



BHOPAL: 40 YEARS OF INJUSTICE

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Cover: Survivors of the Bhopal gas disaster stage a protest demanding proper compensation and justice, on the eve of its 31st anniversary in Bhopal on December 02, 2015. © Getty images

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GLOSSARY

BGIA The Bhopal Group for Information and Action

BMHRC Bhopal Memorial Hospital and Research Centre

CBI The Central Bureau of Investigation (India)

CJM The Chief Judicial Magistrate's Court (Bhopal)

CPCB The Central Pollution Control Board (India)

CSIR The Council of Scientific and Industrial Research (India)

Dow The Dow Chemical Company

DuPont E.I. du Pont de Nemours and Company

Eveready Eveready Industries India Limited

FERA The Indian Foreign Exchange Regulation Act 1973

ICMR Indian Council for Medical Research

IICT the Indian Institute of Chemical Technology

IITR the Indian Institute for Toxicology Research

GLOSSARY *CONTINUED*

MIC Methyl Isocyanate

MLAT Treaty on Mutual Legal Assistance in Criminal Matters between the Republic of India and the United States

MPPCB Madhya Pradesh Pollution Control Board

NEERI National Engineering Environmental Research Institute (India)

NGRI National Geophysical Research Institute (India)

NIREH The National Institute for Research on Environmental Health

SEC Securities and Exchange Commission (USA)

UCC Union Carbide Corporation

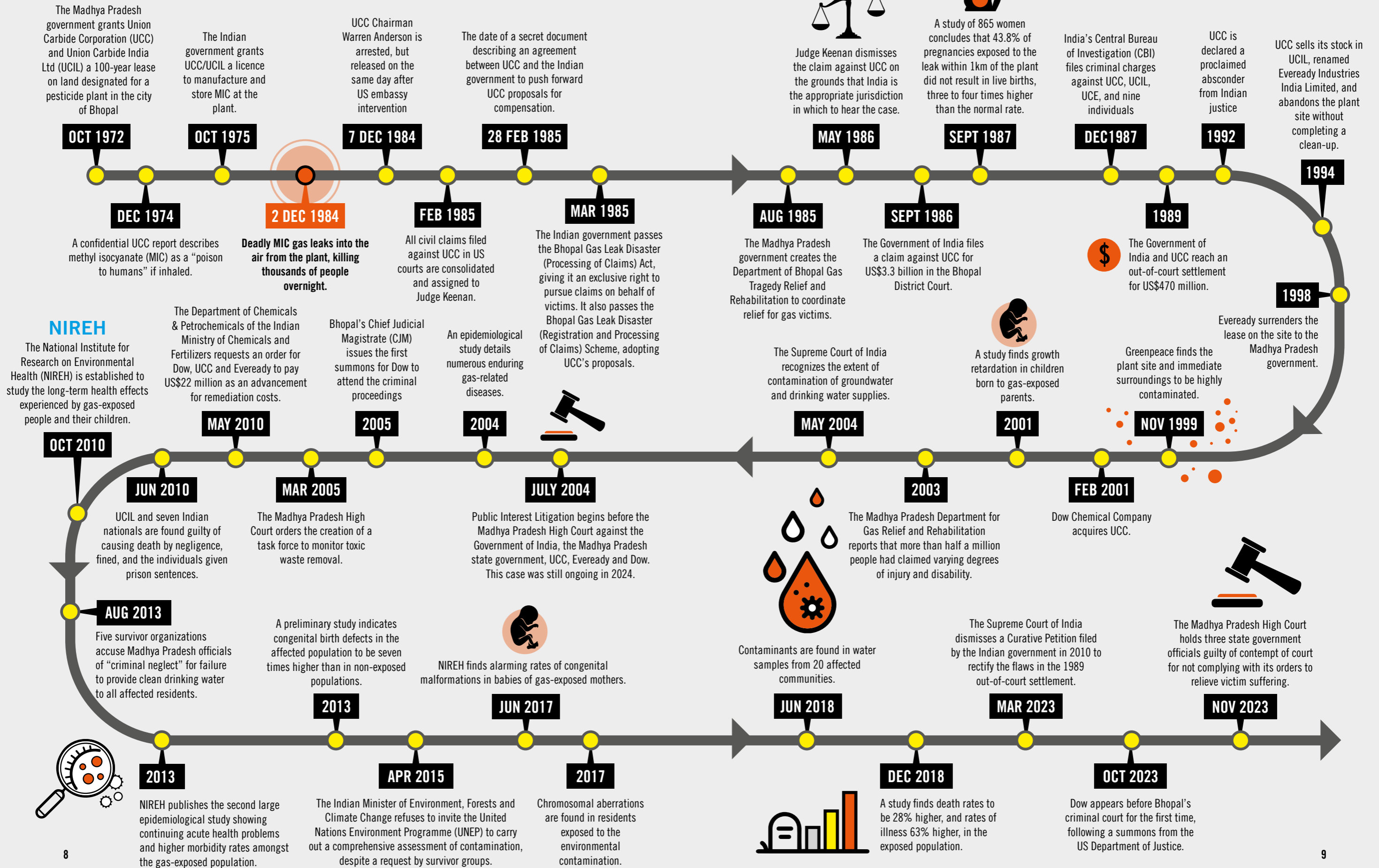
UCE Union Carbide Eastern

UCIL Union Carbide India Ltd

MAP



BHOPAL: 40 YEARS OF INJUSTICE



1. EXECUTIVE SUMMARY

December 2024 will mark the 40th anniversary of the start of one of the world's worst industrial disasters and corporate crimes – which continues to this day.

Shortly before midnight on 2 December 1984, tonnes of the deadly gas methyl isocyanate (MIC) began to leak into the atmosphere from the storage tank of a pesticide plant on the outskirts of the city of Bhopal, in the state of Madhya Pradesh, India. Over the course of that night, approximately 27 metric tonnes of MIC, along with other chemicals, were released into the air.

The consequences for the thousands of residents living close to the plant were catastrophic. More than 570,000 people were exposed to damaging levels of toxic gas, and as many as 10,000 people are believed to have died within three days of the leak. Those who survived developed a wide range of chronic and debilitating illnesses caused by gas exposure, including respiratory ailments, eye disease, immune system impairment, neurological and neuromuscular damage, cancers, gynaecological disorders and mental health problems, as well as experiencing miscarriages and the birth of children with congenital malformations.

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.

The gas leak pushed already impoverished communities into further destitution. In many families, the main wage earner died or became too ill to work. Women and children suffered disproportionately. Over the years that followed, the health effects of gas exposure began to be seen in subsequent generations, with research showing a large number of children born of gas-exposed parents to have been affected by growth retardation, birth defects and other medical conditions.

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 by many organizations over the years have shown ongoing pollution around the plant site, 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.

The pesticide plant was operated at the time by Union Carbide India Ltd (UCIL), an Indian company majority-owned by US-based multinational corporation Union Carbide Corporation (UCC). The catastrophic gas leak was the foreseeable result of innumerable corporate failures, but UCC's response to the disaster was woefully inadequate and callous. Despite the fact that thousands of people were dying from gas exposure, or suffering agonizing injuries, UCC withheld critical information regarding MIC's toxicological properties, undermining the effectiveness of the medical response. To this day, UCC has failed to name any of the chemicals and reaction products that leaked along with MIC on that fateful night in December 1984. The Indian government has offered free health care to gas-exposed people in government hospitals ever since the gas leak, but standards of care have been grossly inadequate, forcing many patients to pay for private treatment and medicines.

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. This amount was less than 15% of the initial amount sought by the government, and far less than most estimates of the damage at the time. 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 18, and children born to gas-affected parents who, time later showed, were also severely affected.

In 2004, on the occasion of the 20th anniversary of the start of the disaster, Amnesty International published the report *Clouds of Injustice – Bhopal Disaster 20 Years on*. This was Amnesty's first comprehensive report on Bhopal, detailing the range of human rights violations and abuses that occurred during and following, the gas leak. In 2014, the year of the 30th anniversary of the disaster, Amnesty International released a report on the human right to remedy, which contained a detailed account of the Bhopal disaster, including an account of developments 30 years on.

The present report provides an update on the situation of Bhopal survivors since 2014. As well as assessing progress and setbacks, this report has three additional objectives. Firstly, to commemorate the thousands of people who died or were seriously and chronically injured as a result of the gas leak and pay tribute to the survivors and their unwavering fight for justice and accountability over the last four decades. Secondly, it seeks to remind the world that Bhopal is not an issue of the past when harms are ongoing and justice has thus far been denied. Finally, with this report Amnesty International joins Bhopal survivors and campaigners in their calls for justice and reparations, laying out specific recommendations for the companies involved in the disaster, the Indian and US governments, and other actors that can make a significant difference to the plight of Bhopal survivors.

UNION CARBIDE AND DOW

The Bhopal plant was at the time operated by UCIL, an Indian company, majority-owned by US-based UCC. UCIL was directly managed by Union Carbide Eastern (UCE), a wholly owned subsidiary of UCC. After the disaster, these entities and their relationships changed. In 1994, UCC sold its stock in UCIL to an Indian company. In 2001, UCC became a wholly owned subsidiary of US-based, The Dow Chemical Company (Dow), another global chemicals giant.

Today, Dow is one of the largest chemical companies in the world. The company operates 104 manufacturing sites in 31 countries and employs approximately 37,800 people. In 2022, it reported annual sales of US\$57 billion and a net income of US\$4.6 billion.

Dow and UCC have maintained the same positions regarding Bhopal for years. Dow continues to distance itself from any responsibility towards the survivors. In an email sent ahead of the publication of this report, a spokesperson wrote that Dow, "never owned or operated the plant"; that UCC only became a subsidiary of Dow's 16 years after the accident; and the plant site today is under the control of the Indian authorities. However, Dow purchased UCC, gaining full control over its assets and benefits, and it should then absorb all of the company's liabilities.

UCC meanwhile continues to defend the fairness of a compensation settlement made in 1989, stating that the Indian Supreme Court had found it "just, equitable and reasonable".

CAMPAIGN VICTORIES

Beginning in the immediate aftermath of the disaster, survivor groups and supporters have mobilized for justice in what has become a social movement spanning four decades. They have initiated or intervened in many legal actions, often leading to significant improvements in the lives of the affected communities. They have also implemented practical initiatives in the absence of sufficient state and corporate support. In 1994, survivor groups fundraised for the Sambhavna Trust Clinic to fill the void left by government research and healthcare providers. Later, they opened the Chingari Rehabilitation Centre. Thousands of gas- and contamination-affected adults and children have benefitted from the highly specialized and professional medical care and rehabilitation provided by these institutions – unparalleled by any of the government-run facilities. Survivor groups’ research on groundwater contamination, health and other ongoing concerns has brought clarity to a large number of areas, often providing a much-needed counter to incorrect, biased or insufficient government figures.

Survivor organizations have also unearthed numerous confidential documents and brought to light obscure dealings between high-ranking government and corporate officials. They have gathered high-profile support, and the signatures of thousands of concerned citizens, in support of their petitions. Relentless campaigning by survivors and their supporters has also ensured that the Bhopal legacy follows Dow around the globe. Despite its best efforts, the company has been unable to dissociate itself from the Bhopal disaster, and its continuing refusal to address outstanding issues has affected its reputation and business.

LEGAL ACTION – THE FIGHT FOR JUSTICE

Within 24 hours of the gas leak, Indian state authorities had launched criminal proceedings. Civil claims for personal injury and death were also filed both in India and US courts immediately after the tragedy and in the months that followed. However, all these efforts have had no or very limited results.

THE CRIMINAL ACTION

On 1 December 1987, India’s Central Bureau of Investigation, filed criminal charges for “culpable homicide not amounting to murder” and other crimes before Bhopal’s Chief Judicial Magistrate (CJM), against UCC, UCIL, UCE, and nine individuals. On 7 December 1984, the state police arrested UCC Chairman Warren Anderson, a US national, but released him on the same day, allowing him to leave the country. Warren Anderson never returned to India to face charges despite promising to do so in his bail bond. The US government played a significant role in obstructing extradition efforts. Neither of the accused foreign companies, UCC or UCE, ever appeared before the CJM. UCE ceased to exist in 1991, and UCC, being outside of India, simply refrained from ever stepping back onto Indian soil.

When Dow became UCC’s parent company in 2001, the CJM turned to Dow for assistance in bringing UCC before it. Between 2005 and 2023, the CJM issued seven summonses for Dow to attend the criminal proceedings. However it was only in May 2023, 18 years later, that the US Department of Justice finally served the CJM’s summons on Dow. Dow responded to the summons and appeared before the Indian criminal court on 2 October and 25 November 2023. It denied that the court had jurisdiction over it, and to challenge any notion that, as a separate legal entity from UCC, it may have any liability for Bhopal or that it should even be called to respond over UCC’s behaviour. Dow even contested that it had been properly served the legal summons.

Meanwhile, all the Indian accused were tried and convicted. In June 2010, UCIL and seven Indian nationals were found guilty of causing death by negligence and ordered to pay a fine. The individuals were also sentenced to the maximum prison sentence of two years. However, they appealed the sentence and, to this day, no-one has actually paid the fine or served time in prison.

THE CIVIL CLAIMS

In February 1985, all civil claims filed against UCC in US courts were consolidated and assigned to Judge Keenan of the US District Court for the Southern District of New York. But Judge Keenan dismissed the claim, declaring US courts to not be the proper forum for decision on the claims. Other legal actions against UCC were initiated in the US, all of them assigned to, and eventually dismissed by, Judge Keenan.

As noted above, the Indian government and UCC reached an out of court settlement for compensation in 1989. The gross inadequacies of this settlement, including the increase in gas-related injuries not accounted for, led the government to file a Curative Petition with the Supreme Court of India in December 2010. The petition sought to invalidate and renegotiate the 1989 settlement agreement and asked for a maximum additional amount of approximately INR 78 billion (about US\$1.7 billion at the time). In April 2011, five victims' groups filed an application in which they contested the government figures for being grossly underestimated and sought even higher damages. In addition, they submitted evidence to argue that UCC had finalized the settlement through fraud on the basis that the vast majority of survivors had been offered compensation for minor or temporary injury even though UCC knew, but did not disclose at the time, that injury resulting from gas exposure, even in small doses, would likely be both major and permanent. In March 2023, after 12 years of protracted litigation, the Supreme Court of India handed down its decision dismissing the claim.

