Amnesty International

Bhopal: Justice Delayed, Justice Denied

Background briefing on the criminal prosecutions in India and the failure to bring the prosecutions to an end 25 years on

The Human Rights Tragedy

- Shortly after midnight on 3 December, 1984, tonnes of deadly methyl isocyanate (MIC) a highly toxic chemical, were silently leaking into the atmosphere from a pesticide factory in Bhopal, India, operated by Union Carbide India Ltd (UCIL), an Indian subsidiary of US based Union Carbide Corporation (UCC).[1]

- Approximately 54,000 pounds of gas - comprised mainly of MIC, with methyl amine, carbon dioxide and other reactants - formed a thick cloud that hung close to the ground. Carried by a breeze towards settlements directly south and south east of the plant site, the gas choked and maimed tens of thousands of inhabitants of the heavily populated old city of Bhopal less than a mile away.

- A catastrophe of unimaginable proportions ensued. It is now understood that by the time the cloud had dispersed, some 8 to 10,000 people had either died or were soon to succumb to the effects of the released gas.[2] Children and the elderly were reported to be most severely affected.

- According to subsequent medical research, those acutely exposed to the gas cloud suffered multi-systemic injuries,[3] leading to highly elevated rates of morbidity and mortality[4] in the affected communities that continue to this day, a quarter century later.

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[1] At the time of the disaster, Union Carbide Corporation (UCC) owned a 50.9% majority shareholding in Union Carbide India Ltd. (UCIL), making UCIL in UCC's own terms a 'subsidiary'.
[2] Amnesty International, "Clouds of Injustice: Bhopal disaster 20 years on", 2004, p.12.
[3] S Srimarachari et al, "GC-NPD and GC-MS analysis of preserved tissue of Bhopal gas disaster: evidence of methyl carbamylation in post mortem blood", Medicine, Science and the Law, October 1991, Vol. 31, No.4, pp. 298-293.
[4] "Clouds of Injustice", op cit, pps. 10-12.

- The impact on health has been severe: long-term prevalence of ocular and respiratory illnesses,[5] multi-systemic injuries to organs within the body:[6] chromosomal aberrations have been discovered, leading to expectation of cancers and the possibility of birth defects;[7] gynaecological and reproductive disorders,[8] neurological[9] and neuromuscular affects, immunological impacts[10] leading to diseases such as tuberculosis manifesting at three times the national average;[11] psychiatric effects such as anxiety, memory loss and depression.[12]

- Evidence of second generational effects has been established: some boys born to gas-affected parents suffer growth retardation, while some girls have suffered from hormone-related problems.[13]

- Under Indian penal law, several serious criminal offences were at stake, including culpable homicide (not amounting to murder). The authorities were swift in making arrests in the immediate aftermaths of the tragedy, but a quarter of a century later the criminal prosecutions have not concluded and no one has been held to account.

The criminal prosecutions: a parody of justice

- Less than 24 hours after the gas leak, on 3 December, 1984, Crime No.1104/84 was registered, *suo moto*, by Station House Officer at Hanumanganj Police Station.[14] The First Information Report (FIR) was registered under section 304 A of the Indian Penal Code (IPC).[15]

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[5] R Dhara, "Health Affects of the Bhopal Gas Leak: a Review", New Solutions, Spring 1994.
[6] S Srimarachari et al, "GC-NPD and GC-MS analysis of preserved tissue of Bhopal gas disaster: evidence of methyl carbamylation in post mortem blood", Medicine, Science and the Law, October 1991, Vol. 31, No.4, pp. 293-298.
[7] "Health Affects of the Bhopal Gas Leak: a review", op cit, p.40.
[8] Shilotri NP et al, "Gynaecological and obstetrical survey of Bhopal women following exposure to methyl isocyanate", J Postgrad Med, 1986; 32:203-5.
[9] International Perspectives in Public Health, vol. 11 & 12, 1996.
[10] AK Saxena et al, "Effect of exposure to toxic gas on the population of Bhopal: IV- Immunological and chromosomal studies", Indian journal of experimental biology, 26 pp. 173-6.
[11] C Sathyamala et al, "Against all odds: Continuing effects of the toxic gases on the health status of the surviving population in Bhopal", December 1989, p.10.
[12] International Perspectives in Public Health, op cit, pp. 36-40.
[13] Ranjan N et al. "Methyl Isocyanate Exposure and Growth Patterns of Adolescents in Bhopal", JAMA 2003; 290:1856-57.
[14] Committee on Government Assurances (2003-2004), Thirteenth Lok Sabha, twelfth report (Extradition of Former Chairman, Union Carbide Corporation), ch. 2 para. 7. Also "Unsettling Truths,

