson and McCartan, 2016, p. 249). They are thus “not well suited to carrying out explorative work” (Robson and McCartan, 2016, p. 249).

\textsuperscript{88} Evaluation research is described for instance by Diekmann (2008, p. 37 et seq.)

\textsuperscript{89} For further examples of qualitative methods see for instance Bansal et al. (2018).
thus having individual characteristics (Bansal et al., 2018, p. 1189 et seq.) with individual benefits and drawbacks (Yin, 2018, p. 5). Different procedures thus may be appropriate for different research projects. Despite the differences, there are, however, also overlaps among the different modes of inquiry (Yin, 2018, p. 5; Bansal et al., 2018, p. 1189). In some situations it may therefore be unclear what kind of research method to apply (Yin, 2018, p. 8) since several appropriate methods may exist (Yin, 2018, p. 11). Under such conditions one must find the most advantageous research method (Yin, 2018, p. 8).

In this study, the analysis of all available qualitative research methods led to the decision to apply a multiple-case study. In case studies a particular contemporary phenomenon is deeply analysed within its real-life context (Yin, 2018, p. 15). Qualitative case studies seek to explore a phenomenon in its natural rather than an artificial environment (Ridder, 2020, p. 80). The researcher hence enters into the study participant’s world rather than the other way around (Yin, 2018, p. 98). In contrast to experiments which intentionally separate a phenomenon from its context (Yin, 2018, p. 15), qualitative case studies consider the context, hence how a phenomenon is shaped by individual conditions (Ridder, 2020, pp. 78 - 79; Danermark, 2019, p. 173). The context is considered without, however, controlling or interfering with it (Ridder, 2020, p. 81). ‘Contemporary’ refers to events in the present and in the recent past (Yin, 2018, p. 12). This is different from the ‘dead’ past when a direct observation is not possible and when relevant people are not alive and thus cannot tell –at least– in retrospect what has occurred (Yin, 2018, p. 12).

Case studies focus on one or more cases (Yin, 2018, p. 3) and the ‘case’ can be nearly anything, such as an individual person, a group, an institution, a programme or a neighbourhood (Robson and McCartan, 2016, p. 152) as long as it is “a real world phenomenon that has some concrete manifestation” (Yin, 2018, p. 31). A case

---

90 There is uncertainty about the value of studying single cases (Robson and McCartan, 2016, p. 151). The common view is that “science is not concerned with the individual case” (Bromley, 1986, p. xi). Others, however, acknowledge the value of case studies; see for instance Yin (2018) and Robson and McCartan (2016).
consequently cannot be something abstract, such as an argument, a claim or a hypothesis (Yin, 2018, p. 31). When the starting point of a case study is something abstract, one has to find a real-world case which represents its “concrete manifestation” in order to conduct the case study (Yin, 2018, p. 31).

The aim of a case study is not to collect all available information about a case, but all relevant information within specified boundaries (Yin, 2018, p. 29). Therefore, it is important to define and to bound the case on the basis of the research questions and, where appropriate, propositions91 (Yin, 2018, pp. 28 - 29).

Bounding the case helps to differentiate between the data about the research object (the ‘phenomenon’) and the context of the case (Yin, 2018, p. 31). This helps to differentiate for instance between those persons who are part of the subject matter and those who are part of the context (Yin, 2018, p. 31). In almost every research project it is desirable to specify the time boundaries of the case (Yin, 2018, p. 31).

The case study research was deemed to be the most appropriate research method for this study for five different reasons. First, this study seeks to explore the challenges that companies face when implementing HRIA in business practice and the strategies they apply to counteract these challenges. In contrast to the ‘dead’ past this study hence focuses on a contemporary phenomenon. Case study research is particularly suitable for the investigation of contemporary phenomena as it allows directly observing the research object and/or interviewing people who may still be involved in the occurrences (Yin, 2018, pp. 3 - 12). Second, the behavioural events cannot be controlled in this realm. Case study research is appropriate when one has either no or only a little control over behavioural events (Yin, 2018, p. 3), thus when the pertinent behaviours cannot be manipulated (Yin, 2018, p. 12). Third, from the literature it was

91 Propositions are “derived from the theory and predict the outcome of a proposed relationship” (Ridder, 2020, p. 14). Generally “if...then” relationships are proposed (Ridder, 2020, p. 14). Hypotheses are also statements about relationships, but they derive from propositions and are more concrete (Bacharach, 1989, p. 500). A proposition would be for instance: the greater the company, the greater the horizontal differentiation grade and the derived hypothesis would be “the greater the number of employees, the greater the number of departments” (Bacharach, 1989, p. 501).
concluded that the implementation of HRIA is a poorly explored and understood topic. Case studies allow exploring a case in depth (Yin, 2018, p. 5). They are hence particularly suitable if there are no or only limited insights regarding a particular phenomenon (Ridder, 2020, p. 85). Furthermore, compared to aggregate quantitative analyses, case studies allow capturing more details on a subject matter (Del Río González, 2008, p. 863). Last but not least, the implementation of HRIA is not a single event, but a dynamic process (cf. Chapter 2.4) and case studies are particularly suitable to explore dynamic operations (Ridder, 2020, p. 85). For the reasons outlined above, the case study was deemed to be the most appropriate research method for this study.

‘Multiple-case study’ means studying more than a single case (Robson and McCartan, 2016, p. 154). Within a multiple-case study each case is first individually analysed and those patterns which have been identified on an individual case basis are then compared and connected across all cases to reach overall conclusions (Yin, 2018, p. 196). This approach is commonly misunderstood as aiming to achieve statistical generalization when in fact case studies are concerned with analytical (also referred to as theoretical) generalization (Robson and McCartan, 2016, p. 154). Analytical generalization means “making an argumentative claim” (Yin, 2018, p. 41) on the basis of the case study’s findings (Yin, 2018, p. 38). The argumentative claim may take the form of a learned lesson, a working hypothesis, or some other principle that is assumed “to be applicable to other situations (not just to other "like cases")” (Yin, 2018, p. 38).92

Contrary to this, statistical generalizability refers to the generalization of the findings in terms of a particular population (Robson and McCartan, 2016, pp. 105 - 110).93 In

---

92 This statement can be found in Tutorial 2.1 on the companion website; cf. Yin (2018, p. 38)

93 Generalizability to other groups or other contexts must be based on other than statistical grounds (Robson and McCartan, 2016, p. 110). Two general strategies can be applied: direct demonstration and making a case (Robson and McCartan, 2016, p. 111). The former means that another study is conducted that addresses the same research questions but in another setting and/or with some
statistical generalization, a conclusion is drawn about a population, on the basis of empirical data gathered from a representative sample from that population (Yin, 2018, p. 37; Danermark et al., 2002, p. 181). On the basis of a representative sample and in accordance with rules of statistical inference (Robson and McCartan, 2016, p. 110), it is hence assumed that what was found about the sample, tells us—at least probabilistically—also something about the population (Robson and McCartan, 2016, p. 166; Danermark et al., 2002, p. 181).

Given the above described characteristics of case study research, the number of cases in a case study, however, is generally below that needed to represent a larger population (Yin, 2018, p. 38). It is hence generally too small for statistical testing (Dul and Hak, 2008, p. 41). A population of for instance two million (1,000) requires a sample of 385 (278) (Small, 2009, pp. 12 - 13). Normally case studies consequently do not allow statistical generalization.

Albeit single-case studies can generate valuable insights, multiple-case studies are presumably more robust (Yin, 2018, p. 25) because conclusions that independently arise from different cases are “more powerful than those coming from a single-case” (Yin, 2018, p. 61). Trying to achieve even a two-case study according to Yin (2018, p. 25) thus is a “worthy objective”. Given that five, six or more replications increase the degree of certainty about the results (Yin, 2018, p. 59), it was decided to apply a multiple-case study and to conduct at least five replications.

Since Yin has developed a systematic case study research method which is oriented towards a realist epistemological view (cf. Yin, 2018, p. 16) and widely accepted in the other type of participant (Robson and McCartan, 2016, p. 111). Making a case in turn refers to the presentation of grounds “that the group studied, or setting, or period is representative (i.e. it shares certain essential characteristics with other groups, settings or periods and hence that the same mechanism is likely to apply in those also)” (Robson and McCartan, 2016, p. 111).

94 The representativeness of the sample for the population “is the degree of similarity between the distribution of values in the two groups, as well as the degree of similarity between the causal relations in this group and in the larger group” (Dul and Hak, 2008, p. 45).
95 A systematic procedure strengthens the rigour of a research project (Yin, 2018, p. 18).
social science disciplines, the case study method applied in this study was informed by his procedural framework and principles.

Following Yin’s (2018) procedural provisions, a ‘case’ is defined in this study as a company that implements HRIA as envisaged by the UNGP. The case is bound to the corporate HRIA implementation challenges and counter strategies. Each case begins with the year that the company has implemented HRIA for the first time and ends with the year of the data collection, hence 2021. The spatial constraints of a case refer to the countries in which the company has its headquarter and further sites. First tier and n-tier suppliers form part of the context of the case.

4.2 Evaluative criteria

There is dissent among scholars over the questions towards which evaluative criteria qualitative research shall be committed and what means can assure the respective evaluative criteria (Robson and McCartan, 2016, p. 168). Classically, research is committed towards the evaluative criteria ‘reliability’, ‘validity’ (Mayring, 2015, p. 123) and ‘objectivity’ (Diekmann, 2008, p. 249). ‘Validity’ stands for the accuracy of results, hence whether they capture “the real state of affairs” (Robson and McCartan, 2016, pp. 104 - 105). Put differently, whether what is measured is what has to be measured (Friedrichs, 2002, p. 100). ‘Reliability’ stands for the reproducibility of the results (Diekmann, 2008, p. 250), in other words: “the stability, the precision of the measurement and the consistency of the measurement conditions” (Friedrichs, 2002, p. 102). The degree of objectivity expresses the extent to which the results are

---

96 According to Google Scholar, Yin’s publication is the second most cited methodology book in the social sciences (Yin, 2018, xv).

97 Friedrichs (2002, p. 100) discusses ‘validity’ with reference to mathematical examinations, explaining that the numerical variables need to adequately represent the relationships between objects. The question is hence, whether an intelligence quotient as an example represents the “real” intelligence of a person or an index on a scale of religious opinions about how religious a person is (Friedrichs, 2002, p. 100).

98 Original statement in German: “die Stabilität und Genauigkeit der Messungen sowie die Konstanz der Meßbedingung”. (Translated by the author).
dependent on the individual implementing the measurement (Diekmann, 2008, p. 249). Complete objectivity exists when different users apply the same measuring instrument and arrive at the same result (Lienert and Raatz, 1969 cited by Diekmann, 2008, p. 249). One needs to keep in mind that objective and reliable results are not necessarily also valid (Diekmann, 2008, p. 256).

Classically ‘reliability’ is assessed on the basis of a re-test, a parallel-test and a consistency test (Mayring, 2015, p. 123; Friedrichs, 2002, p. 102). A re-test means that the study is replicated (with the same sample and the same instruments) and compared with the original results (Mayring, 2015, p. 123; Friedrichs, 2002, p. 102).99 A parallel-test means that the same research question is analysed on the basis of the same sample, but by means of other data collection or analysis instruments (Mayring, 2015, p. 123; Friedrichs, 2002, p. 102). The consistency test means separating the material or the instruments (referring to the categories) into two equal parts and comparing the results (Mayring, 2015, pp. 123 - 124).

‘Validity’ is classically assessed on the basis of the forecast validity, the extreme group, the external criterion and the construct validity (Mayring, 2015, p. 123). ‘Forecast validity’ refers to the development of forecasts on the basis of the results and the verification thereof (Mayring, 2015, p. 124). Within the ‘extreme group’ procedure those parts of the sample for which extreme results are expected are separated, and it is verified whether the results point towards the expected direction (Mayring, 2015, p. 124). This is comparable with the pattern matching method where predictions are made in terms of patterns before the data collection and then compared with the empirical evidence; cf. Yin (2018, p. 175). The ‘external criterion’ procedure means using research results which are closely related to the researcher’s own research topic as a basis for comparison (Mayring, 2015, p. 124). It is particularly reasonable to

99 If the results differ in a re-test, both can be true: either the reliability is low or the conditions have changed (Diekmann, 2008, p. 251). If a thermometer as an example displays after a certain time another temperature, the reason for this can be either a low reliability or an actual temperature change (instability) (Diekmann, 2008, p. 251).
compare the results with studies that have applied other research methods (Mayring, 2015, p. 126). It would be hence particularly reasonable to compare as an example the results of a case study with the results of a survey, an experiment or a test. Construct validity means to verify the plausibility of the results on the basis of proven theories (Mayring, 2015, p. 124).

The transferability of these ‘classic’ procedures to qualitative research, however, has been criticized (Mayring, 2015, p. 124). The consistency test as an example is not informative, since specific text parts can contain content which can change the overall result (Mayring, 2015, p. 124). The re-test is problematic in social sciences since “identical circumstances cannot be recreated” (Robson and McCartan, 2016, p. 168). The parallel-test is problematic, because instruments for the analysis of linguistic material only in very rare cases could prove to be equivalent (Mayring, 2015, p. 124). Alternative means of assuring ‘reliability’, ‘validity’ and ‘objectivity’ thus have been suggested for qualitative research.

The reliability in qualitative research is generally assessed on the basis of the intercoder reliability test, which means that the analysis is conducted by more than one person and the individual results are compared (Mayring, 2015, p. 124). Mayring (2015, p. 124) explains that this procedure in fact measures the objectivity rather than the reliability. Reliability in qualitative research according to him can be assessed on the basis of intracoder reliability, meaning that the same analyst repeats the analysis (Mayring, 2015, p. 124). Optimally, the analysis would have to be repeated without knowledge about the original coding (Mayring, 2015, p. 124). While a total memory loss is unrealistic, it is reasonable to assume that over time the memory at least diminishes. Following Mayring’s (2015) argument, it was decided to assess the reliability of the findings in this study on the basis of an intracoder reliability test.

According to Robson and McCartan (2016, p. 170) one of the main threats to validity in qualitative research is inaccurate or incomplete data which can be counteracted by video or audio tapes. Not considering alternative meanings or explanations of the
phenomenon represents another main threat to validity (Robson and McCartan, 2016, p. 170). All researchers are prone to this risk because presuppositions arise when examining a topic prior to the data collection (Yin, 2018, p. 86). It is reasonable to assume that this risk to validity is particularly high in manual content analysis because, as outlined by Sadler (1981, pp. 27 - 28), humans have deficiencies as analysts, such as the tendency to underline information which confirms a hypothesis already held and to ignore contradictory information (referred to as the ‘negative instances’ phenomenon).\textsuperscript{100} Systematic data analysis procedures (in contrast to free analysis methods) counteract the effects of these deficiencies (Robson and McCartan, 2016, p. 462).

Another important approach to counteract researcher bias is the so-called ‘negative case analysis’ which means that the data are searched for instances that disconfirm provisional conclusions (Robson and McCartan, 2016, pp. 170 - 172). Furthermore, communicative validation (also referred to as member checking) (Mayring, 2015, p. 125) helps to reduce the likelihood of researcher bias (Robson and McCartan, 2016, p. 172). Here the preliminary interpretations are presented to the respondents (Robson and McCartan, 2016, p. 172) and the researcher and respondents achieve consensus about the results discursively (Yin, 2018, pp. 240 - 241; Mayring, 2015, p. 127).

Findings can be also impacted by the beliefs, values and expectations of the researcher (Bryman, 2012, pp. 39 - 40; Diekmann, 2008, pp. 47 - 75; Zalan and Lewis, 2004, p. 521; Kazdin et al., 2003; Ahern, 1999; Sadler, 1981, p. 27 et seq.) To guard against such impacts, Ahern (1999, p. 408, et seq.) suggests different strategies such as the verification of the personal values of the researcher prior to the analysis, the identification of feelings that could indicate a lack of neutrality, as well as potential role conflicts.

\textsuperscript{100} Sadler (1981, p. 27) points out that the shortcomings can vary from person to person, task and context.
Validity can be moreover established by ruling out threats stemming from participants. An important means of counteracting ‘social desirability biases’\textsuperscript{101} is the anonymisation of the data. As stated by Paulraj et al. (2017, p. 253), under conditions of anonymity, respondents have little incentive to brighten reality. Respondents are also less likely to give biased information when they trust the researcher (Robson and McCartan, 2016, p. 171), which can be achieved by different means such as by providing sufficient information about the research aim and the researcher’s expertise.\textsuperscript{102} The likelihood of reflexivity (cf. Yin, 2018, p. 114) can be reduced by assuring that there are no right or wrong answers and that any answer is as valued as another. Another threat to validity is participants not understanding what they are being asked (Yin, 2018, p. 65) which can be counteracted by respective reviews and pre-tests.

Threats to validity can be moreover counteracted by triangulation (Denzin, 2017, pp. 300 - 306; Robson and McCartan, 2016, p. 171). Triangulation means to combine different data,\textsuperscript{103} methods,\textsuperscript{104} theories and investigators to compensate (to some extent) the respective individual limitations of the one with the strengths of the other which could lead to valid results (Denzin, 2017, pp. 300 - 310). If the data are for instance collected by means of different methods and the findings are equivalent, trust in the validity of the findings is increased (Robson and McCartan, 2016, p. 107; Diekmann, 2008, p. 19). In other words, the confidence that the findings reflect the phenomenon accurately is higher (Yin, 2018, p. 129). Triangulation, however, is not a panacea for all methodological weaknesses (Robson and McCartan, 2016, p. 107).

\textsuperscript{101} The ‘social desirability response bias’ stems from the wish of participants to present themselves in a good light (Robson and McCartan, 2016, p. 320; Davis and Silver, 2003, p. 33).
\textsuperscript{102} Boyd and Westfall (1965, p. 60) describe a test which showed that if potential participants receive longer explanatory letters in advance compared to shorter ones, the response rate increases significantly.
\textsuperscript{103} Data triangulation means collecting data from different sources, at different times and in different locations (Denzin, 2017, pp. 301 - 303).
\textsuperscript{104} Method triangulation means both the triangulation within one method and between different methods (Denzin, 2017, p. 307). The former means that different strategies are applied within one method (as for instance varying scales in a survey), while the latter means a combination of different methods such as observation and interviews (Denzin, 2017, p. 307).
Triangulation hence cannot guarantee validity (Robson and McCartan, 2016, p. 109). For Fielding and Fielding (1986, p. 33) triangulation can at most help to achieve richer insights. They also raise awareness that triangulation in fact could increase the probability of error (Fielding and Fielding, 1986, p. 31). It is hence arguable whether triangulation helps to achieve richer results or could have positive or negative effects on validity.

Given that the corporate HRIA implementation challenges and counter strategies represent a hitherto poorly researched and understood topic (cf. Chapter 3.4), the ‘classic’ validity procedures of construct validity and extreme group cannot be applied in this study. Furthermore, because of the general sensitivity of the topic\textsuperscript{105} and the rising institutional pressure in both Germany and Switzerland, due to the announcement of new corporate human rights legal provisions,\textsuperscript{106} the risk that participants would get cold feet and withdraw their data use approval (cf. Robson and McCartan, 2016, p. 172) was deemed to be too high for communicative validation to be applied. Investigator triangulation in turn cannot be applied in this study because of practical constraints and theory triangulation because this study is placed on the ‘nascent theory’ continuum; cf. Chapter 4.1. All the remaining above described procedures for ensuring ‘validity’ are applied in this study and the following chapters provide detailed descriptions.

4.3 Case selection method

Prior to data collection, it is important to define the criteria whereby potential candidates are deemed eligible to serve as cases (Yin, 2018, p. 105). In this study eligible cases were defined as private companies that implement HRIA as envisaged by the UNGP. To generate as valuable insights as possible, it was decided to gather

\textsuperscript{105} This point is described in more detail in Chapter 4.4.
\textsuperscript{106} Further information can be found in Chapters 5.1.1 and 5.1.8, and online at https://www.bmwi.de/Redaktion/DE/Gesetze/Wirtschaft/lieferkettensorgfaltspflichtengesetz.html
data from companies whose HRDD was considered of good quality by an independent third party. It was also decided to select those companies which reached a comparatively high ranking in the UNGP indicators of the ‘Corporate Human Rights Benchmark’ (hereinafter CHRB).\textsuperscript{107} The CHRB assesses the human rights performance of companies on the basis of different international and industry-specific standards including the UNGP (World Benchmarking Alliance, 2021). A comparatively high ranking was defined as a minimum of 13 out of 26 achievable points.

Out of 228 assessed companies, 70 satisfied the predetermined criteria. Within this group, in a next step, those companies had to be identified which actually align their HRDD to the provisions of the UNGP. Therefore, the publicly available information (human rights policies, sustainability reports, CSR reports, etc.) of these 70 companies were searched for the following keywords: ‘United Nations Guiding Principles’, ‘Guiding Principles’, ‘UNGP’, ‘GP’, ‘National Action Plan on Business and Human Rights’, ‘National Action Plan’ and ‘NAP’. The latter three keywords were included given that the National Action Plans on Business and Human Rights derive from the UNGP. Altogether 37 companies indicated to respect human rights as envisaged by either the UNGP or the NAP; these companies were hence deemed to be eligible cases for this study.

A diverse group of respondents allows the exploration of multiple experiences and thus to counteract the risk of one-sided insights (Bryman, 2012, p. 416), which may enable the researcher to obtain a profound understanding of the research phenomenon (Rapley, 2007, p. 17). Ideally, the cases thus would be diverse with respect to size, sector and location. The 37 identified companies, however, displayed a low degree of diversity. Furthermore, 37 represents a comparatively small number of potential study candidates which bears the risk of not finding enough companies

\textsuperscript{107} The ‘Corporate Human Rights Benchmark’ is conducted by the multistakeholder initiative ‘World Benchmarking Alliance’. In 2020 a total of 230 companies from five different industries were assessed on the basis of publicly available information (World Benchmarking Alliance, 2020). For further information see: http://business-humanrights.org/en/corporate-human-rights-benchmark
willing to participate in the study. This risk was deemed to be particularly high because of the sensitivity of the topic, a fact which is discussed in more detail in Chapter 4.4. The snowball sampling technique\textsuperscript{108} offers the opportunity to increase the number of study participants (Small, 2009, p. 14). Benfield and Szlemko (2006, p. 9) as an example, were able to triple their sample by applying the snowball sampling technique. Therefore, it was decided to complement the selection strategy with the snowball sampling strategy. It was decided to ask all (potential) participants whether they knew of other eligible candidates and could establish a contact. While the snowball sampling technique reduces the representativeness of the sample, because the probability is higher that the participants know each other than would be the case had they been randomly selected (Small, 2009, p. 14), this fact was deemed to be negligible, given that this study, as outlined in Chapter 4.1, does not strive towards statistical generalization.

4.4 Data collection method

Different data collection methods (and combinations thereof) such as interviews, direct observation and the analysis of documents, can be applied in case study research (Yin, 2018, pp. 110 - 111). There is no single best method of data collection, given that all methods have their specific strengths and weaknesses (Yin, 2018, p. 113; Denzin, 2017, p. 309; Robson and McCartan, 2016, p. 403). A rational approach in selecting the data collection method(s) thus is to answer the question: What method or methods are the most appropriate ones, given the specific research questions being addressed and the chosen research method? (Robson and McCartan, 2016, p. 241). The suitability of the data collection method depends on what kind of information is required, from whom and under what conditions (Robson and McCartan, 2016, p. 241). After due analysis, the most appropriate approach for this

\textsuperscript{108} Snowball sampling means that (potential) respondents recommend other suitable respondents (Robson and McCartan 2016, p. 167).
study was deemed to be the collection of primary data\textsuperscript{109} via expert interviews in combination with a document analysis.\textsuperscript{110}

Interviews have the advantage of being targeted (Yin, 2018, p. 114). They provide the opportunity to directly focus on a case study’s topics and to gain insightful findings (Yin, 2018, p. 114). Documents on the other hand can provide detailed information covering possibly a long period of time, both of which may be helpful to expand as well as underpin information gathered by means of other data collection methods (Yin, 2018, pp. 114 - 115).

It was decided to combine two data collection methods for reasons of triangulation (cf. Chapter 4.2) and to enhance the understanding of each company, both its specific characteristics as well as its operational contexts. As stated by Ridder (2020, p. 82), combining different sources of evidence helps to “fully comprehend the mechanisms in the site”. Following the approach of Ormiston (2019, p. 427) it was decided to analyse the documents prior to the interviews as well as afterwards. While the former is essential to ensure familiarity with the individual situation of each company (Ormiston, 2019, p. 427 et seq.) the latter is important to expand and underpin the evidence from interviews (Yin, 2018, p. 115).

It was decided to conduct semi-structured expert interviews with employees who work in companies deemed to be eligible cases; cf. Chapter 4.3. Employees were regarded as experts when working in a dedicated human rights, corporate (social) responsibility, sustainability or compliance function.

Semi-structured interviews were chosen as they allow the researcher to ensure that all important topics are covered while at the same time having enough flexibility to

\textsuperscript{109} A secondary data analysis means “any re-analysis of data collected by another research or organisation” (Hakim, 2000, p. 24).

\textsuperscript{110} Collecting data via a group discussion was deemed to be less suitable due to the corona virus pandemic and because, as outlined by Mangold (1973 cited by Diekmann, 2008, p. 438), they normally aim to explore how opinions develop.
ask additional, unplanned questions; cf. (Robson and McCartan, 2016, p. 285; Bryman, 2012, pp. 469 - 471). The latter enables the researcher to follow up on the responses (Robson and McCartan, 2016, p. 285; Bryman, 2012, pp. 470 - 471) and by doing this to receive more precise answers to predefined questions (Egels-Zandén, 2007, p. 50). It allows moreover new themes and directions to emerge which is particularly relevant when examining hitherto poorly explored topics (Mueller, 2021, p. 19). In multiple-case studies semi-structured interviews also allow cross-case comparisons (Clark et al. 2021, p. 428; Bryman, 2012, p. 472).

While semi-structured interviews allow the wording of the questions to be changed (Robson and McCartan, 2016, p. 285), in this study it was decided to use the exact wording, given that even small and presumed harmless changes can at times strongly affect the responses; cf. Robson and McCartan (2016, p. 269).

Taylor et al. (2009, p. 13) caution that human rights represent a sensitive topic to be asking questions about. Companies that do not satisfy their corporate human rights responsibility are prone to the risk of adverse effects such as negative reporting, reputation loss and legal consequences. Scholarship in the BHR field thus can be affected by the fact that “companies have reason to avoid publication of their difficulties” (Janz et al., 2020, p. 7). The willingness of companies to participate in respective studies and to provide complete and truthful information thus can be low, in particular if the data can be traced back to the company and/or to the respondent; cf. for instance O’Dwyer and Madden (2006, pp. 222 - 234). These risks were deemed

111 A detailed description of the difference between ‘fully structured interviews’, ‘semi-structured interviews’ and ‘unstructured interviews’ is provided by Robson and McCartan (2016, p. 285). Unstructured (also referred to as narrative interviews) are more common in other disciplines such as psychology and sociology when the aim is to explore unconscious meanings such as traumas or images of masculinity (Mueller, 2021, pp. 20 - 21).

to be particularly high in this study, given that it focuses on the corporate HRIA implementation challenges. Furthermore, the data had to be collected at a time characterized by rising institutional pressure in both Germany and Switzerland due to the announcement of new corporate human rights laws; cf. Chapters 5.1.1 and 5.1.8.

To counteract the above described risks, Taylor et al. (2009, p. 13) suggest not asking questions about human rights problems per se, but about potential problems. This approach, however, lends itself to bias, since interviewees’ assumptions about potential challenges and counter strategies might be explored rather than the actual challenges and counter strategies. For this reason it was decided not to follow Taylor et al.’s (2009, p. 13) advice and to counteract the above outlined risks by means of an alternative strategy: All potential interviewees would be assured that their answers would be treated in confidence and published in anonymous form only. According to Robson and McCartan (2016, p. 248) this approach counteracts the risk of participants being less forthcoming and open. Under conditions of anonymity, respondents have moreover little incentive to brighten reality; cf. Chapter 4.2. To increase trust in the confidentiality promise it was decided to provide potential participants with sufficient information about the research aim, the researcher’s expertise and her institute.