THE CORPORATE GAMES

The companies used various tactics to avoid or minimize liability, from arguing that the leak had been caused by sabotage to suggesting that the high mortality and morbidity rates were the result of poor hygiene standards. UCC, and later Dow, repeatedly raised the corporate law doctrine of “separate legal personality” (the corporate veil) to argue that all responsibility, and any potential liability emerging from the Bhopal disaster, lay with their subsidiaries. Ever since it acquired UCC in February 2001, Dow has consistently maintained that UCC remained a separate company with its own assets and liabilities, and that, as a result, it had inherited no liabilities from Bhopal. However, Dow purchased UCC by way of convoluted corporate transactions designed to keep a semblance of separateness, while in actual fact gaining full control over its newly acquired subsidiary. The deal was, in all material respects, a classic merger. As such, Dow should absorb all of UCC's liabilities, as it did its assets and benefits.

UCC has been able to use the separate legal personality doctrine to defeat many of the legal claims against it in the USA. Predictably, both UCC and Dow once again raised the separate legal personality between them, as well as that between UCC and UCIL, to reject any suggestion of liability potentially emerging from the Curative Petition. The separate legal personality doctrine remains a strong tenet of corporate law around the globe, even in cases where parent companies exercise full control, in law or in practice, over their subsidiaries' activities. Bhopal is the epitome of this fictional and unfair corporate law device that does not reflect the reality of corporate groups, and how they operate in practice. It is a doctrine that has led to widespread abuse and exploitation of vulnerable individuals and communities affected by the activities of corporate groups around the globe, and to impunity for perpetrators.

A LITTLE HELP FROM MY FRIENDS

UCC, and later Dow, benefited from a great deal of political support and lobbying from powerful actors before, during, and after the disaster. Most of this was covert and intended to advance corporate interests by aggressively promoting a dubious project, and then seeking to minimise or remove liability. In the 1970s and 80s, the US State Department helped push UCC's controversial pesticide project in India, helping dismantle regulatory, planning and financial barriers. High ranking members of the US government and other influential US and Indian individuals continued to use their influence to further UCC's interests after the disaster. Documents that have come to light over the past ten years further illuminate the US government's role in this.

ENVIRONMENTAL RACISM AND SACRIFICE ZONES

In many countries, minority or marginalized communities bear the brunt of industrial pollution and environmental damage because of systemic discrimination based on colour, race, descent, ethnicity, national origin or other attributes. This disproportionate exposure to harm is increasingly referred to as environmental racism. The UN Special Rapporteur on human rights and the environment has coined a name for places affected in this manner: “sacrifice zones”. In a 2022 report, the Special Rapporteur specifically referenced chemical accidents, such as Bhopal, which have a “catastrophic impact on health, human rights and the environment”. He described a sacrifice zone as “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”.

Such descriptions aptly apply to the Bhopal disaster, which has been driven, above all, by the enormous power imbalance of US multinational corporations on the one hand, and low income and marginalized communities in India on the other. The indifference and disdain with which the survivors and their descendants have been treated ever since the gas leak, the lack of proper and effective accountability of both state and corporate actors for both the gas leak and ongoing contamination, and the failure to ensure a reparations programme that adequately addresses all past and ongoing harms have been enabled by entrenched environmental racism.

THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

Although some international guidance on responsible business conduct existed in the 1980s, this was still in its very early stages. The 1984 gas leak shocked the world. However, little was said at the time about the human rights responsibilities of the companies. The normative landscape has changed dramatically since then. In June 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UN Guiding Principles). Companies can no longer deny, at least in their public relations and materials, that they have human rights responsibilities. Indeed Dow’s own website claims that, “Dow’s Values and the Code are influenced by and reflect the fundamental principles described in the United Nations Universal Declaration of Human Rights.”

Despite the complex corporate and legal tangle, one issue is clear: Dow is failing to live up to its responsibility to respect human rights under the UN Guiding Principles and other international business and human rights standards. Dow exercises effective control over UCC. In the language of the UN Guiding Principles, this means that the company has significant “leverage” over the conduct of its subsidiary. The UN Guiding Principles make clear that, when leverage exists, companies should exercise it to prevent or mitigate adverse impacts to the greatest extent possible. In choosing not to exercise this control or leverage, Dow is failing to live up to its responsibilities under international business and human rights standards.

Dow may not have caused the gas leak, or subsequent plant site contamination, but it became directly linked to their adverse human rights impacts, and the ongoing failure to remediate them, from the moment it purchased UCC in 2001. Even if Dow were, as it argues, a distinct and separate legal entity from UCC, and even if it were only “directly linked” to the adverse impacts caused by UCC, Dow is still expected to exercise leverage over UCC. Dow’s ongoing failure to do so over a prolonged period of time is sufficient basis to argue that the company is now knowingly contributing to all outstanding abuses. This, in turn, triggers the obligation to remediate all adverse impacts. Despite its assurances of commitment and compliance with international business and human rights standards, at no point has Dow explained its actions (or lack thereof) regarding Bhopal through the prism of the UN Guiding Principles.

CONCLUSION

Forty years after the gas leak, 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.

Bhopal is not a case of the past. The human rights abuses resulting from the gas leak and site contamination are unresolved and ongoing. Amnesty International joins Bhopal survivors and activists in demanding urgent action to address the ongoing human rights abuses in Bhopal from the governments and companies alike.

KEY RECOMMENDATIONS

RECOMMENDATIONS TO DOW AND ITS SUBSIDIARY UCC

- Provide additional comprehensive compensation to Bhopal survivors, their children and grandchildren, to cover the actual number of deaths and injuries caused by the gas disaster. Provide compensation for the adverse health, economic and social impacts caused by the ongoing contamination at the plant site and of the groundwater.
- Contribute an appropriate and fair financial sum towards clean-up works at the contaminated plant site and surrounding areas, and towards the cost of health monitoring and healthcare for the affected population.

RECOMMENDATIONS TO THE GOVERNMENT OF INDIA AND STATE GOVERNMENT OF MADHYA PRADESH

- Work with survivor organizations to establish a mechanism for the fair, prompt and transparent distribution of all outstanding compensation still held by the government.
- Regularly test the water supplies of all Bhopal communities, and urgently provide safe drinking water to communities whose water supplies are found to be contaminated, including communities beyond those closest to the plant site.
- Significantly strengthen economic rehabilitation and social protection support, including the utilization of gas disaster funds to generate jobs for survivors and their children, income for those who cannot work through social security benefits, and the payment of an adequate and commensurate monthly pension to all women widowed by the disaster, including those who are still awaiting recognition.
- Significantly strengthen health monitoring and ensure high-quality, free healthcare for all people whose health has been affected, or who have been rendered destitute, because of the gas leak and/or groundwater contamination.
- Provide rehabilitation and medical care to all children with congenital disabilities because of gas or contamination affecting their parents or grandparents.

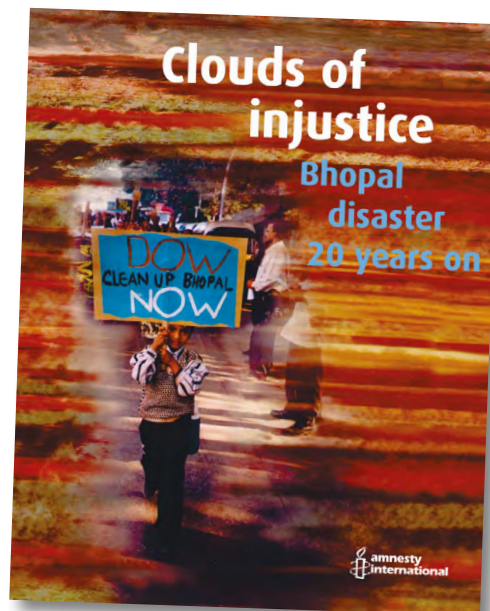
RECOMMENDATIONS TO THE US GOVERNMENT

- Cooperate with the Government of India to ensure that UCC faces criminal charges in the ongoing criminal case in Bhopal.
- Engage in bilateral discussions with the Government of India to support plant site remediation, as well as all other outstanding medical, economic and social needs, and make public the nature, date and content of all communications and meetings.

2. METHODOLOGY

This report is an update to earlier publications released by Amnesty International.

In November 2004, to mark the 20th anniversary of the disaster, Amnesty International published *Clouds of Injustice: Bhopal Disaster 20 Years On*.¹ This was the first comprehensive report by any international organization to detail the range of human rights violations and abuses occasioned by the gas leak. In 2014, the year of the 30th anniversary of the disaster, Amnesty International released a report on the right to remedy for corporate human rights abuses. The report, *Injustice Incorporated: Corporate Abuses and the Human Right to Remedy*, included an updated account on developments since the disaster.² These two reports described in detail the events leading up to, during and following the tragedy, and assessed the impacts and responsibilities through a human rights lens. Because many critical issues are discussed comprehensively in these reports, they are not replicated here, or are only described briefly to provide background to this update.



This latest report, marking the 40th anniversary of the disaster, is the product of extensive research of documentary evidence, including government data and reports, scientific studies, court documents, leaked diplomatic wires, documents discovered through freedom of information requests, company policies and statements, and media articles, as well as press releases, public letters and other communications from campaigning groups. The researchers consulted leading experts on the disaster and its aftermath and are grateful for their support and advice.

Amnesty International wrote to Dow and its wholly owned subsidiary, Union Carbide Corporation (UCC), to provide them with an opportunity to respond to the findings and information in this update. Dow and UCC replied with links to the relevant pages on their respective websites.³ Amnesty International has reviewed these pages and taken the information presented on them into account. Amnesty International also wrote to the Indian and US governments. A copy of these responses has been included in the Annex on page 92.

- 1 Amnesty International, *Clouds of Injustice – Bhopal Disaster 20 Years On* (Index: ASA 20/015/2004), 29 November 2004, https://www.amnesty.ch/fr/themes/economie-et-droits-humains/exemples/justice-pour-bhopal/Clouds_of_injustice_Bericht_2004.pdf
- 2 Amnesty International, *Injustice Incorporated: Corporate Abuses and the Human Right to Remedy* (Index: POL 30/001/2014), 7 March 2014, <https://www.amnesty.org/en/documents/pol30/001/2014/en/>
- 3 Dow, “Statement of The Dow Chemical Company Regarding the Bhopal Tragedy”, <https://corporate.dow.com/en-us/about/legal/issues/bhopal.html>; Union Carbide Corporation (UCC), “Bhopal Gas Tragedy Information”, <http://www.bhopal.com> (both accessed on 5 March 2024).

3. THE WORLD'S WORST INDUSTRIAL DISASTER?

Shortly before midnight on 2 December 1984, tonnes of the deadly gas methyl isocyanate (MIC) began to leak into the atmosphere from the storage tank of a pesticide plant on the outskirts of the city of Bhopal, in the state of Madhya Pradesh, India. Over the course of that night, approximately 27 metric tonnes of MIC, together with other chemicals, were released into the air.⁴ The consequences for the thousands of residents living close to the plant were catastrophic. More than 570,000 people were exposed to damaging levels of toxic gas,⁵ and as many as 10,000 people are believed to have died within three days of the leak.⁶ Those who survived developed a wide range of chronic and debilitating illnesses caused by gas exposure, including respiratory ailments, eye disease, immune system impairment, neurological and neuromuscular damage, cancers, gynaecological disorders and mental health problems, as well as experiencing miscarriages and the birth of children with congenital malformations.⁷ The Madhya Pradesh Department for Gas Relief and Rehabilitation reported that, by October 2003, 554,895 individuals had claimed varying degrees of injury and disability.⁸ Many people who became seriously ill after gas exposure died in the years that followed. By 2003 it was estimated that more than 20,000 people had died as a direct result of exposure to the leak.⁹ Today, this number is believed to be at least 22,000, with exposure-related deaths continuing to occur. More than half a million people continue to suffer some degree of permanent injury. (See *The Curative Petition to the Supreme Court of India* below.)

More than 570,000 people were exposed to damaging levels of toxic gas, and as many as 10,000 people are believed to have died within three days of the leak.¹⁰

The gas leak pushed already impoverished communities into further destitution. In many families, the main wage earner died or became too ill to work.¹¹ Women and children suffered disproportionately. Children under the age of 10 died in large numbers and many of those who survived suffered growth and other health problems.¹² Gas-exposed women were unable to marry due to concerns over possible difficulties with child bearing and the potential financial liability that chronic ill-health entailed.¹³ Married women exposed to the gas faced similar difficulties. Those who lost their husbands in the disaster often faced economic hardship for the rest of their lives (see *Lack of sufficient support to widows* below). Over the years that followed, the health effects of gas exposure began to be seen in subsequent generations, with research showing a large number of children born of gas-exposed parents to have been affected by growth retardation, birth defects and other medical conditions. (See *The multiple impacts on subsequent generations* below.)

4 UCC, *Bhopal Methyl Isocyanate Incident Investigation Team Report*, March 1985, p. 24.

5 Bhopal Gas Tragedy Relief and Rehabilitation Department, *Annual Report 2003*.

6 Amnesty International, *Clouds of Injustice* (previously cited), pp. 10-12.

7 For a brief description of gas-related health effects see Amnesty International, *Clouds of Injustice* (previously cited), pp. 12-18.