- Nine individuals and three corporations were indicated as accused:[16] Warren Anderson, a national of the USA, since 1982 the serving Chairman of UCC; Keshub Mahindra, an Indian national, Chairman of UCIL; V.P. Gokhale, an Indian national, Managing Director of UCIL; Kishore Kamdar, an Indian national, Vice President and in charge of the Agricultural Products Division of UCIL; Jagannath Mukund, an Indian national, Works Manager of the Bhopal Plant; Dr. R.B. Roy Choudhary, Indian national, Assistant Works Manager of UCIL; S. P. Choudhary, Indian national, Production Manager of the Bhopal Plant; Shakeel Ibrahim Qureshi, Indian national, Plant Superintendent; and K.V. Shetty, Indian national, Production Assistant at the Bhopal plant.[17]

- The corporations accused were UCC, UCIL and Union Carbide Eastern, Inc. (UCE), a wholly owned Subsidiary of UCC, based in Hong Kong but incorporated in the USA.[18]

- Higher rank corporate officials Warren Anderson, Keshub Mahindra, and V.P. Gokhale were arrested only four days after the gas leak, on 7 December, 1984.

- Warren Anderson was released on bail the same day, following intervention by the US Embassy.[19] The bail bond signed by Anderson detailed the offence of culpable homicide (not amounting to murder),

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Untold Tales: The Bhopal Gas Disaster Victims' Twenty Years' of Courtroom Struggles for Justice", a report for the Fact Finding Mission on Bhopal, Dr. S. Muralidhar, 2004, p. 31.

[15] 304A Causing death by negligence – "Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both." The Indian Penal Code, Chapter 16

[16] Judgment of Keshub Mahindra vs State of Madhya Pradesh (1996) 6 SCC 129, para. 4.

[17] Assistant Works Manager Roy Choudury died in the late 90's. All other accused remain indicted, though all Indian accused on lesser charges than the foreign accused due to a 13 September, 1996 decision of the Supreme Court, which converted the offence from culpable homicide not amounting to murder under s. 304 part II of the Indian Penal Code, to "causing death by negligence" under s. 304A of the Indian Penal Code. See Keshub Mahindra v. State of Madhya Pradesh (1996) 6 SCC 129.

[18] Keshub Mahindra v. State of Madhya Pradesh (1996) 6 SCC 129.

[19] The New York Times quoted a diplomatic source concerning the intervention: "Throughout the day we were in close consultation with the Indian Government at a high level," the spokesman said. "We expressed deep concern and our hope that the situation could be rectified." "*Indian's arrest and then free U.S. Executive",* Robert Reinhold, The New York Times, 8 December, 1984.

which was not a bailable offence. The bond also contained the promise to return when summoned.[20]

- Anderson was flown to Delhi in an Indian State-owned aircraft where he was met by Embassy officials.[21] Three years later he was formally charged by the Indian Central Bureau of Investigation (CBI) with several serious crimes including culpable homicide (not amounting to murder): numerous summons were ignored, leading to issuance of an arrest warrant and finally a proclamation that Anderson was a 'fugitive from justice.'

- Anderson has not returned to India since he was allowed to leave the country in 1984 and 25 years later, extradition efforts have been unsuccessful.[22]

- All others arrested were also subsequently released on bail.

- On 1 December, 1987, criminal charges, including charges for culpable homicide (not amounting to murder), were filed by the CBI before the Chief Judicial Magistrate's Court in Bhopal (CJM), against corporations UCC, UCIL and UCE, and nine individual executives and management officials.[23]

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[20] In the bond, Warren Anderson stated: "*I am signing this bond for Rs 25,000 and thus undertaking to be present whenever and wherever I am directed to be present by the police or the Court."* English translation of the original Hindi language Bail Bond, dated 7 December, 1984.

[21] "A Killing Wind", Dan Kurzman, p.122.

[22] On 25 May, 1993, the Chief Judicial Magistrate of Bhopal demanded the immediate arrest of the foreign accused, including Anderson, and requested details of extradition proceedings from the CBI. Several years of procedural delays followed, until in 2002 the Committee of Government Assurances pointed at both the CBI and the Ministry of External Affairs for their roles in delaying an extradition request. On 20 May, 2003, the Embassy of India in Washington D.C. handed over the three files detailing India's request for the extradition of Anderson to the State and Justice Departments. The extradition request had taken 16 years since the inception of the criminal proceedings.

