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Summary of “Clouds of Injustice Bhopal Disaster 20 years on”

[An Amnesty International Report ASA 20/015/2004]

AI Index: ASA 20/104/2004

On the night of 2nd December 1984 over 35 tons of toxic gases leaked from a pesticide plant in Bhopal owned by the US based multinational Union Carbide Corporation (UCC)'s Indian affiliate Union Carbide India Limited (UCIL). The gases that leaked consisted mainly of at least 24 tons of poisonous Methyl Isocyanate (MIC) and other reaction products, possibly including toxins such as hydrogen cyanide, nitrous oxide and carbon monoxide.

In the next 2-3 days more than 7,000 people died and many more were injured. Over the last 20 years at least 15,000 more people have died from illnesses related to gas exposure. Today more than 100,000 people continue to suffer chronic and debilitating illnesses for which treatment is largely ineffective.

The disaster shocked the world and raised fundamental questions about government and corporate responsibility for industrial accidents that devastate human life and local environments. Yet 20 years later, the survivors still await just compensation, adequate medical assistance and treatment, and comprehensive economic and social rehabilitation. The plant site has still not been cleaned up. As a result, toxic wastes continue to pollute the environment and contaminate water that surrounding communities rely on. And, astonishingly, no one has been held to account for the leak and its appalling consequences.

Efforts by survivors' organizations to use the US and Indian court systems to see justice done and gain adequate redress have so far been unsuccessful. The transnational corporations involved – UCC and Dow Chemicals which took over UCC in 2001 – have publicly stated that they have no responsibility for the leak and its consequences or for the pollution from the plant. UCC continues to refuse to appear before the court in Bhopal to face trial and the Supreme Court endorsed final settlement has left survivors living in penury.

The Human Rights Impact of the Leak

The leak has claimed more than 20,000 lives so far and left more than a hundred thousand people chronically ill. The gas affected people suffer from a variety of health problems including chronic respiratory illness, eye disease, immune system impairment, neurological damage, neuromuscular damage, and mental health problems. Pregnant women had high rates of miscarriage at the time of the leak, and higher rates of miscarriage persisted even among those who conceived after the gas leak. Gas affected women also suffer from many gynaecological disorders. Children have suffered severe health problems, including growth defects. There are indications that exposed people have a greater risk of cancer.

Despite the intensive work done immediately after the leak, the extent and the quality of medical research has not been adequate to make decisions about de-toxification, short- and long-term treatment, long-term health consequences and the implementation of a program to compensate victims. Inadequate research has been further weakened by the lack of information from UCC about the nature of the gases released during the leak and their toxicity.

The Union Carbide Bhopal plant has been polluting ground water and soil since it began functioning in the early 1970s primarily as a result of poor waste disposal practices. The plant site, abandoned since the 1984 leak, continues to pollute the groundwater, the sole source of water for those around the plant, with many toxic substances, that according to some reports may be carcinogenic. This has also resulted in thousands more people being poisoned. Despite knowledge about the extent of contamination and repeated entreaties to do so, Union Carbide has not taken substantive action to clean the plant site

Those exposed to the gas leak were overwhelmingly from the poorest sections of society, and the debilitating effects of the leak has entrenched existing poverty and disempowerment. A large number of gas affected people are unable to work due to their illnesses or injury and have been impoverished. The high cost of treatment and meagre compensation has further aggravated the economic hardships of thousands of survivors. In addition gas affected people are stigmatised and women in particular are vulnerable to discrimination and social ostracism.

Thousands of people in Bhopal were denied their right to life, and tens of thousands of people have had their right to health undermined. Those struggling for justice and the right to a remedy in Bhopal have been frustrated in their efforts. Thousands of poor families have suffered illness and bereavement, further impairing their ability to realize their right to a decent standard of living. Women facing social stigma as a result of gas exposure have been denied their right to freedom from discrimination. Those who were exposed to the gas and those around the plant who continue to be exposed to contaminated water have been denied their right to a safe environment.

