

Corporate strategies to avoid responsibility for human rights abuses

Corporations around the globe continue to operate with impunity as they often successfully use strategies to avoid responsibility for human rights abuses and environmental damage.

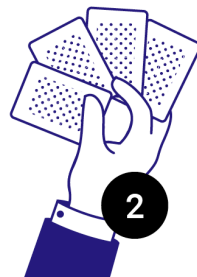
To better understand how companies remain unaccountable for the negative impacts they produce, the Mind the Gap consortium has developed an innovative framework to identify five corporate strategies that lead to the abdication of responsibility for these harmful effects on people and communities around the world.

The wide prevalence and acceptance of these strategies is problematic and emphasises the urgent need for a thorough revision of our global trade and production systems. While the identified strategies may not always be designed with the specific aim of avoiding responsibility, evidence shows their use has resulted in limited accountability for negative impacts, which is harmful for victims and the public interest. To encourage genuine respect for human rights and the environment, the international community urgently needs to close the governance gaps that allow corporations to evade responsibility for their actions.

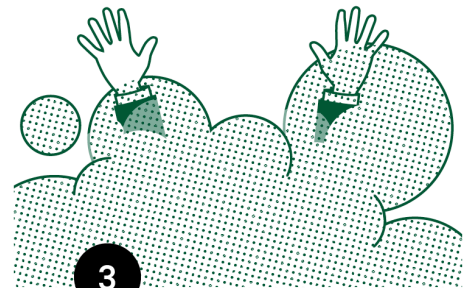
Five harmful strategies



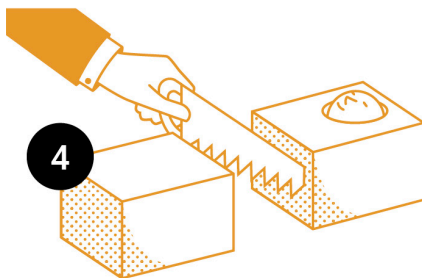
CONSTRUCTING DENIABILITY



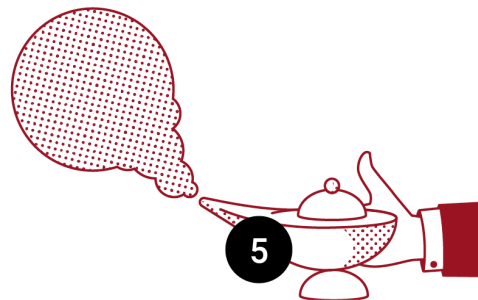
AVOIDING LIABILITY THROUGH JUDICIAL STRATEGIES



DISTRACTING AND OBFUSCATING



UNDERMINING DEFENDERS AND COMMUNITIES



UTILISING STATE POWER

Strategy 1 Constructing deniability

There are several common business practices through which companies can avoid direct or perceived involvement in activities that result in harmful impacts. If companies effectively obscure their involvement in harmful business practices, this poses difficulties for rights-holders who may attempt to protect themselves from, or seek redress for, human rights abuses and environmental harms.

Five ways to construct deniability

- Hiding behind complex supply chains
- Outsourcing high-risk activities
- Outsourcing recruitment and employment
- Disengaging irresponsibly
- Refusing to Disclose



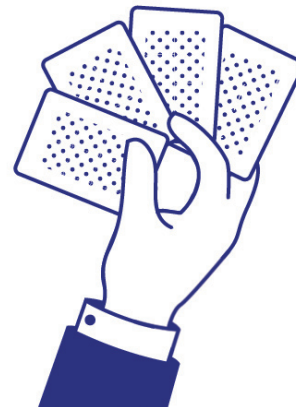
When confronted with negative human rights impacts in their supply chains, companies often argue that such impacts are undetectable due to the complexity of the supply chain, or else they place responsibility for those impacts with their supplier. Companies can also construct deniability by outsourcing high-liability activities and/or recruitment and employment, thereby limiting responsibility for those processes. Furthermore, companies can opt to disengage from certain business activities, thereby cutting their association with human rights harm and thus responsibility for remediation. Companies further construct deniability by directly refusing to disclose information that could tie them to (potential) human rights and environmental impacts.