8 Bhopal Gas Tragedy Relief and Rehabilitation Department, *Annual Report 2003*.

9 Amnesty International, *Clouds of Injustice* (previously cited), p. 12.

10 Bhopal Gas Tragedy Relief and Rehabilitation Department, *Annual Report 2003*.

11 Amnesty International, *Clouds of Injustice* (previously cited), pp. 18-20.

12 Amnesty International, *Clouds of Injustice* (previously cited), p. 18.

13 Amnesty International, *Clouds of Injustice* (previously cited), pp. 20-22.



A satellite map of Bhopal, showing the extent of the toxic gas cloud, which affected half a million people.
© Judah Passow / Planet Labs PBC 2020

The gas leak is not the only chemical catastrophe affecting Bhopal's communities. During the years that the plant was in operation it was a continuous source of contamination. Spillages and accidents, as well as routine operations and indiscriminate dumping practices, resulted in dangerous chemicals being released into the air, soil and groundwater. (See *Ongoing environmental pollution – the second catastrophe* below.) In 1998 the plant's owner, UCC, abandoned the site, handing it back to the state without removing and adequately disposing of the large chemical stockpiles that remained in and around the premises, or completing an environmental clean-up of the surrounding area. Thousands of tonnes of toxic waste remain buried in and around the abandoned plant to this day. Studies by many organizations over the years have shown ongoing pollution around the plant site, including contamination of soil and groundwater with heavy metals.¹⁴ This in turn has contaminated the local residents' water supplies and harmed their health, adding to the already dismal health status of gas-exposed residents.

Criminal prosecutions in India and multiple civil actions in both India and the USA followed the disaster. However, none of these judicial attempts has resulted in prompt, effective and adequate remedy as required by international human rights law.¹⁵ The Bhopal disaster is one of the worst industrial disasters ever witnessed. And yet, four decades on, 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.

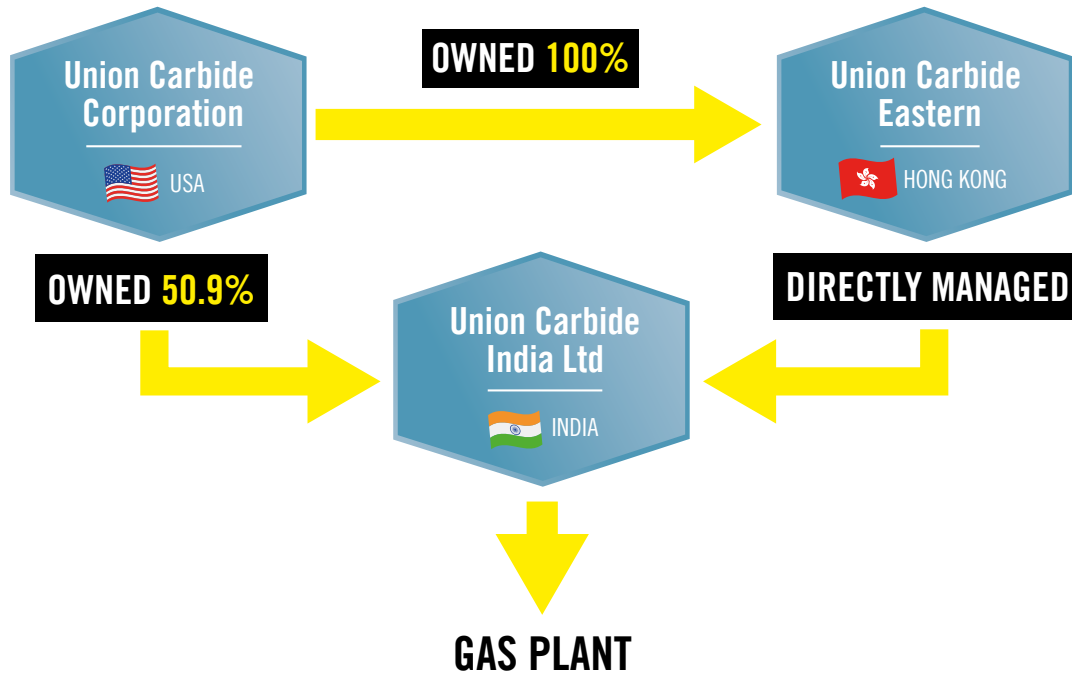
14 Summary of scientific studies conducted on contamination of Union Carbide site and surrounding areas in Bhopal, in Letter to Mr. Prakash Javadekar, Minister of Environment, Forests & Climate Change: Request to invite United Nations Environmental Programme (UNEP) to carry out Comprehensive Assessment of the Environmental damages caused due to Union Carbide's Hazardous waste, Annexure 3, 10 January 2015, https://www.bhopal.net/wp-content/uploads/Events/2014_30th_Anniversary/Letter-to-MOEF-Minister-on-Bhopal-.pdf See also, Centre for Science and Environment, *Action Plan: Environmental Remediation in and around UCIL, Bhopal, Expert Roundtable, April 25-26 2013*, August 2013.

15 Universal Declaration of Human Rights (UDHR), Article 8; International Covenant on Civil and Political Rights (ICCPR), Article 2(3); International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 21 March 2006, UN Doc. A/RES/60/147, among many other instruments.

3.1 THE COMPANIES

At the time of the disaster, the Bhopal plant was operated by Union Carbide India Ltd (UCIL), an Indian company controlled by UCC, a US-based multinational chemicals giant.¹⁶ UCIL reported to Union Carbide Eastern (UCE), a wholly owned subsidiary of UCC based in Hong Kong but incorporated in the USA.¹⁷ UCE reported to UCC.

Company Structure in 1984



After the disaster, these entities and their relationships changed. In 1994, UCC sold its stock in UCIL to another Indian company, which rebranded it as Eveready Industries India Limited (Eveready).¹⁸ In 2001, UCC was taken over by, and became a wholly owned subsidiary of, its primary US competitor, Dow, for US\$11.6 billion.¹⁹

In September 2017, Dow and its subsidiaries merged with E.I. du Pont de Nemours and Company (DuPont). Dow and DuPont became subsidiaries of a newly created holding company named DowDuPont. Dow and DuPont realigned their activities into three groups: materials science, agriculture, and specialty products. In June 2019, DowDuPont was dissolved, and the three divisions became three independent, publicly traded companies: Dow Inc. (former materials science division), Corteva Agriscience (former agriculture division) and Du Pont (former speciality products division). Dow Inc. became the direct parent company of Dow.

¹⁶ UCC owned a controlling 50.9% stake in UCIL. Other shares were owned by the Indian public and government agencies. Themistocles D'Silva, *The Black Box of Bhopal: A Closer Look at The World's Deadliest Industrial Disaster*, 2006, p. 27.

¹⁷ At the time of the disaster, four senior UCE managers sat on the UCIL board. They included the chairperson of UCE, who was also the corporate vice-president of UCC. UCC's executive vice president, who was also a member of its management committee was also a board member of UCIL. See UCC's response to Plaintiff's First Combined Set of Interrogatories and Requests for Admissions. MDL Docket No. 626 Misc. No. 21-38 (JFK) 85 Civ. (JFK), reproduced in Themistocles D'Silva, *The Black Box of Bhopal* (previously cited), p. 250.

¹⁸ Eveready India, "Information on Bhopal", <https://www.evereadyindia.com/media/information-on-bhopal/>, (accessed on 27 February 2024).

¹⁹ UCC, "About us", <https://www.unioncarbide.com/about-us.html> (accessed on 4 March 2024).

Today, Dow is one of the largest chemical companies in the world.²⁰ The company operates 104 manufacturing sites in 31 countries and employs approximately 37,800 people. In 2022, it reported annual sales of US\$57 billion and a net income of US\$4.6 billion.²¹ UCC continues to operate as a wholly owned subsidiary of Dow. It claims to have “more than 2,300 employees” and to “operate some of the most cost-efficient, large-scale production facilities in the world”.²² Its net sales for the year 2022 were US\$5.4 billion and its net income amounted to just under US\$600 million.²³

3.2 COMPANY RESPONSES

Dow and UCC have maintained the same positions regarding Bhopal for years. Ahead of the publication of Amnesty International’s 2014 report, *Injustice Incorporated*, Dow described Amnesty International’s findings as “wrong and misguided”.²⁴ The company noted that it had acquired shares of UCC more than 16 years after the gas release, and that UCC’s liabilities, if any, had not been assumed by Dow.

Dow continues to distance itself from any responsibility towards the survivors. In an email sent ahead of the publication of this report, a spokesperson wrote as follows:

“It is important to recognize that The Dow Chemical Company (TDCC) never owned or operated the plant; it was owned and operated by Union Carbide India Limited (UCIL). Union Carbide Corporation (which itself was a separate company from UCIL) did not become a subsidiary of TDCC until more than 16 years after the tragedy, and 12 years after the \$470 million Bhopal settlement agreement – paid by Union Carbide Corporation and UCIL – was approved by the Indian Supreme Court. The plant site today is under the control of the Madhya Pradesh state government.”²⁵

In 2014, UCC stated that Amnesty International’s “contention that Union Carbide Corporation deprive the victims of the Bhopal gas disaster of the ‘right to an effective remedy’ is without any factual or legal basis.”²⁶ The company defended the fairness of the compensation settlement made in 1989, stating that the Indian Supreme Court had found it “just, equitable and reasonable”. This year, UCC wrote as follows:

“I encourage you to visit our website, <http://www.bhopal.com>, and carefully consider the factual information presented there. I hope it will facilitate a more balanced perspective of the Bhopal tragedy and Union Carbide’s efforts.”²⁷

This website includes the discredited opinion that the leak was caused by sabotage.

20 Dow is consistently ranked in the top 20 by the specialized media. See for example, RankRed, “16 Largest Chemical Companies in The World”, 2 January 2023, https://www.rankred.com/largest-chemical-companies/#10_Dow_Chemical_Company Statista, 2023, <https://www.statista.com/statistics/272704/top-10-chemical-companies-worldwide-based-on-revenue/> (accessed on 4 March 2024).

21 Dow, *2022 Annual Report*, 2022, https://s23.q4cdn.com/981382065/files/doc_financials/2023/ar/2022_Dow_Inc_Annual_Report.pdf pp. 29-30.

22 Union Carbide Corporation, ‘About us’, <https://www.unioncarbide.com/about-us.html> (accessed 4 March 2024).

23 Union Carbide Corporation, US Securities and Exchange Commission (SEC) Form 10K for the fiscal year ended December 31, 2022, p 12-13, 0000029915-23-000003 (d18rn0p25nwr6d.cloudfront.net)

24 Amnesty International, *Injustice Incorporated* (previously cited), p. 218.

25 Email sent on 4 March 2024, see Annex.

26 Amnesty International, *Injustice Incorporated* (previously cited), pp. 214-5.

27 Email sent on 4 March 2024, see Annex.

4. BUSINESS AND HUMAN RIGHTS STANDARDS – THEN AND NOW

Although some international guidance on responsible business conduct existed in the 1980s, this was still in its very early stages.²⁸ There was no sense among the business community of obligation or necessity when it came to respecting international human rights law and standards across borders.²⁹ What was, or was not, acceptable business conduct was still defined by national law. But national law was limited when it came to governing corporate groups operating across borders. For example, there was no concept of ‘home state responsibility’, by which the governments of states where multinationals are headquartered (as opposed to the those of the ‘host states’ where they operate) are responsible for holding them accountable for their actions worldwide. For this reason among others, access to justice across borders was limited.³⁰ The 1984 gas leak shocked the world. However, little was said at the time about the human rights responsibilities of the companies, let alone the obligations of the US government to ensure US-based companies respected human rights when operating abroad.³¹

The normative landscape has changed dramatically since then. In 2000 the United Nations Secretary-General Kofi Annan set up the UN Global Compact, a policy initiative for global businesses committed to aligning their activities with 10 universally accepted principles in the areas of human rights, labour, the environment and anti-corruption.³² In 2003 the then UN Sub-Commission on the Promotion and Protection of Human Rights adopted the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regards to Human Rights (UN Norms).³³ While the UN Human Rights Council (at the time, the UN Commission on Human Rights) did not formally adopt the UN Norms, this instrument sparked efforts to develop a normative framework on business and human rights within the UN. The first step to this end was the nomination in 2005 of Harvard University professor John Ruggie as UN Special Representative of the Secretary-General on business and human rights.

28 In 1976, the Organization for Economic Cooperation and Development (OECD) established the OECD Guidelines for Multinational Enterprises. In 1977, the International Labour Organization published the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. However, these instruments contained very broad and generic recommendations which did not address human rights, or only addressed labour rights and relations. Most importantly, they were not a reflection of actual practice, and the lack of genuine buy-in from global business and governments alike meant that they were largely ignored and led to little improvement in actual corporate behavior across borders.

29 P. Muchlinski, “The Impact of the UN Guiding Principles on business attitudes to observing human rights”, 2021, *Business and Human Rights Journal*, Volume 6, Issue 2, pp. 213-215.

30 See Amnesty International, *Injustice Incorporated* (previously cited).

31 See for example, Robert Reinhold, “Disaster in Bhopal: where does blame lie?”, *New York Times*, 31 January 1985 (discussing the responsibility of the central and state governments under Indian law). Also, P. Muchlinski, “The Bhopal case: Controlling ultra-hazardous industrial activities undertaken by foreign investors”, 1987, *Modern Law Review*, Volume 50 and J. Cassels, “The uncertain promise of law: Lessons from Bhopal”, 1991, *Osgoode Hall Law Journal*, Volume 29, Issue 1. No references are made in any of these pieces to the human rights responsibilities of either the US companies or the US government.

32 UN Global Compact, “Homepage”, <https://unglobalcompact.org/> (accessed on 6 March 2024).

33 UN Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, 2003, UN Doc. E/CN.4/Sub.2/2003/12/Rev.1.



Protest ahead of the 31st anniversary of the disaster © Giles Clark 2015

In 2008, Professor Ruggie set out the three-pillar Protect, Respect and Remedy Framework (UN Framework),³⁴ consisting of the state duty to protect rights (pillar one), the corporate responsibility to respect rights (pillar two) and the duty to provide remedy for violations (pillar three). The UN Framework articulated the principle that companies have a responsibility to respect all internationally recognized human rights wherever in the world they operate. It also introduced the concept of human rights due diligence, a process to help companies identify and address actual and potential adverse human rights impacts along their entire value chain. In June 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UN Guiding Principles), a set of principles designed to operationalize the UN Framework.³⁵ These were the first ever business and human rights instruments formally adopted by an inter-governmental organization.³⁶ In May 2011, the OECD Guidelines for Multinational Enterprises (OECD Guidelines) were updated to reflect the corporate responsibility to respect human rights in line with the UN Guiding Principles.³⁷ Since then, the UN Guiding Principles and the OECD Guidelines have become the most authoritative international standards for addressing questions of corporate respect for human rights. Many individual companies and industry coalitions have begun to publicly adhere to these instruments and commit to respecting human rights.³⁸ Companies can no longer deny, at least in their public relations and materials, that they have human rights responsibilities.³⁹ Indeed Dow's own website claims that, "Dow's Values and

34 Human Rights Council, Protect, Respect and Remedy: a Framework for Business and Human Rights Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 7 April 2008, UN Doc. A/HRC/8/5.

