

Chair
London Organising Committee of the Olympic Games
London 2012
One Churchill Place
Canary Wharf
London, E14 5LN

13 January 2012

EUR 45/001/2012

OPEN LETTER

Dear Lord Coe,

RE: Amnesty International's response to LOCOG's letter dated 23 November 2011 concerning the selection of Dow Chemical Company (Dow) to provide a fabric wrap for the London Olympic Stadium and request for a meeting with affected individuals and civil society groups

Thank you for your letter of 23 November 2011 in response to our letter of 19 October 2011. We appreciate the admission by the London Organising Committee for the Olympic and Paralympic Games (LOCOG) that the 1984 Bhopal disaster was a human tragedy, that 27 years later still requires satisfactory resolution and that there are outstanding issues related to the tragedy, including with regards to site remediation. However, we dispute LOCOG's understanding that these outstanding issues do not concern Dow. We deeply regret that the decision-making process followed by LOCOG in considering a contract with Dow failed to consult with and provide an opportunity to Bhopal victims and survivors, as well as civil society groups, not least because of the negative public messaging such a deal could create and its possible repercussions on the cause of Bhopal victims and survivors.

In this context, Amnesty International also deeply regrets LOCOG's refusal to admit that deficiencies and weaknesses in the procurement process, analysis and due diligence undertaken by LOCOG in awarding the contract to Dow may have existed, allowing for the deal to go ahead.

In your letter, a number of points were put forward to justify LOCOG's decision to procure the Olympic wrap from Dow. We have reviewed these points and consider that the view expressed is one-sided: while Dow's perspective with respect to its responsibilities in relation to the Bhopal disaster has been well represented, the views of victims and survivors have not.

Dow has publicly stated that it has no responsibility for the leak and its consequences or for the pollution from the plant. However, it is clear that victims and survivors of the Bhopal disaster, many civil society groups, including Amnesty International, and key ministries of the Indian government feel differently. They have expressed their concerns and views publicly on numerous occasions and their positions and arguments should have been easily accessible to LOCOG during its decision-making process. Despite the wide availability of information on ongoing litigation, public campaigns and calls for accountability involving Dow, LOCOG seems to have overlooked this information and unreservedly adopted Dow's standard line of defence.

Indeed, your letter reproduces almost literally the arguments that Dow has routinely put forward to reject criticism and calls for action on Bhopal.

Your letter claims that LOCOG runs an “extremely detailed process to award these contracts”. However, it is clear that LOCOG has failed to consult with affected survivors and victims of the Bhopal disaster and human rights and other concerned organisations which have been fighting for justice on this case. An objective, properly informed and balanced assessment is essential when considering such complex and serious issues relating to corporate accountability, environmental degradation and human rights as those associated with the Bhopal disaster. This reveals at a minimum serious deficiencies in the procurement process. Furthermore, because the due diligence process that LOCOG undertakes to award its contracts is not disclosed, it has been impossible for concerned groups to access and assess the accuracy of Dow’s representations regarding Bhopal and the nature and outcome of any enquiries undertaken by LOCOG in this regard.

While we will take this opportunity to respond to some of the specific points made in the letter to justify the decision to procure goods from Dow, we regret that this opportunity was not given to all interested parties prior to this decision being taken. With regards to the specific points raised in your letter, we respond as follows:

- Amnesty International has never claimed that Dow owned, operated or was involved with the facility in Bhopal, or with US-based Union Carbide Corporation (UCC) at the time of the disaster. This is clear from our letter and also from our previous publications. As Dow’s responsibilities for Bhopal are not claimed to emanate from any form of ownership or management of the Bhopal facility or UCC at the time of the disaster, this statement, repeatedly made by Dow, is beside the point and inconsequential.
- The 1989 settlement agreement and its endorsement by the Supreme Court of India has been, and continues to be, challenged by public campaigns and ongoing litigation in India. Those directly impacted by the gas leak had no participation in the negotiations leading up to the agreement, and the compensation offered was insufficient to cover the extent of the damage caused. Indeed, the data upon which the compensation had been calculated has been consistently – and until very recently¹ – challenged by victims’ representative groups. As recently as 2010, the Government of India filed a Curative Petition before the Supreme Court of India against the 1989 agreement. The agreement, which is said to have settled all matters relating to the Bhopal disaster, was so flawed both in terms of process and outcome that questions about its fairness and adequacy will continue to be raised until such time as all those affected by the gas leak have been fully and properly compensated. The matter is far from settled.
- The fact that UCC sold its shares in Union Carbide India Limited (UCIL), UCC’s Indian subsidiary that operated the Bhopal plant at the time, is irrelevant to the matter at hand. Legal actions have been brought against UCC, which at the time had a majority ownership in UCIL, for its own faults and failures related to the gas leak and site contamination. At that time, UCIL was closely controlled by Union Carbide Eastern, which was wholly-owned by US-based UCC. There is ample evidence to show that UCC exercised extensive management and operational control over UCIL and played a directing role in the design and operation of the Bhopal plant in the lead up to the 1984 gas leak and beyond.²
- It is well established in law that responsibilities arising from a company’s own acts and omissions do not go away by virtue of a transfer of shares in a subsidiary. Indeed, US-based UCC is the named defendant in four ongoing legal actions related to the Bhopal events, including a pending criminal prosecution in which the company is accused of