Based on the HRIA provisions of the UNGP and the insights obtained from the literature review, a semi-structured interview guide was developed. The interview guide was designed in a way that would enable in-depth discussions, but at the same time not take too long, as this can reduce the willingness to participate in a study. The risk of the latter is particularly high when an interview lasts much longer than an hour (Robson and McCartan, 2016, pp. 286 - 287). Therefore, a guide was developed for an interview that would last around 60 minutes.

The interview guide was grouped into six subject areas: company and interviewee characteristics (1), the implemented HRIA measures (2) and the HRIA implementation...
challenges and counter strategies (3). The latter was subdivided into the examination of the HRIA requirements (3.1) the human rights data collection (3.2) and the assessment of the human rights impacts (3.3). The data collection was further subdivided into the human rights data collection within the company (3.2.1), from first tier suppliers (3.2.2) and from n-tier suppliers (3.2.3); see Appendix.\(^{114}\)

To strengthen the quality of the interview, the questions were developed according to Yin’s (2018, p. 119), Robson and McCartan’s (2016, pp. 264 and 288)\(^ {115}\) and Bryman’s (2012, p. 473 et seq.) advice for interviews. Attention thus was given to avoid, for instance, prestige bias, questions that are long and/or double-barrelled, and leading and threatening questions; cf. Yin (2018, p. 119); Robson and McCartan (2016, pp. 264 and 288) and Bryman (2012, pp. 473-479). The interview guide was moreover developed according to Robson and McCartan’s (2016, p. 290) description of a commonly used sequence of questions, thus starting with easy questions and placing ‘risky’ ones at the end of the interview.

To generate valuable insights which would allow an in-depth understanding of the topic, the interview guide contained a reminder to use different types of probes\(^ {116}\) as suggested by Zeisel (2009, pp. 230 - 243) and Robson and McCartan (2016, p. 289). The suggested probes refer, for example, to a period of silence, repeating all or part of the interviewee’s response in the form of a question, and asking ‘anything else’? Furthermore, the interview guide combined open-ended questions with prompts\(^ {117}\) these were developed on the basis of those HRIA implementation challenges and counter strategies which are discussed in Chapter 3.3. They were thus derived from

\(^{114}\) To counteract language barriers, it was decided to allow respondents to be interviewed either in the English or German language (whichever was preferred by the respondent). The interview guide thus was prepared in both languages. All interviewees elected to be interviewed in German.

\(^{115}\) As explained by Robson and McCartan (2016, p. 264) the ‘checklist to help avoid problems in question wording’ was adjusted and abridged from de Vaus (2002, pp. 118 - 121).

\(^{116}\) ‘Probes’ are defined by Zeisel (2009, p. 228) as “the interviewer’s prompting for further elaboration of an answer.”

\(^{117}\) ‘Prompts’ “suggest to the interviewee a range of possible answers that the interviewer expects” (Robson and McCartan, 2016, p. 289). How prompts can help to achieve more insightful knowledge is demonstrated for instance by Bryman (2004, pp. 481 - 482).
previous BHR publications. To counteract the risk of one sided insights, it was decided to apply prompts only after the interviewee’s response to each question and only after different types of probes had been applied.

Given the constraints during the corona virus pandemic, the interviews had to be conducted either via telephone, e-mail, instant messaging or video calls. The advantages and disadvantages of all three approaches were analysed and compared on the basis of discussions by Robson and McCartan (2016, pp. 295 - 298); Kazmer and Xie (2008); Hunt and McHale (2007, pp. 1416 - 1418) and Opdenakker (2006). The weighting process led to the conclusion that interviews via video calls would represent the best approach for this study. The primary reason against telephone interviews was the fact that they have to be relatively short (generally not exceeding 30 minutes) (Robson and McCartan, 2016, p. 296) and for reasons outlined above, the interviews in this study would last around 60 minutes. In addition to this, telephone interviews lack visual cues such as facial expressions or hand movements (Opdenakker, 2006, p. 5) which can help to recognize when a topic needs to be further explored or changed (Robson and McCartan, 2016, p. 296). The same disadvantage applies to e-mail interviews (Hunt and McHale, 2007, p. 1418). Moreover, e-mail interviews lack verbal cues (Opdenakker, 2006, p. 9). Furthermore, e-mail interviews can take too long (generally taking place over multiple days) which can lead to a loss of involvement or non-completion (Kazmer and Xie, 2008, p. 263; Hunt and McHale, 2007, p. 1417). This risk was deemed to be particularly high since the data had to be collected during the corona virus pandemic and against the background of rising institutional pressure, thus a generally difficult time period. Beyond that, e-mail interviews are relatively impersonal and hitherto it is not known how this might possibly impact the conduct and results of interviews (Hunt and McHale, 2007, p. 1418). So far we do not know for instance whether interviewees are more or less open in e-mail interviews (Hunt and McHale, 2007, p. 1418).

While the decision for an internet-based data collection was primarily based on the restrictions during the corona pandemic, this approach also promises several benefits
such as a larger number of cases, a greater case variety (access to geographically widespread respondents), reduced time and cost investments and higher convenience; cf. (Robson and McCartan, 2016, pp. 378 - 379); (Hunt and McHale, 2007, pp. 1415 - 1416); (Gosling et al., 2004, p. 93). Several studies which compared internet-based and traditional analogue data collection methods, detect only minor differences in terms of the type of respondents recruited and the comparability of the results; see for instance Gosling et al. (2004); Carini et al. (2003) and Miller et al. (2001). An internet-based data collection, however, also has drawbacks: some people are unable to use the internet because of physical handicaps (Robson and McCartan, 2016, p. 379). Others such as for instance elderly and/or socially disadvantaged people may not be familiar with using the internet (Robson and McCartan, 2016, p. 379). Still others may not have access to the internet. Challenges may arise in securing a representative sample because of low response rates (Robson and McCartan, 2016, p. 379) and/or the exclusion of those persons that, as an example, do not have access to the internet (Hunt and McHale, 2007, p. 1417). These disadvantages were deemed to be negligible in this study, given that people who are working in companies in dedicated human rights, corporate (social) responsibility, sustainability and/or compliance functions (cf. Chapter 4.4) can be expected to have access to the internet and be familiar with using it. Difficulties in securing a representative sample were also deemed to be negligible, given that this study, as outlined in Chapter 4.1, does not strive towards statistical generalization.

It is important to have a complete record of the interviews based on either notes made during the interview or recordings of it (Robson and McCartan, 2016, p. 287). Each approach has different benefits and drawbacks; cf. for instance Bryman (2012, pp. 482 - 483); Rapley (2007, p. 18); Arksey and Knight (1999, p. 105); Walker (1985, pp. 109 - 116). Recordings might counteract openness (Bryman, 2012, pp. 482 - 483; Arksey and Knight, 1999, p. 105) and they might intensify social desirability biases (Minichiello et al., 1995, p. 99 cited by Rapley, 2007, p. 18), but certainly they are more accurate than notes (Yin, 2018, p. 118; Opdenakker, 2006, pp. 3 - 4; Rapley, 2007, p. 18) thus guarding against threats to description validity; cf. Chapter 4.2. It
was decided to audio-record the interviews to ensure that the data were accurate and complete. Notes would only serve as the secondary approach, in case a participant would not allow to be audio-recorded, which did not occur, however.

To counteract the risk of a suboptimal interview guide, due to unclear or ambiguous questions or an illogical sequence of questions, the interview guide was reviewed by another researcher and by a lawyer. In addition to this, the interview was pretested. The reviewers and the test interviewee were asked whether they had any difficulties in understanding the questions and whether the sequence of questions allowed a logical flow of conversation to emerge. Furthermore, they were asked whether they saw any other necessity and/or possibility for improving the interview. Only small optimization suggestions were made, all of which were included in the final interview guide. Given the small need for adjustment, a further test interview was deemed not to be necessary.

For reasons outlined above, the interviews were complemented by a document analysis. It was decided to collect of all the participating companies’ suitable, publicly available documents (i.e. human rights reports, human rights policies, sustainability reports, etc.) and to complement these with suitable internal documents (i.e. process instructions, research reports, audit reports, etc.). Robson and McCartan (2016, p. 350) explain that documents which have been produced for other than the study’s purpose, have the advantage of being non-reactive. According to Robson and McCartan (2016, p. 350), this means that the documents are not influenced by the fact that they are being used in a research project. One needs to consider, however, that even if an internal document was produced for another purpose, it might still be adjusted before being handed to the researcher. External corporate documents on the other hand may contain restricted and/or euphemistic information since companies may seek to avoid negative consequences and/or present themselves in a favourable light; cf. Chapter 4.4 and Yin (2018, p. 114). Cautions thus must be exercised in deeming documents to be accurate reproductions of the real state of affairs (Yin, 2018, p. 115).
4.5 Data collection execution

Within all those companies deemed to be eligible cases (cf. Chapter 4.3) suitable interview candidates had to be identified and recruited (cf. Chapter 4.4); these were identified on the basis of publicly available information (corporate website and/or corporate reports) and via the help of the researcher’s network.

All potential interviewees were contacted via e-mail and/or telephone and asked for their willingness to participate in the study. They were all informed about the aim of the study, how or through whom they came to be selected, the role they would have in the study and how the gathered data would be used. For reasons outlined in Chapters 4.2 and 4.4, all potential interviewees were guaranteed that their responses would be treated in confidence and published in anonymous form only. In accordance with Cantrell and Lupinacci’s (2007, p. 546) and Lakeman’s (1997, pp. 270 - 271) practical advice, the recruitment e-mail also contained links to the websites from which additional information on the researcher and the researcher’s institute could be obtained.

Twelve people from eight different companies agreed to be interviewed.\textsuperscript{118} As a result, 12 in-depth, semi-structured interviews\textsuperscript{119} were conducted during July and August 2021, generating over 12 hours of recording.\textsuperscript{120} Table 4.1 provides an overview of the position and department of each interviewee.

\begin{flushleft}
\textsuperscript{118} There was one evident difference between those companies or rather employees who agreed to participate in the study and those who did not respond. The employees who agreed to participate in the study either knew other study participants or they knew the researcher from previous research projects or in a professional context.
\textsuperscript{119} To ensure high ethical standards throughout the study, the principles of informed consent were followed and the interviews were conducted in line with the ethical considerations described by Robson and McCartan (2016, pp. 205 - 240).
\textsuperscript{120} All interviews have been transcribed by the author on the basis of the procedure which was applied by Mayring in a DFG-project cf. Mayring (2015, p. 57). For further information on different transcription procedures see Ehlich and Switalla (1976 cited by Mayring, 2015, p. 55).
\end{flushleft}
<table>
<thead>
<tr>
<th>Company</th>
<th>Department of interviewee</th>
<th>Position of interviewee</th>
</tr>
</thead>
<tbody>
<tr>
<td>C 1</td>
<td>Corporate Responsibility</td>
<td>Corporate Responsibility Specialist</td>
</tr>
<tr>
<td>C 2</td>
<td>- First interviewee: Sustainability Strategy</td>
<td>- First interviewee: Lead ESG Standards</td>
</tr>
<tr>
<td></td>
<td>- Second interviewee: Sustainable Supply Chain Management</td>
<td>- Second interviewee: Team Lead Sustainable Supply Chain Management</td>
</tr>
<tr>
<td></td>
<td>- Third interviewee: Compliance</td>
<td>- Third interviewee: Senior Regional Compliance Manager, Lead Centre of Competence for Human Rights</td>
</tr>
<tr>
<td>C 3</td>
<td>Sustainability</td>
<td>Specialist Sustainability Strategy</td>
</tr>
<tr>
<td>C 4</td>
<td>- Interviewee one: Sustainable Purchasing Strategy</td>
<td>- Interviewee one: Manager for HRDD and Sustainable Raw Material Purchasing</td>
</tr>
<tr>
<td></td>
<td>- Interviewee two: Sustainable Purchasing Strategy</td>
<td>- Interviewee two: Human Rights Manager</td>
</tr>
<tr>
<td>C 5</td>
<td>Corporate Sustainability</td>
<td>Head of Ethics and Social Impact</td>
</tr>
<tr>
<td>C 6</td>
<td>Corporate Responsibility</td>
<td>Expert Corporate Responsibility</td>
</tr>
<tr>
<td>C 7</td>
<td>- Interviewee one: Central Department Sustainability and Environment Health and Safety (EHS)</td>
<td>- Interviewee one: Speaker Central Department Sustainability and Environment Health and Safety (EHS)</td>
</tr>
<tr>
<td></td>
<td>- Interviewee two: Global Service</td>
<td>- Interviewee two: Department Head Global Service (responsible for supplier audits)</td>
</tr>
<tr>
<td>C 8</td>
<td>Corporate Communications and Sustainability</td>
<td>Public Affairs Manager</td>
</tr>
</tbody>
</table>
Some researchers, for instance Rotter et al. (2014, p. 583), give potential participants the opportunity to engage with the interview questions prior to the interview. This opens up the prospect of better prepared participants which could lead to more valuable insights. It raises on the other hand the risk that potential interviewees might reconsider their willingness to participate. This risk was deemed to be particularly high in this study due to the previously discussed sensitivity of the topic and the rising institutional pressure in Germany and Switzerland; cf. Chapters 5.1.1 and 5.1.8. For this reason it was decided to give only those participants who explicitly asked for it the opportunity to engage with the interview questions prior to the interview. Altogether three participants wanted to engage with the interview questions prior to the interview.

To avoid influence by the researcher and to guard against interviewer biases, different proposals made by Ahern (1999, p. 408 et seq.) were followed. More precisely, prior to the interviews the personal values of the researcher were analysed, areas of potential role conflict were identified and feelings that might indicate a lack of neutrality were assessed. All interviews were carried out in accordance with Robson and McCartan’s (2016, pp. 268 and 287 - 288) general advice on the execution of interviews. Attention thus was given to dress in a neutral way, make the interviewees feel comfortable by being pleasant and knowing the interview guide very well, etc.; cf. Robson and McCartan (2016, p. 268). Furthermore, attention was given to ask all questions in a neutral way and then to react to the responses in a neutral way; cf. Robson and McCartan (2016, p. 288). In addition to this, attention was given not to influence the interviewees through verbal or non-verbal cues; cf. Robson and McCartan (2016, p. 287).

Each interview began with an introduction, which explained the purpose and aim of the study. To combat the risk of participant biases, as described in Chapter 4.2, all interviewees were told at the beginning of each interview that there are no right or wrong answers and that any answer is valued as much as another. All interviewees
were once again assured that their answers would remain anonymous and be treated in confidence.

For reasons outlined in Chapter 4.2, all interviewees were asked at the end of the interview whether they could provide internal documents that would help to answer the research questions. All interviewees responded that their internal documents would be either not informative or were confidential.

4.6 Data analysis method

There are generally two options for the qualitative oriented content analysis of linguistic material: manually and via a specific computer assisted analysis software (CAQDAS). Both approaches have their specific strengths and weaknesses. CAQDAS can handle large data sets very rapidly and offer multiple ways of displaying the results (Robson and McCartan, 2016, p. 466). CAQDAS is, however, limited in terms of the ambiguity of terms, context-specific meaning and the substitution of words (Mayring, 2015, p. 14). If the statement is for example “I did not notice any of this”, the software does not know what ‘this’ refers to (Mayring, 2015, p. 14). For reasons of triangulation (cf. Chapter 4.2) it was decided to combine a manual qualitative oriented content analysis with CAQDAS. This decision, however, could not be implemented given that hitherto Ulm University does not offer CAQDAS. The data thus had to be analysed manually by the author.

As outlined in Chapter 4.2, systematic data analysis procedures (in contrast to free analysis methods) counteract threats to validity stemming from humans’ deficiencies as analysts. A data analysis method which lacks a systematic procedure moreover must accept the critique of an arbitrary procedure (Mayring, 2015, p. 29). Therefore, it was decided to apply a systematic qualitative oriented manual content analysis

121 CAQDAS stands for computer assisted qualitative data analysis.
A systematic handling means on the one hand that the analysis follows explicit rules (Mayring, 2015, p. 12). This rule following (‘Regelgeleitheit’) enables others to understand, retrace and verify the analysis (Mayring, 2015, pp. 12 - 13). Only by doing this, can the qualitative oriented content analysis meet the quality criteria of intersubjective verification (Mayring, 2015, p. 13). A systematic procedure is moreover theory-led (Mayring, 2015, p. 13). Some scholars criticize a theory-led approach by arguing that it would narrow down the view, impede an immersion into the material or distort the material (Mayring, 2015, p. 59). For Mayring ‘theory-led’, however, means following up on the experiences of others (Mayring, 2015, p. 13) to gain a knowledge advancement (Mayring, 2015, p. 60). Specifically this means that the analysis questions have to be derived from existing research and precisely specified in advance of the analysis (Mayring, 2015, p. 60). Furthermore, it means that the material is interpreted on the basis of respective theoretical backgrounds (Mayring, 2015, p. 13).

There are different systematic qualitative oriented manual content analysis methods such as Typological Analysis, Objective Hermeneutics and Content Analysis (Mueller, 2021, p. 4). In contrast to those methods applied in quantitative research, in qualitative research there is, however, not a “universally accepted set of conventions” (Robson and McCartan, 2016, p. 460). In this study it was decided to apply Mayring’s qualitative oriented, “category driven text analysis”122 (hereinafter content analysis) method; cf. Mayring (2015, p. 13).123 This analysis method was chosen as it is an established, systematic, intersubjectively verifiable procedure which is at the same time appropriate for the meaning plethora of linguistic material; cf. Mayring (2015, pp. 7 - 10). In addition to this, Mayring’s analysis method is based on a general procedure model which can be adjusted to specific research questions and material (Mayring, 2015, p. 61). The procedure hence offers enough flexibility to suit individual research situations (Mayring, 2015, p. 52).

122 According to Mayring (2015, p. 13) the notion ‘category driven text analysis’ is more precise than the term ‘content analysis’.
123 Original Statement “kategoriengeleitete Textanalyse”. Translated by the author.
Linguistic material can be analysed on the basis of different interpretation aims (Mayring, 2015, p. 58). One can for instance aim to find out something about the communicator (his or her knowledge, emotional state, intentions, etc.), about the subject matter described within the text and about the impact of the text on others (Mayring, 2015, pp. 58 - 59). Given the plethora of possibilities, the specific interpretation aim needs to be defined prior to the analysis (Mayring, 2015, p. 58). Since this study seeks to gain an understanding of the corporate HRIA implementation challenges and counter strategies, the interpretation aim was defined as the subject matter discussed within the text.

At the centre of the content analysis is the application of a category system to the material (Mayring, 2015, p. 20). The categories have to be defined as closely as possible (Mayring, 2015, p. 47). To achieve this, first three analysis units need to be determined: the coding, context and evaluation unit (Mayring, 2015, p. 61). The ‘coding unit’ determines the smallest text part which can fall under a category (Mayring, 2015, p. 61). The ‘context unit’ determines the biggest text part which can fall under a category and the ‘evaluation unit’ determines which text parts are evaluated consecutively (Mayring, 2015, p. 61). In this study the coding unit was defined as one complete statement to either a HRIA implementation challenge or a counter strategy. The context unit was defined as the aggregated answers from all companies to one of the five overarching thematic blocks (i.e. the examination of the HRIA provisions, the human rights data collection within the company, from first-tier suppliers and n-tier suppliers, and the assessment of the human rights impacts). Furthermore, it was decided to analyse the text parts in the order of the interview guide. Responses that partially or fully addressed other questions –which in semi-structured interviews are typical appearances– in the first instance would be collated separately.

One can differentiate between three basic forms of interpretation: the explication, summary and structuring (Mayring, 2015, p. 67). The ‘explication’ aims to explain single questionable text parts (terms, sentences, etc.) by using additional material
(Mayring, 2015, p. 67). The latter can be either the text context of the questionable text part (narrow context analysis) or other material than the present text (wide context analysis) (Mayring, 2015, p. 68). The analysis technique ‘summary’ reduces the material to such an extent that only the essential contents remain (Mayring, 2015, pp. 67 - 68). The inductive category development is a certain type of summary, which does not aim to summarize the entire text, but only specific aspects of it (Mayring, 2015, p. 68). The focus in the inductive category development is determined by the respective research question/s (Mayring, 2015, p. 88). The analysis technique ‘structuring’ (deductive category application) aims to filter out specific aspects from the material under predetermined criteria or to gauge the material on the basis of predetermined criteria (Mayring, 2015, pp. 67 - 68). While in a deductive approach the categories are hence specified before the text is analysed, in an inductive approach the categories are derived from the text (Mayring, 2015, p. 85). Mayring (2015, p. 67) stresses that the explication, summary and structuring are not procedural steps to be applied consecutively, but that all three represent independent analysis techniques. Thus, for each individual research project the most appropriate analysis technique needs to be determined (Mayring, 2015, p. 67). The appropriateness of the analysis technique depends on the research questions and on the respective material (Mayring, 2015, p. 67).

As outlined in Chapter 1.1, this study seeks to understand what challenges companies face when implementing HRIA and what strategies they apply to counteract these challenges. ‘What-questions’ according to Mayring (2015, p. 88), always indicate an inductive approach. Therefore, it was decided to analyse the material by means of Mayring’s inductive analysis technique. While a deductive approach can also strengthen the analysis by sensitizing the analyst to themes that otherwise might not be recognized, this fact was deemed to be negligible given that Mayring’s content analysis method is theory-led. The material hence is always interpreted on the basis of respective insights from existing literature; cf. above.

124 Original wording “Welche-Fragestellung”. Translated by the author.
Following Mayring’s inductive analysis technique procedure, first a selection criterion was determined on the basis of the research questions; cf. Mayring (2015, pp. 86 - 87). This enables differentiation between the relevant and irrelevant material (Mayring, 2015, pp. 86 - 87). Given the specific research questions this study seeks to answer (see Chapter 1.1), individually experienced corporate HRIA implementation challenges and counter strategies were determined as the selection criteria. This was followed by a determination of the abstraction level of the categories, hence a specification of how concrete or abstract the categories have to be; cf. Mayring (2015, p. 87).

On the basis of this selection criteria, the material then was verified line by line; cf. Mayring (2015, p. 87). The first time the selection criterion was met, a category was formulated which was as close as possible to the original wording (cf. Mayring, 2015, p. 87) but raised the core statement to a higher abstraction level by generalizing it; cf. Mayring (2015, pp. 69 - 70). Whenever thereafter the selection criterion was met, it was decided if the text falls under one of the already generated categories (subsumption) or if a new category needs to be formulated; cf. Mayring (2015, p. 87). Particular attention was given to detect conflicting answers among different respondents as well as inconsistencies in the responses of one interviewee.

At the latest when 50% of the material has been analysed, a revision is required (Mayring, 2015, p. 86). Therefore, after 50% of the material had been analysed, the categories were verified for compliance with the aim of the analysis; cf. Mayring (2015, p. 87). Furthermore, it was verified whether the selection criteria and abstraction level are reasonable; cf. Mayring (2015, p. 87). Given that no major adjustments were required, the analysis was completed for the remaining 50% of the text material.

Next, main categories were formed; cf. Mayring (2015, p. 87). This means that those categories which referred to the same or a comparable subject were identified and summarized into categories on a higher abstraction level; cf. Mayring (2015, p. 70).
Once completed it was verified if the main category system represents the initial categories; cf. Mayring (2015, pp. 70 - 71). Given that all initially formed categories merged into the main category system, an adjustment was deemed unnecessary.

To understand not only what was said, but also how it was meant by the interviewee, it is important to capture the mood and to reflect the individual perspective of the interviewee (Yin, 2018, p. 84). Intonation, pauses and also non-verbal cues may help to elucidate how a statement should be coded (Robson and McCartan, 2016, p. 471). To ensure that tone and emotions are considered Ormiston (2019, p. 430) suggests listening to the recordings while carrying out the analysis. The content analysis was carried out according to Ormiston’s proposal.

Many experiments have shown that the text processing is an interaction process between the reader and the text (Schnotz et al., 1980, p. 7). The meaning is actively constructed by the reader (Mayring, 2015, p. 44). Bartlett (1932) has demonstrated in an empirical study that the reader processes a text against the background of specific interests and his or her existing knowledge (Schnotz et al., 1980, p. 7). Put differently, the existing knowledge as well as the interest of the reader perform a selective and organising function (Mayring, 2015, p. 44). The existing knowledge, aims, motivation and other attributes of the reader impact what information is processed and how it is processed (Schnotz and Dutke, 2004, p. 75 et seq.; Schiefele, 1996 cited by Friedrich, 2017, p. 20; Schnotz et al., 1980, p. 7).

Despite being controlled by content-analytical rules, the allocation of text material to categories consequently remains an interpretation process (Mayring, 2015, p. 8). Subjectivity therefore is a challenge, “although one endemic” to qualitative research (Schrempf-Stirling and van Buren, 2020, p. 36; Bluhm et al., 2011, p. 1871).

To avoid researcher subjectivity a negative case analysis was applied; see Chapter 4.2. The data hence was searched for instances that would disconfirm provisional conclusions (Robson and McCartan, 2016, p. 172) thereby counteracting threats to
validity stemming from the ‘negative instances’ phenomenon, as described in Chapter 4.2.

The re-analysis for the intracoder test (see Chapter 4.2) was repeated two months after the original coding with altogether three randomly chosen interviews (representing 25% of the total material). Since no major differences were detected, it was concluded that the analysis is sufficiently reliable. The next chapter summarizes the findings of the analysis.
5 Findings

This chapter presents the primary data which were collected by means of semi-structured interviews and a document analysis. Following Yin’s (2018, p. 57) procedural framework, the findings are presented first on an individual case basis (5.1) and then on an aggregated case basis (5.2).

5.1 Individual case basis

As this chapter summarizes the findings on an individual case basis, each subchapter first begins with an overview of individual company characteristics and context-specific factors. This is followed by a description of the implemented HRIA measures. Subsequently, the findings for each of the three research questions (see Chapter 1.1) are presented in chronological order.

5.1.1 Case C 1

Company C 1\textsuperscript{125} is a large telecommunication stock company headquartered in Germany.\textsuperscript{126} The company is subdivided into a B2B and a B2C division. Private clients are offered different products and services in the areas of fixed-line network, mobile communications, internet and internet-based TV. Business clients are offered different ICT solutions.

In 2020 the company had 226,291 employees and more than €100 billion revenue. It has sites in 50 different countries on four different continents and business

\textsuperscript{125} Since the implementation of corporate human rights responsibilities represents a sensitive topic (cf. chapter 4.4) the companies and the interviewees remain anonymous in this study.

\textsuperscript{126} While industrial activities may be classified in different ways, this study follows the classification which was specified by the respective companies themselves.
relationships with approximately 20,000 first tier suppliers in 80 different countries on five different continents.

The company operates within a comparatively strong regulatory context which is further aggravated due to the announcement of a new corporate HRDD law. In June 2021 the German Bundestag passed the supply chain due diligence law which makes HRDD legally binding for all companies, that –irrespective of their legal form– have either their headquarters or a branch in Germany and at least 3,000 employees. The law comes into force on 1 January 2023.

Company C 1 does not have a dedicated department for managing human rights, but a corporate responsibility department which is responsible for managing direct adverse human rights impacts and a sustainable supply chain department which is responsible for managing indirect adverse human rights impacts in the supply chain.

HRIA concerning both direct adverse human rights impacts as well as indirect adverse human rights impacts in the supply chain, have been implemented since 2013, with 1.5 employees being responsible for the former and one employee for the latter. The company implements stand-alone HRIA for direct adverse human rights and integrated HRIA for indirect adverse human rights impacts in the supply chain.