35 Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 21 March 2011, UN Doc. A/HRC/17/31.

36 P. Muchlinski, "The Impact of the UN Guiding Principles on business attitudes to observing human rights" (previously cited), p. 212.

37 2011 Update of the OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/2011update.htm>.

38 UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights at 10: Taking stock of the first decade, 22 April 2021, UN Doc. A/HRC/47/39, paras 59 & 61.

39 See European Commission, *Study on Due Diligence Requirements Through The Supply Chain – Final Report*, 2020, <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en pp. 242-245> (addressing the divide between voluntary initiatives and commitments and actual change in practice).



Professor Ruggie's three-pillar Protect, Respect and Remedy Framework

the Code are influenced by and reflect the fundamental principles described in the United Nations Universal Declaration of Human Rights.”⁴⁰ It also states that the company operates in “full accordance with the UN Guiding Principles on Businesses and Human Rights”.

While international soft law standards were developing, calls for mandatory measures that would entrench these standards into law also increased gradually. In 2014 the UN Human Rights Council resolved to establish an open-ended intergovernmental working group to develop a legally binding instrument on business and human rights.⁴¹ At the same time, many states started considering and more recently enacting legislation to impose on companies a duty to carry out human rights due diligence.⁴²

Both the UN Guiding Principles and the OECD Guidelines clearly recognize the central role and responsibility of parent companies to prevent adverse human rights impacts that may result from the activities of their subsidiaries.⁴³

Putting to one side questions of legal liability, under today’s international normative framework, UCC, as majority owner and in control of UCIL’s activities at the time of the disaster and during the decade that followed, bears responsibility for the adverse human rights impacts of the gas leak and plant site contamination. The international business and human rights framework was not in existence during the first few decades after the Bhopal disaster. But since the harms have not been fully addressed and remain ongoing, the framework is highly relevant to UCC’s behaviour and approach to Bhopal during the last 15 years at least. It is also undeniable that Dow, as sole owner of UCC, bears responsibility under the international business and human rights framework for UCC’s failures and the continuing harm. (See more in *The corporate responsibility to respect human rights* below.)

40 Dow, “Human Rights”, <https://corporate.dow.com/en-us/about/legal/conduct/human-rights.html> (accessed on 8 February 2024).

41 Human Rights Council, Elaboration of an International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with Respect to Human Rights, 26 June 2014, UN Doc. A/HRC/RES/26/9.

42 See for example, European Coalition for Corporate Justice, “Comparative table: Corporate due diligence laws and legislative proposals in Europe”, 21 March 2022, <https://corporatejustice.org/publications/comparative-table-corporate-due-diligence-laws-and-legislative-proposals-in-europe-2/>.

43 The various human rights due diligence legislative proposals and laws in existence today, such as European Union’s proposed Corporate Sustainability Due Diligence Directive, make this responsibility legally binding, and, with varying degrees of intensity, make parent companies liable for failing to live up to it. See for example, Amnesty International, *Closing the Loopholes: Recommendations for an EU corporate sustainability law which works for rights holders* (Index: IOR 60/6539/2023), 15 May 2015, <https://www.amnesty.org/en/documents/ior60/6539/2023/en/>

5. ONGOING ENVIRONMENTAL POLLUTION – THE SECOND CATASTROPHE

The Bhopal plant site has been an ongoing source of environmental pollution since it first opened in the 1970s. Alongside the 1984 gas leak, the contamination caused by this pollution represents a second disaster for an increasing number of residents living near the site.

UCC's own assessments from the 1970s onwards reveal concerns over the potential for contamination of sub-surface water from the plant's solar evaporation ponds. Moreover, internal correspondence between UCIL and UCE from the early 1980s reveal actual leaks.⁴⁴ When UCC sold its shares in UCIL, it stated that responsibility for the site, and any potential liability, now lay with the new company, Eveready.⁴⁵ In 1998, Eveready surrendered the lease on its Bhopal site to the State Government of Madhya Pradesh. Both UCC and Dow maintain that responsibility for the clean-up has resided with the state government since then.⁴⁶ Eveready, in turn, states that responsibility for any remaining pollution resides with UCC.⁴⁷ Neither UCC, before selling its shares in UCIL, nor UCIL (now Eveready) before relinquishing the site back to the government, completed the environmental clean-up they had a responsibility to carry out.⁴⁸

Evidence of ongoing pollution around the plant site, including water and soil contamination, has been published by numerous organizations over the years. In November 1999, Greenpeace released a report concluding that the Bhopal site and its immediate surroundings were contaminated with chemicals arising from routine processes, spillages and accidents at the plant, or from materials dumped and stored on the site.⁴⁹ In May 2004 the Supreme Court of India observed that "due to indiscriminate dumping of hazardous waste due to non-existent or negligent practices together with lack of enforcement by the authorities, the groundwater, and, therefore, drinking water supplies" had been compromised.⁵⁰

Between 1990 and 2013, 16 studies were carried out by India's Council of Scientific and Industrial Research (CSIR) institutes, including the National Engineering Environmental Research Institute (NEERI), the National Geophysical Research Institute (NGRI), the Indian Institute of Chemical Technology (IICT) and the Indian Institute for Toxicology Research (IITR), and by central and state agencies such as the Central Pollution Control Board (CPCB), the Madhya Pradesh Pollution Control Board (MPPCB) and the Public Health Engineering Department of Madhya Pradesh. These studies have consistently shown the presence of toxic chemicals and heavy metals in high concentrations as far as 3.5km from the factory and at depths greater than 30m.⁵¹ While proving the existence

44 Amnesty International, *Injustice Incorporated* (previously cited), pp. 53-54.

45 UCC, "Statement of Union Carbide Corporation Regarding the Bhopal Tragedy", www.bhopal.com/union-carbide-statements (accessed 4 March 2024).

46 UCC, "Statement of Union Carbide Corporation Regarding the Bhopal Tragedy" (previously cited) ; Dow, "Q and A with respect to the government of India's request for a Curative Petition related to the 1989 Bhopal Settlement", 28 February 2011.

47 Eveready Industries India Ltd., "Information on Bhopal", 16 June 2010, www.evereadyindustries.com/pressroom/information-bhopal.asp

48 Amnesty International, *Injustice Incorporated* (previously cited), pp. 53-54.

49 Greenpeace, *The Bhopal Legacy: Toxic Contaminants at the former Union Carbide factory site, Bhopal, India, Technical Note 04/99*, 15 May 1999, <https://www.greenpeace.to/greenpeace/?p=501>.

50 Order of the Supreme Court 07/05/2004 in *Research Foundation for Science v. Union of India and And Ors*, Writ Petition (Civil) No. 657/1995.

51 Letter to Mr. Prakash Javadekar, Minister of Environment, Forests & Climate Change (previously cited). See also Centre for Science and Environment, *Action Plan: Environmental Remediation in and around UCIL, Bhopal, Expert Roundtable, April 25-26 2013*, August 2013.



Groundwater contamination of the 42 communities around the Union Carbide factory in Bhopal. Image: Google Earth © 2024 Airbus

of contamination, these reports do not provide a comprehensive assessment of the full extent of environmental contamination.⁵² Survivor organizations claim that a comprehensive scientific assessment of the depth and extent of the contamination is needed to provide immediate protection to all those that might still be drinking contaminated water, to elaborate an appropriate site remediation strategy, and to calculate the amount of compensation due from the polluter companies.⁵³

In 2009, by request of a Task Force set up by the Madhya Pradesh High Court in the context of a public interest litigation lawsuit (see *Public interest litigation in the Madhya Pradesh High Court* below), NEERI, NGRI and IITR attempted to carry out this comprehensive assessment. However, in 2010, a so-called Peer Review Committee set up by the Group of Ministers (a group of various central and state government ministers established to oversee, among other Bhopal-related issues, decontamination efforts) found the assessment inadequate.⁵⁴ In January 2015, survivor organizations wrote to the Indian Minister of Environment, Forests and Climate Change to request that the Minister invite the United Nations Environment Programme (UNEP) to carry out the comprehensive assessment.⁵⁵ In February 2015, the survivor groups met with the Minister, who promised a response within 15 days.⁵⁶ The response, which came two months later, claimed that there was no need for another study.⁵⁷

52 Letter to Mr. Prakash Javadekar, Minister of Environment, Forests & Climate Change (previously cited).

53 Letter to Mr. Prakash Javadekar, Minister of Environment, Forests & Climate Change (previously cited).

54 Letter to Mr. Prakash Javadekar, Minister of Environment, Forests & Climate Change (previously cited). In December 2014, in response to a request from members of the International Campaign for Justice in Bhopal, UNEP had indicated that a formal request from the Indian Ministry of Environment and Forests would be required.

55 Letter to Mr. Prakash Javadekar, Minister of Environment, Forests & Climate Change (previously cited).

56 ICJB, "Bhopal Gas Survivors ask the Environment Minister Mr. Javdekar to take up the UNEP offer of Comprehensive Scientific Assessment of the Contamination and UC Factory", 24 February 2015, <https://www.bhopal.net/bhopal-gas-survivor-ask-the-environment-minister-mr-javdekar-to-take-up-the-unep-offer-of-comprehensive-scientific-assessment-of-the-contamination-and-uc-factory/>

57 Letter of Response from Ministry of Environment, Forest and Climate Change to Ms Rachna Dhingra, 10 April 2015, <https://www.bhopal.net/wp-content/uploads/2015/05/MOEF-refusal-on-UNEP-proposal.pdf> See also, ICJB, "Resident of Water Contaminated Areas ask the Govt of India when will the Union Carbide's Toxic Waste be Cleaned Up?", 5 June 2015, <https://www.bhopal.net/resident-of-water-contaminated-areas-ask-the-govt-of-india-when-will-the-union-carbides-toxic-waste-be-cleaned-up/> Survivor groups sent a new letter to the Minister of Environment, Forests and Climate Change in July 2021, to request a comprehensive assessment of hazardous waste inside and outside the factory premises, but this letter received no response (letter on file with the authors).

5.1 LACK OF ACCESS TO CLEAN DRINKING WATER

The catastrophic health effects of the 1984 gas leak have combined with the hidden but also deadly health impacts of water contamination. Indian courts have long recognized the existence of high levels of water contamination around Bhopal and the serious risks this poses to the health of surrounding communities.⁵⁸ In 1997, in response to emerging evidence of water contamination, 250 hand pumps around the plant were painted with red signs, declaring that the water they provided was unfit for drinking. However, in the absence of any other convenient water source, most people in the surrounding communities continued to drink the water from the pumps.⁵⁹

By an order of the Supreme Court of India in 2004, the Madhya Pradesh state government began supplying fresh drinking water from tankers to 14 communities living around the plant site. Based on new tests, the order was extended to 18 communities in 2012, and 22 communities in 2013.⁶⁰ While the court orders for provision of safe drinking water to an increasing number of communities represented important breakthroughs, the measures came too late for communities that had been forced to drink contaminated water for decades. In addition, authorities have often been slow in implementing the court orders or have put in place defective and insufficient water supply systems, continuing to expose residents to contamination. In August 2013, five survivor organizations accused the Madhya Pradesh state government of “criminal neglect” because of its failure to provide clean drinking water to all affected residents.⁶¹

By 2014, work to connect all 22 communities to piped drinking water had been completed. However, in 2017, the NGO Bhopal Group for Information and Action (BGIA), which is a member of the Monitoring Committee set up by order of the Supreme Court to monitor relief efforts, claimed that contamination had spread beyond the 22 communities, and was now affecting an additional 20 communities.⁶² In response, the Supreme Court of India ordered samples to be taken from these new locations to be analysed by a government-approved laboratory.⁶³ In June 2018, the ITR, the laboratory assigned to carry out this task, concluded its analysis of water samples, finding excessive levels of nitrate, chloride



Hand water pump in Blue Moon Colony, a settlement situated close to the site of the former pesticide plant © Amnesty International 2012

58 Order of the Supreme Court 07/05/2004 in *Research Foundation for Science v. Union of India and And Ors* (previously cited), and Order of the Supreme Court, 03/05/2012 in the same case. See also S. N. Vijetha, “Supreme Court orders end to cancer-causing water in Bhopal”, *The Hindu*, 5 May 2012, <https://www.thehindu.com/news/national/supreme-court-orders-end-to-cancercausing-water-in-bhopal/article3388215.ece>

59 Amnesty International, *Injustice Incorporated* (previously cited), p. 54.

60 Two studies conducted between 2012 and 2013 by the ITR found contamination of groundwater in 22 communities. See “Summary of Scientific Studies Conducted on Contamination of Union Carbide Site and Surrounding Areas in Bhopal”, <https://www.bhopal.net/wp-content/uploads/2021/10/Summary-of-Scientific-Studies-June-2018.pdf> (accessed on 09 March 2024).