¹ Thousands protest in India over Olympics sponsor; AFP 3 December 2011: <http://www.google.com/hostednews/afp/article/ALeqM5hkyhWDqQ1mBqA8dL7UHvQbxtgMw?docId=CNG.794d1157fe2364fc0e0dcd6a77edbd08.131>

² See Amnesty International: “*Clouds of Injustice, Bhopal disaster 20 years on*”, ASA 20/015/2004, available at <http://www.amnesty.org/en/library/asset/ASA20/015/2004/en/fa14a821-d584-11dd-bb24-1fb85fe8fa05/asa200152004en.pdf>

'culpable homicide not amounting to murder'. Despite having been criminally charged in 1987, UCC has never appeared before the Indian court. The Indian magistrate presiding over the prosecution declared the company and its chief executive officer "absconders" from the law. Until today, UCC continues to evade justice.³

- Neither US-based UCC when it sold its interest in UCIL in 1994, nor UCIL (who then became Eveready Industries India Limited) when it relinquished the lease of the Bhopal site to the Madhya Pradesh State Government in 1998, had completed the clean up programme they were required to undertake prior to handing back the site. The Bhopal factory site continues to be heavily contaminated today with stockpiles of waste brought in and/or generated by UCC/UCIL while the plant was in operation and prior to the handover to the state. The "Polluter Pays" principle is well enshrined in Indian law, and has been upheld in numerous Indian Supreme Court judgments.⁴
- Amnesty International does not dispute that the Madhya Pradesh State Government has responsibility for ensuring clean up of the site. As a matter of expediency, an Indian court affirmed that "*the question as to who is responsible for the clean up cannot overshadow the question of clean up itself.*"⁵ This does not detract from Dow's and UCC's fundamental responsibilities, which exist alongside those of the state. This view is supported by international standards on business and human rights as well as statements made by the Government of India. When in early 2008 the Government of India discussed Dow's future investments in the country and the company's potential liabilities in relation to Bhopal, the Indian Ministry of Law, when consulted by India's Department of Chemicals and Fertilizers, expressed the opinion that: "*irrespective of the manner in which UCC has merged or has been acquired by Dow Chemicals, if there is any legal liability, it would have to be borne by Dow Chemicals,*" and some of the company's investments in India could be at risk.⁶
- In February 2001, US-based UCC became a wholly owned subsidiary of Dow. As 100% owner of UCC, Dow elects every director to UCC's board. Even though UCC is formally kept as a separate legal entity, its corporate identity and all of its business are fully integrated with those of Dow. UCC's 2011 annual report to the US Securities and Exchange Commission states: "*Dow conducts its worldwide operations through global businesses, and the Corporation's business activities comprise components of Dow's global businesses rather than stand-alone operations.*"⁷ Yet, despite their significant integration, and the control Dow has in practice over its fully owned subsidiary, Dow has consistently denied any responsibility for UCC's pending liabilities related to Bhopal. Dow has a clear responsibility and the power to ensure that its 100% owned subsidiary faces up to all outstanding charges related to Bhopal, including pending criminal charges. The company has so far failed to do this.
- We see in LOCOG's letter an unbalanced representation of the facts concerning both the New York legal proceedings against UCC and Indian proceedings against UCC and Dow, particularly with respect to the grounds relied on by the claimants. The letter only cites the arguments advanced by the companies and not the claimants. Again, the justification for bringing a claim against Dow does not rely on Dow having had any involvement in the Bhopal site or owning UCIL or UCC at the time, so repeated arguments to this effect are