To assess its direct adverse human rights impacts, company C 1 conducts an online survey and face to face interviews with its own employees. The first step in the HRIA regarding indirect adverse human rights impacts in the supply chain is a classification of suppliers into critical and non-critical product groups. HRIA are implemented for critical product groups. Data on adverse human rights impacts in the first tier supply chain are collected by means of a company individual self-assessment questionnaire (hereinafter SAQ), in combination with media screenings via the external service

127 On 1 January 2024, this number of employees will be reduced to 1,000.
provider EcoVadis and third party audits via the industry initiative ‘Joint Audit Cooperation’ (JAC).

The industry initiative JAC was founded in 2010 by company C 1 together with two other telecommunication companies to increase the effectiveness and efficiency of its sustainability oriented supply chain activities. Today the industry initiative has a total of 17 members: AT&T, Deutsche Telekom, Telstra, Swisscom, Telefónica, KPN, MTN, Elisa, Orange, Proximus, TDC, Telecom Italia, MTS, Telia Company, Telenor, Vodafone and Verizon.

JAC has developed a coordinated audit programme. Each year those suppliers to be audited are determined and divided into equal shares among the JAC member companies. The onsite-assessments are conducted by specialized audit companies and include interviews with the suppliers’ employees. The results are shared among all JAC members. If non-conformities are identified, JAC develops, in cooperation with the suppliers, corrective action plans. All suppliers are supported by JAC until all non-conformities have been removed.

Data on adverse human rights impacts in the n-tier supply chain are collected indirectly via first tier suppliers as well as directly by means of third party audits via JAC. Company C 1 does not know all its n-tier suppliers. At the time of the data collection the knowledge is limited to approximately 10-15% of its second tier suppliers. Company C 1 aims to successively expand the transparency in its n-tier supply chain.

In 2020 company C 1 implemented altogether approximately ten SAQs and 90 audits. Approximately 30 audits have been conducted at first tier supplier sites and 60 at n-tier supplier sites.
Company C 1 administers its own grievance mechanism and consults different stakeholders, such as from policy and science, with respect to both direct adverse human rights impacts as well as indirect adverse human rights in the supply chain.

5.1.1.1 Findings research question one

Examining the corporate HRIA provisions is challenging for company C 1 given that the corporate HRDD laws differ from one country to another. Due to the fact that company C 1 is a global business with sites in 50 different countries and business relationships with approximately 20,000 first tier suppliers in 80 different countries, it is forced to examine multiple national corporate HRDD laws which can also contain abstract rights:

“What is in fact always challenging is understanding the complex formulation of various laws, for example the HRDD law,128 which contains topics that are very, very vaguely formulated or simply leave room for definition, which is the way it is with laws. Discussing in the company (...) what exactly this means for us, is very complex.”129

The complexity is further amplified due to the provision of the UNGP to respect not only the respective national corporate HRDD laws, but also the internationally recognized human rights, which are abstract rights that leave room for interpretation and action. According to company C 1 a clearer framework would enhance the

128 The interviewee was referring here to the HRDD law recently passed in Germany; cf. Chapter 5.1.1.
129 Original wording in German: “Was tatsächlich immer herausfordernd ist, ist tatsächlich diese komplexe Ausgestaltung von verschiedenen Gesetzen zu verstehen, zum Beispiel jetzt auch dieses Lieferketten-Gesetz, das sind einfach Themen, die sehr, sehr schwammig formuliert sind oder auch einfach einen Definitionsspielraum lassen, was bei Gesetzen nun mal so ist. Das dann in dem Unternehmen (...) zu besprechen, was genau das für uns bedeutet, das ist sehr komplex.” (Translated by the author).
understanding of the provisions. It would allow for instance a clearer understanding of what constitutes ‘just and favourable conditions of work’ or ‘the right to education’:

“Of course, the Universal Declaration of Human Rights leaves an extremely wide scope for action or interpretation. I mean, what is an appropriate work? How do I define an adequate access to education? That is of course a matter of definition and if there were a more precise framework (...) then it would be much easier for me to really make a judgment about whether it is appropriate.”

Company C 1 indicated that it is in a state of uncertainty with regard to the interpretation of the human rights provisions.

The provision of the UNGP to respect the internationally recognized human rights “to the greatest extent possible” in cases of conflicts between the respective national laws and the international human rights law (cf. United Nations, 2011, p. 25, Commentary on Guiding Principle No. 23) needs to be more precise in the view of company C 1 to have tighter room for manoeuvre.

5.1.1.2 Findings research question two

One of the challenges that company C 1 faces in collecting human rights data within its own operations is identifying the right contact person. According to company C 1 this is challenging because it has more than 230,000 employees spread across the globe. Another challenge concerns access to human rights data. Receiving the data

130 Original wording in German: “Die Universal Declaration of Human Rights lässt natürlich einen extrem großen Handlungs- oder auch Interpretationsspielraum. Ich mein, was ist eine angemessene Arbeit? Was definiere ich als angemessenen Zugang zur Bildung? Das ist natürlich Definitionssache und wenn’s hier einen genauer Rahmen geben würde (...) dann würde mir das viel einfacher fallen da wirklich ein Urteil darüber zu fallen ob es angemessen ist.” (Translated by the author).
can be challenging on the grounds of data protection, given that confidential, often also personal, data are required:

“...because, of course, a great deal of the data is confidential, and often, when it comes to people, the data is also personal. Here, of course, a big issue is always the data protection of our employees.”

Another challenge refers to the limited human rights knowledge of employees. Company C 1 indicated that all employees know in general that they have human rights, but most people do not know the specific meaning of human rights for them as rights holders:

“Everyone knows I have basic human rights, but how exactly that is designed, what exactly that means for me, that is something many do not know.”

When collecting human rights data from its first tier suppliers, company C 1 faces language barriers as not all data are available in German or English. A translation can be challenging on the grounds of data protection. Another challenge refers to the general willingness of first tier suppliers to provide meaningful data. For company C 1 it is not challenging to receive data from its first tier suppliers, but the quality of the data strongly depends on their negotiating position, which varies from very weak to very strong:

131 Original wording in German: “...die dann auch wirklich zu bekommen, weil natürlich sind auch sehr viele Daten vertraulich, häufig, wenn es jetzt um Menschen geht, sind die Daten auch personenbezogen. Hier ist natürlich auch immer ein großer Punkt der Datenschutz unserer Mitarbeiter.” (Translated by the author).

132 Original wording in German: “Jeder weiß ich habe grundlegende Menschenrechte, aber wie genau das ausgestaltet ist, was das genau für mich bedeutet, das wissen ganz viele nicht.” (Translated by the author).
“If you take a much-discussed example like company X, of course they give us data, but how valuable the data is, is of course another question. Here we are partly in a weaker position and unfortunately have to work with the data we receive from them. Accordingly, partly it is really difficult to obtain usable data, even valid data.”  

Company C 1 participates in the industry initiative JAC to increase the effectivity and efficiency of its sustainability oriented supply chain activities. According to company C 1 it can be challenging to find consensus in industry initiatives due to different interests and ideas. An industry initiative, according to company C 1, has no influence on the quality of the human rights data in terms of correctness, completeness and topicality:

“In itself this does not change the quality of the data. If a supplier wants to provide incorrect data (...) then it doesn't matter whether there are 15 companies behind it or one company, as the data is simply worthless.”

Collecting human rights data in the n-tier supply chain is challenging for company C 1 because of the complexity of its n-tier supply chain network. Given that company C 1 has approximately 20,000 first tier suppliers, the amount of n-tier suppliers is very high. The large amount makes it difficult for company C 1 to identify the n-tier suppliers. This is aggravated by the fact that supplier relationships are dynamic. Access to the human rights data is also challenging due to missing contractual relationships with n-tier suppliers:

133 Original wording in German: “Wenn man jetzt ein viel diskutiertes Beispiel wie company X nimmt, natürlich geben die uns Daten, aber wie wertvoll die Daten sind, ist natürlich immer die andere Frage. Hier sind wir auch teilweise in der schwächeren Position und müssen leider mit den Daten arbeiten, die wir von denen kommen. Und dementsprechend ist es schon wirklich schwer da teilweise an brauchbare Daten, ja auch valide Daten, zu kommen.” (Translated by the author).

134 Original wording in German: “an sich ändert das nichts an der Datenqualität. Wenn ein Lieferant mir falsche Daten liefern möchte (...) dann ist es egal ob da 15 Unternehmen hinter stehen oder ein Unternehmen, dann sind die Daten einfach wertlos.” (Translated by the author).
“If there is no mandatory contractual relationship, then it is of course difficult to access the data, because the suppliers don't just hand over their data wildly, so it is of course easier on a contractual basis (...), because then we have a basis on which we can argue, and that is of course missing in the n-tier supply chain.”

5.1.1.3 Findings research question three

According to company C 1 it can be quite challenging to interpret the collected data, because it can be difficult to assess whether the impacts in fact constitute a human rights violation:

“It is generally very difficult, even if you are involved in the topic, to judge at what point a human rights violation occurs.”

In terms of the assessment of human rights impacts in the supply chain, company C 1 described the challenge to assess the actual human rights situation on the basis of certificates, given that their information value can be restricted:

“With certificates, of course, it is often the case that you don't really know how valuable this certificate is, how do I get this certificate, what are the selection criteria, you thus always have to weigh up which certificates are really meaningful.”

135 Original wording in German: “Wenn es da keine zwingende vertragliche Beziehung gibt, dann ist es natürlich schwer da wirklich an Daten zu kommen, weil die Lieferanten geben ja auch nicht einfach ihre Daten wild raus, dementsprechend ist es natürlich auf vertraglicher Basis noch einfacher (...), weil wir dann einfach auch eine Grundlage haben auf der wir argumentieren können und die fehlt natürlich in der n-tier Lieferkette.” (Translated by the author).

136 Original wording in German: “Es ist allgemein ganz schwer, auch wenn man im Thema drin ist, zu beurteilen, ab wann liegt denn eine Menschenrechtsverletzung vor.” (Translated by the author).

137 Original wording in German: “Bei Zertifikaten ist es natürlich auch ganz oft so, dass man nicht wirklich weiß, wie wertvoll ist jetzt dieses Zertifikat, wie komme ich an dieses Zertifikat, was sind da jetzt die Auswahlkriterien, da muss man natürlich auch immer abwägen, welche Zertifikate jetzt wirklich aussagekräftig sind.” (Translated by the author).
Furthermore, while in some cases it is easy for company C 1 to assess their own responsibility in the supply chain, in other cases many different actors and interconnected actions are involved, making it difficult to identify the deciding factor:

“In some cases it is of course incredibly easy to say who is responsible, but in other cases it's this system that's working together and that's where it gets more complicated to really identify the deciding factor.” 138

5.1.2 Case C 2

Company C 2 is a large automobile producing stock company which is headquartered in Germany. In 2020 the company employed 120,726 employees and had more than €5 billion revenues. Company C 2 has more than 80 sites in 20 different countries on five different continents and business relationships with approximately 12,000 first tier suppliers in 70 different countries on five different continents.

Company C 2 operates within a comparatively strong regulatory context which is further aggravated due to the recently passed supply chain due diligence law in Germany; see Chapter 5.1.1.

Company C 2 does not have a dedicated department for managing human rights, but a compliance department which is responsible for managing direct adverse human rights impacts and a sustainable supply chain department which is responsible for managing indirect adverse human rights impacts in the supply chain. HRIA concerning direct adverse human rights impacts have been implemented since 2013 and HRIA

138 Original wording in German: “Natürlich ist es in manchen Fällen unglaublich einfach zu sagen wer dafür verantwortlich ist, in anderen Fällen ist es nunmal dieses System das zusammenspielt und da wird’s dann komplizierter wirklich den ausschlaggebenden Faktor zu identifizieren.” (Translated by the author).
concerning indirect adverse human rights impacts in the supply chain since 2012, with 0.1 employees being responsible for the former and 12 employees for the latter. The company implements stand-alone HRIA for direct adverse human rights impacts (via the Quick-Check of the Danish Institute for Human Rights)\textsuperscript{139} and integrated HRIA\textsuperscript{140} for indirect adverse human rights impacts in the supply chain. HRIA with respect to indirect impacts in the supply chain are integrated into Environmental Impact Assessments (EIA), Social Impact Assessments (SIA) and conventional due diligence analysis.

To assess its direct adverse human rights impacts, company C 2 conducts an online survey among its own employees. Data on adverse human rights impacts in the first tier supply chain are collected by means of an SAQ via the Drive Sustainability industry initiative. All suppliers applying for direct and indirect material tenders exceeding a certain volume, are assessed on the basis of the SAQ. In addition to this, company C 2 conducts media screenings, second party audits and third party audits via the Validated Assessment Program (VAP) of the industry initiative ‘Responsible Business Alliance’ (RBA), the multistakeholder initiative ‘Aluminium Stewardship Initiative’ (ASI), the multistakeholder initiative ‘Initiative for Responsible Mining Assurance’ (IRMA) and the multistakeholder initiative ‘Responsible Steel’. Company C 2 participates in these industry and multistakeholder initiatives to enhance the effectivity and efficiency of its sustainability oriented supply chain activities.

RBA is currently the largest sustainable supply chain management industry initiative, with more than 400 member companies from four different sectors (electronics, retail, auto and toy) (RBA, 2021a). On the basis of different factors such as country, product and audit results, RBA classifies suppliers into ‘extreme risk’, ‘high risk’, ‘medium risk’ and ‘low risk’ sites (RBA, 2021b). The audit provisions are determined

\textsuperscript{139} The Quick-Check is a “condensed assessment covering key human rights issues (...) it contains 28 main questions and has a total of 240 corresponding indicators” (The Danish Institute for Human Rights, 2006, p. 4).

\textsuperscript{140} ‘Integrated HRIA’ are defined in Chapter 2.1.5.
by RBA and executed by approved audit companies (RBA, 2021c). RBA is responsible for the accreditation of the audit companies (RBA, 2021c). The audits last between two and five days and include a document verification, a visual site verification, interviews with both management and employees (RBA, 2021c). The third party audit results can be shared among the RBA member companies (RBA, 2021c). To give employees more opportunities to provide feedback (RBA, 2021d) RBA has implemented the ‘worker voice platform’ (RBA, 2021a) which includes a grievance mechanism and an online employee survey tool (RBA, 2021d).

The ASI is a multistakeholder initiative with 200 member companies (ASI, 2021a). The ASI has developed a third-party certification programme to ensure that human rights and other sustainability principles are integrated into the aluminium supply chains (ASI, 2021b). Organisations from all parts of the supply chain can join the ASI (ASI, 2021c, p. 7). To receive an ASI certificate a company needs to satisfy certain provisions which are assessed on the basis of a third party audit (ASI, 2021c, p. 4). The third party audits are executed by specialized audit companies which have been accredited by the ASI (ASI, 2021c, p. 4).

IRMA is a multistakeholder initiative which offers a third-party certification programme to ensure that human rights and other social and environmental performance standards are satisfied at mine sites (IRMA, 2021a). With the exception of energy fuels, IRMA covers all mined materials and refers to all mine sizes (IRMA, 2021b) including small-scale and artisanal mining (IRMA, 2021c).

Responsible Steel is a multistakeholder initiative which offers a third-party certification programme to ensure that human rights and other social and environmental performance standards are satisfied in the steel supply chains (Responsible Steel, 2021a). Responsible Steel cooperates with IRMA (Responsible Steel, 2021a). To receive a Responsible Steel certificate companies need to pass several process steps: (1) a self-assessment against the Responsible Steel Standard, (2) a desktop review verification of different corporate documents, self-assessment
data, media screening data and a stakeholder analysis, (3) a third party audit including interviews with the management, employees and external stakeholders, and (4) the verification of the audit report by an “independent Assurance Panel” (Responsible Steel, 2021b). The Panel consist of five members assessing whether the evidence provided supports the Responsible Steel conformity categories, whether the audit report contains enough information to award a certificate and whether the certification recommendation is overall coherent (Responsible Steel, 2021c).

Company C 2 executes second and third party audits at high risk supplier sites. Risks are assessed on the basis of country and product factors, media screening data and incoming grievances.

Human rights data in the n-tier supply chain are collected indirectly through first tier suppliers and directly by means of second party audits, third party audits and media screenings. Company C 2 does not know all its n-tier suppliers, but aims to successively expand transparency in ‘critical’ raw materials supply chains. Raw materials are classified as ‘critical’ on the basis of the procurement volume, country of origin, customer awareness, violations and the leverage of company C 2. Company C 2 prioritizes those areas in critical raw material supply chains for HRIA where the risks are most significant (referred to as ‘hot spots’) with special emphasis on mining and cultivation. To increase transparency in critical raw materials supply chains, company C 2 uses, amongst others, satellite data.

Company C 2 consults different stakeholders such as from policy, science and NGOs with respect to indirect adverse human rights in the supply chain.

Company C 2 administers its own grievance mechanism and participates in the grievance mechanism of RBA.
5.1.2.1 Findings research question one

Given that company C 2 is a global business with more than 80 sites in 20 different countries and business relationships with approximately 12,000 first tier suppliers in 70 different countries, it is forced to examine multiple varying national corporate HRDD laws which use abstract legal terms:

“No law regulates that, they only say ‘appropriate’ (...) I think that’s always the point, what is appropriate?”141

The complexity is further amplified according to company C 2 due to the provision of the UNGP to respect not only the national corporate HRDD laws, but also the internationally recognized human rights which are abstract rights that leave room for interpretation. Different industry initiatives such as ASI and Responsible Steel provide sufficient clarity with respect to the interpretation of some rights such as the ‘right to just and favourable remuneration’ and the ‘abolition of child labour’. For other rights, according to company C 2, there is less clarity.

Company C 2 has found that the international human rights law and the respective national laws can be conflicting, such as for instance with respect to freedom of assembly in China and equal rights of men and women in Arabian countries. The provision of the UNGP to respect the internationally recognized human rights “to the greatest extent possible” (cf. United Nations, 2011, p. 25, Commentary on Guiding Principle No. 23) is not clear in the view of company C 2, but should not be further substantiated as the vagueness offers the opportunity to prioritize business interests:

“If really clear ideas or requirements are created, then the company is expected to fulfil them (...). Especially the automotive

141 Original wording in German: “Das regelt ja kein Gesetz, die sagen ja nur, angemessen’ (...) Das ist glaube ich immer der Punkt, was ist angemessen?” (Translated by the author).
manufacturers, who are extremely dependent on China, may find themselves in the predicament of having to meet requirements somewhere (...) that they can't actually meet if they want to continue their business there (...). From the company's point of view, it may be not such a bad idea to have these more flexible regulations, where the company can say that we are really trying to implement them to the best of our knowledge and belief, but of course we are also taking our business into account.”

Company C 2 counteracts the challenges by exchanging with other companies. Another counter strategy is the consultation of in-house lawyers. Company C 2 has found that individual interpretations of in-house lawyers vary, however. It is a general experience of company C 2 that the individual interpretations of vague legal terms vary:

“I think that’s the difficulty in general with vague terms like that, you can ask 100 people and you receive 100 different answers.”

5.1.2.2 Findings research question two

Collecting data for the HRIA within its own operations is challenging for company C 2 because of limited staff capacities. Another challenge is the limited human rights knowledge of employees. Company C 2 highlighted that the identification of adverse

142 Original wording in German: “Wenn dann wirklich klare Vorstellungen oder Voraussetzungen geschaffen werden, dann wird erwartet, dass das Unternehmen das erfüllt (...). Gerade die Automobilhersteller, die ja doch extrem von China abhängen, die kommen dann vielleicht in die Bredulie, dass sie irgendwo Vorgaben erfüllen müssen (...), die sie eigentlich gar nicht erfüllen können, wenn sie weiterhin dort ihr Geschäft machen wollen (...). Von daher ist es vielleicht aus Unternehmenssicht gar nicht mal so unschön, hier etwas diese flexiblere Regelungen zu haben, wo es dann sagen kann, wir versuchen es wirklich nach unserem eigenem besten Wissen und Gewissen umzusetzen, aber berücksichtigen natürlich auch unser Geschäft dabei.” (Translated by the author).

143 Original wording in German: “Das ist glaube ich die Schwierigkeit generell bei solchen vagen Begriffen, du kannst da 100 Leute Fragen und kriegst 100 verschiedene Antworten.” (Translated by the author).
human rights impacts is challenging when employees do not recognize any violations themselves:

“Identifying this when no one, not even the employee himself recognizes any violation is difficult, of course.”

Company C 2 explained that one needs to differentiate between knowing what human rights exist and understanding the respective claims or what constitutes a human rights violation, with the latter being significantly more complex:

“I think many people are now aware of what human rights are, but then to assess in everyday life whether in their activity they can trigger a human rights violation, so to speak, is something that many people are still not aware of, because it is also extremely complex.”

Company C 2 counteracts the knowledge deficits by respective human rights training.

Company C 2 has found that the human rights knowledge is also limited amongst employees in the supply chain, given that their suppliers have only recently begun to address the topic:

“Our suppliers are only just starting to do it.”

144 Original wording in German: “Das dann zu identifizieren, wenn da überhaupt keiner, selbst der Mitarbeiter gar keinen Verstoß bei sich sieht, das ist natürlich dann schwer.” (Translated by the author).

145 Original wording in German: “Ich glaube vielen ist jetzt bewusst, was Menschenrechte sind, aber dann einzuschätzen im Alltag ob bei ihrer Tätigkeit sie sozusagen einen Menschenrechtsverstoß auslösen können, das ist noch vielen nicht bewusst, weil das auch extrem komplex ist.” (Translated by the author).

146 Original wording in German: “Unsere Lieferanten, die fangen ja teilweise erst an damit.” (Translated by the author).
It is generally easy for company C 2 to receive data for the HRIA from its first tier suppliers, given that it has a strong negotiating position with its first tier suppliers. According to company C 2 this is due to the fact that HRIA are a binding award criteria, company C 2 is an attractive reference customer and because it participates in industry/multistakeholder initiatives. Company C 2 highlighted that industry/multistakeholder initiatives offer efficiency gains through the standardization of approaches and the sharing of the human rights data collected. As a result suppliers are confronted with one uniform request rather than with many different ones from varying companies:

“They [referring to the suppliers] are not prepared to fill out ten questionnaires, so it is of course good that we have a standardized procedure and that strengthens of course.” 147

According to company C 2 an industry initiative also influences the quality of the human rights data in terms of correctness, completeness and timelessness, because suppliers are aware of the risk of losing not one but several customers:

“In general, when more customers want things, the supplier is more willing to provide the right information, because he is afraid that if he provides the wrong information, he will lose his entire customer base.” 148

147 Original wording in German: “Sie [bezogen auf die Lieferanten] sind halt nicht bereit zehn Fragebögen auszufüllen und da ist es natürlich gut, dass wir ein standardisiertes Vorgehen haben und das stärkt natürlich da.” (Translated by the author).

148 Original wording in German: “Generell ist es schon so, dass wenn mehr Kunden die Dinge wollen, dass dann die Bereitschaft des Lieferanten die richtige Informationen abzugeben steigt, weil er natürlich Angst hat, wenn er die falschen angibt, dann verliert er sozusagen seinen ganzen Kundenstamm.” (Translated by the author).
Company C 2 has found that it can be challenging to find consensus in industry/multistakeholder initiatives because human rights leave room for interpretation:

“The issues are really not clear and that means of course every stakeholder who sits in there naturally interprets them to their advantage.”\(^{149}\)

Collecting human rights data in the n-tier supply chain is challenging for company C 2 because of the complexity of its n-tier supply chain network which is characterized by a large number of globally dispersed, constantly changing supplier relationships within up to eight different tier-levels. For company C 2 it is thus challenging to identify the n-tier suppliers. Access to human rights data is also challenging due to generally missing contractual relationships with n-tier suppliers. Even when company C 2 has a contractual relationship with an n-tier supplier, access to the human rights data is still not guaranteed:

“Even if you have a contractual relationship, this is a necessary but not sufficient condition to receive the data.”\(^{150}\)

Company C 2 counteracts the n-tier supply chain complexity by limiting its focus to particularly risky raw materials.

\(^{149}\) Original wording in German: “Dass die Themen wirklich nicht eindeutig sind und dass natürlich jeder Stakeholder der da drin sitzt sie natürlich zu seinem Vorteil auslegt.” (Translated by the author).

\(^{150}\) Original wording in German: “Selbst wenn du eine Vertragsbeziehung hast ist das die notwendige aber nicht die hinreichende Bedingung, an die Daten rizukommen.” (Translated by the author).
5.1.2.3 Findings research question three

Company C2 reported that it is particularly challenging to assess potentially adverse human rights impacts:

“As long as we are talking about preventive measures, where the human rights violation is probable but has not occurred, here we also have a duty of care, we have to minimize the risk of a human rights violation occurring, and to find out whether I have actually minimized it or whether I have not yet minimized it. Normally I only find out after something has happened that it has not been minimized, but that perhaps I could have done something else to actually minimize it.”

The assessment of the actual human rights situation in the supply chain can be difficult according to company C2, because the information value of the assessment basis can be restricted. The information value of the Drive Sustainability SAQ is restricted, in the view of company C2, because of limited financial and time resources of the external service provider NQC:

“In my opinion that is also due to the fact that we pay NQC very poorly. This means that they don’t have the opportunity to look at a single questionnaire or the documents for more than ten minutes (...) I don’t believe that they do this deliberately, that they release incorrect or incomplete documents, but that they simply don’t have

151 Original wording in German: “Solange wir über Präventivmaßnahmen reden, wo die Menschenrechtsverletzungen wahrscheinlich ist, aber nicht eingetreten, da haben wir ja auch eine Sorgfaltspflicht, wir müssen ja das Risiko minimieren, dass eine Menschenrechtsverletzung eintritt, und das rauszufinden, also habe ich es tatsächlich minimiert dadurch oder habe ich es noch nicht minimiert. In der Regel stelle ich es halt erst fest, wenn was passiert ist, dass es halt nicht minimiert war, sondern dass ich hätte vielleicht noch etwas anderes hätte machen können, um es tatsächlich zu minimieren.” (Translated by the author).
the time. If we gave them more time and better payment, I think the
quality would increase.”  

Company C 2 has found that the information value of certificates can be restricted, due to a discrepancy between the human rights situation at a supplier site according to a certificate and the actual human rights situation:

“What we have noticed so far (...) we have a certificate here, company XY is certified by TÜV, and then you go there and somehow find something completely different from what the certificate is supposed to tell you.”

The assessment whether company C 2 has contributed or could contribute to (potential) adverse human rights impacts in the supply chain is challenging because many different actors and interconnected actions are involved, which applies in particular to lower n-tier levels:

“The further down I get, the more it gets mixed up. And when I am, let’s say, at the mine and at the smelter (...) then I don’t even know anymore whether the person in the mine is working for me at all or whether by chance it comes from another mine, because everything is mixed up again in the smelter in such a way that I can no longer

152 Original wording in German: “Das liegt aber auch daran, dass wir den NQC einfach verdamm schlimm bezahlen meines Erachtens. Das heißt der hat gar nicht die Möglichkeit, sich länger als zehn Minuten einen einzelnen Fragebogen oder auch die Dokumente anzuschauen (...) Ich glaube nicht, dass sie das mutwillig machen, dass sie da falsche oder nicht vollständige Dokumente freigeben, sondern dass sie halt einfach auch keine Zeit haben. Wenn wir denen mehr Zeit geben würden und eine bessere Bezahlung, würde meines Erachtens die Qualität steigen.” (Translated by the author).

153 Original wording in German: “Was wir bisher mitbekommen haben (...) wir haben hier jetzt ein Zertifikat, die Firma XY ist vom TÜV zertifiziert, und dann gehst du dahin und stellst irgendwie etwas ganz anderes fest als das was dir das Zertifikat dir da sagen soll.” (Translated by the author).
reconstruct it (...) and then, of course, I can no longer say at that moment that I have a verifiable contribution.”

5.1.3 Case C 3

Company C 3 is a large automobile and industrial supplier company headquartered in Germany. The company is subdivided into three divisions: automotive technologies, automotive aftermarket and industry. Company C 3 develops and produces components and systems for motors (including combustion, hybrid and electrical engines), gears, chassis, electric drive systems, and rotative and linear movements. In the automotive aftermarket division, company C 3 offers repair solutions for the automobile spare parts market.