61 Amnesty International, *Injustice Incorporated* (previously cited), p. 55.

62 *The Times of India*, “Dumped toxic waste from defunct carbide plant affects 20 more areas”, 10 March 2018, <https://timesofindia.indiatimes.com/city/bhopal/dumped-toxic-waste-from-defunct-carbide-plant-affects-20-more-areas/articleshow/63243525.cms>

63 Order of the Supreme Court 22/11/2017 in *Research Foundation for Science v. Union of India and And Ors*, Writ Petition (Civil) No. 657/1995, <https://www.bhopal.net/wp-content/uploads/2021/10/SC-order-22Nov2017-from-22-to-42-communities.pdf>

and heavy metals in the 20 identified communities.⁶⁴ Based on these findings, the Supreme Court ordered the State Government of Madhya Pradesh to provide these additional communities (a total of 3,313 households) with safe drinking water.⁶⁵

More recent investigations by BGIA and another NGO, the Sambhavna Trust Clinic, which has its own laboratory, have revealed that an additional 29 communities adjacent to the 42 affected communities are using water contaminated with persistent organic pollutants (POPs). BGIA claims that these are newly affected communities, and that the contamination from UCC's abandoned plant is therefore spreading.⁶⁶

While the nature and spread of contamination is being tested and debated, it is likely that thousands of people are still using polluted groundwater as their primary source of water. In addition, even the communities that are now connected to piped water supplies continue to experience problems. Since they were installed, the pipes have deteriorated, leading to frequent interruptions in the water supply.



Children outside the former Union Carbide facility in Bhopal, India. 1 December 2012 © Giles Clarke/Getty Images Reportage

64 IITR Report, *Analysis of Drinking Water Samples from Bhopal (Ground Water Sample), Final Report*, 12 June 2018, <https://www.bhopal.org/wp-content/uploads/2018/08/IITR-report-dlsa-email.pdf> To Amnesty's knowledge, no state laboratory has so far conducted, or disclosed, studies in relation to these findings.

65 Order of the Supreme Court 18/04/2018 in *Research Foundation for Science v. Union of India and And Others*, Writ Petition (Civil) No. 657/1995, https://main.sci.gov.in/supremecourt/1995/14025/14025_1995_Order_18-Apr-2018.pdf

66 The Bhopal Medical Appeal, "Carbide's chemicals poison 29 new colonies in Bhopal", 29 June 2022, <https://www.bhopal.org/water-contamination-2/carbides-chemicals-poison-29-new-colonies-in-bhopal/>

While the nature and spread of contamination is being tested and debated, it is likely that

thousands of people are still using polluted groundwater as their primary source of water



When this happens, the affected people have no choice but to drink the contaminated groundwater.⁶⁷ A study carried out by scientists from MGM New Bombay Hospital in 2017 found chromosomal aberrations in residents who were not exposed to the gas leak that were nevertheless similar to those of exposed populations. The study explained that this may be due to water contamination.⁶⁸ Chromosomal aberrations can cause miscarriage, disease, or problems in growth or development.⁶⁹ (See *Long-term health impacts* and *The multiple impacts on subsequent generations* below.)

5.2 PUBLIC INTEREST LITIGATION IN THE MADHYA PRADESH HIGH COURT

In July 2004, one of the survivor organizations, the Bhopal Gas Peedith Mahila Udyog Sangathan, filed proceedings in the Madhya Pradesh High Court against a number of defendants, including the Government of India, the Madhya Pradesh state government, UCC, Eveready (formerly UCIL) and Dow.⁷⁰ The claim, which is ongoing, seeks environmental remediation, medical assistance for victims, and damages for environmental pollution.⁷¹

On 30 March 2005 the High Court directed the Government of India to constitute a task force to implement toxic waste removal, irrespective of questions around liability. Over the years, various proposals have been made for removal and disposal of the toxic waste in different facilities around the country, and even abroad. However, each time, the proposals have been resisted by the local governments and communities who would receive the waste.⁷²

67 Email communication with Rachna Dhingra of Bhopal Group for Information & Action (BGIA), October 2023. See also, Free Press Journal, "Bhopal: Organisation working with gas survivors demand testing of contaminated water at PHE or MPPCB lab", 15 June 2022, www.freepressjournal.in/bhopal/bhopal-organisation-working-with-gas-survivors-demand-testing-of-contaminated-water-at-phe-or-mppcb-lab

68 Bani Bandana Ganguly and Shouvik Mandal, "Cytogenetic changes in the Bhopal population exposed to methyl isocyanate (MIC) in 1984: Then and 30 years later", December 2017, Mutation Research/Genetic Toxicology and Environmental Mutagenesis, Volume 824, www.sciencedirect.com/science/article/abs/pii/S1383571817302371

69 Genetic Alliance and The New York-Mid-Atlantic Consortium for Genetic and Newborn Screening Services, *Understanding Genetics: A New York, Mid-Atlantic Guide for Patients and Health Professionals*, 2009, Appendix F: Chromosomal abnormalities, <https://www.ncbi.nlm.nih.gov/books/NBK115545/>

70 *Alok Pratap Singh v. Union of India & Ors.* W.P.(C) No. 2802 of 2004. The claim originally only named Dow as corporate respondent. On 14 September 2004, Dow requested that the court also implead UCC and Eveready, a request that the court accepted. Since then, proceedings have continued against all three corporate defendants.

71 For general context, see Amnesty International, *Injustice Incorporated* (previously cited), pp. 57-59.

72 For example, various proposals were also made and assessed since 2010 for incineration of the waste in a facility in Pithampur, an industrial city about 200km from Bhopal. However, on each occasion, these were resisted either by local government or residents over safety concerns. Shruti Tomar, "Hazardous Union Carbide waste to be burnt... after 37 long years", Hindustan Times, 17 March 2022, <https://www.hindustantimes.com/india-news/hazardous-union-carbide-waste-to-be-burnt-after-37-long-years-101647455945463.html>; ICJB, "MP govt's proposed action of incinerating 337 mt of hazardous Union Carbide Waste at Pithampur, MP, is dangerous", 9 March 2022, <https://www.bhopal.net/mp-govts-proposed-action-of-incinerating-337-mt-of-hazardous-union-carbide-waste-at-pithampur-mp-is-dangerous/>



The processing plant. 2014 © Giles Clark

In May 2010, the Department of Chemicals & Petrochemicals (Ministry of Chemicals and Fertilizers) requested the High Court to order Dow, UCC and Eveready to deposit INR 1 billion (approximately US\$22 million at the time) as an advance for remediation costs. The court deferred a ruling on the merits of that application, reiterating the view that the question of who was responsible could not overshadow the immediate clean-up work requested of the government. As of March 2024, there has been no decision on the request for advance payment. In the meantime, the Government of India decided to bear the cost of remediation (estimated at INR 3.1 billion) “pending restitution from the polluter”.⁷³

In August 2013, India’s Centre for Science and Environment, an NGO, released an environmental remediation Action Plan outlining detailed recommendations for short-, medium- and long-term measures to restore the site. The Action Plan was developed by an expert group which included research institutes, waste management companies, the Central Pollution Control Board, civil society, affected communities and a former UCIL plant operator. However, this plan was never implemented and toxic waste remains in and around the abandoned plant.

⁷³ Amnesty International, *Injustice Incorporated* (previously cited), p. 58.

6. HEALTH EFFECTS OF THE GAS LEAK AND SITE CONTAMINATION

The health impacts of the gas leak were immediate and catastrophic. Thousands died at the point of exposure or during the following days. Those who survived, experienced an array of health conditions, most of which became chronic diseases, and often lead to premature death. Children were among those most affected by gas exposure.⁷⁴ Over the past 40 years, thousands of survivors, their children and now grandchildren continue to experience health problems.⁷⁵

6.1 LONG-TERM HEALTH IMPACTS

While the immediate health effects of exposure to MIC are now well-known, research on the long-term impacts of exposure remains incomplete. The Indian Council for Medical Research (ICMR) carried out an epidemiological study for the period 1985-1994, although it only published the results in 2004. The study presented evidence of a broad range of enduring diseases associated with gas exposure, including respiratory, ocular, gastrointestinal, reproductive, neurological, immunological and psychological illnesses.⁷⁶ The ICMR has not conducted any significant additional research since then. However, in October 2010, in recognition of the need to resume population health research, the ICMR established the National Institute for Research on Environmental Health (NIREH) in Bhopal. NIREH's purpose was to study the long-term health effects of those exposed to the gas, as well as impacts on the next generation.⁷⁷

One of NIREH's first activities was to assess data gathered since the completion of ICMR's 1985-1994 epidemiological study and produce a new comprehensive study. It published this study, which was meant to cover the period 1996-2010, in 2013.⁷⁸ However, researchers were unable to include most of the people covered by the initial study since some 79% of the gas-affected group and 64% of the unexposed control group were uncontactable. For this reason, many national and international experts found the results of the second study unreliable.⁷⁹ Nevertheless, the findings were still in line with those reported in the first population-based epidemiological study. They showed a continuation of acute and on-going adverse health impacts in those exposed, and higher morbidity rates than in the unexposed group.⁸⁰ Since then, NIREH has conducted additional studies predominantly based on existing data

74 S.F. Irani and A.A. Mahashur, "A survey of Bhopal children affected by methyl isocyanate gas", October 1986, *Journal of Post Graduate Medicine*, Volume 32.

75 Amnesty International, *Injustice Incorporated* (previously cited), p. 52.

76 *Health Effects of the Toxic Gas Leak from the Union Carbide Methyl Isocyanate Plant in Bhopal, Technical Report on Population Based Long Term Epidemiological Studies (1985 - 1994)*, ICMR Project 02, Bhopal Gas Disaster Research Centre, Gandhi Medical College, Bhopal (M.P.), India and Indian Council of Medical Research.

77 Application for Directions, Bhopal Gas Peedith Mahila Stationery Karamchari Sangh, applicants, in Curative Petition (C) No. 345-347 of 2011 (against the impugned Judgment and Order dated 14th and 15th February 1989, 4th May 1989 and the Judgment and Order dated 3rd October 1991 passed by this Hon'ble Court), in *Union of India v. Union Carbide Corporation and Ors*, para. 112.

78 NIREH, *Technical Report on Population-based Long-term Epidemiological Studies Part II (1996-2010)*, 2013.

79 Of the 62,706 people from the exposed group and 13,526 from the unexposed control group, only 16,860 exposed and 5,741 from control areas were available for follow-up in 2010. This translates into a cohort loss of 79% in affected areas and 64% in control areas over the 25-year period. Dinesh C. Sharma, "Bhopal study represents 'missed opportunity'", December 2013, *The Lancet*, Volume 382, Issue 9908, [www.thelancet.com/journals/lancet/article/PIIS0140-6736\(13\)62562-3/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(13)62562-3/fulltext); The Sambhavna Trust Clinic, *Status of Health and Healthcare of Gas Exposed and Unexposed Populations*, 1 December 2018, www.bhopal.org/wp-content/uploads/2018/12/Report-on-Health-Healthcare-Nov-2018.pdf

80 Dinesh C. Sharma, "Bhopal study represents 'missed opportunity'" (previously cited).

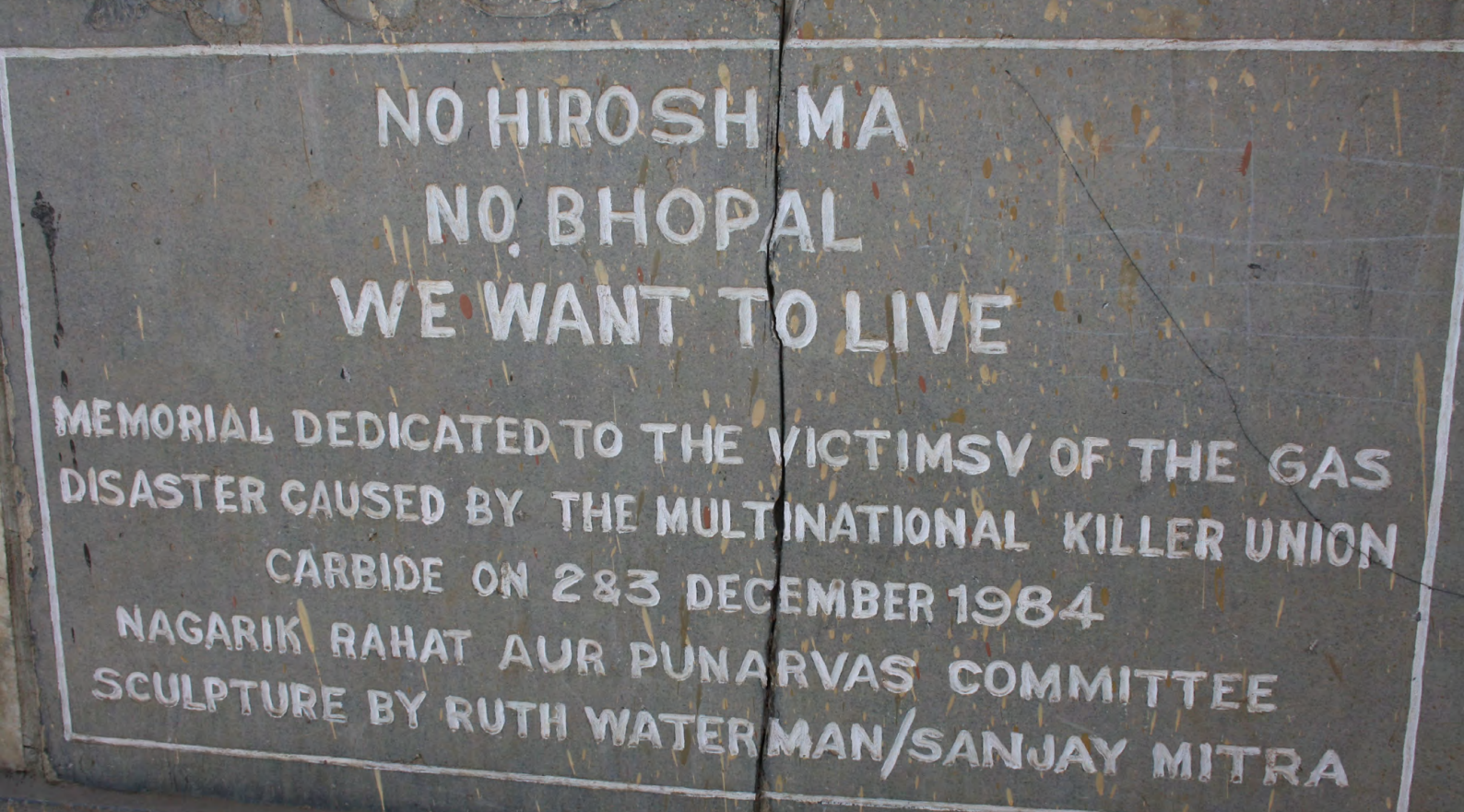


Plate on the Bhopal Memorial Statue © Amnesty International 2012

from ICMR research and hospital databases. These studies have had the purpose of establishing disease patterns and have confirmed the prevalence, and chronicity, of many gas exposure-related ailments, some of which appear to have worsened over time.⁸¹

One of the main purposes of these large epidemiological studies is to gain the necessary knowledge to provide better medical care for the affected population. The first comprehensive epidemiological report by ICMR was published in 2004, two decades after the disaster, and the second report by NIREH was published in 2013, almost 30 years afterwards.⁸² In 2019, NIREH abandoned its Bhopal-specific research focus, shifting to broader areas of environmental health.⁸³ The lack of a timely and comprehensive understanding of the long-term health impacts of gas exposure severely undermined any efforts to improve the welfare of gas exposure victims.⁸⁴ To this day, only two standardized treatment protocols exist to treat gas-related illnesses, which is insufficient to address all ailments associated with gas exposure (see below).⁸⁵ Campaigners are now asking for a review of the work of NIREH since it was set up in 2010.⁸⁶

81 See for example, NIREH, *Final Report on a Cross-sectional Study on Current Health Status of Gas Affected Individuals of Bhopal: Phase- I. Data triangulation to understand health status of gas exposed survivors of Bhopal (2023)*. ICMR-NIREH, (2013).