Role of Union Carbide Corporation

UCC owned 50.9% of the equity of UCIL, and maintained extensive corporate, managerial, technical and operational control over UCIL. Despite that, since the leak UCC has argued that the Bhopal plant was not under its control or management and that UCIL was responsible, prior to the leak. However, in its general policy UCC detailed the intention to “secure and maintain effective management control of an affiliate”. The company decided to store quantities of the “ultra-hazardous” MIC in the Bhopal plant in bulk, but did not equip the plant with the corresponding processing or safety capacity. On the night of the gas leak crucial safety systems including the cooling system, the liquid nitrogen pressure and the vent gas scrubber—were not functional.

UCC transferred technology that was not proven and entailed operational risks. It did not apply the same standards of safety in design or operations to Bhopal as it had in place in the USA. Most importantly for those who lived and worked around the plant, and unlike in the USA, the company failed to set up any comprehensive emergency plan or system in Bhopal to warn local communities about leaks.

As early as 1982, a UCC safety audit had highlighted many major and minor safety concerns regarding the Bhopal plant. There had been a number of accidents at the plant prior to the leak and local media and the workers union had repeatedly raised safety concerns in public. Months before the December 1984 disaster, the UCC was warned of the possibility of a runaway reaction in its similar to the one that caused the eventual leak in Bhopal occurring at the West Virginia MIC plant. Amnesty International is not aware of any evidence to show that this report was shared with UCIL or of any appropriate preventive measures taken at the Bhopal plant.

After the leak UCC maintained that MIC was nothing more than tear gas even though the company's own manuals clearly said that MIC was a fatal poison. Till date UCC has refused to identify the reaction products released and related toxicological information of the products that leaked. This has prevented doctors from developing an appropriate treatment protocol for victims.

Later UCC also claimed that the leak was an act of sabotage caused by a disgruntled employee, whom it has since refused to name. After UCC was taken over by Dow Chemicals, both companies used the new ownership structure in an attempt to avoid any responsibility for the Bhopal disaster.

Urging that the case be thrown out of the USA, UCC argued before the US District Court that, "Indeed, the practical impossibility for American courts and juries, imbued with US cultural values, living standards and expectations, to determine living standards for people living in the slums or 'hutments' surrounding the UCIL, Bhopal, India, by itself confirms that the Indian forum is overwhelmingly the most appropriate. Such abject poverty and the vastly different values, standards and expectations which accompany it are commonplace in India and the third world. They are incomprehensible to Americans living in the United States."

UCC appealed against the orders of the Bhopal and Madhya Pradesh High Court to pay interim relief to the gas affected victims of Bhopal.

The Settlement

In 1988 the Madhya Pradesh High Court upheld with some modifications a Bhopal District Court ruling and ordered UCC to pay 250 crore rupees (approximately US\$ 157 million at the prevailing rate) as interim compensation to the victims. On 14th February 1989, even as UCC's appeal against this decision was being heard in the Supreme Court, the apex Court pronounced an order that endorsed a settlement that involved UCC paying 750 crore rupees (approximately US\$ 470 million at the prevailing rate) not as fines, penalties or punitive damages but "for the benefit of all victims" of the gas leak. In return all civil and criminal liabilities and charges against UCC and UCIL were dropped. Following widespread protests and an appeal the Supreme Court however reinstated criminal proceedings in 1991.

None of the victims or their representatives were consulted by the Supreme Court or the Indian Government before accepting this full and final settlement. At the time of settlement the number of victims and the full nature and extent of the damages suffered was not even known. The settlement was based on an estimate of 105,000 victims (3000 dead, 30,000 permanent or total disabilities, 20,000 temporary or partial disabilities, 2,000 serious injuries, and 50,000 minor injuries). This figure was arbitrary; at the time of the settlement, even though victims had filed over 600,000 claims only 29,000 of them had been categorized.

Over the years this has resulted in grave injustice to victims since the money meant for 105,000 victims has been distributed amongst more than five times the numbers of dead, injured and disabled used by the Supreme Court to calculate the settlement. The 2003 annual report of the Madhya Pradesh Gas Relief and Rehabilitation Department reveals that by October 2003, compensation had been awarded in 15,248 cases of death and at least 554,895 cases of injury or disability.