In 2020 company C 3 employed 83,300 employees and had more than €12 billion revenues. Company C 3 has approximately 200 sites in more than 20 different countries in Europe, America, Africa, Asia and Oceania and business relationships with approximately 27,000 first tier suppliers in 120 different countries in Europe, America, Africa, Asia and Oceania.

Company C 3 operates within a comparatively strong regulatory context which is further aggravated due to the recently passed supply chain due diligence law in Germany; see Chapter 5.1.1.

Company C 3 does not have a dedicated department for managing human rights, but a sustainability department which is responsible for managing direct adverse human

---

rights impacts and a sustainable supply chain department which is responsible for managing indirect adverse human rights impacts in the supply chain.

HRIA concerning direct adverse human rights impacts have been implemented since 2020 and HRIA concerning indirect adverse human rights impacts in the supply chain have been implemented since 2021, with three employees being responsible for the former and two for the latter. Company C 3 implements stand-alone HRIA for direct adverse human rights impacts and integrated HRIA for indirect adverse human rights impacts in the supply chain. HRIA with respect to indirect impacts in the supply chain are integrated into sustainability analysis.

Data on adverse human rights impacts in the first tier supply chain are collected by means of SAQs via the external service provider NQC, and via a visual verification of the ILO core labour rights and occupational safety factors during quality audits (referred to as ‘quick checks’). In 2020 company C 3 assessed approximately 30% of its first tier suppliers for direct material on the basis of SAQs and approximately 60 first tier suppliers for direct material by means of quick checks.

Data on adverse human rights impacts in the n-tier supply chain are indirectly collected via first tier suppliers by means of SAQs. Company C 3 does not know all its n-tier suppliers, but aims to successively expand transparency in conflict minerals supply chains and to ensure that smelters are IRMA-certified. Conflict minerals are defined by company C 3 as tin, tantalum, tungsten and gold that originate from the Democratic Republic of the Congo, neighbouring countries, conflict countries and those that recently emerged from conflict, countries with weak or missing State leadership and security structures, and countries that systematically violate international law.

Company C 3 administers its own grievance mechanism. Hitherto neither employees nor other relevant stakeholders have been consulted during the course of the HRIA.
5.1.3.1 Findings research question one

Given that company C 3 is a global business with approximately 200 sites in more than 20 different countries and business relationships with approximately 27,000 first tier suppliers in 120 different countries, it is forced to examine multiple national corporate HRDD laws. The complexity is further amplified due to the provision of the UNGP to respect not only the respective national laws, but also the internationally recognized human rights, which are abstract rights that leave room for interpretation and which originally address the responsibility of the State:

“How the concrete implementation of these abstract international human rights, which as they are described in all the conventions, actually address the State, how we can implement them concretely (...) it is a difficulty (...) there is also still a lack of criteria that create a meso level between this absolute macro perspective, which represents the international human rights, and this very operational one, which you then have in the company.”

Company C 3 counteracts this challenge by turning to politicians and asking for further specification. In addition to this, company C 3 interprets the abstract human rights on the basis of handouts and recommendations of different organisations. Furthermore, company C 3 examines the implementation of other companies. Despite these counter strategies, company C 3 stated that it was unsure whether it was sufficiently fulfilling its responsibility for human rights:

155 Original wording in German: “Wie die konkrete Umsetzung dann eigentlich von diesen abstrakten internationalen Menschenrechten, die ja eigentlich auch an Staaten adressiert sind, so wie sie beschrieben sind in den ganzen Konventionen, wie wir das dann konkret umsetzen können (...) es ist eine Schwierigkeit (...) es fehlt auch noch an Kriterien die zwischen dieser absoluten Makro-Perspektive, die das internationale Menschenrecht darstellt und diesem sehr operativen was man dann im Unternehmen hat nochmal so ein meso-level schafft.” (Translated by the author).
Company C 3 has found that the international human rights law and the respective national laws can be conflicting, such as for instance with respect to freedom of association and the right to collective bargaining in China:

“...a conflict regarding freedom of association and collective bargaining in China. In China, with State trade unions, this means something different from in Western countries, which is of course a challenge.”

According to company C 3 the provision of the UNGP to respect the internationally recognized human rights in such cases “to the greatest extent possible” (United Nations, 2011, p. 25, Commentary on Guiding Principle No. 23) is not clear enough and thus should be further substantiated by the State:

“This should be further specified, but to be honest, this is then again (...) the task of States (...) to specify further how to deal with such borderline cases.”

156 Original wording in German: “Das ist halt auch diese Unsicherheit, wann hat man seine Sorgfaltspflicht hinreichend erfüllt.” (Translated by the author).

157 Original wording in German: “…wo das ein Konflikt darstellt ist freedom of association and collective bargaining in China. Darunter wird in China etwas anderes verstanden mit staatlichen Gewerkschaften als das jetzt vielleicht in westlichen Ländern der Fall ist, das ist natürlich eine Herausforderung.” (Translated by the author).

158 Original wording in German: “Das sollte weiter konkretisiert werden, das ist dann aber ehrlich gesagt auch wiederum (...) die Aufgabe von Staaten (...), dass hier (...) nochmal weiter spezifiziert wird, wie mit solchen Grenzfällen umzugehen ist.” (Translated by the author).
5.1.3.2 Findings research question two

One of the challenges company C 3 faces when collecting the human rights data within its own company is the limited human rights knowledge of employees. Company C 3 highlighted that the knowledge is limited with respect to both what human rights exist and what claims exist or what constitutes a human rights violation. According to company C 3 an awareness among employees that human rights affect all areas of the company is missing. So far exceedingly few employees have considered topics from a human rights perspective:

“Very few people have thought about these issues from a human rights perspective, and that is something you notice (...) that is a bit of a challenge, that human rights and respect for human rights is something that has to be implemented by everyone and that also has to be lived through processes in the company, but this awareness is not yet there.”

Company C 3 has found that the human rights knowledge among employees is even more limited in the supply chain, in particular when suppliers are small and medium-sized enterprises (SMEs). When collecting human rights data from its first tier suppliers, company C 3 is also confronted with a data collection fatigue. In addition to this, many suppliers in the mechanical engineering sector reject their corporate human rights responsibility or try to limit it:

“...because many companies do not even have a basic understanding of the issue of human rights, and also take a much narrower view of their corporate responsibility (...) especially in the context of

159 Original wording in German: “Die wenigsten haben sich mal aus einer menschenrechtlichen Brille heraus Gedanken über die Themen gemacht und das merkt man (...) das ist so ein bisschen die Herausforderung, dass Menschenrechte und der Respekt für Menschenrechte etwas ist, was eben durch alle umgesetzt werden muss und dass auch entsprechend durch Prozesse im Unternehmen gelebt werden muss, dieses Bewusstsein ist noch nicht da.” (Translated by the author).
mechanical engineering. What is going on at the VDMA [the Mechanical Engineering Industry Association in Germany] is sublime, where they really try to shift the responsibility and try to keep it as narrow as possible so that they have as little work with it as possible.”

When collecting human rights data from its first tier suppliers, access can be difficult, depending on the negotiating position which, in relation to the specific supplier relationship, varies from very weak to very strong. The negotiating position is strengthened, according to company C 3, through participation in industry/multistakeholder initiatives; these offer further advantages such as a common understanding through exchanges with others, the standardization of approaches and the establishment of an industry standard which functions as a benchmark. Company C 3 has found that participation in an industry/multistakeholder initiative, however, can also be challenging due to conflicting interests, different aims and limited resources of NGOs, which partially withdraw their participation.

Collecting human rights data in the n-tier supply chain is challenging for company C 3 because of complex, globally dispersed supply chain networks:

“...the complexity of the network itself with all its ramifications. We also have pilots underway where we are now looking at the supply chain for aluminium, for example, including the n-tier supply chain. You have a corresponding ramification and, depending on which raw material you are looking at, copper, aluminium, or something else, 

____________________________

160 Original wording in German: “...da viele Unternehmen noch nicht mal das Basisverständnis haben, was das Thema Menschenrechte angeht, und auch ihre Unternehmensverantwortung wesentlich enger fassen (...) gerade im Rahmen des Maschinenbaus. Das was beim VDMA abgeht ist unter aller Kanone, wo man wirklich versucht die Verantwortung dafür abzuwälzen und versucht das so eng wie möglich zu halten, damit man ja möglichst wenig Arbeit damit hat.” (Translated by the author).
For company C 3 it is challenging to establish transparency in the n-tier supply chain because first tier suppliers usually refuse to disclose their suppliers:

“...because this is something that our direct suppliers usually do not tell us. They do so in individual projects when we ask specifically, but the standard situation is that they do not tell us who the suppliers are because of fearing disadvantages in price negotiations or the exclusion of certain suppliers from the value chain. This means that we heavily rely on the willingness of our direct suppliers to talk to us.”

In addition to this, the supplier relationships are dynamic:

“This is also a pilot experience. We have seen in a specific project that there are (...) frequently changing suppliers.”


162 Original wording in German: “..weil unsere direkten Lieferanten uns für gewöhnlich das nicht mitteilen. Sie tun’s in Einzelprojekten, wenn wir konkret nachfragen, aber die Standardsituation ist, dass aufgrund von befürchteten Nachteilen bei Preisverhandlungen oder dem Ausschluss von bestimmten Lieferanten aus der Wertschöpfungskette nicht mitgeteilt wird, wer die Lieferanten sind. Das heißt, da ist man maßgeblich auf die Gesprächsbereitschaft unserer direkten Lieferanten angewiesen.” (Translated by the author).

163 Original wording in German: “Das ist auch eine Pilotenerfahrung. Das haben wir in einem konkreten Projekt gesehen, dass es da häufig wechselnde Lieferanten (...) gibt.” (Translated by the author).
Access to human rights data is challenging according to company C 3 due to generally missing contractual relationships with n-tier suppliers. Company C 3 counteracts the n-tier supply chain complexity by limiting its focus to conflict minerals.

5.1.3.3 Findings research question three

Company C 3 indicated that while the likelihood of adverse human rights impacts can be assessed on rational or objective criteria such as country and sector-specific risks, the assessment of impacts is relatively subjective:

“The difficulty is simply that while likelihood can be assessed reasonably rationally or objectively simply based on cross probabilities of occurrence, country and sector-specific risks, net probability of occurrence based on implemented systems, known cases, etc., that can be assessed relatively well, with impact it's just very subjective. You have a relatively subjective assessment.”

It is difficult for company C 3 to assess adverse human rights impacts in the supply chain on the basis of the Drive Sustainability SAQ because the questionnaire focuses on policies and management systems rather than on specific HRDD measures. Asking suppliers about their HRDD measures in the view of company C 3 would represent a better assessment basis:

“...because the data that are queried are not sufficient to make a very concrete impact assessment. If you look at the SAQ from Drive

Sustainability, they ask (...) do you have a policy, do you have a management system (...) Why don't we ask specifically what the respective measures are that the suppliers have implemented (...) This would help us much more in being able to make a concrete assessment.”

The assessment of adverse human rights impacts on the basis of the Drive Sustainability SAQ is difficult according to company C 3, given that it lacks a direct consultation of potentially impacted rights holders and other relevant stakeholders. The information value of employee consultations in the course of audits in turn can be limited because they take place in artificial situations:

“...in the context of a rather artificial situation, where you also cannot know whether this is the whole truth that you are being told, so yes, it is extremely difficult, even if we now have these on-site audits and can perhaps also talk to employees, to actually be able to assess the concrete human rights situation.”

In cases where first tier suppliers refuse access to their human rights data, company C 3 cannot assess the adverse human rights impacts, but only the general human rights risk on the basis of country and sector-specific risks:

165 Original wording in German: “...weil die Daten, die abgefragt werden nicht ausreichend sind, um ein ganz konkretes impact assessment vorzunehmen. Also wenn du dir den SAQ von Drive Sustainability anschaut, da wird (...) abgefragt, habt ihr ne policy, habt ihr ein Managementsystem (...) Warum fragen wir nicht ganz konkret danach was die jeweiligen Maßnahmen sind, die die Lieferanten umgesetzt haben (...) Das würde uns viel mehr weiterhelfen, um eine konkrete Abschätzung machen zu können.” (Translated by the author).

166 Original wording in German: “...im Rahmen einer eher künstlichen Situation, wo man auch nicht wissen kann ob das jetzt die ganze Wahrheit ist, die mir da erzählt wird, von daher ja, es ist extrem schwierig, selbst wenn wir jetzt diese on-site-audits haben und vielleicht auch mal mit Mitarbeitern sprechen können, die konkrete menschenrechtliche Situation tatsächlich bewerten zu können.” (Translated by the author).
“Then we really have to rely on the country and sector-specific risks (...) and that’s the only basis for evaluation that we have. If he [the supplier] refuses to talk to us, then we don’t have any other great options.”

Company C 3 responded that it cannot report challenges with respect to the assessment of its own responsibility in the supply chain on the basis of an area of responsibility which differentiates between ‘contribution’ and ‘direct link’ because their analyses lack such differentiations:

“I must also say in all honesty that the analysis is simply not yet that fine granular.”

5.1.4 Case C 4

Company C 4 is a large automobile producing stock company which is headquartered in Germany. In 2020 it employed 665,445 employees and had more than €200 billion revenues. Company C 4 has sites in more than 140 different countries on four different continents and business relationships with more than 65,000 first tier suppliers in 100 different countries on five different continents.

Company C 4 operates within a comparatively strong regulatory context which is further aggravated due to the recently passed supply chain due diligence law in Germany; see Chapter 5.1.1.

---

167 Original wording in German: “Dann sind wir wirklich auf die länder und sektorspezifischen Risiken (...) angewiesen und das ist dann halt die Bewertungsgrundlage, die wir haben. Wenn der [Lieferant] sich weigert mit uns zu sprechen, dann haben wir ja keine großartigen weiteren Möglichkeiten.” (Translated by the author).

168 Original wording in German: “Da muss ich auch ganz ehrlich sagen, so feingranular ist die Analyse auch einfach noch nicht.” (Translated by the author).
Company C 4 does not have a dedicated department for managing human rights, but a compliance department which is responsible for managing direct adverse human rights impacts and a sustainable supply chain department which is responsible for managing indirect adverse human rights impacts in the supply chain. HRIA concerning direct adverse human rights impacts have been implemented since 2020 and HRIA concerning indirect adverse human rights impacts in the supply chain since 2017, with two employees being responsible for the latter. Company C 4 implements integrated HRIA (general sustainability assessment) for both direct adverse human rights and indirect adverse human rights impacts in the supply chain.

Company C 4 does not consult its own employees. Employees of suppliers are consulted during third party audits. Other relevant stakeholders are not consulted.

Company C 4 initially analyses the general risk for adverse human rights impacts at its production sites and sets respective HRIA priorities. The risks are assessed on the basis of a combination of a country and a business area risk category. The former is based on a Maplecroft index and the latter on publicly available information such as the CHRB. On the basis of this risk analysis, sites are classified as ‘high’, ‘middle’ or ‘low’ risk sites. High risk sites are examined by means of an audit.

The first step in the HRIA with respect to indirect adverse human rights impacts in the first tier supply chain is a classification of suppliers into ‘relevant’ and ‘non-relevant’ suppliers. The classification depends amongst others on the company size and type of service provided. In a second step, company C 4 assesses the general risk exposure of those suppliers that have been classified as relevant. The risk exposure is assessed on the basis of a combination of three risk categories: country, corporate policies and corporate processes. The country risk is assessed by an external service provider. The corporate policies and corporate processes are assessed on the basis of the standardized SAQ via the industry initiative Drive Sustainability, with NQC as the service provider. Supplier sites with a high risk exposure are verified by means of an
audit. In 2020 company C 4 assessed approximately 13,000 first tier suppliers by means of SAQs and almost 800 suppliers by means of an audit.

Data on adverse human rights impacts in the n-tier supply chain are collected indirectly via first tier suppliers by means of SAQs and directly by means of third party audits and media screenings. Company C 4 does not know all its n-tier suppliers, but aims to successively expand the transparency from mining until final production in particularly risky raw material supply chains. Company C 4 has classified altogether more than ten raw materials as particularly risky, including conflict minerals, cobalt and lithium. To increase the transparency in these raw material supply chains, company C 4 asks its first tier suppliers to provide respective information on the upstream supply chain. In addition to this, company C 4 uses supply chain mapping technologies. Due to the complexity of its supply chains with up to eight different tier levels, company C 4 prioritizes those tiers in risky raw material supply chains for HRIA where the risks are most significant with special emphasis on mining and cultivation. To enhance the effectivity and efficiency of its human rights activities, company C 4 participates in the industry initiative ‘Responsible Minerals Initiative’ (RMI).

RMI focuses on responsible sourcing of minerals and metals from high-risk areas (RMI, 2021a). The initiative has more than 400 member companies from varying sectors (RMI, 2021a). RMI offers its members a tool for mapping the supply chain (RMI, 2021b) and two different third party audit verification processes: one for smelters and refineries, and one for those companies in high risk mineral and metal supply chains that cannot be classified as the former (RMI, 2021c). All audits are executed by RMI-approved audit companies (RMI, 2021d). The results can be shared among the member companies (RMI, 2021c).

Company C 4 administers its own grievance mechanism.
5.1.4.1 Findings research question one

Given that company C 4 is a global business with sites in more than 140 different countries and business relationships with more than 65,000 first tier suppliers in approximately 100 different countries, it is forced to examine multiple national corporate HRDD laws that use abstract legal terms such as ‘appropriate’:

“It is difficult to check individually in each country what the concrete requirements are (...) When we think of due diligence laws now, then it is certainly always primarily the question of what must be appropriate, which is always of course a leeway. What does ‘appropriate’ mean? That is difficult for us.”¹⁶⁹

Company C 4 counteracts this challenge by exchanges with other companies, such as those within the ‘Global Business Initiative on Human Rights’. Despite this counter strategy, company C 4 indicated it was in a state of uncertainty as to whether its corporate human rights responsibility is sufficiently met:

“It is always a question of whether how we understand and implement them [the provisions] is actually seen that way.”¹⁷⁰

The complexity is further amplified due to the provision of the UNGP to respect not only the respective national corporate HRDD laws, but also internationally recognized human rights, which are abstract rights that leave room for interpretation, creating some uncertainty on the part of company C 4:

¹⁶⁹ Original wording in German: “Ist aber dann schwierig das in jedem Land einzeln zu prüfen wie jetzt die konkreten Anforderungen sind (...) Wenn wir jetzt an due diligence Gesetze denken, dann ist es sicherlich immer voreilende die Frage, das muss angemessen sein, das ist immer natürlich ein Spielraum. Was heißt “angemessen”? Da tun wir uns schwer.” (Translated by the author).
¹⁷⁰ Original wording in German: “Es ist immer die Frage ob wir sie [die Vorgaben] verstehen und umsetzen, auch tatsächlich so gesehen wird.” (Translated by the author).
“In any case, there is a particular uncertainty (...) we are always in a certain grey area or area of estimation, appropriateness (...) human rights per se you understand roughly where the journey is roughly going, but (...) it is somewhere grey.”  

Company C 4 has found that the international human rights law and the respective national laws can be conflicting, such as for instance with respect to the right to freedom of peaceful assembly and association in China. For company C 4 the meaning of the provision of the UNGP to respect the internationally recognized human rights in such cases “to the greatest extent possible” (cf. United Nations, 2011, p. 25, Commentary on Guiding Principle No. 23) is not sufficiently clear in individual cases:

“It is of course the case that in individual cases it is not entirely clear (...) what that means exactly.”

5.1.4.2 Findings research question two

One of the challenges company C 4 faces when collecting the human rights data within its own company are limited staff capacities. Another challenge is the limited human rights knowledge of employees:

“The knowledge is very, very limited, even among the people who handle it. The human rights knowledge is very restricted even among the people who are responsible for human rights in compliance.”

171 Original wording in German: “Es herrscht auf jeden Fall eine gewisse Unsicherheit (...) wir bewegen uns da immer in so einem gewissen Graubereich oder Abschätzungs-, Angemessenheitsfragenbereich (...) Menschenrechte an sich, man versteht ungefähr ja wo geht die Reise ungefähr hin, aber (...) es ist irgendwo grau.” (Translated by the author).

172 Original wording in German: “Es ist natürlich so, dass das dann im Einzelfall nicht ganz klar ist (...) was das genau bedeutet.” (Translated by the author).

173 Original wording in German: “Es ist sehr, sehr wenig Wissen vorhanden, selbst bei den Leuten, die es bearbeiten. Selbst bei den Leuten, die für Menschenrechte in der Compliance zuständig sind, ist sehr überschaubares menschenrechtliches Wissen vorhanden.” (Translated by the author).
Company C 4 highlighted in this context that one needs to differentiate between understanding the fundamentals of human rights on an abstract level and understanding what kind of impact this has on someone’s own activity:

“...the basic principles of human rights, understanding this on an abstract level is one thing, the other thing is understanding what kind of impact this has on my activity.”\(^{174}\)

Company C 4 counteracts these knowledge deficits by respective human rights training.

Company C 4 reported that the human rights knowledge among the employees of its first tier suppliers is also limited, making the data collection challenging:

“Of course, they have very little knowledge about many of these topics. This means that when we ask them, they often do not know what we want.”\(^{175}\)

Company C 4 has a strong negotiating position with its first tier suppliers in terms of access to the human rights data, given that HRIA are a binding award criteria and because its order volumes are relatively big. The negotiating position is further reinforced through participation in industry initiatives such as Drive Sustainability, given that different customers confront suppliers with the same human rights requirements:

---

\(^{174}\) Original wording in German: “...die Grundzüge von Menschenrechten, aber das abstrakt verstanden zu haben ist das eine, das andere ist, was hat das für einen Einfluss auf meine Tätigkeit.” (Translated by the author).

\(^{175}\) Original wording in German: “bei denen ist natürlich ein sehr geringes Wissen überhaupt vorhanden zu vielen von diesen Themen. Das heißt also, wenn wir die fragen, dann wissen die auch oft nicht, was wir wollen.” (Translated by the author).
“...that the expectation, the minimum requirements are the same for all (...) so that suppliers cannot say, well, company A and company B have much too high requirements, I don't care, I'll only supply company C and company D. But that one says, in principle it doesn't matter who you want to supply, that's how it looks, these are the requirements.”

Despite its strong negotiating position and despite collecting the human rights data by means of industry/multistakeholder initiatives, it is difficult for company C 4 to ensure that the data it receives are trustworthy:

“Clearly, the assurance, how do I make sure that the data I get is correct (...) because not all data is equal.”

Collecting human rights data in the n-tier supply chain is challenging for company C 4 because of the complexity of its n-tier supply chain network which is characterized by a large number of globally dispersed, constantly changing supplier relationships distributed over up to eight different tier-levels:

“Due to the diversity of its products, the company C 4 Group’s supply chain is highly complex, globally widely ramified and subject to constant change (...) with up to eight stages.”

176 Original wording in German: “...dass die Erwartung, die Mindestanforderungen für alle gleich sind (...) so dass Lieferanten, eben nicht sagen können, ja gut company A und company B haben viel zu hohe Anforderungen, ist mir egal ich beliebere nur company C und company D. Sondern dass man sagt, im Prinzip egal wen ihr beliefern wollt, so sieht’s aus, das sind die Anforderungen.” (Translated by the author).

177 Original wording in German: “Ganz klar ist die assurance, wie stelle ich sicher, dass die Daten, die ich bekomme, stimmen (...) weil Daten sind nicht gleich Daten.” (Translated by the author).

178 Original wording in German: “Die Lieferkette des company C 4 Konzerns ist aufgrund der Vielfalt seiner Produkte hochkomplex, global weit verzweigt und einem stetigen Wandel unterworfen (...) mit bis zu acht Stufen.” (Translated by the author).
Due to constantly changing supplier relationships the collected data can soon become obsolete:

“...that this is often only a time recording (...) You spend an enormous amount of effort to somehow find out, maybe you do a human rights risk analysis, and then a transport company changes and then you suddenly have a completely different sub-supply chain and all the effort you have made is a bit for the garbage can and that is a big challenge.”

Access to human rights data is also challenging due to generally missing contractual relationships with n-tier suppliers:

“If we want to get data and don’t have this leverage of awarding contracts, it is of course still incredibly difficult and you are always dependent on the willingness and discretion of the supplier to participate.”

Company C 4 counteracts the n-tier supply chain complexity by limiting its focus to risky raw materials.

179 Original wording in German: “…dass dies oft nur eine Zeitaufnahme ist (...) Du wendest halt enorm viel Aufwand auf, um irgendwie herauszufinden, vielleicht machst du eine menschenrechtliche Risikoanalyse, und dann aber wechselt so ein Transportunternehmen und dann hast du plötzlich eine ganz andere sub-Lieferkette und alles das was du an Aufwand gemacht hast ist ein bisschen für die Tonne und das ist eine große Herausforderung.” (Translated by the author).

180 Original wording in German: “Wenn wir da an Daten kommen wollen und nicht diesen Hebel der Vergabe haben, ist es natürlich immer noch wahnsinnig schwer und man ist immer auf die Bereitschaft und das Gutdünken des Lieferanten angewiesen mitzumachen.” (Translated by the author).
5.1.4.3  Findings research question three

For company C 4 it is challenging to prioritize the adverse human rights impacts because it is difficult to assess the scale, scope and reversibility:

“Evaluating means primarily prioritizing, and the requirement that is actually placed on us, is to look at the scope, scale, and the reversibility, and that is of course very, very complicated.” 181

Furthermore, it is challenging for company C 4 to assess its own responsibility in the supply chain on the basis of a responsibility which differentiates between ‘contribution’ and ‘direct link’ because it is difficult to specify clear criteria for these two cases:

“It is of course always difficult to assess what is still ’directly linked’ to, for example, and where this is no longer the case. Here, too, it is not so easy to clearly define the criterion of what is ‘contributed’ and what is ‘directly linked to’.” 182

In cases where a supplier does not allow access to human rights data, company C 4 cannot assess the adverse human rights impacts, but only the general human rights risk on the basis of country and sector-specific risks. Company C 4 stressed that it makes no sense to implement HRIA at supplier sites which refuse access to the human rights data, because these suppliers are also not willing to cooperate with respect to required improvements:

181 Original wording in German: “Bewerten heißt ja vor allem auch priorisieren, da wäre ja dann die Anforderung, die eigentlich an uns gestellt wird, sich Umfang, Schwere, Wiedergutmachungsmöglichkeiten anzusehen und das ist halt sehr, sehr kompliziert natürlich.” (Translated by the author).

182 Original wording in German: “Weil auch das (...) natürlich immer schwierig ist einzuschätzen, was ist jetzt noch direkt linked zu zum Beispiel und wo ist das dann nicht mehr der Fall. Auch da, klare Hinterlegung Kriterium was ist ,beitragen‘, was ist ,directly linked to‘ ist nicht so einfach.” (Translated by the author).
“If he’s not even willing to give us data, he’s not going to be willing to work with us on improvements.”

Company C 4 counteracts the assessment challenges by cooperating with other companies.

5.1.5 Case C 5

Company C 5 is a large chemical and pharmaceutical stock company which is headquartered in Germany. In the chemical division, company C 5 develops robust plants and crop protection products with a particular focus on cotton, rice and corn. In the pharmaceutical division company C 5 develops both non-prescription and prescription medicines. In the domain of prescription medicines company C 5 has a particular focus on cardiovascular diseases, women’s health, oncology, haematology, ophthalmology, and genetic and cell therapy. In the domain of non-prescription medicines company C 5 has a particular focus on food supplements, skin care, allergies, common cold and pain.

In 2020 company C 5 employed 99,538 employees and had more than €40 billion revenues. Company C 5 has sites in more than 80 different countries in Europe, America and Asia and business relationships with approximately 97,000 first tier suppliers in 140 different countries in Europe, America, Africa, Asia and Oceania.

Company C 5 operates within a comparatively strong regulatory context which is further aggravated due to the recently passed supply chain due diligence law in Germany; see Chapter 5.1.1.

