

ACCESS TO JUSTICE AND EFFECTIVE REMEDIES IN THE CONTEXT OF TOXICS

SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON TOXICS AND HUMAN RIGHTS

INTRODUCTION

Amnesty International welcomes the opportunity to provide input in response to the call for input for the upcoming report on access to justice and effective remedies in the context of toxics by the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes (Special Rapporteur on Toxics and Human Rights).¹

In this document, Amnesty International provides information on four case studies for consideration, based on research into human rights abuses linked to the chemical industries in India, and the USA, oil pollution in the Niger Delta in Nigeria, and mining in the Philippines. In each of the case studies, local communities have continued to live with the consequences of environmental impacts. Those affected by ongoing pollution have faced challenges to access their right to a thorough clean-up of their local environment, adequate compensation for harms suffered, proper medical treatment for multi-generational health risks and continued access to clean drinking water. Marginalized communities have faced challenges to access information about the toxic materials they have been exposed to and have found it difficult to mount legal challenges due to the imbalances of power between themselves and the companies, in terms of access to financial means, government officials, and other resources. Amnesty International has declared Bhopal in India, fenceline communities along Houston Ship Channel in the USA and Santa Cruz in Zambales, in the Philippines as “sacrifice zones.”²

We also include links to the full Amnesty International reports that are discussed below: [Bhopal: Forty Years of Injustice. The Cost of Doing Business? The Petrochemical Industry’s Toxic Pollution in the USA](#), [Nigeria: Tainted sale?: Why Shell’s divestment from the Niger Delta must not harm human rights](#), [Nigeria: No Clean-Up, No Justice: An evaluation of the implementation of UNEP’s environmental assessment of Ogoniland, nine years on](#), and [What do we get in return?: How the Philippines nickel boom harms human rights](#).

GAS METHYL ISOCYANATE LEAK, BHOPAL, INDIA

On 2 December 1984, approximately 27 metric tonnes of the deadly gas methyl isocyanate (MIC) began to leak into the atmosphere from the storage tank of a Union Carbide pesticide plant on the outskirts of the city of Bhopal, in the state of Madhya Pradesh, India. It is now estimated that more than 22,000 people have died as a direct result of exposure to the leak, with exposure-related deaths continuing to occur. More than half a million people continue to suffer some degree of permanent injury.³

Forty years later, local communities in Bhopal continue to suffer a multiplicity of human rights violations. Failures to adequately deal with the multi-generational health, economic and social impacts of gas exposure. The gas leak is not the only chemical catastrophe affecting Bhopal’s communities. Thousands of tonnes of toxic waste remain buried in and around the abandoned plant to this day. Studies have shown ongoing pollution around the plant site,

¹ <https://www.ohchr.org/en/calls-for-input/2025/call-input-access-justice-and-effective-remedies-context-toxics>

² According to the UN Special Rapporteur on human rights and the environment: “A sacrifice zone can be understood to be a place where residents suffer devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas.” Amnesty International, *The cost of doing business: The petrochemical industry’s toxic pollution in the USA* (Index: AMR 51/7566/2024), 25 January 2024, <https://www.amnesty.org/en/documents/AMR51/7566/2024/en/> p. 7.

³ Amnesty International, *Bhopal: Forty Years of Injustice* (Index: ASA 20/7817/2024), 28 March 2024, p. 50-56, <https://www.amnesty.org/en/documents/asa20/7817/2024/en/>, p. 10.

including contamination of soil and groundwater with heavy metals. This in turn has contaminated residents' water supplies and harmed their health, adding to the already dismal health status of gas-exposed residents.⁴