[23] The charges laid against the accused were under several sections of the Indian Penal Code. Section 304: Punishment for culpable homicide not amounting to murder: Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death. or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death; Section 304 Part II: Causing death by negligence: Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of

- All foreign accused have managed to escape Indian justice by virtue of simply remaining abroad. Summons issued against Anderson and UCC reportedly met with a dismissive response from Robert Berzok, UCC's director of communications: *"Union Carbide will not appear because, as a United States corporation, it is not subject to India's jurisdiction."*[24] Meanwhile, the Indian officials were sent up for trial.

- In November 1988, the CJM issued an arrest warrant for Warren Anderson. In December 1991, it issued a proclamation ordering Anderson to appear in court in February 1992 to face charges of culpable homicide not amounting to murder. Neither Anderson nor UCC or UCE[25] appeared in court and in February 1992, they were declared absconders (equivalent to the status of 'fugitive') by the CJM. Efforts to extradite Anderson began.

- Due to its non-appearance in court, on 27 March, 1992, the CJM declared that UCC's properties would be 'attached' (seized by the court) if it did not appear by the next hearing. The following month, UCC endowed its Indian assets to a charitable trust hastily registered in London, and in this way attempted to remove them from Indian jurisdiction.[26] The CJM declared the transfer 'malafide' and ordered attachment of UCC's Indian assets in an effort to compel its appearance.[27]

- Upon request by UCC's attorney, the Supreme Court later on modified the terms of the attachment, allowing the sale of the shares held by

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either description for a term which may extend to two years, or with fine, or with both; Section 326: Voluntary causing grievous hurt by dangerous weapons or means punishable with a maximum of ten years or with fine or with both; Section 324: Voluntary causing hurt by dangerous weapons or means punishable with a maximum of three years or with fine or with both and Section 429: Mischief by killing or maiming cattle of the value of 50 rupees punishable with a maximum imprisonment five years or fine or with both.

[24] "India Acts in Carbide Case", Reuters, May 17, 1988. This statement was made even while UCC was actively participating in civil proceedings before the Indian courts.

[25] UCE ceased to exist on 2 April, 1991, date on which the corporation was dissolved. Notice dated 22 July, 1991, filed with the Hong Kong Registrar of Companies on 20 August, 1991. On 18 December 1990, UCE had ceased to have a place of business in Hong Kong, according to Notice of cessation dated 8 January, 1991, filed with the Hong Kong Registrar of Companies on 12 January, 1991.

[26] "Unsettling Truths, Untold Tales: The Bhopal Gas Disaster Victims 'Twenty Years' of Courtroom Struggles for Justice", op. cit., p. 33.

[27] Ibid.

UCC in UCIL. Survivor advocates filed applications to halt the transfer, but these applications were adjourned on five occasions and by the time they were heard on 20 October, 1994, the sale of the shares had already taken place. Thus UCC escaped Indian jurisdiction.

- In 2002, 10 years after the CJM first requested the extradition of Warren Anderson and in view of the Government's inaction, a Committee of the Indian Parliament investigated the delay in fulfilling the CJM's extradition order. It found that the Central Bureau of Investigation and Ministry of External Affairs had created numerous procedural delays over the course of a decade that had prevented extradition being pursued. The Committee ordered immediate action on extradition.[28]

- It was not until 2003 that the Government of India moved the US Government to have Warren Anderson extradited. It took the Government of India 11 years to comply with the 1992 judicial request for extradition of Warren Anderson, and another year for the request to be rejected by the US Government.[29] Two decades after the CJM first ordered Anderson's presence in court, extradition has not yet occurred.

- As recently as 31 July, 2009, the CJM re-issued an arrest warrant for Warren Anderson and ordered the federal government to press on with extradition.[30]

- In August 2009 the CJM asked the CBI about the status of the extradition; the CBI responded that they had alerted the Ministry of External Affairs and that the matter was now with them, and the process continues…[31]

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[28] Committee on Government Assurances (2003-2004), Thirteenth Lok Sabha, twelfth report (Extradition of Former Chairman, Union Carbide Corporation).

[29] Fax, 25 May, 2004, Ashley Deeks, United States Department, Office of the Legal Adviser, Washington D.C. 20520. The request was fully rejected by the U.S. dept. of Justice in June 2004 "*as it does not meet the requirements of Articles 2(1) and 9(3) of the Extradition Treaty".*

[30] "Court issues arrest warrant for former CEO of Union Carbide in gas leak case", Associated Press, July 31, 2009. See http://www.guardian.co.uk/world/2009/jul/31/warren-anderson-arrest-warrant

[31] Bhopal Group for Information and Action, Intervenor and Assistant to the Prosecution, personal correspondence November 2009. Also reported in the Hindustan Times, local edition, August 2009.