---

183 Original wording in German: “Wenn der nicht mal bereit ist uns Daten zu geben, wird der auch nicht bereit sein, mit uns an Verbesserungen zu arbeiten.” (Translated by the author).
Company C 5 does not have a dedicated department for managing human rights, but a sustainability department which is responsible for managing direct adverse human rights impacts and a sustainable supply chain department which is responsible for managing indirect adverse human rights impacts in the supply chain. HRIA concerning direct adverse human rights impacts have been implemented for a couple of decades and HRIA concerning indirect adverse human rights impacts in the supply chain have been implemented since 2010, with approximately 30 employees being responsible for the former and ten employees for the latter. Company C 5 implements stand-alone HRIA for both direct adverse human rights as well as indirect adverse human rights impacts in the supply chain.

To understand its direct adverse human rights impacts, company C 5 conducts audits at its own sites and implements online surveys among its own employees. In addition to this, company C 5 consults other relevant stakeholders.

The first step in the HRIA regarding indirect adverse human rights impacts in the first tier supply chain is a classification of suppliers into ‘strategically important’ and ‘strategically not important’ suppliers. Company C 5 analyses the general sustainability risk of all suppliers that have been classified as ‘strategically not important’ and exceed a certain a purchasing volume. The general sustainability risk is assessed on the basis of a combination of two risk categories: country risk and product or service risk. Company C 5 uses for these assessments internationally recognized risk classifications, such as for instance those of the World Bank and the United Nations. Supplier sites which either have a high risk of adverse human rights impacts and/or have been classified as strategically important suppliers, are assessed via the external service provider EcoVadis within the industry initiative Together for Sustainability (TfS) by means of SAQs in combination with media screenings. Supplier sites with a particularly high risk of adverse human rights impacts are assessed by means of second and third party audits within the industry initiatives TfS and the Pharmaceutical Supply Chain Initiative (PSCI), both of which include employee consultations. Company C 5 participates in these two industry initiatives to enhance
the effectivity and efficiency of its sustainable supply chain activities. In 2020 company C 5 assessed approximately 600 suppliers on the basis of SAQs in combination with media screenings via EcoVadis and 100 suppliers by means of second and third party audits. Due to the corona virus pandemic, five supplier sites had to be audited virtually.

Data on adverse human rights impacts in the n-tier supply chain are collected indirectly through first tier suppliers (via SAQs and audits) and directly by means of audits. Company C 5 has identified a particularly high risk of adverse human rights impacts at the beginning of its seed supply chain and therefore prioritizes the cultivation of seeds for HRIA.

Company C 5 consults different stakeholders with respect to indirect adverse human rights impacts in the supply chain and administers its own grievance mechanism.

5.1.5.1 Findings research question one

For company C 5 it is challenging that the internationally recognized human rights are abstract rights which leave room for interpretation. At company C 5, internal experts from different disciplines interpret the internationally recognized human rights together but, in contrast to natural science topics, it is difficult for company C 5 to achieve consensus when the experts are from different countries. The interpretation differs from one expert to another, even for rights such as a ‘just and favourable remuneration’, which can be substantiated on the basis of concrete parameters such as supermarket baskets:

“When we have a question on a scientific topic, several subject matter experts, laboratory technicians, chemists, etc. are always brought in and there is usually THE one answer (...) in terms of human rights topics we also arrive at an answer through swarm
knowledge, but depending on the country the expert comes from, there is not always consensus. So it is not so clear. Let me give you an example, when we introduced living wages (...) you can calculate something with supermarket baskets (...) but whether that is a fair amount, is completely different per country. That means (...) there are different internal perceptions.”  

Company C 5 counteracts this challenge by taking legal advice from specialized external law firms.

For company C 5 it is also challenging that the international human rights covenants are interpreted differently by varying countries, leading to diverse national corporate human rights laws in different countries. Company C 5 indicated that it is particularly challenging in those situations where the international human rights law and the respective national laws are conflicting, such as for instance with respect to freedom of speech and freedom of association in China and Saudi Arabia and LGBTQ rights in the Middle East:

“That's the biggest challenge, when something is interpreted differently in a national law, it exists, but it has a different threshold, that's also challenging enough (...) but when a country has a law that makes it illegal, against the law, then it gets really complicated.”

---


185 Original wording in German: “Das ist so die größte Herausforderung, wenn etwas in einem lokalen Gesetz anders interpretiert wird, es gibt es, aber es hat eine andere Schwelle, das ist auch schon herausfordern genug (...) wenn aber ein Land ein Gesetz hat, dass das illegal, gesetzeswidrig ist, dann wird es richtig kompliziert.” (Translated by the author).
The interpretation of the provision of the UNGP to respect the internationally recognized human rights in such cases “to the greatest extent possible” (United Nations, 2011, p. 25, Commentary on Guiding Principle No. 23), is very difficult according to company C 5. To understand the provision, company C 5 took legal advice from specialized law firms. Company C 5 described that only specialized lawyers were able to explain the interpretation of this provision:

“The interpretation is very, very difficult (...) we work together with law firms in terms of our activities, so it is now clear, but it is by no means so clear (...) I have not yet experienced that someone can explain it to me very well if he or she does not work in a law firm.”

The provision to respect not only the respective national corporate human rights laws, but also the internationally recognized human rights, offers according to company C 5 a good compass orientation in those countries which have not ratified the international human rights covenants.

5.1.5.2 Findings research question two

For company C 5 it is challenging to collect data within its own operations due to limited staff capacities. The employees at company C 5 have very good knowledge of human rights. In terms of the consultation of potentially impacted rights holders and other relevant stakeholders, company C 5 reported difficulty in assessing when the input is sufficient and fairly weighted:

186 Original wording in German: “Die Interpretation ist sehr, sehr schwierig (...) Wir arbeiten bei unseren Aktivitäten mit Anwaltskanzleien zusammen, deswegen ist es jetzt mittlerweile klar, aber es ist auf gar keinen Fall so klar (...) ich habe es noch nicht erlebt, dass mir das jemand sehr gut erklären kann, wenn er oder sie nicht in einer Kanzlei mitarbeitet.” (Translated by the author).
“When does a company have enough input and has weighted it fairly.”

When collecting human rights data from its first tier suppliers company C 5 was first confronted with a restricted willingness of suppliers to be verified by means of an audit and bearing the associated costs. Company C 5 was able to overcome this challenge by declaring the verification process as a binding award criterion and by joining the industry initiatives ‘TfS’ and ‘PSCI’. Company C 5 has found that industry/multistakeholder initiatives offer further advantages: the opportunity for exchange with others and to generate efficiency gains through the standardization of approaches and the sharing of assessment data. As a result suppliers are confronted with one uniform request rather than with many different ones from varying companies:

“...for suppliers not to be bothered by 20 companies with the same request, but to have a consolidation there.”

Company C 5 assumes that industry/multistakeholder initiatives also help to ensure that the collected human rights data are accurate, comprehensive and up-to-date due to the high quality standards of the verification measures. Company C 5 has found that participation in industry/multistakeholder initiatives, however, can also be challenging due to the limited commitment of participating companies. The onboarding of new member companies also slows down the development of the initiatives because of varying degrees of corporate maturity.

187 Original wording in German: “Ab wann ein Unternehmen genug Input sich geholt hat und es fair gewichtet hat.” (Translated by the author).

188 Original wording in German: “...für Lieferanten, dass sie nicht von 20 Unternehmen belästigt werden mit derselben Anfrage, sondern dass sie da eine Konsolidierung haben.” (Translated by the author).
Collecting the human rights data in the n-tier supply chain is challenging for company C 5 due to complex non-transparent supply chain networks. Company C 5 has found that tier one suppliers are generally not willing to disclose their suppliers:

“Lack of transparency, no knowledge about who actually the tier 2, tier 3 is (...) I have never seen it before that a tier 1 would open up voluntarily and say, here are the suppliers who supply me.”

The only exception is the short seed supply chain which normally consists of not more than two tier levels. In the seed supply chain company, C 5 knows both its first tier suppliers, who function as distributors that coordinate the harvest of the farmers, and the farmers themselves.

5.1.5.3 Findings research question three

When company C 5 identifies adverse human rights impacts in its supply chain, it asks the respective supplier to eliminate the violation, without assessing whether it has contributed to the adverse human rights impacts:

“In purchasing, there is no such differentiation. If we find out that a supplier is violating human rights, we agree with the supplier how and by when he has to solve the problem. Where we have a gradation is the degree of severity, is it a slight risk or a severe risk, but whether it is due to company C 5 or someone else, we have never

189 Original wording in German: “Fehlende Transparenz, kein Wissen darüber, wer überhaupt Tier 2, Tier 3 ist (...) dass ein Tier eins mal sagt, hier sind die Lieferanten, die mich beliefern, das habe ich noch nie mitbekommen, dass ein Lieferanten das so freiwillig öffnet.” (Translated by the author).
made such a distinction (...) we have never asked ourselves the question, is it due to us or is it due to a third party.” 190

Company C 5 once tried to assess, on the basis of a theoretical case example, the transition from being ‘directly linked’ to a ‘contribution’, hence when the conditions for a contribution are met. According to company C 5 the theoretical assessment was very complex and resulted in ten different opinions:

“Well, we haven’t found that out yet, but we tried to play it out theoretically, at what point you are simply no longer indirect, at what point you have to assume that it somehow has a contribution, but as I said, that was a theoretical exercise and it was incredibly complex, we also ended up with ten different opinions.” 191

5.1.6 Case C 6

Company C 6 is a large technology stock company which is headquartered in Germany. Company C 6 develops braking, steering, entrance and air-conditioning systems for rail and commercial vehicles.

In 2020 company C 6 employed 29,500 employees and had more than €6 billion revenues. Company C 6 has more than 100 sites in 30 different countries in Europe, America and Asia and business relationships with approximately 29,000 first tier suppliers.

190 Original wording in German: “Im Einkauf gibt es diese Differenzierung nicht, wenn wir bei einem Lieferanten feststellen, dass er oder sie Menschenrechte verletzt, dann wird mit den Lieferanten vereinbart, wie er bis wann die zu lösen hat. Wo wir eine Abstufung haben ist der Schweregrad, ist das ein leichtes Risiko oder ein severe risk, aber ob das jetzt an company C 5 liegt oder jemand anderen, das haben wir noch nie unterschieden (...) wir haben uns da nie die Frage gestellt, liegt das jetzt an uns oder liegt das an Dritten.” (Translated by the author).

191 Original wording in German: “Also das haben wir bei uns noch nicht rausgefunden, wir haben das aber mal versucht theoretisch durchzuspielen, ab wann man einfach nicht mehr indirekt ist, ab welchen Grad man jetzt davon ausgehen muss, dass es doch schon irgendwie eine contribution hat, aber wie gesagt, das hatten wir in einer theoretisches exercise und das war unfassbar komplex, wir sind auch am Ende zu zehn verschiedenen Meinungen gekommen.” (Translated by the author).
suppliers in more than 70 different countries in Europe, America, Africa, Asia and Oceania. Company C 6 purchases primarily semi-finished products, (electronic) components and synthetic materials. The purchased share of raw material is relatively low.

Company C 6 operates within a comparatively strong regulatory context which is further aggravated due to the recently passed supply chain due diligence law in Germany; see Chapter 5.1.1.

Company C 6 does not have a dedicated department for managing human rights, but a corporate responsibility department which is responsible for managing direct adverse human rights impacts and a sustainable supply chain department which is responsible for managing indirect adverse human rights impacts in the supply chain. HRIA concerning both direct adverse human rights impacts as well as indirect adverse human rights impacts in the supply chain have been implemented since 2017, with approximately 0.5 employees being responsible for the former and two employees for the latter. Company C 6 implements stand-alone HRIA and integrated HRIA for both direct adverse human rights as well as indirect adverse human rights impacts in the supply chain.

To assess its direct adverse human rights impacts, company C 6 conducts audits at sites which have a high risk of adverse human rights impacts. Company C 6 consults different stakeholders in an informal way in the context of industry dialogues with respect to both direct adverse human rights impacts as well as indirect adverse human rights impacts in the supply chain.

Data on adverse human rights impacts in the first tier supply chain are collected by means of SAQs, SAQs in combination with media screenings and third party audits. The commercial vehicle division uses the SAQ of the industry initiative Drive Sustainability (service provider NQC) and the rail vehicle division uses the SAQ of the industry initiative Railsponsible (service provider EcoVadis). EcoVadis assesses
company sites on the basis of SAQs in combination with media screenings. The Railsponsible initiative was founded in 2015 by company C 6 together with other companies from the railway industry to increase the efficiency and effectivity of their sustainability oriented supply chain activities.

Third party audits are implemented at supplier sites with a high risk of adverse human rights impacts and include consultation with the suppliers’ employees. Company C 6 assesses the general risk of supplier sites by integrating sustainability aspects into other on-site assessments. In 2020 company C 6 assessed approximately 900 first tier suppliers of direct material by means of SAQs and SAQs in combination with media screenings. Planned third party audits at high risk supplier sites had to be cancelled due to the corona virus pandemic.

Because of limited resources, company C 6 does not assess adverse human rights impacts in the n-tier supply chain.

Company C 6 administers its own grievance mechanism.

5.1.6.1 Findings research question one

Given that company C 6 is a global business with 100 sites in 30 different countries and business relationships with approximately 29,000 first tier suppliers in more than 70 different countries, it is forced to examine many different national corporate HRDD laws which can be quite vague:

“We see that there are simply different laws (...) with different specifications, and of course we now see Germany rushing ahead with completely new specifications, which I believe are still very, very
unclear for every company, so there is also room for interpretation in some laws again.”

Another challenge refers to the fact that internationally recognized human rights are abstract rights which leave scope for interpretation:

“At one point or another, we have to define for ourselves exactly how we want to deal with a situation that is not 100 percent defined.”

Company C 6 counteracts this challenge by taking advice from a consulting company that is specialized in human rights. Furthermore, company C 6 has exchanges with other companies within industry and multistakeholder initiatives. Despite these counter strategies, company C 6 indicated it was in a state of uncertainty as to whether its corporate human rights responsibility is sufficiently met.

For company C 6 it is challenging that there can be conflicts between the international human rights law and the respective national laws. The provision of the UNGP to respect internationally recognized human rights in such cases “to the greatest extent possible” (United Nations, 2011, p. 25, Commentary on Guiding Principle No. 23), should be further substantiated according to company C 6, because the scope for interpretation offers the opportunity not to respect the internationally recognized human rights:

“It gives us room for interpretation, that means it gives those who are responsible room for interpretation not to do it, and that is

192 Original wording in German: “Wir sehen es sind einfach unterschiedliche Gesetze (...) mit unterschiedlichen Vorgaben, sehen jetzt natürlich Deutschland vorpreschen mit ganz neuen Vorgaben, die glaube ich für jedes Unternehmen noch sehr, sehr unklar sind, also auch wieder Interpretationsspielraum in manchen Gesetzen drin.“ (Translated by the author).

193 Original wording in German: “Wir müssen an der einen oder anderen Stelle genau für uns definieren, wie möchten wir mit einem nicht 100 Prozent definierten Sachverhalt umgehen.“ (Translated by the author).
actually the negative. A clear specification, in the sense of what must be done, is more desirable, because then you have a clear black-and-white picture.” 194

5.1.6.2 Findings research question two

One of the challenges company C 6 faces when collecting human rights data in the own company is the limited human rights knowledge of its employees. According to company C 6 this is attributable to missing information campaigns and inadequate human rights training:

“The knowledge is very limited, because there are no information campaigns, there is a little bit of a Codes of Conduct training, covering the topics that we don’t want forced labour, no child labour, such topics are addressed briefly and concisely, but that is all that the employees receive.” 195

When collecting human rights data from its first tier suppliers the access can be difficult, depending on the negotiating position which, in relation to the specific supplier relationship, varies from very weak to very strong. The negotiating position is strengthened according to company C 6 through participation in industry/multistakeholder initiatives. Company C 6 reported that those initiatives also offer efficiency gains through the standardization of approaches and the sharing of

194 Original wording in German: “Es gibt uns Interpretationsspielraum, das heißt es gibt auch den Verantwortlichen Interpretationsspielraum das eben nicht zu tun und das ist eigentlich das Negative. Eine klare Vorgabe, im Sinne von das muss gemacht werden ist wünschenswerter, weil dann hat man ein klares schwarz-weiß Bild.” (Translated by the author).

195 Original wording in German: “Das Wissen ist sehr begrenzt, weil es gibt keine Informationskampagnen, es gibt bisschen eine Codes of Conduct Schulung, da werden die Themen wir wollen keine Zwangsarbeit, keine Kinderarbeit und sowas werden kurz und knapp adressiert und das ist aber auch alles was die Mitarbeiter mitbekommen.” (Translated by the author).
assessment data. As a result suppliers are confronted with one uniform request rather than with many different ones from varying companies.

Due to limited resources, company C 6 has not assessed the adverse human rights impacts in the n-tier supply chain:

“We now have the challenge of actually verifying our tier 1 suppliers (...) so that we don’t even have the resources to refer to the n-tier.”

5.1.6.3 Findings research question three

Assessing the adverse human rights impacts is challenging for company C 6 because different employees interpret the data differently, resulting in varying assessments:

“In my view, the interpretation of the data is a big problem, meaning that when two people (...) look at it, they quickly come to different conclusions. Some say we have no risk, others say that too little is known for this to be concluded.”

Company C 6 highlighted that assessing adverse human rights impacts is generally a complex task which would require a specialized course of study:

196 Original wording in German: “Wir haben jetzt die Herausforderung tatsächlich soweit unsere Tier 1 Lieferanten zu prüfen (...) dass wir gar nicht die Ressourcen haben, um uns auf den n-tier zu beziehen.” (Translated by the author).

197 Original wording in German: “Die Interpretation der Daten ist aus meiner Sicht ein genau so großes Problem, das heißt zwei Menschen (...) die drauf schauen kommen schnell mal zu anderen Ergebnissen. Die einen sagen wir haben kein Risiko, die anderen sagen aus meiner Sicht wissen wir zu wenig damit es ein Risiko gibt.” (Translated by the author).
“There are really many, many handouts here and there (...) but you actually need almost a complete course of study to be prepared for it.” 198

Company C 6 reported that the existing data collection approaches allow only to a limited extent the assessment of adverse human rights impacts in the supply chain:

“I would say the tool landscape does not yet give a distinct possibility to really say, if I collect the data, then I can really interpret something from it.” 199

Company C 6 explained that while the EcoVadis SAQ queries very detailed information, the data are not site-specific. Contrary to this, the Drive Sustainability or NQC SAQ queries site specific information, but is less detailed, thereby limiting its information value:

“...where the NQC questionnaire (...) does not go into so much detail in order to perhaps draw better conclusions (...) that is why for me for example the (...) questionnaire is a nice questionnaire, but it is not designed to assess the impacts, because it only asks about governance, it asks whether you have an ISO 14001 certificate, that is nice information, but how effective is such a certificate, meaning how do the business processes behind it function; you cannot draw any conclusions from that.” 200
Company C 6 also queries the information value of its audits given that they are announced in advance, last only one day and are limited to specific topics:

“In our case, the audits are announced (...) it's only one day, you don't have the opportunity to analyse the complete range of sustainability topics and processes in one day, which means that you limit it to a certain extent, to a certain scope, to important topics for you, but that doesn’t mean that you have an overview over all topics.”

Company C 6 counteracts the assessment challenges by taking advice from a consulting company which is specialized in human rights.

5.1.7 Case C 7

Company C 7 is a large technology company headquartered in Germany and subdivided into four division: mobility solutions, industrial technology, consumer goods and energy, and building technology. Company C 7 is one of the leading suppliers of the automobile sector. Company C 7 develops powertrain solutions, chassis control systems, automotive steering and automotive electronics; it also develops for instance driver assistance systems for autonomous driving. In the industrial technology division company C 7 develops drive and steering technologies for machines. In the consumer goods division, company C 7 develops tools and devices for professional and private crafting such as cordless screwdrivers, and household

Fragebogen, ein netter Fragebogen ist aber nicht impact ausgelegt, weil eben nur governance gefragt wird, es wird gefragt habt ihr eine ISO 14001 Zertifikat, das ist eine nette Info, aber wie wirkungsvoll ist so ein Zertifikat, also wie funktionieren dann die Geschäftsprozesse dahinter, also daraus kann man keinen Rückschluss machen.” (Translated by the author).

201 Original wording in German language: “Bei uns sind die Audits angekündigt (...) es ist nur ein Tag, man hat an einem Tag nicht die Möglichkeit die komplette Bandbreite an Nachhaltigkeitsthemen und Prozessen zu analysieren, das heißt man beschränkt sich da wieder auf ein gewisses Maß, auf einen gewissen scope und sagt, dass sind für mich die wichtigen Themen, das heißt noch lange nicht, dass man dann alle Themen im Blick hat.” (Translated by the author).
appliances such as washing machines, dishwashers and vacuum cleaners. In the energy and building technology division, company C 7 develops technologies for building security (video monitoring, systems for entrance controls, alarm systems) and energy efficiency (heating and air conditioning systems).

In 2020 company C 7 employed 395,029 employees and had more than €70 billion revenues. Company C 7 has 400 sites in approximately 60 different countries in Europe, America, Africa, Asia and Oceania and business relationships with approximately 23,000 first tier suppliers in around 60 different countries in Europe, America, Africa, Asia and Oceania. Company C 7 purchases primarily finished and semi-finished components. The share of raw material (primarily steel, aluminium and synthetic material) is relatively low.

Company C 7 operates within a comparatively strong regulatory context which is further aggravated due to the recently passed supply chain due diligence law in Germany; see Chapter 5.1.1.

Company C 7 does not have a dedicated department for managing human rights, but a sustainability department which is responsible for managing direct adverse human rights impacts and a sustainable supply chain department which is responsible for managing indirect adverse human rights impacts in the supply chain. HRIA concerning both direct adverse human rights impacts as well as indirect adverse human rights impacts in the supply chain have been implemented since 2020 by approximately ten employees. Company C 7 implements integrated HRIA for both direct adverse human rights as well as indirect adverse human rights impacts in the supply chain.

To assess its direct adverse human rights impacts, company C 7 analyses the reports of rating agencies and industry comparisons. Company C 7 does not ask its employees whether they feel that their rights have been infringed. Instead company C 7 consults its business segment, department and region heads in order to make respective assessments.
Data on adverse human rights impacts in the first tier supply chain are collected by means of second party quick checks (visual on-site assessment of a limited list of human rights) and second party audits. The former are executed within regular supplier site visits by employees from the purchasing or quality department. In 2020 company C7 implemented more than 1,000 quick-checks. Second party audits are implemented at high risk supplier sites. The risk level is assessed on the basis of the country, sector and concrete indications. The country risk is assessed amongst others on the United Nations’ Human Development Index and the Corruption Perception Index. Second party audits include a consultation with the suppliers’ employees.

Data on adverse human rights impacts in the n-tier supply chain are collected indirectly through first tier suppliers via second party audits and directly via second party audits; the latter is applied only in extremely rare cases in ‘relevant’ raw material supply chains. Raw materials are classified as relevant on the basis of media and NGO reports and business factors such as the raw material requirement of company C7. Company C7 prioritizes the extraction of ‘relevant’ raw material supply chains for HRIA.

Company C7 administers its own grievance mechanism.

5.1.7.1 Findings research question one

Given that company C7 is a global business with 400 sites in 60 different countries and business relationships with approximately 23,000 first tier suppliers in 60 different countries, it is forced to examine many different national corporate HRDD laws which can be quite vague:

“...that they are not congruent (...) for instance, the German supply chain due diligence law (...) raises other issues and other questions and uses other formulations, which in turn leave room for
interpretation (...) this applies to all laws, which makes it more complex, hence the list of requirements is getting longer.” 202

The complexity is further amplified due to the provision of the UNGP to respect not only the national corporate HRDD laws, but also the internationally recognized human rights which, due to their vagueness, leave room for interpretation, and in turn lead to different interpretations:

“It increases the complexity immensely (...) So human rights are interpreted differently in different parts of the world and if we now say that international human rights should be respected, then they are also interpreted differently in other parts of the world.” 203

For company C 7 it is also challenging that there can be conflicts between the international human rights law and the respective national laws, such as with respect to non-discrimination or the right to freedom of peaceful assembly and association:

“To give an example, if we talk about being inclusive and not discriminating, and in some countries of the world homosexuality is forbidden and persecuted, then we are in a direct contradiction (...) and this applies also (...) to freedom of association or freedom of union.” 204

202 Original wording in German: “...dass sie nicht deckungsgleich sind (...) zum Beispiel das deutsche Lieferketten-Sorgfaltspflichtengesetz (...) wirft nochmal andere Themen und andere Fragen auf und verwendet andere Formulierungen, die dann wiederum Interpretationsspielraum zulassen (...) das trifft eben auf alle Gesetze zu, was es komplexer macht, also die Anforderungsliste wird länger.” (Translated by the author).

203 Original wording in German: “Es erhöht die Komplexität ungemein (...) Also Menschenrechte werden anders interpretiert in verschiedenen Teilen der Welt und wenn wir jetzt sagen es sollen internationale Menschenrechte geachtet werden, dann werden die auch in anderen Teilen der Welt anders interpretiert.” (Translated by the author).

204 Original wording in German: “Um ein Beispiel zu nennen, wenn wir davon sprechen, dass wir inklusiv sein wollen und nicht diskriminieren wollen und in manchen Ländern der Welt Homosexualität verboten ist und verfolgt wird dann sind wir in einem direkten Widerspruch (...) und das kann man jetzt (...) genau so über Koalitionsfreiheit oder Vereinigungsfreiheit spielen.” (Translated by the author).
On the one hand company C 7 is unsure how to interpret the provision of the UNGP to respect the internationally recognized human rights in such cases “to the greatest extent possible” (United Nations, 2011, p. 25, Commentary on Guiding Principle No. 23). On the other hand it is unsure whether it wants a further specification that would create clarity as it cannot foresee the result:

“It is certainly a place of ambiguity (...) I wonder if we really want clarity or not, since all directions are possible.”

Company C 7 counteracts the above described challenges by taking advice from in-house lawyers and by exchanges with other companies within associations. Despite these counter strategies, company C 7 indicated to be in a state of uncertainty with respect to the interpretation of its corporate human rights responsibility:

“I still think it is unclear, given that it leaves a lot of room for interpretation (...) the whole issue of human rights is not a..., we sometimes compare it to CO₂, so I can measure CO₂ emissions; there's a reason why companies have a very hard time developing human rights KPIs.”

5.1.7.2 Findings research question two

One of the challenges company C 7 faces when collecting data for the HRIA within its own company refers to the limited human rights knowledge of employees. Company

205 Original wording in German: “Es ist mit Sicherheit eine Stelle der Unklarheit (...) ich frage mich ob wir wirklich Klarheit haben wollen oder nicht, es kann ja in alle Richtungen gehen.” (Translated by the author).

206 Original wording in German: “Ich empfinde es trotzdem weiterhin als unklar, also es lässt viel Interpretationsspielraum zu (...) das Ganze Thema Menschenrechte ist kein, wir vergleichen es manchmal mit CO₂, also ich kann CO₂ Emissionen messen, es gibt einen Grund warum sich Unternehmen sehr schwer tun, KPIs zu Menschenrechte zu haben.” (Translated by the author).
C 7 highlighted that the knowledge is limited with respect to both what human rights exist and what constitutes a human rights violation.

When collecting human rights data from its first tier suppliers the access can be difficult, depending on the negotiating position which, in relation to the specific supplier relationship, varies from very weak to very strong. According to company C 7 participation in industry/multistakeholder initiatives strengthens the negotiating position. Company C 7 outlined that while access to the human rights data is facilitated through the participation in industry/multistakeholder initiatives, this has no influence on the data quality, hence whether the human rights data are accurate, comprehensive and up-to-date. In the view of company C 7 the data quality rather depends on the length of time a particular topic has been addressed by a company:

“The quality improves over time because also the maturity of an organisation grows (...) ten years ago people were asking whether working hours are adhered to, but the overall conglomerate of human rights was not yet being asked about as massively as it is today, and that is also how we see the data availability, the older topics are already better documented and more mature, and those topics that are being asked about relatively recently are not yet as good in terms of the data quality.”