82 Dinesh C. Sharma, "Bhopal study represents 'missed opportunity'" (previously cited); The Sambhavna Trust Clinic, *Status of Health and Healthcare of Gas Exposed and Unexposed Populations* (previously cited).

83 NIREH's Scientific Advisory Committee decided in September 2019 to shift focus of its research away from the Bhopal gas incident towards broader areas of environmental health. ICJB, "ICMR's institute in Bhopal not only suppresses study on birth defects in children born to gas exposed parents but now decides to change focus away from gas victims", 13 November 2021, <https://www.bhopal.net/icmr-institute-in-bhopal-not-only-suppresses-study-on-birth-defects-in-children-born-to-gas-exposed-parents-but-now-decides-to-change-focus-away-from-gas-victims/#more-27404>

84 A 2012 study of women's access to gas-related healthcare facilities highlighted that the lack of long-term medical data meant that survivors continued to receive many of the same symptomatic medical treatments that they received in the first few days after the disaster. R. Shadaan, *Women's Access to Healthcare 28 Years After the Bhopal Disaster: A Case Study of Jai Prakash Nagar*, December 2012, www.bhopal.org/wp-content/uploads/2016/06/Womens-Access-to-Healthcare-in-JP-Nagar-R.Shadaan-2014.pdf

85 Application for Directions, in *Union of India v. Union Carbide Corporation and Ors* (previously cited), para. 112.

86 ICJB, "Bhopal disaster survivors meet the minister in charge of Bhopal and seek action on 5 crucial issues", 19 June 2022, <https://www.bhopal.net/bhopal-disaster-survivors-meet-the-minister-in-charge-of-bhopal-and-seek-action-on-5-crucial-issues/>

In addition to ICMR and NIREH, the government-run Bhopal Memorial Hospital and Research Centre (BMHRC) was mandated (by order of the Supreme Court in 1991) to carry out medical research on gas-related afflictions. However, this institution has also failed to accomplish this task and, despite having direct access to gas-affected patients, has failed to systematically gather their data and use it for healthcare planning purposes.⁸⁷ Like ICMR and NIREH, it has not been able to develop appropriate treatment protocols to address the various gas-related ailments. To address these deficiencies, in 2012 the Supreme Court ordered the digitization of all medical information of gas victims, the use of this data for research purposes, and the development of standardized protocols for treatment of each category of ailment from which gas victims were suffering.⁸⁸ BMHRC and other government officials failed to comply with these orders and, 11 year after they were issued, in November 2023 the Madhya Pradesh High Court found three state government officials guilty of contempt of court. The Court also directed that additional charges on the same grounds be brought against a number of other respondents.⁸⁹ On 20 December 2023, formal charges were instituted against former BMHRC Director Dr Prabha Desikan, among others. In its order, the Madhya Pradesh High Court observed that “it [was] obvious that despite a lapse of more than ten and a half years” the accused had “demonstrated no urgency or sincerity” in complying with the Supreme Court directions, “[t]hereby leaving the gas victims in the lurch”. The Court added that it saw no reason for the laxity in compliance apart from the respondent’s “insensitivity towards gas victims”.⁹⁰



20 DECEMBER 2023

FORMAL CHARGES WERE INSTITUTED AGAINST
FORMER BMHRC DIRECTOR **DR PRABHA DESIKAN**



MADHYA PRADESH HIGH COURT OBSERVED THAT

***“IT [WAS] OBVIOUS THAT DESPITE A LAPSE OF MORE THAN TEN AND A HALF YEARS”
THE ACCUSED HAD “DEMONSTRATED NO URGENCY OR SINCERITY”
IN COMPLYING WITH THE SUPREME COURT DIRECTIONS,
“[T]HEREBY LEAVING THE GAS VICTIMS IN THE LURCH”***

87 Application on Behalf of Petitioner 2 for issuance of Appropriate Directions in *Bhopal Gas Peedith Mahila Udyog Sangthan vs Union of India and Others*, High Court of Madhya Pradesh Principal Seat at Jabalpur, 21 August 2023, W.P. No. 15658/2012, paras 13-17.

88 Order of the Supreme Court 09/08/2012 in *Bhopal Gas Peedith Mahila Udyog Sangathan & Ors. v. Union of India and Ors*, Writ Petition (Civil) No.50/1998, www.bhopal.net/wp-content/uploads/2021/10/SC-order-Aug-2012.pdf para. 35(18).

89 The High Court of Madhya Pradesh at Jabalpur in *Bhopal Gas Peedith Mahila Udyog Sangthan and Others vs The State of Madhya Pradesh and Others*, dated 28 November 2023, CONC No. 832 of 2015. See also, The Times of India, “Three MP officials held guilty for not complying with SC order”, 11 December 2023, <https://timesofindia.indiatimes.com/city/bhopal/three-mp-officials-held-guilty-for-not-complying-with-sc-order/articleshow/105884567.cms>

90 The High Court of Madhya Pradesh at Jabalpur in *Bhopal Gas Peedith Mahila Udyog Sangthan and Others vs The State of Madhya Pradesh and Others*, Charge – Respondent No. 6 Dr Prabha Desikan, Director, Bhopal Memorial Hospital & Research Centre, dated 20 December 2023, CONC No. 832 of 2015, para. 4.

The report concluded that the death rate was 28% higher and that rates of illness were 63% higher in the exposed population compared to the unexposed population.

Over the years, various independent experts and institutions have attempted to fill the gap in research left by government institutions. The Sambhavna Trust Clinic has contributed important data in recent years. The preliminary results of a study it performed from 2009 to 2016 on a sample of 100,000 people revealed that cancer incidence in gas-exposed people was 10 times greater than in the unexposed population. The study also found significantly higher rates of TB, paralysis and cancer in gas and contamination-exposed families compared to unexposed families.⁹¹ In December 2018 the Sambhavna Trust Clinic published a report based on a study conducted between 2015 and 2017 on a smaller sample of people from the previously assessed cohort. This included people who had been directly exposed to the toxic gases in 1984, and those exposed in the wombs of gas-exposed mothers. The report concluded that the death rate was 28% higher and that rates of illness were 63% higher in the exposed population compared to the unexposed population.⁹²

In 2017, a team of scientists from MGM New Bombay Hospital followed up on studies initially carried out by the ICMR which had recorded damage to human DNA from exposure to MIC. Thirty years after these first studies were conducted, the scientists found that DNA damage continued in cohorts of gas-exposed people from severely and moderately exposed areas. The study also found an increase in chromosomal aberrations even in people who were not exposed to gas during the 1984 leak, or who were only moderately exposed to the gas because they did not live close to the facility. They explain that this increase may have several causes, including lifestyle, occupational exposure, nutrition and, importantly, drinking water and soil contamination.⁹³

Despite these and other studies carried out over the years, knowledge about the long-term health effects of gas exposure remains patchy.⁹⁴ The ICMR's 1985-1994 study remains the only comprehensive and systematic assessment of the long-term impacts of MIC among the exposed population. In response to pressure from survivor organizations, and from the hundreds of survivors who gathered outside BMHRC in June 2022, the Minister of Chemicals and Fertilizers promised that NIREH would carry out additional appropriate medical research on Bhopal gas victims and their children.⁹⁵

91 The Bhopal Medical Appeal, "Sambhavna study says gas hit ten times more prone to cancer", (n.d.), www.bhopal.org/stories/sambhavna-study-says-gas-hit-ten-times-more-prone-to-cancer/

92 The Sambhavna Trust Clinic, *Status of Health and Healthcare of Gas Exposed and Unexposed Populations* (previously cited).

93 The study found higher levels of abnormal cells and aberrations in the moderately and severely exposed groups than in the unexposed population. In addition, aberrations were found to be significantly higher in the unexposed and moderately exposed groups than in the previous screening. Bani Bandana Ganguly and Shouvik Mandal, "Cytogenetic changes in the Bhopal population" (previously cited).

94 The Bhopal Medical Appeal, *Sambhavna Medical Research Report*, (n.d.), www.bhopal.org/sambhavna-clinic/sambhavna-medical-research-report/

95 ICJB, "Bhopal disaster survivors meet the minister in charge of Bhopal and seek action on 5 crucial issues" (previously cited).

It concluded that 43.8% of the pregnancies did not result in live births. This is three to four times higher than the normal incidence of 6% to 10% spontaneous abortions (miscarriages) in Bhopal at the time

6.2 THE MULTIPLE IMPACTS ON SUBSEQUENT GENERATIONS

Despite the research gaps, the multi-generational health impacts of the gas leak have become increasingly evident. Studies have gradually revealed the multiple ways in which children born of gas-exposed parents, including those who were conceived years after the gas release, have been affected.

6.2.1 CHILDREN EXPOSED IN UTERO

One study conducted in September 1987 involved 865 women who lived within 1km of the plant and who were pregnant at the time of the gas leak. It concluded that 43.8% of the pregnancies did not result in live births. This is three to four times higher than the normal incidence of 6% to 10% spontaneous abortions (miscarriages) in Bhopal at the time (as estimated by the ICMR). Of the 486 live births, 14.2% of the babies died in the first 30 days compared to a death rate of 2.6% to 3% in the two years preceding the tragedy.⁹⁶ A study carried out by Sambhavna Trust Clinic in 2010 confirmed these findings, noting that the exposure of pregnant women to the toxic gases had resulted in high levels of pregnancy loss, as well as a high mortality rate in the first five years of life. This same study also showed a “significantly lower head circumference and body mass index” among girls who had been exposed to gas in utero compared to their older and younger sisters.⁹⁷

A 2001 study published in the Journal of the American Medical Association (JAMA), carried out by another group of experts from the Sambhavna Trust Clinic, found that many boys who were either in utero, toddlers or born of gas-exposed parents suffered from growth retardation. This was more profound in those exposed in utero.⁹⁸ A more recent assessment published in 2023 has reviewed the health of men who were exposed while in their mothers’ wombs. It reveals that these men have had a higher risk of developing disabilities and cancer later in life. The study also found lower educational attainment and higher unemployment rates among these men, suggesting multi-generational social costs stemming from the gas disaster.⁹⁹

96 Daya R. Varma, “Epidemiological and experimental studies on the effects of methyl isocyanate on the course of pregnancy”, June 1987, Environmental Health Perspectives, Volume 72, <https://ehp.niehs.nih.gov/doi/epdf/10.1289/ehp.8772153>

97 S. Sarangi and others, “Effects of exposure of parents to toxic gases in Bhopal on the offspring”, August 2010, American Journal of Industrial Medicine, Volume 53, Issue 8, www.bhopal.org/wp-content/uploads/2018/07/Effectsofexposureofparents.pdf

98 Nishant Ranjan and others, “Methyl isocyanate exposure and growth patterns of adolescents in Bhopal”, October 2003, Journal of American Medical Association, Volume 290, No. 14. A follow-up study in 2006 revealed that, by that year, boys who had shown stunted growth had caught up. The mechanism underlying early stunting followed by catch-up growth was unclear. The study explains that an important adverse effect of the Bhopal disaster was lasting pulmonary pathology and that the catch-up growth in the boys might be similar to that observed in asthmatic children. Daya R Varma and others, “Catch-up growth in males affected by the Union Carbide disaster of 1984 in Bhopal, India”, March 2008, Federation of American Societies for Experimental Biology, Volume 22, Issue 1, Supplement 1, https://faseb.onlinelibrary.wiley.com/doi/abs/10.1096/fasebj.22.1_supplement.1137.1

99 Gordon C. McCord and others, “Long-term health and human capital effects of in utero exposure to an industrial disaster: A spatial difference-in-differences analysis of the Bhopal gas tragedy”, June 2023, BMJ Open, Volume 13, Issue 6, <https://bmjopen.bmj.com/content/13/6/e066733> See also, University of California San Diego, “Industrial disasters may cause higher rates of disability and cancer for future generations”, 5 June 2023, <https://today.ucsd.edu/story/industrial-disasters-may-cause-higher-rates-of-disability-and-cancer-for-future-generations>



Wall painting dedicated to the memory of Bhopal gas victims © Amnesty International 2012

6.2.2. CHILDREN BORN OF GAS-EXPOSED PARENTS OR AFFECTED BY CONTAMINATION

Larger-than-usual numbers of spontaneous abortions (miscarriages) and stillbirths appear to have continued in the years following the disaster, even for pregnancies that were conceived after the gas leak. One study found the rate of these to be an estimated three to six times higher compared to the control population for the five-year period following the gas leak.¹⁰⁰

In 2013 the preliminary results of a study by the Sambhavna Trust Clinic indicated that congenital birth defects in affected areas of Bhopal could be up to seven times higher than usual rates. Surveys showed that in affected areas of Bhopal, 3,000 children out of a total of 20,000 families were suffering from multiple and serious congenital deformities. The findings included both mental and physical impairments in third generations, and attributed a large proportion of these conditions to contaminated water. This is because many of these children's parents moved to the area in the years after the gas leak, and thus had no known exposure other than to contaminated water.¹⁰¹ The children's health would also have been affected by drinking the contaminated water themselves.¹⁰² The Sambhavna Trust Clinic's 2009-2016 study, mentioned above, also found that a significantly larger number of children born to gas- and contamination-exposed parents had birth defects, compared to the unexposed population.¹⁰³

100 Swarup Sarkar, "Affidavit on morbidity and mortality caused by exposure to methyl isocyanate in Bhopal", in Curative Petition (C) No.345-347 of 2010 in the matter of *Union of India v. Union Carbide Corporation and Ors*, para. 7, November 2022, para. 8.7(f).