In February 1985, all civil claims filed against Union Carbide in US courts were consolidated and assigned to the US District Court for the Southern District of New York. However, the Judge dismissed the claim, declaring US courts to not be the proper forum for decision. In September 1986, the Indian government filed a claim against UCC for US\$3.3 billion. In 1989, without consulting Bhopal survivors, the parties reached an out-of-court settlement for US\$470 million, less than 15% of the initial amount sought. The mechanism put in place to disburse the money was also highly inadequate. Thousands of claims were not registered at all, including those of gas-exposed children under the age of eighteen, and children born to gas-affected parents who, time later showed, were also severely affected.⁵

Criminal charges were brought against Union Carbide's US staff, but they were allowed to leave India and travel home to the USA, and they never returned to face justice. In June 2010, Union Carbide's Indian subsidiary, Union Carbide India Ltd, and seven Indian nationals were found guilty of causing death by negligence and sentenced to two years in prison and ordered to pay a fine. However, they appealed, and no-one has actually paid a fine or served a prison sentence.⁶

In 2001, UCC became a wholly owned subsidiary of US-based The Dow Chemical Company (Dow), one of the largest chemical companies in the world. Dow continues to distance itself from any responsibility towards the survivors claiming in a letter to Amnesty International that it "never owned or operated the plant", that UCC only became a subsidiary of Dow's sixteen years after the accident, and the plant site today is under the control of the Indian authorities.⁷

Survivors and their descendants still await just compensation, a thorough clean-up of their environment, adequate medical assistance and treatment, punishment of all perpetrators, and comprehensive economic and social rehabilitation.⁸ Amnesty International has called for the State Government of Madhya Pradesh, UCC and Dow to live up to their human rights obligations and responsibilities. The fact that 40 years have passed since the gas leak and there remain significant outstanding human rights concerns reflects a collective failure of the international community.⁹

US PETROCHEMICAL AND REFINING INDUSTRIES, USA

US petrochemical and refining industries are heavily concentrated in states along the Gulf Coast of Mexico, particularly in Texas and Louisiana, in part due to the presence of Gulf Coast oil and access to international markets. The Houston Ship Channel in Harris County, Texas, is a 52-mile waterway that connects Houston with the Gulf of Mexico. One of the busiest waterways in the world, the Houston Ship Channel is home to the largest petrochemical complex in the USA, surrounded by over 600 petrochemical facilities, which represent approximately 44% of the nation's petrochemical production capacity.¹⁰

The petrochemical industry is a major source of pollution along the Houston Ship Channel. This pollution stems from various stages of refining and production, as well as flaring, leaks, storage and handling. Pollutants include volatile organic compounds (VOCs) such as benzene, toluene, 1-3 butadiene, ethylene and styrene; greenhouse gases, such as methane, carbon dioxide and nitrous oxide; and particulate matter (PM). The industry also contributes to the production of ozone, a secondary pollutant formed from the reaction between VOCs, oxides of nitrogen and sunlight. Ground-level ozone combined with the presence of PM creates smog, characterized by haze and reduced visibility. Another secondary pollutant is formaldehyde, formed through chemical reactions involving

⁴ Amnesty International, Bhopal: Forty Years of Injustice, p. 18

⁵ Amnesty International, Bhopal: Forty Years of Injustice, p. 12

⁶ Amnesty International, Bhopal: Forty Years of Injustice, p. 50-56,

⁷ Amnesty International, Bhopal: Forty Years of Injustice, p. 11

⁸ Amnesty International, Bhopal: Forty Years of Injustice, p. 18

⁹ Amnesty International, Bhopal: Forty Years of Injustice, p. 87

¹⁰ Amnesty International, The cost of doing business: The petrochemical industry's toxic pollution in the USA (Index: AMR 51/7566/2024), 25 January 2024, <https://www.amnesty.org/en/documents/AMR51/7566/2024/en/> p. 23.