³ See 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,* ASA 20/024/2009, available at <http://www.amnesty.org/en/library/info/ASA20/024/2009/en>

⁴ The Government of India asserted this principle in a letter to the Lower District Court of Manhattan, on June 28, 2004: "*It is the official position of the Government of India that. . . Pursuant to the 'polluter pays' principle recognized by both the United States and India, Union Carbide should bear all the financial burden and cost for the purpose of environmental clean-up and remediation. The Union of India and the State Government of Madhya Pradesh shall not bear any financial burden for this purpose.*" *Bano v. Union Carbide Corp.* S.D.N.Y. (No. 99 CIV. 11329 (JFK).

⁵ Order of the High Court of Madhya Pradesh, May13, 2005.

⁶ See: "Dow Chemical and Bhopal as an Investment Impediment in India" and "Transcription of Internal Document from the Prime Minister of India obtained through public records request" available at http://legacy.bhopal.net/assets/3617/Letter_SEC_Bhopal_May_08.pdf

⁷ Union carbide Corporation, 10-K report, 18 February 2011, p.4. Available at <http://phx.corporate-ir.net/phoenix.zhtml?c=109589&p=irol-sec>

beside the point. The letter misses serious facts surrounding the Bhopal events: it omits, for instance, all reference to the ongoing criminal prosecution against UCC, in which as stated above Dow's subsidiary is a proclaimed absconder from justice. It fails to reflect that in January 2005 Dow was summoned by the Bhopal criminal court to explain why it should not be asked to produce its fully owned subsidiary in court, and that Dow has so far failed to submit the requested explanation.

LOCOG's position as expressed publicly and in its letter to Amnesty International endorses and legitimizes an abusive position that is often taken by companies that seek to avoid responsibilities for serious human rights tragedies. The Bhopal disaster is an emblematic case that exposes the hurdles that victims of human rights abuses face when seeking justice. The interaction of powerful corporate interests, legal complexity and government failures has proved a huge obstacle to justice for the people of Bhopal. UCC has tried to hide behind the corporate veil on grounds that UCIL was a separate legal entity to avoid owning up to the devastation caused in Bhopal. Now, Dow is doing the same with regards to UCC's liabilities.

Your letter refers to Dow's right of association with London 2012 as stemming from its status as a worldwide sponsor of the Olympic movement in 2010. In Amnesty International's opinion, this status does not in any way legitimise its selection to provide the Olympic wrap. Your letter also asserts that LOCOG "*stand[s] behind them [Dow] both as a worldwide sponsor ... and supplier of LOCOG*". We feel that this statement is completely unjustifiable and unnecessary, particularly in light of the serious circumstances involved and public concern that the deal with Dow has brought on. Companies who abuse human rights or fail to redress abuses for which they are responsible must be held to account and made to repair the harm caused, not be rewarded with highly profitable contracts and prestigious associations.

There are outstanding and serious concerns relating to compensation, environmental remediation, access to clean drinking water and adequate health care in Bhopal. Dow owns the company that was at the heart of the events causing such devastation, for which victims and survivors are still awaiting satisfactory resolution. These facts have received insufficient consideration by LOCOG. For LOCOG to state that it is satisfied that Dow has no responsibility for what happened in Bhopal is premature, simplistic and ill-informed.

Amnesty International calls on LOCOG to publicly admit that it made a mistake in providing the contract to Dow and that the standards and process it relied on in making the decision to procure the wrap from Dow were weak and inadequate.

Given the seriousness of the issues at hand and public outrage that has resulted from the procurement contract with Dow, we request that LOCOG agree to a meeting with affected individuals and civil society groups, including Amnesty International, the Bhopal Medical Appeal and the UK-based CORE Coalition. Other groups who have been heavily engaged in these issues include Indian survivors groups (Bhopal Gas Peedit Mahila Purush Sangharsh Morcha, Bhopal Gas Peedit Mahila Stationery Karmachari Sangh, Bhopal Gas Peedit Nirashrit Pension Bhogi Sangharsh Morcha, Children Against Dow-Carbide and Bhopal Group for Information and Action) and the International Campaign for Justice in Bhopal (ICJB).

We look forward to receiving confirmation with respect to the proposed meeting.

Yours sincerely,

Seema Joshi

Head of Business and Human Rights
Amnesty International