- In February 2001 UCC became a wholly owned subsidiary of The Dow Chemical Company (Dow). Even though UCC continued to be a separate legal entity, its corporate identity and all of its business are fully integrated with those of Dow.

- The merger agreement between Dow and UCC omitted to mention UCC's potential liability in the Bhopal case, and did not indicate that any pending criminal prosecution existed against UCC, despite the ongoing criminal prosecutions before the CJM.[32]

- On 6 January, 2005, the CJM issued summons for Dow to attend the proceedings and give account as to why it should not be asked to produce its fully owned subsidiary and proclaimed absconder, UCC, in court.[33] On request by legal counsel for Dow's subsidiary in India, Dow Chemical India Private Ltd. the summons were 'stayed'.

- Almost five years later the summons remains frozen, though survivor advocates are attempting to get the stay lifted so that the request to Dow can proceed. The CBI has made no attempt to remove the stay, and the process continues…

- In the meantime, a separate case against the Indian management officials accused is still ongoing. Lesser charges (causing death by negligence) have been pursued since September 1996. 158 prosecution witnesses have been deposed. In August 2009, the first of eight witnesses for the defence deposed at the court of the CJM, and the process continues…[34]

A 25-year-old tale of impunity

[32] Dow has always denied inheriting any liability for Bhopal by virtue of purchasing UCC, as UCC has remained a separate legal entity.
[33] Criminal Case No. 91 of 1992, State Versus Warren Anderson & others.
[34] The trial of the Indian accused did not begin until the charges were settled by Supreme Court order in September 1996 (see above). The process has been inefficient and inexcusably slow. Amongst other reasons are the facts that the trial has not continued on a day by day basis, and the identity of the magistrates presiding over the case has changed several times. In the words of Dr. S. Muralidhar, Advocate Supreme Court of India: "*The failure of the criminal justice process to deal with the problem is writ large on these proceedings.*" "Unsettling Truths, Untold Tales: The Bhopal Gas Disaster Victims' Twenty Years' of Courtroom Struggles for Justice", op. cit. p. 35.

- Under international human rights law, States are obliged to protect individuals from acts of non-state actors, including of companies, which would result in abuse of their human rights. This obligation requires States to take all appropriate measures to ensure that companies do not abuse human rights. When abuses do occur, the State must take action to hold the companies to account, including by prosecuting them when the abuses amount to crimes, and punishing them if found guilty.

- Under international human rights standards, investigations into alleged human rights abuses must be carried out promptly, they must be thorough and effective. Where an investigation reveals that an abuse has occurred, the State must ensure that those responsible are held to account. [35]

- Criminal prosecutions in Bhopal have neither been timely nor effective. 25 years after criminal prosecutions began:

  ➢ The criminal prosecutions against UCC, UCE and Warren Anderson are still open and pending. UCC and Warren Anderson remain identified as "absconders" by the Bhopal District Court and the Supreme Court of India.

  ➢ Prosecution of UCE has been further impaired by the dissolution of the corporation, requiring identification of the new entity or entities against which proceedings should continue.

  ➢ Although requested more than 15 years ago, the process to extradite Warren Anderson is still ongoing.[36]

  ➢ In defiance of Indian jurisdiction and the rule of law, neither Warren Anderson nor UCC have submitted themselves to the legitimate proceedings of the Indian court, and Dow has failed to ensure its wholly owned subsidiary UCC appears to face charges.

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[35] See Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), esp. paragraphs 15 and 18. See also Committee on Economic Social and Cultural Rights, General Comment 9, The Domestic Application of the Covenant, U.N. Doc E/C.12/1998/24 (1998), esp. paragraphs 3 and 9.

[36] Following rejection of the 2003 extradition request by the U.S. dept. of Justice (see above), the CJM issued a new warrant for the arrest of Anderson on 31 July, 2009, and prompted the CBI to pursue another extradition request.

- The criminal prosecutions against the Indian officials are still open and pending. The accused are only now presenting their defence.

On the 25th Anniversary of the Bhopal gas leak disaster, a quarter of a century after criminal prosecutions began; they are still open and pending.

Amnesty International is calling on the Government of India to take urgent and decisive action to ensure that those accused face justice in the ongoing criminal proceedings.

Amnesty International is also calling on the Dow Chemical Company to cooperate fully in the ongoing legal proceedings in order to ensure that those responsible are held accountable.

Amnesty International supports the campaign for justice in Bhopal, including prosecution and punishment of those found to be criminally responsible, and will continue to join survivors and activists to demand justice, accountability and an end to 25 years of human rights violations.