VOCs, including those produced and emitted by the petrochemical industry. Secondary formaldehyde (formed from other chemicals) makes up almost 95% of all the ambient formaldehyde present in Houston Ship Channel neighbourhoods.¹¹

Several rights, including the right to health, depend in part on the realization of the right to access to information. Despite the severity of the risks faced by communities who live in the vicinity of petrochemical facilities, residents told Amnesty International that they have very little information available to them. Fenceline communities are mostly unaware of what types and quantities of chemicals neighbouring petrochemical facilities handle, the health risks associated with exposure to pollutants, and the extent of the dangers posed by living within a facility's vulnerable zone.¹²

The UN Guiding Principles on Business and Human Rights state that remedies for corporate human rights harms may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions, as well as the prevention of harm – for example through guarantees of non-repetition. Fenceline communities along the Houston Ship Channel are repeatedly and continually exposed to petrochemical pollution but, despite these harms, they are denied effective remedy. The petrochemical companies deny responsibility and are often able to evade accountability. Fines are rarely enforced and, when they are, the money does not go directly to communities and in some cases is even channelled into pro-industry schemes.¹³

Amnesty International previously called for companies operating along the Houston Ship Channel to remedy the harms caused by their operations, including accumulating harm caused by emissions over time. This includes taking preventative measures and making necessary investments to ensure emissions do not exceed permitted levels and operations are rights-respecting. Companies should also establish and allocate funds to a health program that provides medical monitoring and treatment for fenceline communities.¹⁴

OIL POLLUTION IN THE NIGER DELTA, NIGERIA

The existence of widespread environmental pollution in the Niger Delta linked to the oil industry has long been recognized. In its landmark 2011 Environmental Assessment of Ogoniland, the United Nations Environment Programme (UNEP) documented widespread oil contamination, including of ground water and drinking water sources.¹⁵

Livelihoods, health and access to food and clean water of communities across the Niger Delta are closely linked to the land and environmental quality, and hence are vulnerable to contamination from oil spills, which have occurred right across the network of pipelines and wells. The impact of the pollution can be devastating. In 2019, an academic study found that oil spills occurring within 10 km of a mother's place of residence in the Niger Delta doubled neonatal mortality rates and impaired the health of her surviving children.¹⁶ UNEP documented the contamination of agricultural land and fisheries, the poisoning of drinking water, and the exposure of hundreds of thousands of people to serious health risks. Recent research into the toxic footprint of oil contamination in the state of Bayelsa, concluded that "toxins from hydrocarbon pollution are present at often dangerous levels in the soil, water and air across Bayelsa. They have been absorbed into the human food chain. And they have ultimately found their way into the bloodstreams and tissue of people living in affected communities."¹⁷

The main adverse impacts of oil exploitation in the Niger Delta, as documented by Amnesty International and its partner, the Port Harcourt-based, Centre for the Environment, Human Rights and Development (CEHRD), include violations and abuses of the following human rights: The right to an adequate standard of living, including the right to food – as a consequence of the impact of oil-related pollution and environmental damage on agricultural lands

¹¹ Amnesty International, The cost of doing business, p. 25.

¹² Amnesty International, The cost of doing business, p. 71.

¹³ Amnesty International, The cost of doing business, p. 89.

¹⁴ Amnesty International, The cost of doing business, p. 99.

¹⁵ Amnesty International, Nigeria: Tainted Sale?: Why Shell's divestment from the Niger Delta must not harm human rights (Index: Index: AFR 44/6797/2023), 26 May 2023, Nigeria: Tainted Sale?: Why Shell's divestment from the Niger Delta must not harm human rights, p. 7

¹⁶ Amnesty International, Nigeria: Tainted Sale?, p. 7.