Strategy 2 Avoiding liability through judicial strategies

Corporations routinely use a range of judicial procedures to avoid liability for harms they have caused or contributed to, often leaving victims without proper remedy for the (on-going) harms they are facing. When successful, judicial strategies avoid a court decision that confirms corporate liability for human rights abuses, or prevent the adoption of legislation or investigations that could adversely impact a company's investments.

Five ways to avoid liability through judicial strategies

- Abusing judicial process
- Engaging in jurisdiction shopping
- Shielding parent companies
- Settling cases
- Taking States to international arbitration



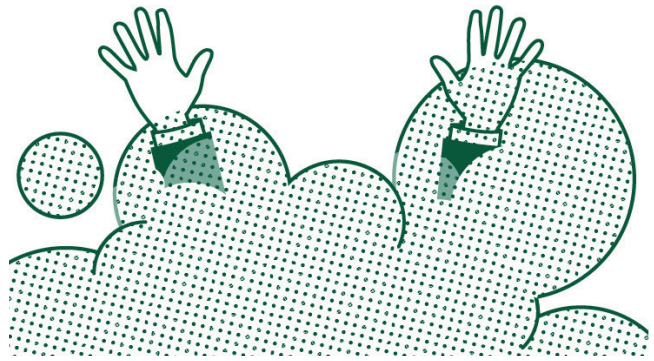
When companies are challenged in court, they have a variety of tools at their disposal to avoid liability. Commonly used strategies include: abusing judicial processes in order to delay and complicate proceedings and withhold attention from the substance of the case; engaging in jurisdiction shopping; shielding parent companies from liability for harms conducted by entities within their corporate group; and settling cases out of court to avoid a guilty verdict and setting a precedent. Another strategy is to take states to international arbitration to avoid the adoption of more stringent legislation or to put pressure on states to drop criminal investigations.

Strategy 3 Distracting and obfuscating stakeholders

Companies often resort to a range of communication tactics to influence the course of events in their business interest. This is problematic if it means that legitimate community, worker or public interests are disregarded or only responded to in a cosmetic, superficial manner.

Six ways to distract and obfuscate stakeholders

- Symbolically engaging communities
- Disseminating distorted information
- Engaging in fraudulent activities
- Manipulating scientific research
- Abusing standards
- Diverting complaints through company-controlled mechanisms



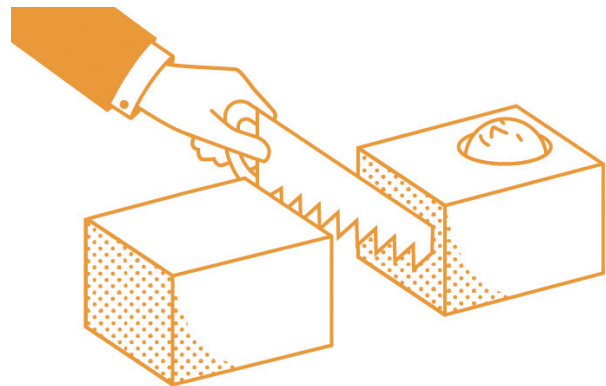
Companies can engage communities impacted by their operations in a symbolic rather than meaningful way to avoid community protests and subsequent demands for accountability directed at them. They can disseminate distorted information among the public to make their business seem more responsible than it is, or engage in downright fraudulent activities and disseminate false information to avoid responsibility for past or future harms. Another form in which this strategy manifests itself is by manipulation of scientific research. Furthermore, companies can abuse standard systems that are designed to assure that products and production qualities conform with specific requirements to conceal unsustainable or substandard company practices. A last form identified here is the diversion of complaints through company controlled grievance mechanisms that pretend to offer remedy for victims, but actually delay or divert right-holders' complaints.

