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Union Carbide Corporation (UCC), DOW Chemicals and the Bhopal Communities in India –

The Case

On the night of 2 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.

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 Indian Supreme Court-endorsed final settlement has left survivors living in penury.

The impact on human rights

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

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 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 in 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.

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 has subsequently refused to submit itself to Indian jurisdiction.

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. 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, excluding 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.

Conclusions

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.

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 the consequences of 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.

THE UN Norms

The UN Norms did not exist at the time of the Bhopal disaster, and one cannot expect the UCC, UCIL, the government of India or the state government of Madhya Pradesh to have been guided by them. However what happened in Bhopal can leave no doubt about the importance of the UN Norms and the need for governments and transnational corporations to acknowledge the responsibilities of business enterprises with regard to human rights.

In relation to Bhopal the application of specific articles of the Norms would have helped UCC in identifying its human rights responsibilities.

According to Article 14 of the UN Norms, transnational corporations and other business enterprises are responsible for the environmental and human health impact of their activities.

The Commentary to Article 14 states:

"(a) Transnational corporations and other business enterprises shall respect the right to a clean and healthy environment..."

"(b) Transnational corporations and other business enterprises shall be responsible for the environmental and human health impact of all of their activities..."

"(c) ...“on a periodic basis (preferably annually or biannually), transnational corporations and other business enterprises shall assess the impact of their activities on the environment and human health including impacts from... the generation, storage, transport and disposal of hazardous and toxic substances. Transnational corporations and other business enterprises shall ensure that the burden of negative environmental consequences shall not fall on vulnerable racial, ethnic and socio-economic groups.”

"(e) Transnational corporations and other business enterprises shall respect the prevention principle... and the precautionary principle..."

"(f) Upon the expiration of the useful life of their products... transnational corporations and other business enterprises shall ensure effective means of collecting or arranging for the collection of the remains..."

"(g) Transnational corporations and other business enterprises shall take appropriate measures in their activities to reduce the risk of accidents and damage to the environment by adopting best management practices and technologies... and reporting of anticipated or actual releases of hazardous and toxic substances.”

Other provisions of the UN Norms also address situations like that of the Bhopal disaster. Article 18, for example, calls on transnational corporations and other business enterprises to make reparations for damage done through their failure to meet the standards spelled out in the Norms:

"Transnational corporations and other business enterprises shall provide prompt, effective and adequate reparation to those persons, entities and communities that have been adversely affected by failures to comply with these Norms through, inter alia, reparations, restitution, compensation and rehabilitation for any damage done or property taken. In connection with determining damages, in regard to criminal sanctions, and in all other respects, these Norms shall be applied by national courts and/or international tribunals, pursuant to national and international law."

Article 17 calls on states to have in place the necessary legal and administrative framework to give effect to the Norms:

"States should establish and reinforce the necessary legal and administrative framework for ensuring that the Norms and other relevant national and international laws are implemented by transnational corporations and other business enterprises."