Role of the Governments of India and Madhya Pradesh

The government of India and the state government of Madhya Pradesh were aware that the Bhopal plant used hazardous substances and processes, There were also public warnings by the media and by workers' unions in the plant about dangerous conditions at the plant, as well as several accidents, some fatal. Just months before the accident, the state government granted

legal titles to thousands of people who had built homes around the plant site. However, Amnesty International has been unable to find evidence that the central or state government took adequate steps to assess the risk to these local communities, most of whom would be the first victims of the gas leak, or the surrounding environment. Nor did the government impose strict safety standards or press Union Carbide to review safety mechanisms.

In 1985 the government of India enacted the Bhopal Claims Act and took away from victims the right to represent themselves and vested itself with the exclusive right to represent victims. In 1989 the government agreed to a settlement with UCC. In return for a modest and arbitrarily determined financial payment to victims, the settlement bestowed sweeping civil and criminal immunity on UCC, trading off its legal liability. The government negotiated settlement entirely excluded the victims of the disaster from shaping the end of the case.

The payment of compensation to victims did not, however, begin until 1992 and involved numerous problems including payment of inadequate sums, delayed payments, arbitrary rejection or downgrading of claims. Excessive bureaucracy in the claims process led to the entry of middlemen and rampant corruption, further reducing the amount of compensation money that victims were able to finally get.

In 1994, the Indian Council for Medical Research (ICMR) stopped all further research on the medical effects of the Bhopal disaster without explanation. The full results of the research carried out and the data with the ICMR have yet to be published.

The state Government efforts to provide rehabilitation have proven largely ineffective. The poor quality of the health care system has meant that most survivors have had to spend most of their compensation money on private medical treatment. The hospitals set for the treatment of gas victims provide only symptomatic treatment.

The social and economic rehabilitation measures have been poorly implemented and have failed to lessen the impoverishment of already economically vulnerable survivors. Those orphaned and widowed by the gas leak are in a particularly precarious condition.

Despite a Supreme Court order in May 2004 to provide clean drinking water to communities affected by the contaminated water the government of Madhya Pradesh has not yet implemented the order in full.

Conclusion

It is clear that both UCC/Dow and the Indian/Madhya Pradesh government failed to comply with their respective obligations and responsibilities to (a) prevent the gas leak and address its consequences, and (b) prevent and stop the continuing pollution of the environment and water through the dispersal of toxic and hazardous substances. The Bhopal case also illustrates how companies evade their human rights responsibilities and underlines the need to establish a universal human rights framework that can be applied to companies directly.

Governments have the primary responsibility for protecting the human rights of communities endangered by the activities of corporations, such as those employing hazardous technology. However, as the influence and reach of companies have grown, there has been a developing consensus that they must be brought within the framework of international human rights standards. There is already a clear trend to extend international obligations beyond states, including to individuals (for international crimes), armed groups, international organizations and private enterprises. Amnesty International supports this trend and believes that companies have an inalienable responsibility for the human rights impact of their operations.

These human rights are explicitly guaranteed in international treaties which are legally binding on the Indian state. Such obligations can be enforced by Indian courts if they are

incorporated into Indian law. The Indian Constitution guarantees the right to life, and the Indian Supreme Court has held that this includes the right to health and to protection from environmental pollution. The Court has also determined that companies are responsible for environmental damage and for compensating anyone harmed by their activities.

The UN Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights (UN Norms)—adopted by the UN Sub-Commission in 2003—is a significant step towards generating universally recognized, normative framework to identify the responsibilities of companies for the human rights impact of their actions.

Amnesty International also maintains that there is no substitute for taking steps to regulate the activities of corporations in both host and home countries. Laws in host countries must be developed and enforced to allow national governments and local communities to control the activities of companies operating in their territory. Transnational corporations should avoid double standards in safety and adopt the best practices in all aspects of safety in all their operations.

The Bhopal disaster and its aftermath demonstrate clearly the need for an international human rights framework that can be applied to companies directly, that could also act as a catalyst for national legal reform, and serve as a benchmark for national law and regulations. Ensuring public participation and transparency in decisions relating to the location, operational safety and waste disposal of industries using hazardous materials and technology is an essential step to heighten risk awareness and responsible behaviour as well as to ensure better preparedness to prevent and deal with disasters like Bhopal.