¹⁷ Amnesty International, Nigeria: Tainted Sale?, p. 7.

and fisheries; The right to water – which occur when oil spills pollute water used for drinking and other domestic purposes; The right to health – which arise from the failure to secure the underlying determinants of health, including a healthy environment, and the failure to enforce laws to protect the environment and prevent pollution; and The right to ensure access to effective remedy for people whose human rights have been impaired.¹⁸

These violations and abuses affect people differently, with disparate impacts on women and girls, children, older people, and other vulnerable groups. For example, women and girls have been excluded from aspects of oil spill remediation, and this can leave them in particularly difficult situations with respect to damage done to their livelihoods because they do not get access to the limited compensation that may be offered.¹⁹

Amnesty International has previously called for oil companies, including Shell, to commit to a full clean-up of the Niger Delta as they are responsible for the ongoing pollution, but they should no longer be involved in the management and oversight structures of the clean-up, such as the Governing and Management boards.²⁰ Finally, the tragic and unresolved situation in Nigeria demonstrates the urgency for governments where the oil companies are headquartered - to issue strong legislation mandating companies to respect human rights and environmental standards across their global operations, along with robust enforcement mechanisms to ensure these norms are implemented.²¹

NICKEL MINING IN ZAMBALES AND PALAWAN, PHILIPPINES

The Philippines is the world's largest exporter of nickel ore, which is a key component in lithium-ion batteries used to power electric vehicles and renewable storage units.²² The provinces of Zambales and Palawan are home to some of the largest nickel deposits in the Philippines and deforestation and environmental damage linked to nickel mining operations is undermining the right to a clean, healthy and sustainable environment of Indigenous People and rural communities.²³ Analysis indicates that 60% of mineral deposits and 49% of mining projects in the Philippines are found in Indigenous Peoples' ancestral domains.²⁴ As a result, communities have reported to Amnesty International adverse harms to their livelihoods, access to water and health.

Amnesty International has called for mining companies to conduct genuine and meaningful consultations with all potentially affected rights holders, including women, at critical phases of project planning, implementation, monitoring and rehabilitation. Ensuring respect for Indigenous Peoples' rights, including their rights to Free, Prior and Informed Consent (FPIC), to define the process by which FPIC is achieved and to withhold consent. Mining operations that affect Indigenous Peoples should not go ahead if FPIC has not been obtained in line with international standards.²⁵

Potential environmental impacts identified from mining operations can include: dust generation, air pollution and noise generation from heavy equipment, contamination of water, including drinking water resources, damage to aquatic ecosystems and displacement of aquatic species, contamination of land, soil erosion, risk of landslides due to construction activities on high angle slopes, and disturbance and displacement of wildlife and their habitat.²⁶ Communities harmed by nickel mining in the Philippines lack access to justice and effective remedies for the harms they are experiencing, while the sector's expansion, being driven in part by demand associated with the energy transition, further risks harming human rights and the environment. The current energy transition narrative prioritizes the replacement of all fossil fuel powered vehicles with electric ones, and many states provide subsidies and other financial incentives to accelerate the transition.²⁷

¹⁸ Amnesty International, Nigeria: Tainted Sale?, p. 8.

¹⁹ Amnesty International, Nigeria: Tainted Sale?, p. 8.

²⁰ Amnesty International, Environmental Rights Action/Friends of the Earth Nigeria (ERA/FoEN), Friends of the Earth Europe, and Milieudefensie, Nigeria: No Clean-Up, No Justice: An evaluation of the implementation of UNEP's environmental assessment of Ogoniland, nine years on (Index: AFR 44/2514/2020), 27 June 2020, <https://www.amnesty.org/en/documents/afr44/2514/2020/en/>, p. 30.

²¹ Amnesty International et al, Nigeria: No Clean-Up, No Justice, p. 7.

²² Amnesty International, What do we get in return?: How the Philippines nickel boom harms human rights (Index: ASA 35/8607/2024), 9 January 2025, <https://www.amnesty.org/en/documents/ASA35/8607/2024/en/>, p. 6.

²³ Amnesty International, What do we get in return?, p. 6.

²⁴ Amnesty International, What do we get in return?, p. 24.

²⁵ Amnesty International, What do we get in return?, p. 88.

²⁶ Amnesty International, What do we get in return?, p. 25 - p. 26.

²⁷ Amnesty International, What do we get in return?, p. 85.