In terms of data collection in the n-tier supply chain, company C 7 highlighted non-transparency as a challenge:

207 Original wording in German: “Die Qualität verbessert sich über die Zeit, weil auch der Reifegrad einer Organisation wächst (...) vor zehn Jahren hat man gefragt nach, ob Arbeitszeiten eingehalten werden, aber es wurde noch nicht so das Gesamtkonglomerat Menschenrechte so massiv angefragt wie es heute der Fall ist und so sehen wir auch die Datenverfügbarkeit, also die älteren Themen sind auch schon besser dokumentiert und reifer und die Themen, die relativ neu gefragt werden, die sind auch noch nicht so gut in der Datenqualität.” (Translated by the author).
“Who should I write to in the sub-tier supply chain if I don’t know who is in the sub-tier supply chain? (…) We don’t even know who we should write to.” 208

This is aggravated by dynamic supplier relationships:

“The challenge that comes with that is, if I get an answer now, so even if I have an answer, it doesn’t mean it’s going to be the same in a month. This also increases the complexity in the sense that I have to make regular queries, which are very time-consuming.” 209

Access to human rights data in the n-tier supply chain is also challenging due to missing contractual relationships with n-tier suppliers:

“We have no contractual relationship with tier-n suppliers; once we have no contractual relationship, we depend on the goodwill of tier-n suppliers, if they say no, we have no recourse whatsoever.” 210

The counter strategy of company C 7 to overcome the n-tier supply chain challenges is a focus on risky raw materials.

---


209 Original wording in German: “Die Herausforderung die dazu kommt ist, wenn ich jetzt eine Antwort kriege, also selbst wenn ich eine Antwort habe, heißt es nicht, dass es in einem Monat noch so ist. Das erhöht die Komplexität auch noch einmal in dem Sinne, dass ich regelmäßige Abfragen machen muss, die sehr aufwendig sind.” (Translated by the author).

210 Original wording in German: “Wir haben keine Vertragsbeziehung mit tier-n Lieferanten, sobald wir keine Vertragsbeziehung haben, sind wir auf den good will von tier-n Lieferanten angewiesen, wenn die nein sagen, haben wir keinerlei Handhabe.” (Translated by the author).
5.1.7.3 Findings research question three

Company C 7 explained that a judgment on whether impacts constitute a human rights violation is difficult due to cultural differences, which lead to diverse assessment results:

“I’ll try to give you an example. Let’s take a theoretical example: the right to one’s own data is certainly viewed differently in Germany than by a comparable colleague in China; it’s simply a cultural difference, the bar is set differently (...) There is no standard that says this is now the worldwide standard.”

Furthermore, it is challenging for company C 7 to assess the severity of adverse human rights impacts, given that the indicators ‘scale’, ‘scope’ and ‘irremediability’ allow room for interpretation:

“The UNGP define scale, scope, irremediability (...). Nevertheless, this still leaves a lot of room for interpretation. And there again a lot of personal gusto comes into it, what is a lot and what is not a lot and what is difficult and what is not so difficult, is sometimes not as clear as it seems (...) we have already had many discussions about that.”

211 Original wording in German: “Ich versuche es mal an einem Beispiel zu machen. Jetzt mal ein theoretisches Beispiel, das Recht auf die eigenen Daten, das wird sicherlich in Deutschland anders gesehen als von einem vergleichbaren Kollegen in China, das ist einfach ein kultureller Unterschied, die Messlatte ist unterschiedlich (...) Es gibt da keinen Standard der sagt das ist jetzt weltweit dieser Standard.” (Translated by the author).

212 Original wording in German: “Die UNGP definieren ja schon scale, scope, irremediability (...). Trotzdem lässt das immer noch großen Interpretationsspielraum zu. Und auch da kommt wieder viel persönliches Gusto rein, also was jetzt viel ist und was nicht viel ist und was schwer ist und was nicht so schwer ist, ist manchmal nicht so klar wie’s scheint (...) darüber haben wir schon viele Diskussionen geführt.” (Translated by the author).
Company C 7 highlighted that the assessment, whether it has contributed to adverse human rights impacts or is directly linked to adverse human rights impacts, can be assessed differently depending on the perspective. The assessment can be different depending on whether assessed from a legal, business ethical or external stakeholder perspective:

“For me it has three aspects, first it is justiciable (...) then it is an ethical question, does this correspond to our own business ethics? And thirdly, maybe others, I say NGOs or something like that, say this is a violation, you are to blame, so all these three aspects, they can be evaluated very differently.”

5.1.8 Case C 8

Company C 8 is a large stock company headquartered in Switzerland. Company C 8 produces nutrition, beverages, pet food, food supplements and nutritional-focused medicine. In addition to this, company C 8 offers direct-to-consumer meal delivery services.

In 2020 company C 8 employed 268,350 employees and had more than €70 billion revenues. Company C 8 has more than 100 sites in over 40 different countries in Europe, America, Africa, Asia and Oceania and business relationships with more than 165,000 first tier suppliers in approximately 190 different countries in Europe, America, Africa, Asia and Oceania. Company C 8 purchases primarily 16 raw materials: coffee, cacao, dairy, palm oil, soya, sugar, cereals, grains, hazelnuts, vegetables, fish, seafood, meat, eggs, pulp and paper.

213 Original wording in German: “Für mich hat es drei Aspekte, ein Mal ist es justiziabel (...) dann ist es eine ethische Frage, entspricht das unserer eigenen business Ethik? Und als Drittes sind vielleicht andere, ich sage mal NGOs oder so etwas, die sagen das ist eine Verletzung da seid ihr dran schuld, also alle diese drei Aspekte, die können ganz unterschiedlich bewertet werden.” (Translated by the author).
Company C 8 operates within a comparatively strong regulatory context which is further aggravated due to the announcement of new legal provisions. In April 2021 the Swiss Federal Council announced the aim to legally oblige large Swiss companies to report inter alia about their human rights risks. Furthermore, the Swiss Federal Council announced it would pass a HRDD law with respect to child labour and conflict minerals (Swiss Federal Council, 2021a). According to the Swiss Federal Council (2021b), Swiss companies will be bound to satisfy the new statutory requirements for the financial year 2023. In addition to this, company C 8 is affected by the German HRDD supply chain law; see Chapter 5.1.1.

Company C 8 does not have a dedicated department for managing human rights, but an internal Human Rights Community team (consisting of 25 employees from different functions) that is responsible for managing direct adverse human rights impacts as well as indirect adverse human rights impacts in the supply chain. Company C 8 has implemented HRIA since 2008 and implements both stand-alone and integrated HRIA for both direct adverse human rights as well as indirect adverse human rights impacts in the supply chain.

Company C 8 consults different stakeholders such as from policy, science and NGOs with respect to both direct adverse human rights impacts as well as indirect adverse human rights in the supply chain. Company C 8 consults its own employees via an online survey.

Company C 8 implements HRIA in the supply chain for priority raw materials that originate from countries with a high risk of adverse human rights impacts. In 2020 company C 8 conducted six HRIA in its supply chain: three regarding hazelnuts from Turkey, two regarding cacao from Cote d’Ivoire and one regarding palm oil from Indonesia. Data on adverse human rights impacts in the first tier supply chain are collected by means of an individual company SAQ, second party audits, and via the

\[^{214}\text{This new law is comparable with the EU Directive 2014/95/EU.}\]
industry initiative Sedex’s SAQs and third party audits. Company C 8 participates in the industry initiative Sedex to enhance the efficiency and effectivity of its sustainability oriented supply chain activities.

Sedex has more than 60,000 members from over 180 countries (Sedex, 2021a). The industry initiative offers SAQs and third party audits (including the consultation of workers) and the exchange of the collected data among members (Sedex, 2021b). Third party audits are conducted by specialized independent audit companies that have been accredited by Sedex (Sedex, 2021b).

Data on adverse human rights impacts in the n-tier supply chain are normally collected indirectly through first tier suppliers (via SAQs and audits), but there are also raw materials such as cacao where the data are collected directly from n-tier suppliers via audits.

Company C 8 administers its own grievance mechanism.

5.1.8.1 Findings research question one

Given that company C 8 is a global business with 115 sites in 46 different countries and business relationships with more than 165,000 first tier suppliers in approximately 190 different countries, it is forced to examine many different national corporate HRDD laws:

“One fundamental challenge is, of course, that the laws at the moment shoot up like mushrooms from the ground. In other words, each country, or at least many countries, are developing their own
Given that these laws leave room for interpretation due to undefined legal terms, Company C 8 finds itself in a situation of legal uncertainty with respect to its corporate human rights responsibility:

“In any case, at least so far, we are still asking ourselves in many places what do terms such as ‘appropriate’, ‘substantiated knowledge’, etc. mean. (...) also just now with the supply chain due diligence law (...) what about all the global programmes that we have, with all the global analyses that have been made, what does that mean for us (...), is it enough if we as company C 8 have globally defined 15 high-risk raw materials, 11 human rights risks that are particularly relevant for us, or would we basically have to do that again specifically for the German market, that is a question that no one has been able to answer for me so far.”

The complexity is further amplified due to the provision of the UNGP to respect not only the respective national corporate HRDD laws, but also the international human rights law, which leaves scope for interpretation. Company C 8 has a relatively clear understanding of those 11 human rights which it prioritizes, but less clarity with respect to the remaining human rights:

215 Original wording in German: “Eine ganz grundsätzliche Herausforderung ist natürlich, dass es im Moment, dass die Gesetze so ein bisschen wie die Pilze aus dem Boden schießen. Also dass jedes Land oder zumindest viele Länder eben eigene Regulierungen aufbauen (...) wir haben natürlich dann die Herausforderung, dass wir in all diesen Märkten aktiv sind.” (Translated by the author).

216 Original wording in German: “Da ist es auf jeden Fall, zumindest bisher noch so, dass wir uns an ganz vielen Stellen die Frage stellen, was bedeuten denn jetzt Begriffe wie “angemessen”, “substantiierte Kenntnis” usw. (...) auch gerade jetzt beim Lieferketten-Gesetz (...) was ist denn mit den ganzen globalen Programmen, die wir haben, mit den ganzen globalen Analysen auch, die gemacht wurden, was bedeutet das für uns (...), reicht es, wenn wir als company C 8 global 15 hochrisiko-Rohstoffe definiert haben, elf Menschenrechtsrisiken, die besonders relevant für uns sind oder müssten wir das im Grunde als deutscher Markt auch nochmal wirklich für uns dezidiert machen, das ist eine Frage, die mir bis jetzt noch keiner beantworten konnte.” (Translated by the author).
“I don't think that everything is completely fixed down to the last
detail, so to speak, completely 100 percent clear, (...) we have really
broken down the 11 most important human rights topics for us on
which we are focusing, which we are prioritizing (...) and there we
have a much clearer picture.” 217

Company C 8 has found that there can be conflicts between the international human
rights law and the respective national laws. The vagueness of the UNGP’s provision to
respect the internationally recognized human rights in such cases “to the greatest
extent possible” (United Nations, 2011, p. 25, Commentary on Guiding Principle No.
23) represented at the beginning a bigger challenge for company C 8 than today.
Meanwhile company C 8 appreciates the vagueness of this provision as it offers room
for manoeuvre:

“It is precisely such formulations that, in case of doubt, have always
been a compromise between two worlds, and I think that this certain
leeway makes sense because if you write down exactly how, let’s say,
the ideal world should be, that doesn’t mean that this is the optimal
way to get there and that it would actually work that way. I believe
that at the end of the day you always need this leeway and freedom
to perhaps not only go the straight way, but also to the left and right
and still achieve the goal.” 218

217 Original wording in German: “Ich glaube nicht das alles komplett bis ins letzte Detail sozusagen
fixiert ist und komplett 100 prozentig klar ist, wir haben (...) die elf wichtigsten
Menschenrechtsthemen für uns nochmal heruntergebrochen auf die wir uns eben fokussieren, die wir
priorisieren (...) und da haben wir ein deutlich klareres Bild.” (Translated by the author).

218 Original wording in German: “Genau solche Formulierungen sind es ja immer, die im Zweifel ein
Kompromiss gewesen sind aus zwei Welten und diese gewissen Spielräume halte ich auch für sinnvoll
weil wenn man genau hinschreibt wie, ich sag mal die heile Welt sein sollte, heißt das ja noch lange
nicht, dass das auch der optimale Weg dahin ist und dass es dann auch wirklich so funktioniert. Ich
glaube am Ende des Tages braucht man immer diese Spielräume und Freiräume, um vielleicht eben
auch nicht nur den geraden Weg zu gehen, sondern auch links und rechts und trotzdem ans Ziel zu
kommen.” (Translated by the author).
5.1.8.2 Findings research question two

One of the challenges company C 8 faces when collecting the human rights data within its own company is a complex business structure with globally dispersed sites and varying hierarchy levels. Due to this, in some situations employees have a limited knowledge about the activities of other employees:

“...that it comes to such a situation where one hand does not quite know what the other is doing.”

One of the biggest challenges according to company C 8 is the limited human rights knowledge of employees. Many employees lack for instance awareness with respect to the fact that human rights violations can also occur in countries like Germany:

“...that there is not the problem awareness that, for example, in Germany such cases can also occur.”

Company C 8 highlighted that the human rights knowledge is also limited amongst employees in the supply chain.

When collecting human rights data from its first tier suppliers the access can be difficult, when the negotiating position is weak, but generally company C 8 has a strong negotiating position due to its size and because it is an attractive reference customer. In the view of company C 8, participation in an industry/multistakeholder initiative does not necessarily strengthen the negotiating position with suppliers, given that major differences exist in terms of the design of these initiatives. According

219 Original wording in German: “...dass es zu so Situation kommt wo die eine Hand nicht so ganz so weiß, was die andere tut.” (Translated by the author).

220 Original wording in German: “...dass es nicht das Problembewusststein gibt, dass zum Beispiel auch in Deutschland solche Fälle auftreten können.” (Translated by the author).
to company C 8, industry/multistakeholder initiatives which lack standards or provisions that are binding rather have no influence on the negotiating position:

“It depends on the initiative, as long as there are no standards or specifications from this initiative that have to be adhered to, which can then also be used in the argumentation, I would tend to say rather neutral.” 221

While industry/multistakeholder initiatives can facilitate access to human rights data, they also offer the opportunity for exchange with others and to develop joint measures. Company C 8 has found that in industry/multistakeholder initiatives it can, however, be difficult to achieve consensus due to different expectations among the participants. Besides, different companies have varying development levels. Furthermore, industry/multistakeholder initiatives, according to company C 8, cannot ensure good human rights data quality.

Collecting human rights data in the n-tier supply chain is challenging for company C 8 due to complex, non-transparent and dynamic supply chain networks. While company C 8 requires many different raw materials, its cacao supply chain alone consists of more than 100,000 smallholders:

“…because we have this large supplier base, just the direct suppliers alone, which is of course a big challenge in itself, but then in this chain, if you go further down, you are really talking about millions of people (...) in our cacao supply chain alone there are well over 100,000 cacao farmers (...). We know about half of them, but we don't know the other half yet (...) that is one supply chain, so we're

221 Original wording in German: “Es kommt auf die Initiative an, solange es aus dieser Initiative heraus keine Standards oder Vorgaben gibt die einzuhalten sind, die man dann in der Argumentation auch nutzen kann, würde ich sagen tendenziell eher neutral.” (Translated by the author).
not yet talking about palm oil, coffee and all the other things that exist.”

The counter strategy of company C 8 to overcome their supply chain complexity is a focus on specific raw materials and specific human rights.

Company C 8 counteracts the challenge of dynamic supply chain relationships by long-term supplier relationships and programmes:

“We really try to build long-term supplier relationships, which means that, if I take the cacao plan for example, most of the farmers who have become part of this programme over time are still part of it, and that's really the core, because otherwise you’re never going to achieve a fundamental change.”

5.1.8.3 Findings research question three

For company C 8 it is challenging to assess its own responsibility in the supply chain on the basis of the area of responsibility, as defined by the UNGP:

“If I buy cacao from the supplier’s, supplier’s, supplier’s, supplier, for example, am I then responsible if something happens or do I just

222 Original wording in German: “...allein schon dadurch dass wir eben diese große Lieferanten-Basis haben, alleine die direkten Lieferanten, was alleine für sich genommen natürlich schon eine große Herausforderung ist, aber dann in dieser Kette, wenn man weiter nach unten geht, dann spricht man eben wirklich von Millionen von Menschen (...) allein in unserer Kakao-Lieferkette sind weit über 100.000 Kakaobauern (...). Wir kennen gut die Hälfte, die andere Hälfte aber eben noch nicht (...) das ist eine Lieferkette, also da reden wir dann noch nicht von Palmöl, Kaffee und was es sonst noch alles gibt.” (Translated by the author).

223 Original wording in German: “Wir versuchen wirklich langfristige Liefer-Beziehungen aufzubauen, das heißt, wenn ich zum Beispiel den Kakao plan heranziehe, die meisten Bauern, die über die Zeit hinweg Teil von diesem Programm geworden sind, sind es auch noch und das ist im Grunde wirklich der Kern, weil ansonsten wird man es nie schaffen, dass sich wirklich grundlegend etwas ändert.” (Translated by the author).
contribute to it, so I think this demarcation is difficult to make so clearly in practice.”  

According to company C 8 the assessment of adverse human rights impacts in the supply chain can be challenging on the basis of certificates, because their information value can be restricted. Company C 8 reported that there can be a discrepancy between the conditions according to a certificate and the actual human rights situation.

Company C 8 counteracts the assessment challenges by focusing upon shorter assessment cycles. Rather than sampling inspections by a certifier every couple of years, supplier sites thus are constantly assessed:

“...that we try (...) not just to do spot checks where the certifier comes by every three years or so, but really try to work continuously with the suppliers.”

5.2 Aggregated case basis

This chapter outlines the findings on an aggregated case basis. Chapter 5.2.1 first gives an overview of the aggregated findings to research question one. This is followed in Chapter 5.2.2 by a summary of the aggregated findings to research question two. Chapter 5.2.3 concludes with the aggregated findings to research question three.

224 Original wording in German: “Wenn ich vom Lieferanten, des Lieferanten, des Lieferanten, des Lieferanten Kakao beziehe zum Beispiel, bin ich dann verantwortlich wenn was passiert oder trage ich nur dazu bei, also diese Abgrenzung ist glaube ich so deutlich in der Praxis schwer zu machen.” (Translated by the author).

225 Original wording in German: “...dass wir versuchen (...) nicht einfach nur Stichproben zu machen wo dann eben der Zertifizierer alle drei Jahre oder so mal vorbeikommt, sondern eben wirklich versuchen kontinuierlich mit den Lieferanten zusammenzuarbeiten.” (Translated by the author).
5.2.1 Findings aggregated on a case basis research question one

According to the findings, companies face four different implementation challenges when examining the HRIA provisions of the UNGP. The first challenge refers to the complexity to examine varying national corporate HRDD laws in different countries. Seven out of eight companies (C 1, C 2, C 4, C 5, C 6, C 7, C 8) described this as a challenge. Another challenge refers to abstract legal terms. Seven companies (C 1, C 2, C 4, C 5, C 6, C 7, C 8) commented that it is challenging to understand the provisions because the national corporate HRDD laws use abstract legal terms such as ‘appropriate’ or ‘substantiated knowledge’. In a similar vein, all eight companies highlighted the vagueness of the internationally recognized human rights, which leave scope for interpretation. Two companies (C 2, C 5) reported that the internationally recognized human rights are interpreted differently by different individuals. Company C 2 emphasized that industry initiatives provide sufficient clarity with respect to the interpretation of some rights such as the ‘right to just and favourable remuneration’ and the ‘abolition of child labour’. For other rights, according to company C 2, there is less clarity. Similarly, company C 8 indicated having a relatively clear understanding of those 11 human rights which it prioritizes, but less clarity with respect to the remaining human rights.

Seven companies (C 2, C 3, C 4, C 5, C 6, C 7, C 8) described the challenge of conflicts between the internationally recognized human rights and the respective national laws. The provision of the UNGP to respect the internationally recognized human rights in such cases “to the greatest extent possible” (cf. United Nations, 2011, p. 25, Commentary on Guiding Principle No. 23) leaves scope for interpretation in the view of all eight companies. The companies diverged on whether the provision should be further substantiated. Three companies (C 1, C 3, C 6) hold the view that the provision should be further substantiated. Company C 6 explained that the existing scope for interpretation offers the opportunity not to respect the internationally recognized human rights. One company (C 7) is not sure whether it wants a further concretization that would create clarity as it cannot foresee the result. Two companies (C 2, C 8)
reject further specification. Whereas for company C 8 abstract provisions offer flexibility to develop individual corporate solutions, for company C 2 the vagueness offers flexibility to pursue business interests.

Table 5.1 displays the challenges of all eight companies in the first HRIA process step.

Table 5.1 Corporate challenges in the HRIA provision examination

<table>
<thead>
<tr>
<th>Challenge</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Varying national corporate HRDD laws</td>
<td>C 1, C 2, C 3, C 4, C 5, C 6, C 7, C 8</td>
</tr>
<tr>
<td>Abstract legal terms in the national corporate HRDD laws</td>
<td>C 1, C 2, C 4, C 5, C 6, C 7, C 8</td>
</tr>
<tr>
<td>Vagueness of the internationally recognized human rights</td>
<td>C 1, C 2, C 3, C 4, C 6, C 7, C 8</td>
</tr>
<tr>
<td>Conflicts between the internationally recognized human rights and the national laws</td>
<td>C 2, C 3, C 4, C 5, C 6, C 7, C 8</td>
</tr>
</tbody>
</table>

According to the findings, the companies apply six different counter strategies to the above outlined challenges; the most often applied, which is implemented by four companies (C 2, C 4, C 6, C 7), refers to exchanges with other companies. Another counter strategy applied by three companies (C 2, C 5, C 6) is the consultation of external experts. Two companies (C 2, C 5) consult specialized external law firms and one company (C 6) specialized external consulting companies. Companies C 2 and C 7 consult in-house lawyers and companies C 2 and C 3 interpret the internationally recognized human rights with the help of handouts of different organisations or initiatives. One company (C 3) examines the implementation of other companies and in addition to this turns to politicians and asks for further specification.
Table 5.2 displays the counter strategies of all eight companies in the first HRIA process step.

Table 5.2 Corporate counter strategies in the HRIA provision examination

<table>
<thead>
<tr>
<th>Counter strategy</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exchanges with other companies</td>
<td>C 2, C 4, C 6, C 7</td>
</tr>
<tr>
<td>Consultation of external experts</td>
<td>C 2, C 5, C 6</td>
</tr>
<tr>
<td>Consultation of in-house lawyers</td>
<td>C 2, C 7</td>
</tr>
<tr>
<td>Handouts of different organisations/initiatives</td>
<td>C 2, C 3</td>
</tr>
<tr>
<td>Verification of the implementation of other companies</td>
<td>C 3</td>
</tr>
<tr>
<td>Asking politicians for further specification</td>
<td>C 3</td>
</tr>
</tbody>
</table>

Despite these counter strategies, five companies (C 3, C 4, C 6, C 7, C 8) indicated to be in a state of uncertainty as to whether they are sufficiently fulfilling their human rights responsibility.

5.2.2 Findings aggregated on a case basis research question two

According to the findings, companies face six different implementation challenges when collecting the data for the HRIA within their own company. The most often reported challenge refers to the limited human rights knowledge of employees. All but one company (C 5), reported that it is challenging to collect the human rights data within the company because the human rights knowledge of employees is limited. Three companies (C 1, C 2, C 4) highlighted in this context the need to differentiate between knowing human rights in general and understanding the respective claims or violations, with the latter being more sophisticated. Company C 1 outlined that while employees know in general that human rights exist, most do not understand the respective claims. In a similar vein, company C 4 explained that understanding the fundamentals of human rights on an abstract level cannot be compared to
understanding what kind of impact this has on someone’s own activity. Four companies (C 2, C 3, C 4, C 7) reported that employees’ knowledge is limited with respect to both what human rights exist and what claims exist or what constitutes a human rights violation.

The second most often reported challenge, which was mentioned by three companies (C 2, C 4, C 5), refers to limited staff capacities. One company (C 1) highlighted a conflict of objectives. Company C 1 reported that on the grounds of data protection, some data cannot be issued to those responsible for the HRIA, given that often confidential, personal data are required. One company (C 5) articulated the difficulty in assessing when the input of potentially impacted rights holders and other relevant stakeholders is sufficient and fairly weighted. One company (C 1) stated that the identification of the right contact person is challenging, because the company has a large number of employees spread across the globe. One company (C 8) described that in some situations employees have a limited knowledge about the activities of other employees due to a complex business structure, with globally dispersed sites and varying hierarchy levels.

Table 5.3 displays the challenges of all eight companies with respect to the data collection within the company.

Table 5.3 Corporate challenges in the human rights data collection within each company

<table>
<thead>
<tr>
<th>Challenge</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limited human rights knowledge of employees</td>
<td>C 1, C 2, C 3, C 4, C 6, C 7, C 8</td>
</tr>
<tr>
<td>Limited staff capacities</td>
<td>C 2, C 4, C 5</td>
</tr>
<tr>
<td>Conflict of objectives</td>
<td>C 1</td>
</tr>
<tr>
<td>Sufficient and fairly weighted input of potentially impacted rights holders and other relevant stakeholders</td>
<td>C 5</td>
</tr>
<tr>
<td>Identification of the right contact person</td>
<td>C 1</td>
</tr>
<tr>
<td>Limited oversight about the activities of other employees</td>
<td>C 8</td>
</tr>
</tbody>
</table>

Two companies (C 2, C 4) reported counteracting the knowledge deficits by respective human rights training.

According to the findings, companies face five different challenges when collecting human rights data from their first tier suppliers. Four companies (C 2, C 3, C 4, C 8) explained that data collection is difficult in the first-tier supply chain because the human rights knowledge of their suppliers’ employees is limited. According to company C 3 this is particularly true for SMEs. All eight companies highlighted that access to human rights data strongly depends upon the negotiating position with first tier suppliers. Company C 1 pointed out that it is not challenging to receive human rights data from its first tier suppliers, but the quality of the data strongly depends on their negotiating position, which varies from very weak to very strong. While some companies indicated having a strong negotiating power with their first tier suppliers (C 2, C 4, C 5, C 8) others indicated that, depending on the respective supplier relationship, their negotiating power varies from very weak to very strong (C 1, C 3, C 6, C 7).

Another challenge mentioned by one company (C 3) refers to data collection fatigue among first tier suppliers. Company C 3 reported moreover that many suppliers in the mechanical engineering sector reject their corporate human rights responsibility or try to limit it. Company C 1 stated that certain information which is handed out by suppliers in a foreign language cannot be translated for reasons of data protection.

Table 5.4 displays the challenges that all eight companies face when collecting human rights data in the first tier supply chain.
Table 5.4 Corporate challenges to human rights data collection in the first tier supply chain

<table>
<thead>
<tr>
<th>Challenge</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limited human rights knowledge of employees</td>
<td>C 2, C 3, C 4, C 8</td>
</tr>
<tr>
<td>Weak negotiating position impedes access to (informative) human rights data</td>
<td>C 1, C 3, C 6, C 7</td>
</tr>
<tr>
<td>Data collection fatigue among first tier suppliers</td>
<td>C 3</td>
</tr>
<tr>
<td>Rejection or limitation of the corporate human rights responsibility</td>
<td>C 3</td>
</tr>
<tr>
<td>Conflict of objectives</td>
<td>C 1</td>
</tr>
</tbody>
</table>

According to the findings, companies apply two counter strategies to overcome the data collection challenges in the first tier supply chain. All eight companies participate in industry/multistakeholder initiatives to strengthen their negotiating power with their first tier suppliers and to benefit from further advantages such as efficiency gains through the standardization of approaches and the sharing of collected data. Company C 8 stressed that participation in industry/multistakeholder initiatives does not necessarily strengthen the negotiating position with suppliers, given that major differences exist in terms of the design of these initiatives. According to company C 8, industry/multistakeholder initiatives which lack standards and provisions that are binding rather have no influence on the negotiating position. Three companies (C 2, C 4, C 5) try to strengthen their negotiating position with their first tiers suppliers by declaring the HRIA as a binding award criterion.