The concerned Governments and the international community must ensure that victims of human rights violations have effective access to justice and effective redress for the harm suffered, without discrimination, and regardless of whether those responsible for the violations are governments or corporations.

Recommendations

Having noted the steps taken by governments in India to assist the victims of the Bhopal tragedy:

Amnesty International calls on the governments of India and Madhya Pradesh to:

- ensure the effective and prompt decontamination and clean up of the Bhopal site by Union Carbide Corporation (UCC)/Dow Chemical Company, or to undertake the job if UCC/Dow is either unwilling or unable to do so;
- conduct a detailed assessment of the nature and extent of damage to health and environment from improper waste disposal and contaminants from the abandoned factory site and make public the findings;
- ensure Dow/UCC provide full reparations, restitution, compensation and rehabilitation for the continuing damage done to health and the environment by the ongoing contamination of the site;
- ensure regular supply of adequate safe water for the domestic use of the affected communities in line with the order issued by the Supreme Court
- ensure adequate and accessible healthcare for all survivors, in particular by making sure the offer of free health care is extended without discrimination to all those affected by the disaster, including to children born of parents affected by the gas leak;

- work with survivors' organizations to establish a mechanism for the distribution of all outstanding compensation in a way that guarantees the victims access to justice and due process, ensures transparency and guards against corruption;
- reassess the compensation received by victims, following the 1989 settlement, and make up any shortfall in line with the Supreme Court's 1991 order;
- ensure that UCC makes available all information about the reaction products released on the day of the leak and full information regarding their toxicity and impact on people and the environment, and make sure that such information is passed on to the survivors in languages they can understand;
- ensure that all studies carried out by the Indian Council of Medical Research and any other relevant research on the health impact of the gas leak are made public;
- conduct a thorough and transparent review of the rehabilitation programs in consultation with survivors' groups;
- address the particular needs of women who face social stigma and those who were orphaned as a result of the disaster.

Amnesty International further calls on the Indian Government to:

- invite relevant Special Procedures of the UN Commission on Human Rights to visit India and examine the effect of UCIL/UCC activities and the Bhopal disaster on contamination of the ground water and the environment, and consequently on the human rights of affected communities. Key procedures [mechanism] would include the Special Rapporteur on adverse effects on the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right of adequate standard of living; and the special rapporteur on the Right to Food.

Amnesty International calls on the US government to:

- do everything within its legal authority to ensure that Bhopal survivors are able to obtain redress;
- cooperate with the government of India to ensure that UCC and/or Dow Chemical appear before Chief Magistrate's Court in Bhopal to face trial on the criminal charges.

Amnesty International calls on Dow Chemical Company to ensure that UCC:

- effectively and promptly decontaminates the Bhopal factory site, cleans up the groundwater and removes the stockpiles of toxic and hazardous substances left by the company when they abandoned the site;
- cooperates fully with those who are assessing the long-term health consequences of the gas leak and of the hazardous and toxic substances left on site since 1984;
- promptly makes public all information it has on all reaction products released on the day of the gas leak and full information regarding their toxicity and impact on people and the environment;
- appears before the Chief Magistrate's Court in Bhopal in the criminal case.

Amnesty International calls on Dow Chemical Company to:

- provide promptly full reparations, restitution, compensation and rehabilitation for the continuing damage done to people's health and the environment by the ongoing contamination of the site.

Amnesty International calls on the UN Commission on Human Rights to:

- work towards the adoption of an international, universally recognized normative framework for business, including minimum human rights standards for corporations to be incorporated into domestic law.

Amnesty International calls on the UN High Commissioner for Human Rights to:

- take a leading role in multilateral efforts to clarify the human rights responsibilities of transnational corporations and other business enterprises;
- offer the technical assistance of her office to ensure that mechanisms of reparation for survivors of the Bhopal tragedy accord with international human rights standards.

A complete version of the Amnesty International report on Bhopal "*Clouds of Injustice: Bhopal Disaster- 20 years on*", ASA 20/015/2004, is available in Hindi, English and Arabic at <http://web.amnesty.org/pages/ec-bhopal-eng>

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