101 The Bhopal Medical Appeal, "New abnormalities seen in third generations of Bhopal children", 4 March 2013, www.bhopal.org/medical-issues/new-abnormalities-seen-in-third-generations-of-bhopal-children/ See also, NDTV, "Bhopal gas tragedy: NGO raises concern over congenital defects in children, 2 December 2015, www.ndtv.com/bhopal-news/bhopal-gas-tragedy-ngo-raises-concern-over-congenital-defects-in-children-1250094

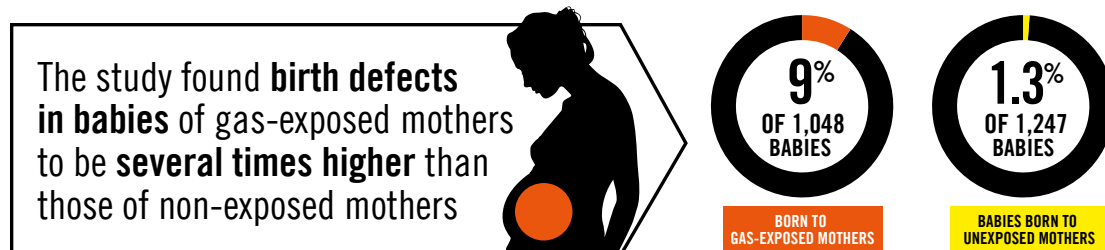
102 The Chingari Rehabilitation Centre reports that they regularly care for young children who were born disabled or ill, or who were made sick from the lingering contamination. See, Bhopal Medical Appeal, "About the Chingari Rehabilitation Centre", www.bhopal.org/chingari-rehabilitation-centre/about-the-chingari-rehabilitation-centre/ (accessed on 11 March 2024).

103 The Bhopal Medical Appeal, "Sambhavna study says gas hit ten times more prone to cancer" (previously cited).

Experts from the Sambhavna Trust Clinic and other medical research institutions have gone to great lengths to understand the effects of the gas leak and water contamination on second and third generations. Nevertheless, this understanding remains as patchy and incomplete as the general understanding of long-term health effects of gas on those directly exposed. State institutions have failed to produce any studies that systematically assess the effects of the gas disaster on second and third generations. This is despite findings in the first few years following the gas leak that pointed to chromosomal aberrations among those exposed, leading to fears of an increase in birth defects among subsequent generations.¹⁰⁴

A study carried out by NIREH from January 2016 to June 2017 found alarming rates of congenital malformations in babies of gas-exposed mothers, but this study was never published. The study found birth defects in babies of gas-exposed mothers to be several times higher than those of non-exposed mothers (9% of 1,048 babies born to gas-exposed mothers compared to 1.3% of 1,247 babies born to unexposed mothers). The results of this study only became available after campaigners filed a Right to Information request. Documents obtained through the request also reveal that ICMR decided not to publish the study, alleging flaws in the methodology and validation of data, as well as bias.¹⁰⁵ However, the documents also reveal that the study design was approved at three consecutive internal meetings of NIREH's Scientific Advisory Committee over two years.¹⁰⁶

In October 1991 the Supreme Court of India recognized that children born after the disaster who might manifest congenital or pre-natal afflictions due to the gas were entitled to compensation, and ordered that the central government provide medical insurance coverage to 100,000 children born to gas-exposed parents.¹⁰⁷ However, the Government of India has done very little to support these children. It has failed to conduct research to gain a comprehensive understanding of who these children are and how they have been affected. Moreover, it failed to provide the Court-mandated insurance.¹⁰⁸ Children living with gas-related disabilities have thus never received any form of compensation or financial support.¹⁰⁹



104 R. Dhara, "Health effects of the Bhopal gas leak: A review", Spring 1994, New Solutions, p. 40.

105 Documents obtained under a Right to Information request: www.bhopal.net/wp-content/uploads/2019/11/Suppression-of-congenital-deformities-.pdf

106 ICJB, "RTI docs reveal ICMR suppressed findings of study that found birth defects in babies of gas exposed mothers", 28 November 2019, www.bhopal.net/rti-docs-reveal-icmr-suppressed-findings-of-study-that-found-birth-defects-in-babies-of-gas-exposed-mothers/

107 Supreme Court of India, *Union Carbide Corporation v. Union of India*, 1991, 4 SCC 584, para. 207.

108 Order of the Supreme Court, 14 March 2023, in *Union of India & Ors vs M/S. Union Carbide Corporation & Ors*. Curative Petition (C) No. 345-347 of 2010, para. 46.

109 ICJB, "Disabled children born to gas exposed parents urge PM & CM to ensure their legal rights from UCC/Dow Chemical", 29 November 2021, www.bhopal.net/disabled-children-born-to-gas-exposed-parents-urge-pm-cm-to-ensure-their-legal-rights-from-ucc-dow-chemical/

6.3 INADEQUATE HEALTHCARE

The Government of India has offered free healthcare to gas-exposed people in government hospitals ever since the gas leak. However, standards of care have not always been adequate, forcing many to pay for private treatment, for certain medicines that government hospitals often lack, or for procedures such as injections. The lack of effective state healthcare for gas survivors has led to a proliferation of unregulated private ‘clinics’ with unqualified practitioners in the most affected communities.¹¹⁰ According to a report, published in 2004, by an independent ‘Fact Finding Mission on Bhopal’ nearly 61% of compensation money was used for medical expenses even though medical care for those exposed to the gas was supposed to be free.¹¹¹ This is consistent with more recent studies and testimonies from survivors.¹¹²

Ever since the gas leak, medical care has been largely provided to patients exhibiting symptoms. This was noted in a 1994 study by the International Medical Commission on Bhopal and remains largely the case 30 years later.¹¹³ A persistent problem over the years has been the absence of standardized treatment protocols to treat chronic patients. The lack of specially designed protocols is due in large part to UCC’s failure to release information relating to the composition of the leaked gases. However, the government has also failed to take independent action to develop an understanding of the health consequences of exposure and how to treat these appropriately. Four decades have passed since the leak, and only two specialized treatment protocols, to treat mental health afflictions and pulmonary disease respectively, have been developed. These were rolled out 30 years after the disaster. There are no specialized protocols to treat any of the other gas-specific ailments.¹¹⁴

The lack of effective state healthcare for gas survivors has led to a proliferation of unregulated private ‘clinics’ with unqualified practitioners in the most affected communities.

110 Application on Behalf of Petitioner 2 (previously cited), paras 9-10.

111 Ashok Raj, “Whither Bhopal workers: A status report on their occupational dislocation caused by the gas disaster and an assessment of the efforts towards their economic rehabilitation”, in *The Bhopal Gas Disaster, impacts, responses, current status and recommendations for the future, Fact Finding Mission on Bhopal, 1994-2004*, 2004.

112 The Sambhavna Trust Clinic, *Status of Health and Healthcare of Gas Exposed and Unexposed Populations* (previously cited), p. 7; Amnesty International, *Injustice Incorporated* (previously cited), pp. 52-53.

113 International Medical Commission on Bhopal, *The Use of Drugs in Bhopal Gas Victims: Interim Report of the International Medical Commission on Bhopal*, December 1994, p. 36. See also R. Shadaan, *Women’s Access to Healthcare 28 Years After the Bhopal Disaster* (previously cited); The Bhopal Medical Appeal, “Yoga centres for gas disaster survivors in Bhopal not serving purpose”, 21 June 2018, www.bhopal.org/from-sambhavna/world-yoga-day-yoga-centres-for-gas-disaster-survivors-in-bhopal-not-serving-purpose/; ICJB, “Survivors of Union Carbide disaster seek answers from state & central govt on the 4th day of their 37-day campaign”, 29 October 2021, www.bhopal.net/survivors-of-union-carbide-disaster-seek-answers-from-state-central-govt-on-the-4th-day-of-their-37day-campaign/

114 In May 2016 (more than 30 years after the gas leak), NIREH released a *Manual of Mental Health Care for Medical Officers of Bhopal*. ICMR, “NIREH Bhopal released a *Manual of Mental Health Care for Medical Officers of Bhopal* during a workshop held on 5th May 2016, in the auditorium of BMHRC, Bhopal”, (n.d.), <https://main.icmr.nic.in/content/nireh-bhopal-released-manual-mental-health-care-medical-officers-bhopal-during-workshop-held> The only other treatment protocol subsequently developed was for pulmonary patients. Application on Behalf of Petitioner 2 (previously cited), para. 30 (noting that only two treatment protocols for chronic obstructive pulmonary disorder and mental health were specifically directed to the treatment of gas victims).



The Sambhavna Clinic provides free medical care (through modern medicine, ayurveda and yoga) to the survivors of the December '84 Union Carbide disaster in Bhopal, India. April 2012. © Amnesty International

Contrary to the very reason for its existence – to provide healthcare to Bhopal gas victims – the BMRHC has failed to provide adequate treatment to its patients. It was designated by order of the Supreme Court to function as a specialist hospital for treatment of MIC-related illness, but lacks specialist departments and experts on some of the most common afflictions such as pulmonary, gynaecological and paediatric illnesses.¹¹⁵ As recently as June 2022, survivor groups were still complaining about the shortage of doctors and specialists, the closure of crucial departments including nephrology, oncology, gastro-surgery and neurology, and the lack of equipment, tests and medicines. In response to pressure from survivor organizations, the Minister of Chemicals and Fertilizers promised that the BMHRC would be “returned to its original glory”, and that a medical college would be opened in the hospital.¹¹⁶

Other local hospitals that are mandated to provide healthcare to gas-exposed people are equally neglected, with insanitary facilities, a lack of water, medicines and equipment, and poor patient care.¹¹⁷

115 Application for Directions, in *Union of India v. Union Carbide Corporation and Ors* (previously cited), para. 100. CJB, “Survivors write letter to Prime Minister about the deteriorating conditions of Bhopal Memorial Hospital”, 31 August 2017, www.bhopal.net/press-release-survivors-write-letter-to-prime-minister-about-the-deteriorating-conditions-of-bhopal-memorial-hospital/

116 ICJB, “Bhopal disaster survivors meet the minister in charge of Bhopal and seek action on 5 crucial issues” (previously cited). According to media reporting, there now is a glimmer of hope with the assumption as Director of the hospital in July 2023 of a former BMHRC doctor who appears to be willing to listen to the demands of survivor organizations. Under the new leadership, departments that had been closed for six years have resumed operations, many treatment facilities have reopened, and teaching has started in several departments. See, S. Sarkar, “For Bhopal gas tragedy survivors, some happiness and continuing travails in 2023”, *The Week*, 30 November 2023, www.theweek.in/news/india/2023/11/30/for-bhopal-gas-tragedy-survivors-some-happiness-and-continuing-travails-in-2023.html

117 R. Shadaan, *Women's Access to Healthcare 28 Years After the Bhopal Disaster* (previously cited); Letter from survivor organizations to Justice V.K. Aggarwal, Chairman, Monitoring Committee for Medical Rehabilitation of Bhopal Gas Victims, 2 March 2015, <https://www.bhopal.net/inspection-report-of-indira-gandhi-women-and-child-hospital/#more-23315>; *Monitoring Visit of Indira Gandhi Women and Children's Hospital*, 16 February 2014, www.bhopal.net/wp-content/uploads/2015/03/Monitoring-Visit-of-Indira-Gandhi-Women.pdf

6.4 THE SAMBHAVNA TRUST CLINIC AND CHINGARI REHABILITATION CENTRE

The Sambhavna Trust Clinic opened as a charitable trust in 1994 with funds collected by the Bhopal Medical Appeal's first appeal in the British newspaper The Guardian. Its purpose is to provide free healthcare to survivors of the Bhopal gas leak disaster and ongoing water contamination, as well as to collect community health data. The clinic has about 56 staff members, just under half of whom are survivors of the disaster themselves. This includes five regular doctors, three visiting doctors, one yoga and two Panchakarma (Ayurvedic) therapists, and community health workers. The clinic stands in the heart of the gas-affected area of Bhopal, about 500m from the dilapidated and abandoned UCC factory. It has provided direct treatment and support through its community health initiatives to more than 65,000 people.¹¹⁸ The trust also supports the Chingari Rehabilitation Centre, founded in 2006. The Centre offers free treatment to more than 200 children from gas- and contamination-affected families.¹¹⁹ There are no other facilities that treat children whose health has been affected, either by the gas leak or water contamination, free of charge.¹²⁰

While providing high quality, personalized care to thousands of people, the Sambhavna Clinic is still unable to meet the health needs of the affected population, many of whom are chronically ill.¹²¹ The Chingari Rehabilitation Centre has almost 700 children on its waiting list.¹²² These two institutions, supported by charitable donations, cannot and should not be expected to meet the vast healthcare needs of the community.



The Sambhavna Clinic provides free medical care (through modern medicine, ayurveda and yoga) to the survivors of the December '84 Union Carbide disaster. April 2012.

118 The Bhopal Medical Appeal, "About the Sambhavna Clinic", www.bhopal.org/sambhavna-clinic/about-the-sambhavna-clinic/ (accessed 4 March 2024).