Table 5.5 displays the counter strategies of all eight companies in the first tier supply chain data collection process step.
Table 5.5 Corporate counter strategies in the human rights data collection in the first tier supply chain

<table>
<thead>
<tr>
<th>Counter strategy</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participation in industry/multistakeholder initiatives</td>
<td>C 1, C 2, C 3, C 4, C 5, C 6, C 7, C 8</td>
</tr>
<tr>
<td>Declaration of HRIA as a binding award criteria</td>
<td>C 2, C 4, C 5</td>
</tr>
</tbody>
</table>

Five companies (C 1, C 2, C 3, C 5, C 8) explained that industry/multistakeholder initiatives are accompanied by new challenges, such as the difficulty in finding consensus due to different interests or ideas, a limited commitment of the participating companies and a slowing down of the development because of varying corporate degrees of maturity.

The companies diverged on whether participation in industry/multistakeholder initiatives influences the quality of the human rights data with respect to accuracy, completeness and topicality. Two companies (C 2, C 5) indicated that industry/multistakeholder initiatives have a positive impact on the data quality. Whereas company C 2 assumes that the data quality is positively influenced by the fact that suppliers are aware of the risk of losing not one but several customers, company C 5 assumes that the high quality standards of the initiative’s verification approaches have a positive impact on the data quality. Two companies (C 1, C 7) stated that an industry/multistakeholder initiative has no impact on the data quality. For company C 7 the quality of the human rights data is influenced primarily by the corporate grade of maturity and for company C 1 by the general willingness of suppliers to provide high quality data.

A recurrent theme, with respect to the data collection in the n-tier supply chain, which was mentioned by all but one company (C 6), refers to the difficulty in identifying n-tier suppliers due to complex n-tier supply chain networks, which are characterized by a large number of globally dispersed, constantly changing suppliers, spread across
up to eight different tier levels. One exception is the short seed supply chain of company C 5 which normally consists of not more than two tier levels. Company C 5 stated that in its seed supply chain it knows both its first tier suppliers who function as distributors, and who coordinate the harvest of the farmers and the farmers themselves. Company C 6 did not report any challenges in the n-tier supply chain, given that hitherto its HRIA have been limited to first tier supplier relationships. Access to human rights data in the n-tier supply chain is challenging according to four companies (C 2, C 3, C 4, C 7) because of generally missing contractual relationships with n-tier suppliers.

Table 5.6 displays the challenges that all eight companies face when collecting human rights data in the n-tier supply chain.

Table 5.6 Corporate challenges in the human rights data collection in the n-tier supply chain

<table>
<thead>
<tr>
<th>Challenge</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complex n-tier supply chain networks</td>
<td>C 1, C 2, C 3, C 4, C 5, C 7, C 8</td>
</tr>
<tr>
<td>Dynamic supply chain relationships</td>
<td>C 1, C 2, C 3, C 4, C 5, C 7, C 8</td>
</tr>
<tr>
<td>Missing contractual relationships</td>
<td>C 2, C 3, C 4, C 7</td>
</tr>
</tbody>
</table>

One strategy to counteract the n-tier supply chain challenges, which was mentioned by five companies (C 2, C 3, C 4, C 7, C 8), is a focus on particularly risky raw materials. Company C 8 limits the focus moreover to specific human rights. The challenge of dynamic supply chain relationships is counteracted by company C 8 through long-term supplier relationships and programmes.

Table 5.7 displays the n-tier supply chain counter strategies of all eight companies.
Table 5.7 Corporate counter strategies in the human rights data collection in the n-tier supply chain

<table>
<thead>
<tr>
<th>Counter strategy</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Focus on risky raw materials</td>
<td>C 2, C 3, C 4, C 7, C 8</td>
</tr>
<tr>
<td>Focus on specific human rights</td>
<td>C 8</td>
</tr>
<tr>
<td>Long-term supplier relationships</td>
<td>C 8</td>
</tr>
</tbody>
</table>

5.2.3 Findings aggregated on a case basis research question three

According to the findings, companies face five different challenges when assessing adverse human rights impacts. One challenge mentioned by five companies (C 1, C 2, C 3, C 6, C 7) refers to the difficulty in assessing whether the identified impacts in fact constitute a (potential) human rights violation. According to company C 1 the assessment is challenging even for those employees who have profound human rights knowledge. Company C 3 pointed out the difficulty in applying objective assessment criteria, resulting in subjective assessments of adverse human rights impacts. Similarly, companies C 4 and C 7 described that different employees interpret the data differently, resulting in varied assessment results. For company C 7 different cultural imprints lead to different assessment results. One company (C 2) highlighted that in contrast to actual adverse human rights impacts, potential impacts are much more difficult to assess. Contrary to this, company C 3 indicated that whereas potential adverse human rights impacts can be assessed on the basis of objective criteria such as implemented systems, known cases, country and sector specific risks, the assessment of actual impacts is relatively subjective.

Two companies (C 4, C 7) reported the difficulty in assessing the severity on the basis of scale, scope and reversibility, given that these indicators allow scope for interpretation.
Five companies (C 1, C 2, C 3, C 6, C 8) pointed out the difficulty in assessing the actual human rights situation in the supply chain, because the information value of the assessment basis can be restricted. Three companies (C 1, C 2, C 8) explained that the information value of certificates can be restricted, because there can be a discrepancy between the conditions according to a certificate and the actual human rights situation at a supplier site. Three companies (C 2, C 3, C 6) believe that the information value of the Drive Sustainability SAQ is limited. Whereas two companies (C 3, C 6) emphasized that the information value is limited, because the SAQ focuses on policies and management systems, company C 2 highlighted the limited time and financial resources of the external service provider NQC to examine the SAQs. Company C 3 also noted that the Drive Sustainability SAQ lacks a direct consultation of potentially impacted rights holders and other relevant stakeholders. Two companies (C 3, C 6) agreed that the information value of audits can be restricted, but emphasized different reasons. Whereas company C 6 explained that its audits are announced in advance, last only one day and are limited to specific topics, company C 3 pointed out that the employee interviews take place in artificial situations.

Another key challenge noted by five companies (C 1, C 4, C 5, C 7, C 8) emerged in the context of the assessment of ‘contribution’ and ‘direct link’. Company C 4 explained that it is difficult to specify criteria for these two cases. Similarly, company C 8 reported the difficulty in assessing in the supply chain where it could contribute to adverse human rights impacts. Company C 7 noted that, depending on the particular perspective, these two cases can be differently assessed. The assessment can be different, according to company C 7, depending on whether it is assessed from a legal, business ethical or external stakeholder perspective. Company C 5 reported an attempt to assess, on the basis of a theoretical case example, the transition from being directly linked to a contribution, consequently from when the conditions for a contribution are met. The theoretical exercise resulted in many different opinions and the waiving of respective differentiations in the HRIA. Company C 3 outlined that it cannot report challenges in this respect because its HRIA lack such differentiations. Two companies (C 1, C 2) pointed out that in supply chains many different actors and
interconnected actions can be involved, making it difficult to assess the respective responsibilities. According to company C 2, this is particularly true for n-tier supply chains.

Table 5.8 displays the challenges of all eight companies in the assessment step.

Table 5.8 Corporate challenges in the human rights impact assessment

<table>
<thead>
<tr>
<th>Challenge</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Difficulty in assessing whether impacts in fact constitute (potential) adverse human rights impacts</td>
<td>C 1, C 2, C 3, C 6, C 7</td>
</tr>
<tr>
<td>Restricted information value of the assessment basis in the supply chain</td>
<td>C 1, C 2, C 3, C 6, C 8</td>
</tr>
<tr>
<td>Difficulty in assessing ‘contribution’ and ‘direct link’</td>
<td>C 1, C 2, C 4, C 5, C 7, C 8</td>
</tr>
<tr>
<td>Scope for interpretation of the severity parameters ‘scale’, ‘scope’ and ‘reversibility’</td>
<td>C 4, C 7</td>
</tr>
</tbody>
</table>

According to the findings, companies apply three different strategies to overcome the assessment challenges. Company C 4 counteracts these challenges by cooperating with other companies. Company C 8 focuses on continued supplier assessments rather than sampling inspections by a certifier every couple of years, and company C 6 takes advice from a consulting company which is specialized in human rights.

Table 5.9 displays the strategies of all eight companies to counteract the assessment challenges.
Table 5.9 Corporate counter strategies in the human rights impact assessments

<table>
<thead>
<tr>
<th>Counter strategy</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cooperation with other companies</td>
<td>C 4</td>
</tr>
<tr>
<td>Continued assessments</td>
<td>C 8</td>
</tr>
<tr>
<td>Advice from specialized consulting company</td>
<td>C 6</td>
</tr>
</tbody>
</table>
6 Discussion

This chapter discusses the findings of this study. First the findings are discussed in light of evidence gathered by previous empirical research and arguments put forward by scholars in the BHR, CSR and SSCM fields. This is followed in Chapter 6.2 by a critical review of the study’s objectives, its contribution and limitations.

6.1 Discussion of findings

The empirical data collected in this study confirm the preliminary assumption\(^{226}\) as described in Chapter 1, that in each of the three HRIA implementation steps, and depending on whether the human rights data are collected within the company, from first tier suppliers or n-tier suppliers, companies face different challenges and apply different counter strategies. The evidence gathered suggests that one of the biggest challenges companies face when examining HRIA provisions are varying national corporate HRDD laws in different countries. This is in line with Rotter et al. (2014, p. 582) who state that “the plurality of legal systems creates a source of challenges for international business.” The plurality of the statutory corporate human rights requirements is demonstrated for instance by Grabosch (2019) who provides a worldwide comparison of national HRDD laws. Seven companies (C 1, C 2, C 4, C 5, C 6, C 7, C 8) commented that it is challenging to interpret the national corporate HRDD laws because they use abstract legal terms such as ‘appropriate’ or ‘substantiated knowledge’. In a similar vein, all eight companies described the vagueness of internationally recognized human rights, which leaves scope for interpretation. The internationally recognized human rights are abstract rights such as that everyone has the right ‘to just and favourable conditions of work’ (Article 23, number one, UDHR), the right ‘to just and favourable remuneration ensuring (...) an existence worthy of human dignity’ (Article 23, number three, UDHR) and the right ‘to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay’

\(^{226}\) On preliminary assumptions in explorative studies see also Diekmann (2008, p. 34).
The vagueness of the internationally recognized human rights is also acknowledged by Montgomery and Maggio (2009, p. 202) who state that the ILO standards often lack concrete provisions because they are quite abstractly formulated. Vague provisions require further interpretation.\textsuperscript{227} The findings suggest that there are guides that provide sufficient clarity with respect to the interpretation of some rights, but less clarity with respect to other rights. This adheres closely to Goetzmann (2017, p. 96) who notes that the development of the exact content of internationally recognized human rights is only evolving and that hitherto only for some human rights is there a certain degree of clarity. It also corresponds to González-Cantón et al. (2019, p. 872) who state that the terms ‘cruel’, ‘inhuman’ and ‘degrading treatment’ (Article 5, UDHR) as an example, remain undefined in international law, which makes their interpretation challenging. Similarly, Waldron (2010, p. 279) claims with respect to the prohibition of ‘cruel’, ‘inhuman’ and ‘degrading treatment’ (Article 5, UDHR) that “even with the best will in the world it is not easy to figure out what these provisions forbid.” In a similar vein, Hartman et al. (2003, p. 201) recognize that the right to ‘just and favourable conditions of work’ (Article 23, number one, UDHR) has not been clearly defined yet. In their view, this right thus only provides a general idea of what might be significant rather than clarity on how it should be interpreted (Hartman et al., 2003, p. 201). The findings thus suggest that it is challenging for companies to understand some internationally recognized human rights which can be explained by their vagueness and a hitherto limited interpretation.

According to the findings, companies apply six different strategies to counter the challenges they face in the HRIA provision examination. The most often applied counter strategy, (implemented by companies C 2, C 4, C 6, C 7), refers to the exchanges with other companies. Another counter strategy, which is applied by three companies (C 2, C 5, C 6), is consultation with external experts. The findings show that

\textsuperscript{227} The practitioner needs to know if and how to apply a legal norm, a systematic procedure called the ‘interpretation’ (Jocham, 2021, p. 1). The legal interpretation is not arbitrary but follows a systematic procedure which is divided into four classic interpretation methods: the interpretation of the wording, of the systematology, of the evolutionary history and of the sense and purpose (Jocham, 2021, p. 2). For a detailed description see Jocham (2021).
two companies (C 2, C 5) consult specialized external law firms and one company (C 6) specialized external consulting companies. Companies C 2 and C 7 consult in-house lawyers and companies C 2 and C 3 interpret the internationally recognized human rights with the help of handouts from different organisations or initiatives. One company (C 3) examines the implementation of other companies and in addition to this turns to politicians and asks for further specification. Interestingly, the analysis reveals that despite these counter strategies, the majority of the companies (C 3, C 4, C 6, C 7, C 8) are in a state of uncertainty as to whether their corporate human rights responsibility is sufficiently met. This finding aligns with Siakala and Mueller’s (2020, p. 39) argument that “legal uncertainty is inherent in the use of abstract legal terms.”  

Grabosch (2019, p. 5) defends the view that abstract provisions, however, also offer advantages. He argues that vague legal terms force companies to understand their sense and purpose, and to independently develop suitable solutions (Grabosch, 2019, p. 5). According to Grabosch (2019, p. 5) companies rather tend to accept solutions which they have developed on their own. While this might be true, the empirical data collected in this study suggest that abstract provisions cause uncertainty, presumably because the scope for interpretation they create leads to different interpretations by different people. As expressed by one interviewee: “I think that’s the difficulty in general with vague terms like that, you can ask 100 people and you receive 100 different answers.”

One important finding which emerged repeatedly is that internationally recognized human rights and national laws can be conflicting. Seven companies (C 2, C 3, C 4, C 5, C 6, C 7, C 8) reported conflicts, such as for instance with respect to freedom of assembly in China and equal rights for men and women in Arabian countries. This finding accords with Scherer and Palazzo (2011, p. 915), who state that internationally active companies are confronted with plural and sometimes conflicting legal

228 Original wording in German: “dem Ansatz unbestimmter Rechtsbegriffe wohnt Rechtsunsicherheit inne.” (Translated by the author).
229 Original wording in German: “Das ist glaube ich die Schwierigkeit generell bei solchen vagen Begriffen, du kannst da 100 Leute fragen und kriegst 100 verschiedene Antworten.” (Translated by the author).
provisions. This finding is also consistent with Montgomery and Maggio (2009, p. 201) who note that national laws restrict internationally recognized labour rights such as freedom of association. The result is also in line with Hoffman and McNulty (2009, pp. 543 - 548) who describe that China curtails the right of freedom of expression and the right to freedom of peaceful assembly and association. One new and interesting aspect uncovered by this study, refers to the provision of the UNGP to respect the internationally recognized human rights in such cases “to the greatest extent possible” (cf. United Nations, 2011, p. 25, Commentary on Guiding Principle No. 23). While all companies agreed that this provision leaves scope for interpretation, they diverged on whether it should be further substantiated to establish clarity. Three companies (C 1, C 3, C 6) indicated that this provision should be further substantiated. One company (C 7) is not sure if it wants a further specification that would create clarity, as it cannot foresee the result. Two companies (C 2, C 8) reject any further specification. Whereas for company C 8 abstract provisions offer flexibility to develop individual solutions, for company C 2 the vagueness offers flexibility to pursue business interests. The latter reflects the deeply ingrained logic of profit maximization being at the core of corporate decisions. Particularly here the disparity between respect for human rights, as envisaged by the UNGP, and the actual corporate implementation, surfaces. While company C 2 advocates the vagueness of this provision to be able to prioritize business interests, company C 6 asks for further concretization to eliminate this very opportunity. The findings hence suggest that different companies have different views on whether the internationally recognized human rights or economic interests should be prioritized. Potentially there are also different views among different employees within a company, but this assumption cannot be verified based on the completed study.

The findings confirm the preliminary assumption of the study that, depending on whether the human rights data are collected within the company, from first tier suppliers or n-tier suppliers, companies face different challenges and apply different counter strategies. The results indicate that collecting human rights data within the company is particularly challenging because of the limited human rights knowledge
of employees. Except for company C 5, which reported that its employees have very good human rights knowledge, all the remaining companies specified the limited human rights knowledge as a challenge. This limited human rights knowledge of employees as a corporate challenge accords with the findings of Sethi et al. (2011, p. 9). One of the reasons why only company C 5 reported that its employees have good human rights knowledge, could be its longer HRIA implementation time period. Company C 5 has already implemented HRIA with respect to direct adverse human rights impacts for several decades. Contrary to this, company C 8 began to implement HRIA in 2008, companies C 1 and C 2 in 2012, company C 6 in 2017 and companies C 3, C 4 and C 7 only in 2020. The implementation time period of the remaining companies thus is significantly shorter. The human rights knowledge of company C 5’s employees consequently could be better, because it has been addressing this topic already for a longer period of time.

Another plausible explanation for the difference between company C 5 and the remaining seven companies could be a larger number of specialized employees contributing to a greater dissemination of knowledge. Whereas at company C 5 approximately 30 employees are responsible for the HRIA regarding direct adverse human rights impacts (representing 0.0301% of the overall workforce), at company C 2 the amount is 0.1 employees (representing 0.0001% of the overall workforce), at company C 1 1.5 employees (representing 0.0007% of the overall workforce), at company C 6 0.5 employees (representing 0.0017% of the overall workforce), at company C 7 ten employees (representing 0.0025% of the overall workforce), at company C 3 three employees (representing 0.0036% of the overall workforce) and at company C 8 25 employees (representing 0.0093% of the overall workforce). At the remaining companies, the relative number of employees responsible for the HRIA implementation thus is significantly lower.

Another reason for the knowledge difference could be different views on what can be classified as ‘good human rights knowledge’. The findings show that in contrast to company C 5, the great majority of the companies (C 1, C 2, C 3, C 4, C 7) differentiated
between knowing the human rights concept in general or what human rights exist and understanding the respective claims or what constitutes a human rights violation. The following quote from company C 1 illustrates this: “everyone knows I have basic human rights, but how exactly that is designed, what exactly that means for me, that is something many do not know.” 230 Those companies that reported the limited human rights knowledge of their employees consequently could set higher requirements, by classifying ‘good knowledge’ as not only knowing the human rights concept in general or what human rights exist, but also understanding the respective claims or what constitutes a human rights violation. Naturally the latter is more sophisticated, in particular because of the above described vagueness of the internationally recognized human rights and the hitherto limited clarity with respect to the interpretation of some rights.

Interestingly, only two companies (C 2, C 4) reported counteracting the knowledge deficit by means of human rights training. This begs the question why the majority of the companies recognize the human rights knowledge deficit of their employees, but does not address it by respective training. One plausible explanation could be the fear of negative impacts on profit maximization goals. Giuliani (2016, p. 44) claims that the violation of human rights is well-enshrined in some companies because it enables the generation of efficiency gains that otherwise would be impossible to realize. Companies hence might assume that if employees knew their human rights, they would also enforce them, and that this would lead to efficiency losses and ultimately to profit losses. Companies hence might deliberately decide not to counteract the knowledge deficit of their employees to minimize the risk of efficiency or profit losses. It should be borne in mind here, that this explanation says nothing about whether good human rights knowledge of employees would indeed lead to efficiency or profit losses.

230 Original wording in German: “Jeder weiß ich habe grundlegende Menschenrechte, aber wie genau das ausgestaltet ist, was das genau für mich bedeutet, das wissen ganz viele nicht.” (Translated by the author).
Another plausible explanation could be a strong competitive pressure forcing companies to prioritize other topics. Seppala (2009, p. 414) notes that there is no level playing field since only some companies take responsibility for human rights. Similarly, Muchlinski (2001, pp. 35 - 36) explains that those companies that invest time and financial resources in human rights measures are at a competitive disadvantage compared to those companies that do not take comparable measures. Hoffman and McNulty (2009, p. 542) state that “given the competitive nature of capitalism, adherence to ethical policies can put a firm at a disadvantage if others are not playing by the same rules.” In a similar vein, Cragg (2000, p. 210) explains that while some companies ignore human rights for reasons of profit maximization their competitors “feel compelled to follow their lead or to lose an important competitive advantage.” It is hence equally plausible that it is not a deliberate decision of companies to be against human rights training, but that strong competition forces companies to prioritize other topics.

Interestingly, four companies (C 2, C 3, C 4, C 8) reported that human rights knowledge is also limited among the employees of their first tier suppliers, making data collection in the first tier supply chain challenging. In the words of company C 4: “they have very little knowledge about many of these topics. This means that when we ask them, they often do not know what we want.” 231 This finding echoes insights from Hofmann et al.’s (2018, p. 125) study, which suggests that many suppliers do not understand what they are being asked.

Another noteworthy finding with respect to the data collection in the first tier supply chain refers to the negotiating position with first tier suppliers and access to human rights data. All eight companies highlighted that access to (informative) human rights data strongly depends upon their negotiating position with first tier suppliers. While some companies indicated to have a strong negotiating power with their first tier suppliers (C 2, C 4, C 5, C 8) others stated that, depending on the respective supplier

---

231 Original wording in German: “Bei denen ist natürlich ein sehr geringes Wissen überhaupt vorhanden zu vielen von diesen Themen. Das heißt also, wenn wir die fragen, dann wissen die auch oft nicht, was wir wollen.” (Translated by the author).
relationship, their negotiating power varies from very weak to very strong (C 1, C 3, C 6, C 7). According to the findings three companies (C 2, C 4, C 5) try to strengthen their negotiating position with their first tier suppliers by declaring HRIA as a binding award criterion and all eight companies by participating in industry or multistakeholder initiatives. The latter finding echoes the work of McCorquodale et al. (2017, p. 213) who found that approaching suppliers collectively via industry or multistakeholder initiatives is deemed by companies to be more effective than as a single company. This finding is also consistent with Mueller and Siakala (2019, pp. 135 - 144) and Mueller and Bessas (2017, p. 34) who assert that industry initiatives offer the opportunity to strengthen the assertiveness of the buying company. Mueller and Bessas (2017, p. 34) explain that suppliers often only take requirements seriously and are only then willing to adapt their processes and structures accordingly when they are approached collectively via an industry initiative. In contrast to previous findings, the empirical data collected in this study suggest, however, that participation in an industry/multistakeholder initiative does not necessarily strengthen the negotiating position as there are differences in design. Company C 8 stressed that industry/multistakeholder initiatives which lack binding standards and provisions rather have no influence on the negotiating position. In contrast to previous studies, the empirical data collected in this study thus suggest that, depending on the specific design of the industry/multistakeholder initiative, the negotiating position with suppliers can be strengthened.

In line with the empirical results of Hofmann et al. (2018, p. 129) and Mueller and Siakala (2019, pp. 144 - 146) the data suggest that participation in an industry/multistakeholder initiative brings further benefits to companies, such as efficiency gains through the standardization of approaches and the sharing of collected data. Consistent with the findings of McCorquodale et al. (2017, p. 215) and Sethi et al. (2011, p. 2), the results suggest that participation in industry/multistakeholder initiatives, however, is also connected to new challenges, such as difficulty in achieving consensus due to different opinions among the participating parties. One new and interesting finding in this context relates to the
question about whether human rights data collection via industry/multistakeholder initiatives influences the data quality. The companies diverged on whether industry/multistakeholder initiatives influence the human rights data quality in terms of accuracy, completeness and topicality. Two companies (C 2, C 5) assume that industry/multistakeholder initiatives have a positive impact on the data quality, but for different reasons. Whereas company C 2 assumes that the data quality is positively influenced by the fact that suppliers are aware of the risk of losing not one but several customers, company C 5 assumes that the high quality standards of the initiative’s verification approaches have a positive impact on the data quality. Two companies (C 1, C 7) assume that industry/multistakeholder initiatives have no impact on the data quality. Company C 1 assumes that the data quality is influenced primarily by the general willingness of suppliers to provide high quality data. For Company C 7 the supplier’s grade of maturity is the decisive factor. From this it follows that there is a dissensus among companies on whether industry/multistakeholder initiatives influence the human rights data quality.

A recurrent theme with respect to the data collection in the n-tier supply chain, which was mentioned by all but one company (C 6), was the complexity of the n-tier supply chain. Except for company C 6, which limits its HRIA to first tier suppliers, all companies described difficulty in identifying n-tier suppliers due to a large number of globally dispersed, constantly changing suppliers that operate within up to eight different tier-levels. One exception is the short seed supply chain of company C 5 which normally consists of not more than two tier levels. Company C 5 stated that in the seed supply chain it knows both its first tier suppliers who function as distributors of the harvest and the farmers themselves. The evidence gathered in this study mirrors the discussion of Siakala and Mueller (2020, p. 1) who explain that in the course of globalization and against the background of the World Trade Organization trading rules, complex, globally dispersed and dynamic supply chains have emerged. Siakala and Mueller (2020, p. 38) stress that in complex supply chains it can be difficult and sometimes even impossible to identify all n-tier suppliers. The result also accords with Hofmann et al. (2018, p. 115) who found that it is difficult for companies to
identify human rights risks linked to conflict minerals, due to non-transparent, globally dispersed supply chains. Hofmann et al. (2018, p. 130) also discuss the challenges of multi-tier levels. One of the companies in their study indicated that between its first tier suppliers and the smelters are nine to 11 tiers (Hofmann et al., 2018, p. 131). The challenge of dynamic supplier relationships corresponds to the empirical findings of Fraser et al. (2020, p. 14) and Doorey (2011, p. 599) who found that until the identification of an n-tier supplier is achieved, the supplier may in fact no longer be a source of supply. This also confirms the findings of Grimm et al. (2016, p. 1981) who state that dynamic procurement markets make the identification of n-tier suppliers more difficult, because by the time of the identification, the subcontractor in fact may no longer be a supplier. Despite recognizing the dynamics of supply chains, for Doorey (2011, p. 601) a completely unknown supply chain is “a myth”, however. He argues that while some companies would disclose their suppliers voluntarily other supplier-relationships would be revealed by respective investigations and incidents (Doorey, 2011, p. 601). Therefore, he assumes that there is much more knowledge about the respective supplier relationships than companies would admit (Doorey, 2011, p. 599). It must be noted, however, that Doorey (2011) in his empirical study focuses on Nike and Levi’s, hence two companies from the apparel sector. Adverse human rights impacts in the n-tier supply chain of the apparel industry have been in the public spotlight already for a comparatively long period of time as discussed for instance by Grimm et al. (2016, p. 1972) and Winstanley et al. (2002, pp. 210 - 215). Other industries, such as for example consulting, financial services and mechanical engineering –at least until now– have been less exposed to public scrutiny. It is reasonable to assume that the knowledge about who the n-tier suppliers are will be greater in those industries where already more investigations have taken place. Furthermore, comparing for example the supply chain network of the apparel industry with that of the automotive industry, it becomes clear that the levels of complexity vary. While Nike and Levi’s have approximately between 700 and 750 (sub)suppliers (Doorey, 2011, pp. 594 - 596), Fraser et al. (2020, p. 12) showed using the example of the automotive industry and the raw material cobalt, that the number of suppliers (beginning with one strategic tier one supplier down to the tier
six mine level suppliers) is at least 79. Considering the fact that not only cobalt is needed for the production of a car, but up to 10,000$^{232}$ different individual parts, the dimension or complexity of the n-tier supply chain becomes clear. Doorey (2011) thus fails to consider that supply chains are characterized by different grades of transparency and by different levels of complexity. It is reasonable to assume that the identification of n-tier suppliers is more challenging in those supply chains where hitherto less transparency has been established and in which there is a higher degree of complexity.