Strategy 4 Undermining defenders and communities

Whether through direct violence or indirect tactics to thwart critics, companies can seek to silence communities and human rights defenders in order to continue their business operations, thereby avoiding to address concerns raised by defenders, communities and civil society organisations.

Five ways to undermine defenders and communities

- Attacking human rights defenders
- Filing lawsuits to intimidate critics
- Criminalising human rights defenders
- Dividing communities
- Undermining unionisation



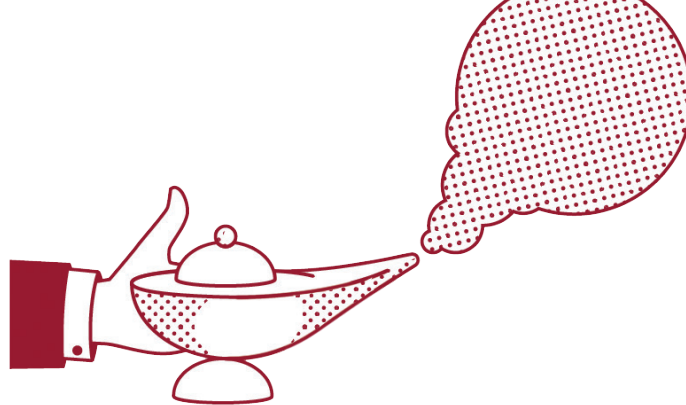
The chosen mechanism for silencing criticism varies depending on the social context and judicial tools available. Strategies against defenders and communities can take the form of physical attacks or threats executed by affiliates of the company for opposing corporate activities. Or the judicial system can be weaponised against human rights defenders through strategic lawsuits, criminalisation and claims of defamation. Companies can also use community engagement and the promised developmental benefits of their investments to pit community members against those protesting misconduct. And they can obstruct collective organisation of workers and thereby avoid having to respect other labour rights.

Strategy 5 Utilising State Power

Companies can leverage their power with states to obtain favourable treatment, security and impunity. Where corporate interests have “captured” the state or its agents, communities, human rights defenders and other rights holders risk losing fundamental protections and access to justice.

Four ways to Utilise State Power

- Exploiting governance gaps created by states
- Avoiding regulations through corporate lobbying
- Aligning with repressive state institutions
- Engaging State security forces



The instruments used by companies to gain and leverage state assistance vary in their legality and acceptance. One way companies do this is by exploiting the governance gaps created by states, for example by profiting from preferential treatment in export processing zones. Corporate lobbying against regulations intended to protect human rights and the environment, but that potentially harm business interests, is a common practice. Furthermore, companies may align with suppressive state institutions that violate human rights. Finally, companies can engage state security forces to protect their business interests, even when serious human rights violations can be expected as a result.

About Mind the Gap

This framework on harmful corporate strategies is the result of a collaborative research process – including literature studies, surveys and consultations – and the Mind the Gap website demonstrates the wide prevalence of such strategies in practice. More detailed explanations of the harmful strategies and corresponding evidence can be found on www.mindthegap.ngo.

The evidence suggests that economic liberalisation and globalisation policies combined with existing governance gaps and other systemic barriers to justice have fostered an environment that is conducive to corporate misconduct and impunity for environmental damage and human rights abuses. In turn, such misconduct and impunity continues to hinder the efforts of states to achieve sustainable and fair policy outcomes. To arrive at a situation where businesses can no longer avoid responsibility for negative human rights and environmental impacts, the Mind the Gap consortium calls on duty-bearers to close the governance gaps that allow harmful corporate

strategies to be applied; call on companies to stop exploiting these gaps and using these strategies; and support civil society organisations and rights holders to become aware of these strategies in order to counter them.

MINDTHE GAP

The Mind the Gap consortium involves civil society organisations from across the globe with the aim of increasing respect for human rights and achieving justice and remedy for individuals and communities whose lives and livelihoods have been adversely affected by multinational corporations.

Acknowledgements

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