Another noteworthy challenge with respect to human rights data collection in the n-tier supply chain, refers to missing contractual relationships with n-tier suppliers. Four companies (C 2, C 3, C 4, C 7) explained that it is challenging to access the human rights data because of generally missing contractual relationships with n-tier suppliers. This adheres closely to Fraser et al. (2020, p. 2) who describe the difficulty in enforcing sustainability provisions in the n-tier supply chain due to missing contracts. Similarly, Mueller and Siakala (2019, p. 158) assert that – due to regularly missing contractual relationships – leverage over n-tier suppliers is lower than over first tier suppliers. Grimm et al. (2016, p. 1972) also note that a missing contractual relationship can make it challenging for a company to control n-tier suppliers.

Once the data have been collected, the adverse human rights impacts need to be assessed, representing the last step in the HRIA implementation. The UNGP expect companies to assess whether adverse human rights impacts have occurred or are occurring (representing actual adverse human rights impacts) or could occur (representing potential adverse human rights impacts); see Chapter 2.1.4. In addition to this, companies need to differentiate between adverse human rights impacts that the company causes through its own activities, contributes to through its own activities in its business relationships, and adverse human rights impacts that are

$^{232}$ This estimate is based on an article in the ‘Süddeutsche Zeitung’; online available at: https://www.sueddeutsche.de/auto/rueckrufaktionen-pfusch-ab-werk-1.16544-2
directly linked to the company’s operations, products and services by its business relationships without cause or contribution on its part; cf. Chapter 2.1.4. Furthermore, companies need to assess the severity of the (potential) adverse human rights impacts on the basis of the parameters ‘scale’, ‘scope’ and ‘reversibility’; cf. Chapter 2.4.

The data suggest that it can be difficult for companies to assess whether the identified impacts in fact constitute a (potential) human rights violation. Five companies (C 1, C 2, C 3, C 6, C 7) described this as challenge. According to company C 1 the assessment is challenging even for those employees who have profound human rights knowledge. Companies C 4 and C 7 described how different employees interpret the impacts differently, resulting in varied assessment results. Similarly, company C 3 pointed out the difficulty in applying objective assessment criteria, resulting in subjective assessments. The fact that it can be challenging to assess the impacts seems to be a logical consequence of the previously outlined challenge of a limited clarity with respect to the interpretation of some rights, since the assessment of (potential) rights infringements presupposes respective claims to be clear. In the words of company C 1:

“The Universal Declaration of Human Rights leaves an extremely wide scope for action or interpretation. I mean, what is an appropriate work? How do I define an adequate access to education? That is of course a matter of definition and if there could be a more precise framework (...) then it would be much easier for me to really make a judgment about whether it is appropriate.”

233 Original wording in German: “Die Universal Declaration of Human Rights lässt natürlich einen extrem großen Handlungs- oder auch Interpretationsspielraum. Ich mein, was ist eine angemessene Arbeit? Was definiere ich als angemessenen Zugang zur Bildung? Das ist natürlich Definitionssache und wenn’s hier einen genauen Rahmen geben würde (...) dann würde mir das viel einfacher fallen da wirklich ein Urteil darüber zu fallen ob es angemessen ist.” (Translated by the author).
A lack of clarity as a challenge was also specified by two companies (C 4, C 7) with regard to the assessment of severity on the basis of the parameters ‘scale’, ‘scope’ and ‘reversibility’. In the words of company C 7:

“The UNGP define scale, scope, irremediability (...) Nevertheless, this still leaves a lot of room for interpretation (...) what is a lot and what is not a lot (...) we have already had many discussions about that.”

This corresponds with Goetzmann (2017, pp. 90 - 92) who notices that the UNGP determine some basic parameters for the assessment of adverse human rights impacts, without, however, a detailed specification of these parameters. Ruggie (2010b, p. 3) formulated the aim of the UNGP to be “general enough to be universally applicable (...) but specific enough to have practical utility.” The findings indicate that the lack of specification of the severity parameters is an assessment challenge for some companies.

Five companies (C 1, C 2, C 3, C 6, C 8) identified difficulty in assessing the actual human rights situation in the supply chain, given that the information value of the assessment basis can be restricted. Three companies (C 1, C 2, C 8) reported that the information value of certificates can be restricted, because there can be a discrepancy between the human rights situation according to a certificate and the actual human rights situation. This is in line with previous empirical findings; see for instance MacLeod and Dewinter-Schmitt (2019); LeBaron and Lister (2016); Hertin et al. (2008); Egels-Zandén (2007); O’Rourke (2000) and Walgenbach (2001).

Scholars outline different reasons as to why there can be a discrepancy between the conditions according to a certificate and the actual conditions. For MacLeod and

---

234 Original wording in German: “Die UNGP definieren ja schon scale, scope, irremediability und co. Trotzdem lässt das immer noch großen Interpretationsspielraum zu (...) was jetzt viel ist und was nicht viel ist (...) darüber haben wir schon viele Diskussionen geführt.” (Translated by the author).
Dewinter-Schmitt (2019, p. 75) this is attributable to a lack of human rights expertise of national accreditation bodies and certification organisations. Similarly, O’Rourke (2000, p. 6) concludes that PWC auditors seem to have inadequate knowledge to identify for instance violations of health and safety requirements. According to Ruggie (2008b, p. 53) health and safety violations are more easily detected during on-site assessments than those concerned with for instance freedom of association, harassment or discrimination. MacLeod and Dewinter-Schmitt (2019, p. 75) defend the view that greater adherence to the human rights provisions could be achieved if the knowledge deficit at the national accreditation bodies and certification organisations could be eliminated and the human rights expertise of certification organisations could also be monitored by the national accreditation bodies. Consequently, they believe that audits or certificates could be a sound indicator of the human rights performance provided that the knowledge deficit is effectively overcome. O’Rourke, (2000, pp. 4 - 8) explains that discrepancies between the assessment result and the actual business conduct are also attributable to a lack of independence of the auditors. She explains moreover that employee interviews are conducted in a way that counteracts honesty, such as close to a manager’s office (O’Rourke, 2000, pp. 4 - 8). Giuliani (2016, pp. 40 - 44) attributes discrepancies between formal adherence and the actual business conduct to cultural differences. She claims that while a specific act may represent a violation of an international provision, it may be widely recognized in a local community, because it either complies with the local culture or does not represent a break of the domestic law (Giuliani, 2016, p. 43). For Giuliani (2016, pp. 40 - 44), non-compliance with the provisions of a global buyer thus is attributable to compliance with national culture. Roloff and Aßländer (2010, p. 528) in turn blame the contradictory demands of the buying company. They explain that the combination of social and environmental requirements on the one hand and ambitious price requirements on the other are the reasons for deception (Roloff and Aßländer, 2010, p. 528). They argue that situations can be created in which the suppliers believe “that the only remaining option (…) [is] either to cheat or to accept bankruptcy” (Roloff and Aßländer, 2010, p. 517). In a similar vein, AccountAbility-Unido (2006, p. 26 cited by Giuliani, 2016, p. 44) argues
that while buying companies make a lot noise about social and environmental requirements, they set timelines and budgets which make it impossible for companies to “respect rights and also to be profitable”.

One new and interesting aspect uncovered by this study refers to the information value of the Drive Sustainability SAQ as an assessment basis for the HRIA. Three companies (C 2, C 3, C 6) reported that the information value of the Drive Sustainability SAQ is limited. Interestingly, the companies believe the information value to be limited for different reasons. Whereas two companies (C 3, C 6) emphasized that the information value is limited, because the SAQ focuses on policies and management systems, company C 2 highlighted the limited time and financial resources of the external service provider NQC to examine the SAQs. Company C 3 also noted that the SAQ lacks a direct consultation of potentially impacted rights holders and other relevant stakeholders. The findings hence suggest that some companies question the information value of the Drive Sustainability SAQ as an assessment basis for the HRIA, but for different reasons.

Another new and interesting aspect uncovered by this study refers to the difficulty in assessing companies’ own responsibility in the supply chain on the basis of the responsibility as defined by the UNGP which differentiates between ‘contribution’ and ‘direct link’. The findings suggest that some companies have knowledge deficits in this area. Company C 8 as an example asked whether buying cacao “from the supplier’s, supplier’s, supplier’s, supplier” would mean, that it would be responsible for the adverse human rights impacts, if any did occur, or did it “just contribute to it”. The answer reveals the limited knowledge of company C 8 regarding their responsibility as defined by the UNGP which attributes responsibility for adverse human rights impacts in both cases, hence when a company causes adverse human rights through its own activities and also when a company contributes to adverse human rights impacts through its activities in its business relationships; see Chapter 2.1.4. The limited knowledge could be attributable to a lack of time of the employees to deal with the HRIA provisions in depth. The latter seems a plausible explanation...
given the limited staff capacities (cf. above and Chapter 5.1). Three companies (C 2, C 4, C 5) explicitly mentioned limited staff capacities as a challenge in HRIA implementation. The data also suggest that it is generally difficult to both understand and operationalize these two terms in business practice. Company C 4 reported the difficulty in specifying criteria for these two case scenarios. Similarly, company C 5 described an attempt to assess, on the basis of a theoretical case example, the transition from being directly linked to a contribution, hence when the conditions for a contribution are met. This theoretical exercise resulted in many different opinions and the waiving of respective differentiations in the HRIA. When adverse human rights impacts occur at a supplier site, company C 5 thus asks the respective supplier to eliminate the impacts, without, however, analysing its own contribution. In a similar vein, company C 3 responded that it cannot report challenges in this respect because their analyses lack such differentiations. Company C 7 noted that, depending on the particular perspective, these two cases can be differently assessed, depending on whether assessed from a legal, business ethical or external stakeholder perspective. This adheres closely to the view articulated by Ruggie (2008a, p. 21) who notes that the definitions of complicity vary within and between the legal and non-legal realms, making it challenging to define “what constitutes complicity in any given context”.

Two companies (C 1, C 2) explained that it can be difficult to assess their own responsibility in the supply chain because many different actors and interconnected actions can be involved. Similarly, Wood (2012, pp. 73 - 74) argues that “many social and environmental conditions are the products of complex social interactions in which chains of causation are long and convoluted (...) and contributions are difficult or impossible to tease apart.” In a similar vein, Mueller and Siakala (2019, p. 6) claim that supply chains are complex networks, which can make the identification of connections and any attribution of responsibility based on them challenging. From this it follows that when the chains of causation are long and convoluted, which according to company C 2 can be the case especially in n-tier supply chains, it can be challenging if not impossible to tease apart which act ultimately had which impact.
The prevention or mitigation of potential adverse human rights and the remedy of actual adverse human rights impacts, requires, however, an understanding not only of what causes the (potential) human rights violation, but also what responsibility this implies and for whom. The findings suggest that both can be challenging for companies in the supply chain.

6.2 Critical review

This study complements and advances the empirical BHR literature on implementation, with little knowledge on the challenges that companies face when implementing human rights responsibilities in business practice and the strategies they apply to counteract these challenges. The main contribution of this study is a focused and differentiated analysis of the challenges that companies face when implementing HRIA as envisaged by the UNGP and the strategies they apply to counteract these challenges. The study differentiates between the three different process steps within the HRIA implementation, i.e. (1) examining the HRIA provisions, (2) collecting the human rights data, and (3) assessing the human rights impacts. In line with the UNGP’s provisions, the study also differentiates between adverse human rights impacts that the company causes through its own activities, adverse human rights impacts that the company contributes to through its own activities in its business relationships, and adverse human rights impacts that are directly linked to the company’s operations, products and services without cause or contribution on its part; cf. United Nations (2011, p. 17, Guiding Principle No. 17(a)). In addition to this, the study differentiates between first tier and n-tier supplier relationships. In so doing, it provides more profound and differentiated insights into this topic than previous empirical BHR studies have done, thereby allowing an improved understanding of the challenges that companies face when implementing HRIA and the strategies they apply to counteract these challenges.
Despite providing rich insights into this topic, the study is limited in several respects. First of all, given that this is an explorative study, which is based on a non-representative sample, caution must be exercised in generalizing the findings. It is possible that the challenges and counter strategies of equivalent companies are different. It is reasonable to be particularly prudent in generalizing the findings to companies with deviant characteristics in terms of size, industry and grade of internationality. It is likewise reasonable to be particularly prudent in generalizing the findings to companies that operate in other legal, political and socio-cultural settings.

To assess the generalizability of the findings, the HRIA implementation challenges and counter strategies should be compared with the results of future representative studies.

To verify the reliability of the results, the content analysis was repeated and compared with the original results on the basis of three randomly chosen interviews (representing 25% of the total material); see Chapter 4.6. Since no major differences were detected, it was concluded that the analysis is sufficiently reliable. For Mayring (2015, p. 124) intracoder reliability would presuppose that the analysis is repeated by the same analyst, but without knowledge about the original coding. While a total memory loss is unrealistic, it is reasonable to assume that over time knowledge about the original coding at least decreases. Due to time constraints, the content analysis in this study, however, had to be repeated only two months after the original coding. The informative value of the intracoder reliability test consequently could be limited.

Different precautionary measures have been applied in this study to counteract threats to validity through researcher bias. As suggested by Ahern (1999, p. 408 et seq.) and outlined in Chapter 4.5, the personal values of the researcher were reflected prior to the data collection. Furthermore, feelings that could indicate a lack of neutrality as well as potential role conflicts were analysed. In addition, the empirical data were analysed according to Mayring’s (2015) inductive category driven text analysis method, thus an established and systematic data analysis method. To counteract the negative instances phenomenon, the systematic content analysis was
secured by using a negative case analysis, thus a search for evidence contrary to tentative conclusions. The study, however, lacks communicative validation. Given the general sensitivity of the topic (cf. Chapter 4.4) and the rising institutional pressure in Germany and Switzerland due to the announcement of new legal provisions (cf. Chapters 5.1.1 and 5.1.8), the risk that participants would get cold feet and withdraw their data use approval, as explained by Robson and McCartan (2016, p. 172), was deemed to be too high for communicative validation to be applied. Communicative validation might also have contributed to the validity as it allows mitigation against researcher bias; cf. Robson and McCartan (2016, p. 172). The objectivity of the results moreover cannot be assessed on the basis of an intercoder reliability test (cf. Mayring (2015, p. 124)), given that this study was conducted by one researcher only. A combination of qualitative and quantitative research methods (method triangulation) might also have helped to achieve more valid or at least richer results which, however, could not be implemented, given that this study is placed on the nascent theory continuum; cf. Chapters 4.1 and 4.2.

To counteract participant bias, the interviewees were told at the beginning of each interview that there are no right or wrong answers and that any response is equally valued; cf. Chapters 4.2 and 4.5. Even when participants are explicitly told that any answer is as valued as another, they are still likely to feel that certain answers might make them look better than others (Robson and McCartan, 2016, p. 114). The data hence still may be susceptible to participant bias.

Interviewees were also assured anonymity as outlined in Chapters 4.2 and 4.5. Joinson (2001, p. 188) compared information that was disclosed by visually anonymous study participants with non-visually anonymous study participants, with the former disclosing considerably more information. Since the interviewees in this study were not visually anonymous (cf. Chapter 4.4) the results thus could be distorted through withheld information. Safeguarding anonymity also limited the ability to discuss company-specific details.
Data collected via interviews can be inaccurate due to poor recall, which as outlined by Yin (2018, p. 114) is a typical interview weakness. To counteract participant bias due to poor recall, it was decided to complement the interviews with internal and external corporate documents; cf. Chapter 4.4. This strategy, however, could be realized only to a limited extent. While access to internal documents was restricted for reasons of privacy and/or non-suitability, all external corporate documents primarily provided insights into the characteristics of the companies (size, sector, location, etc.) and the HRIA approaches, but only very limited insights into the HRIA implementation challenges and counter strategies. External documents may moreover contain euphemistic information since companies may seek to avoid negative consequences and/or present themselves in a favourable light; cf. Chapter 4.4 and Yin (2018, p. 114). Caution thus must be exercised in deeming documents as accurate reproductions of the real state of affairs (Yin, 2018, p. 115).

Last but not least, it is reasonable to assume that the HRIA implementation challenges and counter strategies might change over time. The findings consequently could become obsolete.

Despite these limitations, the findings of this study represent an important contribution to an improved understanding of the corporate HRIA implementation challenges and counter strategies. The next chapter provides a conclusion and discusses potential avenues for further research.
7 Conclusions

Against the background of industrialization and globalization, with the rising power of companies, the recurrence of corporate human rights violations and governments repeatedly proving their inability or unwillingness to regulate business conduct, scholars and practitioners alike began to challenge the effectiveness of the state-centric human rights concept. Over the past 25 years, scholars and practitioners have therefore sought to broaden the human rights concept by also assigning direct responsibility for human rights to companies. A careful literature review has revealed that there is a rich debate among scholars with regard to justification for direct corporate human rights responsibilities and the definition of corporate human rights duties, but a dearth of empirical research that has investigated the challenges that companies face when implementing human rights responsibilities in business practice and the strategies they apply to counteract these challenges.

To the best of the author’s knowledge, to date only the qualitative study of McCorquodale et al. (2017) provides insights into the challenges that companies face when implementing HRIA as envisaged by the UNGP and the strategies they apply to counteract these challenges. The empirical insights of McCorquodale et al.’s (2017) study were deemed to be limited, given that they focus on the implementation of HRDD in general and not on HRIA in particular. Furthermore, McCorquodale et al.’s (2017) study lacks a differentiation between the three varying HRIA implementation steps of examining the HRIA provisions, collecting the human rights data and assessing the human rights impacts. Equally limited are the insights from McCorquodale et al.’s (2017) study with respect to supplier relationships, given that they focus on business relationships in general and not on supplier relationships in particular, with the latter moreover not being differentiated according to first tier and n-tier supplier relationships. The challenges that companies face when implementing HRIA as envisaged by the UNGP and the strategies they apply to counteract these challenges consequently were deemed to be a poorly empirically explored and understood topic, warranting further exploration.
Expanding empirical knowledge in this field seemed important not only to complement and advance the existing BHR literature on implementation, but also to prepare the ground for an improved human rights respect by companies. As argued by Obara (2017, p. 272), more knowledge about how companies implement their human rights responsibility in business practice enhances our capability to promote respect for human rights by corporate actors. In an era when many companies have transformed from small and primarily local organisations to big, multinational actors with significant human rights impacts, expanding knowledge in this area therefore also appeared important from a societal perspective.

The main contribution of this study is a focused and differentiated analysis of the challenges that companies face when implementing HRIA as envisaged by the UNGP and the strategies they apply to counteract these challenges. The study differentiates between the three different process steps within the HRIA implementation. In line with the UNGP’s provisions, the study also differentiates between adverse human rights impacts that the company causes through its own activities, adverse human rights impacts that the company contributes to through its own activities in its business relationships, and adverse human rights impacts that are directly linked to the company’s operations, products and services without cause or contribution on its part; cf. United Nations (2011, p. 17, Guiding Principle No. 17(a)). In addition to this, the study differentiates between first tier and n-tier supplier relationships. In so doing, it provides more profound and differentiated insights into this topic than previous empirical BHR studies have done, thereby allowing an improved understanding of the challenges that companies face when implementing HRIA and the strategies they apply to counteract these challenges.

Given that this study focuses on the implementation of the corporate human rights responsibility as envisaged by the UNGP, it provides moreover knowledge on the workability of the UNGP in business practice. It is thus a reflection of operational realities which may be of value for scholars as well as for practitioners who are engaged in the conceptual evolution of the UNGP.
To explore the corporate HRIA implementation challenges and counter strategies, the study applied a qualitative oriented multiple-case study research method. Primary data were collected via semi-structured interviews and a document analysis, and analysed on the basis of a systematic, inductive, category driven text analysis method.

The empirical data collected in this study confirm the preliminary assumption that in each of the three HRIA implementation steps, and depending on whether the human rights data are collected within the company, from first tier suppliers or n-tier suppliers, companies face different challenges and apply different counter strategies. The findings suggest that in the first HRIA implementation step, companies face the challenge of varying national corporate HRDD laws, abstract legal human rights requirements, and conflicts between national laws and the international human rights law. They try to overcome these challenges by exchanges with other companies, consulting external experts, using handouts, examining the implementation of other companies and asking politicians for further specification. Despite these counter strategies, the majority of the companies indicated they were in a state of uncertainty as to whether their corporate human rights responsibility is sufficiently met.

The human rights data collection in the company and in the first tier supply chain is challenging according to the findings because of limited human rights knowledge of employees. Two companies reported to counteract this knowledge deficit by means of human rights training. The findings also suggest that access to (informative) human rights data in the first tier supply chain can be challenging, when the negotiating position with first tier suppliers is weak. Companies try to strengthen their negotiating position with first tier suppliers by declaring HRIA as a binding award criterion and by participating in industry/multistakeholder initiatives. The effectiveness of the latter counter strategy depends, according to the findings, on the specific design of the industry/multistakeholder initiative. The findings indicate that the participation in an industry/multistakeholder initiative brings further benefits to the companies, such as efficiency gains through the standardization of approaches and the sharing of collected data, but is also connected to new challenges such as the difficulty to
achieve consensus due to different opinions and interests among the participants. The companies diverged on whether the collection of human rights data via industry/multistakeholder initiatives influences the data quality with respect to accuracy, completeness and topicality. A recurrent theme with respect to the data collection in the n-tier supply chain was the difficulty in identifying n-tier suppliers in complex supply chain networks characterized by a large number of globally dispersed, constantly changing suppliers, spread across up to eight different tier-levels. Access to human rights data in the n-tier supply chain is challenging according to the findings because of generally missing contractual relationships with n-tier suppliers.

The findings suggest that in the last HRIA implementation step it is challenging for companies to both assess whether the identified impacts in fact constitute a (potential) human rights violation and to determine the severity of the impacts. In the supply chain it can be challenging for companies to assess the actual human rights situation because the information value of the assessment basis can be restricted. Furthermore, the results indicate that companies have difficulties in assessing their own responsibility in the supply chain on the basis of an area of responsibility which differentiates between ‘contribution’ and ‘direct link’.

Despite these profound and differentiated insights, which allow an improved understanding of the corporate HRIA implementation challenges and counter strategies, the study is limited in several respects, some of which open up interesting avenues for future research. First of all, given that this is an explorative study, which is based on a non-representative sample, caution must be exercised in generalizing the findings. Future replications thus could assess the generalizability of the findings.

In addition to this, the cases are relatively homogeneous in terms of size and region, given that all companies are large corporations headquartered in either Germany or Switzerland. It would be interesting to see whether SMEs and companies that operate in other institutional and socio-cultural contexts face other HRIA implementation challenges and apply other counter strategies, if any. Future research thus could
provide in-depth insights of potentially influential corporate factors and context-specific effects. All companies from this study moreover participate in industry/multistakeholder initiatives. Future research thus may examine whether the challenges experienced and the counter strategies applied vary when companies implement HRIA on their own instead of via industry/multistakeholder initiatives, and whether there are differences depending on the specific design of the initiatives.

One new and interesting discussion point uncovered by this study refers to the question of whether the human rights data collection via industry/multistakeholder initiatives influences the data quality with respect to accuracy, completeness and topicality. An interesting avenue for further research thus would be an exploration of whether the collection of the human rights data via an industry/multistakeholder initiative has a positive or negative impact on the data quality and if so, for what reason(s).

To widen the set of perspectives, future research could moreover incorporate views from employees working in departments other than those in this study, such as for instance human resources or the legal department. Future research would also benefit from incorporating opinions on the HRIA implementation challenges and counter strategies from a rights-holder’s perspective.

The findings suggest that the human rights knowledge of employees varies among companies and that only some companies counteract knowledge deficits by respective human rights training. Future research could investigate the reasons for the differences.

The findings also suggest that different companies have different views on whether internationally recognized human rights or economic interests should be prioritized. Potentially there are also different views among varying employees within a company, representing another promising area for future research.
Last but not least, the study differentiates between first tier and n-tier supplier relationships. Given that n-tier supply chains can be characterized by several tier levels, it would be interesting to see whether, depending on the specific tier level, there are differences in the HRIA implementation challenges and counter strategies.

It is hoped that the insights from this study will allow scholars and practitioners alike not only to explore the interesting areas for further research, but also to utilize the knowledge in a way that supports the overarching goal of progress in respect of human rights and human dignity.
8 References


RBA (2021a) *About the RBA*. Available at:


Operationalization of the “Protect, Respect and Remedy” Framework, UN doc. A/HRC/14/27.

Ruggie, J. (2010b) ‘Human rights and transnational corporations and other business enterprises Note by the Secretary-General’, UN doc. A/65/310.


United Nations General Assembly (1948) *The Universal Declaration of Human Rights*. 223


Appendix

The interview guide

Once again thank you very much for being willing to participate in the study. Your support is highly appreciated! First of all I would like to reassure you that your responses will be saved and published in anonymous form only. No one will thus be able to link your responses to you or to the company you work for. Confidentiality thus is absolutely assured. There are no right or wrong answers. Any answer will be hence as valued as another. You can therefore be completely open and honest in your responses.

To ensure that nothing is lost I would like to audio-record the interview. Once the interview has been transcribed the audio-record will be deleted. Is that alright with you?

As previously explained, the study aims to understand the corporate HRIA implementation challenges and counter strategies, thus focusing upon the first step within the HRDD. The study focuses on employees as rights holders and in business relationships on supplier relationships which are differentiated according to first tier and n-tier suppliers.

If you have any questions during the interview please do not hesitate to ask.

1 Company and interviewee characteristics

Department of interviewee:
Position of interviewee:
Sector:
Size:
Turnover in 2020:
Number of employees:
Location of the headquarters:
Locations in how many countries:
Approximate number of first tier suppliers:

First tier suppliers in how many countries:

The HRIA approaches

2 Since when have you been implementing HRIA?

3 How are you implementing HRIA?

(Prompt with the following)
- Stand-alone or integrated HRIA
- Consultation with your own employees to understand their views
- Consultation with other relevant stakeholders to understand their views
- Consultation with your suppliers’ employees to understand their views
- Consultation with other relevant stakeholders to understand their views
- Grievance mechanism

4 How are you collecting the data for the HRIA from your first tier suppliers?

Prompt with the following:

(a) SAQs
(b) second party audits
(c) third party audits
(d) quick-checks
(e) media screenings
(f) via industry and/or multistakeholder initiatives

5 How are you collecting the data for the HRIA from your n-tier suppliers?

Prompt with the following:

- Indirectly via first tier suppliers, directly, or a combination of both approaches
Examining the HRIA provisions of the UNGP

6 Does your company face any challenges when examining the HRIA provisions of the UNGP?

Apply different types of probes.

7 Does your company apply any strategies to counteract these challenges?

Apply different types of probes.

Collecting the data for the HRIA

8 Does your company face any challenges when collecting the data for the HRIA within the company?

Apply different types of probes.

Prompt with the following:

- The human rights knowledge of employees

9 Does your company apply any strategies to counteract these challenges?

Apply different types of probes.

10 Does your company face any challenges when collecting the data for the HRIA from first tier suppliers?

Apply different types of probes.

11 Does your company apply any strategies to counteract these implementation challenges in the first tier supply chain?
Prompt with the following:

- participation in industry and/or multistakeholder initiatives

**12 Does your company face any challenges when collecting the data for the HRIA from n-tier suppliers?**

Apply different types of probes.

Prompt with the following:

- transparency

**13 Does your company apply any strategies to counteract these implementation challenges in the n-tier supply chain?**

Apply different types of probes.

Prompt with the following:

- participation in industry and/or multistakeholder initiatives

**Assessing the adverse human rights impacts**

**14 Does your company face any challenges when assessing the adverse human rights impacts?**

Apply different types of probes.

Prompt with the following:

- the differentiation between ‘causation’, ‘contribution’ and ‘direct link’

**15 Does your company apply any strategies to counteract these assessment challenges?**
Apply different types of probes.

16 Are there any other HRIA implementation challenges and/or counter strategies which have not been discussed yet?

Apply different types of probes.

- 

Thank you very much for answering my questions.

Does your company have internal documents that provide insights into the HRIA implementation challenges and counter strategies that you could hand out to me or that I could download somewhere on my own?

Can I finally ask you if you know other eligible candidates for this study, hence other people responsible for the implementation of HRIA at either your or another company that is experienced in implementing HRIA as envisaged by the UNGP? Could you establish a contact?