119 The Bhopal Medical Appeal, "About the Chingari Rehabilitation Centre" (previously cited).

120 The Bhopal Medical Appeal, "Healing Bhopal's damaged children", 30 November 2018, www.bhopal.org/from-chingari/healing-bhopals-damaged-children/; ICJB, "Bhopal survivors: Governments of USA & India directly responsible for neglecting the ongoing tragedy", 3 December 2014, www.bhopal.net/bhopal-survivors-governments-of-usa-india-directly-responsible/

121 The Bhopal Medical Appeal, "About the Sambhavna Clinic" (previously cited).

122 The Bhopal Medical Appeal, "Healing Bhopal's damaged children" (previously cited).



A woman who, as a child, survived exposure to the toxic gas cloud released by the explosion at the Union Carbide chemical plant 35 years ago, meets with her doctors on their morning rounds at the Chirayu Cancer Hospital. © Judah Passow 2018



A woman with respiratory problems waits her turn to receive treatment at the Sambhavna clinic. © Judah Passow 2018



Doctors at the Chirayu Cancer Hospital prepare a patient for a chemotherapy session. The elderly man, sitting on the examination table, survived exposure to the toxic gas cloud, and has developed pancreatic cancer. His daughter, standing next to him, tries to encourage him to persevere with the debilitating treatment. © Judah Passow 2018



Child at the Chingari rehabilitation centre, where he receives treatment for an attention deficit hyperactivity disorder. The 11-year old and his family live in Shahjahanabad near the derelict Union Carbide factory. His grandmother survived exposure to the toxic gas cloud. © Judah Passow 2018



An elderly woman living near the plant vents her anger over the indifference shown by the Indian government to the impact the disaster 35 years ago continues to have on the lives of those living next to the derelict factory today. © Judah Passow 2018



A mother comforts her son during a physiotherapy session at the Chingari rehabilitation centre. © Judah Passow 2018



Demonstrators marching through the streets of Bhopal to mark the 34th anniversary of the Union Carbide gas disaster. © Judah Passow 2018



Demonstrators marching through the streets of Bhopal to mark the 34th anniversary of the disaster. © Judah Passow 2018

7. ECONOMIC AND SOCIAL REHABILITATION

Most people affected by the gas leak were very poor and the harm caused by their exposure to the gas and/or subsequent pollution threw them deeper into poverty. Many families lost their main or only source of income. Many primary wage-earners died or fell seriously ill, and large numbers of livestock were lost.¹²³ Chronic illness and mental distress affected the capacity of many to work and earn their livelihoods. Today, it is not only the survivors who need support in gaining a stable livelihood, but also their children. Either through ill health of their own, or because they were forced to drop out of school to look after their ill parents, many people who were born to gas-exposed parents find themselves destitute.¹²⁴

7.1 LIMITED AND INEFFECTIVE ECONOMIC REHABILITATION

In August 1985, the Madhya Pradesh state government created the Department of Bhopal Gas Tragedy Relief and Rehabilitation to coordinate relief and rehabilitation programmes for gas victims.¹²⁵ Relief efforts include economic rehabilitation to address the loss of income of many thousands of people affected by the gas leak. Some of the initial measures included establishing training programmes and building work sheds to support small-scale enterprises. However, most of these initiatives were either discontinued within a few years or never fully completed, and only a small number of people were able to derive long-term benefits from them.¹²⁶

Survivor groups have criticized these initiatives, which they say are insufficient to meet the economic needs of gas-affected people.

Over the years the state government has also put in place economic rehabilitation programmes, but the extent to which they have been successful in helping people secure stable and reliable sources of income is unknown. Survivor groups have criticized these initiatives, which they say are insufficient to meet the economic needs of gas-affected people.¹²⁷ Government data on levels of unemployment

123 Amnesty International, *Clouds of Injustice* (previously cited), pp. 19-20.

124 ICJB, "37 years after the world's worst industrial disaster, justice remains denied to its survivors in Bhopal", 1 December 2021, www.bhopal.net/37-years-after-the-worlds-worst-industrial-disaster-justice-remains-denied-to-its-survivors-in-bhopal/#more-27444

125 Government of Madhya Pradesh, "Bhopal gas tragedy relief and rehabilitation", <https://bgtrrdmp.mp.gov.in/DEPARTMENT%20OF%20BHOPAL%20GAS%20TRAGEDY%20RELIEF%20AND%20REHABILITATION.html> (accessed 4 March 2024).

126 N. D. Sharma, "After 17 years of gas leak disaster, no end to government apathy for survivors", *The Tribune*, 3 December 2001; *Hindustan Times*, "Bhopal gas tragedy anniversary reopens wounds", 4 December 2001. Ashok Raj, "Whither Bhopal workers" (previously cited), p. 37.

127 For example, ICJB, "Press release: RTI docs reveal MP government incompetent plan of action for rehabilitation for Bhopal gas victims", 29 April 2010, www.bhopal.net/press-release-rti-docs-reveal-mp-government-incompetent-plan-of-action-for-rehabilitation-for-bhopal-gas-victims/



Control Room Details, Derelict Bhopal Processing Plant © Giles Clark 2014

or underemployment resulting from the gas leak and schemes to support their economic recovery has always been limited, and there is no known evaluation of the initiatives. As the extent of the contamination of the plant site and water sources became apparent, so did the link between the ongoing contamination, ill health and inability to work. This has increased the number of people in need of economic support, making the economic rehabilitation programmes that exist even more stretched and potentially less effective. Campaigners have repeatedly demanded that information be gathered to determine the number of people that are unemployed as a result of both gas exposure and groundwater contamination.¹²⁸

According to the Department of Bhopal Gas Tragedy Relief and Rehabilitation's website, the equivalent of about US\$22.2 million was allocated for economic rehabilitation under a Second Action Plan sanctioned in July 2010.¹²⁹ It reports that 12,355 gas victims registered for job training, 4,700 of whom were later employed and the rest were in the process of gaining employment. It is not clear whether these are overall figures for all trained individuals since economic rehabilitation programmes began, or if they refer to specific programmes or schemes. The website does not include any information about the type of jobs people have found or whether they are still in employment today, nor does it provide any update regarding the 7,655 individuals who were supposedly looking for employment.

128 The last estimates, produced by survivor groups in 2005, point to a figure of at least 60,000 families. Bhopal Gas Peedith Mahila Stationery Karmachari Sangh and others, *Fact Sheet 2005*, www.bhopal.net/delhi-marchers/factsheets/economicrehabilitation.pdf

129 Government of Madhya Pradesh, "Economic rehabilitation", <https://bgtrrdmp.mp.gov.in/Economic%20Rehabilitation.html> (accessed 4 March 2024).

Since the colony opened, inhabitants have suffered from poor access roads, open drains and gutters, overflowing sewers, piles of rubbish and no access to clean drinking water.

The rest of the information on the website appears to be largely the same as that provided 10 years ago, when Amnesty International last reported on these issues.¹³⁰ This either means that no further action has been taken in the last 10 years, or that new initiatives are not being monitored, reported or updated.

7.2 LACK OF SUFFICIENT SUPPORT TO WIDOWS

Women who were widowed by the disaster found themselves in a particularly precarious situation, as most lost their family's breadwinner. The state government built an area, described as a 'colony', of around 2,500 houses for survivors, inhabited primarily by widows. However, it did not ensure adequate living conditions. Since the colony opened, inhabitants have suffered from poor access roads, open drains and gutters, overflowing sewers, piles of rubbish and no access to clean drinking water. In August 2004 the state government admitted that the quality of life in the colony was bad.¹³¹ Amnesty International visited the area in October 2013 and noted some improvements, particularly in relation to provision of drinking water. However, living conditions remained poor.¹³² Colony residents continue to demand an upgrade of the sewage system to avoid cross-contamination with their water supply.¹³³



Residents of a Bhopal settlement collecting water, Bhopal, 2012 © Amnesty International

¹³⁰ For example, in 2013 the Department of Bhopal Gas Tragedy Relief and Rehabilitation reported that 296 students were admitted to the Industrial Training Institute every year, that 152 industrial sheds had been built, and that 600 women gas victims had benefitted from training by the Madhya Pradesh Women Financial Development Corporation. These are the exact same figures being reported today.

¹³¹ Application for Direction, State of Madhya Pradesh, 14 August 2004, in *Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India and others*, Supreme Court of India, Writ Petition (C) 50 of 1998, p. 10.

¹³² Amnesty International visit to the rehabilitation colonies, October 2013.

¹³³ Letter from survivor organizations to the Chairperson Mrs K. Karunanidhi, Parliamentary Standing Committee on Chemicals & Fertilizers, on the subject of "Urgent Attention to Ongoing and Continuing Disaster in Bhopal", 1 September 2022, point 4(iv).

Today, the Department of Bhopal Gas Tragedy Relief and Rehabilitation offers no more information about standards of living in the colony than it did 10 years ago, except from declaring that 18 houses remain vacant.¹³⁴

The state government also instituted a widows' pension scheme. Until 2013 the Department of Bhopal Gas Tragedy Relief and Rehabilitation was providing pensions to 1,077 widows, at about US\$4.60 at current rates per month.¹³⁵ However, the number of actual widows was known to be much larger: the state government itself had indicated in its 2008 Plan of Action that 5,000 widows required financial support as a consequence of the disaster.¹³⁶ Under the Second Action Plan sanctioned in July 2010, the number was finally revised and 5,000 widows benefited from pension support. The amount provided was also increased to about US\$21 at current rates per month.¹³⁷

Despite the important improvements, problems have remained:

1. Payments have been discontinued at least twice. They were suspended for more than a year in 2016.¹³⁸ They were temporarily halted again in December 2019, resuming in June 2021.¹³⁹ During these periods the women had no income and nothing to fall back on for their subsistence needs.¹⁴⁰
2. Despite the increase in the pension amount, it is still insufficient to cover the widows' basic needs. Survivor groups are calling for an increase of the pension benefit to more than US\$60 per month.¹⁴¹
3. A total of 536 widows eligible for pension payments have not yet received any money.¹⁴²

134 Department of Bhopal Gas Tragedy Relief and Rehabilitation, "Social rehabilitation", <https://bgtrrdmp.mp.gov.in/Social%20Rehabilitation.html> (accessed 4 March 2024).

135 Amnesty International, *Injustice Incorporated* (previously cited), p. 51.

136 "Memorandum on plan of actions for the relief and rehabilitation of bhopal gas tragedy victims", accessed by Amnesty International in October 2013 through a link at the then Bhopal Gas Tragedy Relief and Rehabilitation Department's website, which is no longer available. See Amnesty International, *Injustice Incorporated* (previously cited), pp. 51-52. Relevant excerpts of the Memorandum can also be found here: www.bhopal.net/wp-content/uploads/2019/03/4-MP-govt-Plan-of-Action.pdf

137 Department of Bhopal Gas Tragedy Relief and Rehabilitation, "Social rehabilitation" (previously cited).

138 The Bhopal Medical Appeal, "Disaster survivors hold press conference on eve of anniversary", 1 December 2017, www.bhopal.org/icjb/disaster-survivors-hold-press-conference-on-eve-of-anniversary/

139 ICJB, "36th anniversary: Survivors condemn Dow Chemical, governments of USA, India and Madhya Pradesh for ongoing damage to health and environment", 3 December 2020, www.bhopal.net/36th-anniversary-survivors-condemn-dow-chemical-governments-of-usa-india-and-madhya-pradesh-for-ongoing-damage-to-health-and-environment/; The Times of India, "Madhya Pradesh Government resumes monthly pension for gas widows", 10 September 2021, <https://timesofindia.indiatimes.com/city/bhopal/state-govt-resumes-monthly-pension-for-gas-widows/articleshow/86080327.cms>

140 The suspension of payments was brought to the attention of India's National Human Rights Commission (NHRC) which, during the second half of 2020, issued a number of communications to the government requesting it to produce an "Action Taken Report". The NHRC closed the case when the government announced resumption of the scheme. NHRC, Case 1556/12/8/2020, Victims/Widows of Bhopal Gas Tragedy, <https://hrcnet.nic.in/HRCNet/public/CaseStatus.aspx>

141 The Bhopal Medical Appeal, "35th anniversary: Bhopal survivors march for justice", 10 December 2019, www.bhopal.org/anniversary-events/35th-anniversary-bhopal-survivors-march-for-justice/

142 In April 2021, 470 additional widows were promised compensation after a fresh budget was approved. They are yet to receive this support. The Bhopal Medical Appeal, "Survivor organisations fight for pensions for widows", 17 January 2022, www.bhopal.org/news/survivor-organisations-fight-for-pensions-for-widows/ As many gas-affected married men continue to die, these numbers need reassessing on a regular basis. Campaigners are now claiming pensions on behalf of 536 widows (the number was initially 538, but two widows died recently). ICJB, "Our demands on 39th anniversary", 29 November 2023, www.bhopal.net/our-demands-on-the-39th-anniversary/

8. LEGAL ACTION – THE FIGHT FOR JUSTICE

Legal claims for personal injury and death were filed both in Indian and US courts immediately after the tragedy and in the months that followed. However, these efforts have had very limited results.

8.1 THE CRIMINAL ACTION

Less than 24 hours after the gas leak, the state authorities launched criminal proceedings.¹⁴³ Nine individuals and three corporations were accused of several criminal offences under the Indian Penal Code, including “culpable homicide (not amounting to murder)”.¹⁴⁴ The individuals accused included: Warren Anderson, a US national and Chairman of UCC since 1982; Keshub Mahindra, an Indian national and Chairman of UCIL; and V.P. Gokhale, an Indian national and Managing Director of UCIL. The corporations accused were UCC, UCIL and UCE. Warren Anderson, Keshub Mahindra and V.P. Gokhale were arrested four days after the gas leak, on 7 December 1984, but Warren Anderson was released on bail the same day, following intervention by the US Embassy in India, and left the country two days later. The bail bond signed by Warren Anderson contained a promise to return when summoned. The other people who had been arrested were also subsequently released on bail.

On 1 December 1987, India’s investigating agency, the Central Bureau of Investigation (CBI), filed criminal charges before the Chief Judicial Magistrate’s Court (CJM) in Bhopal against the corporations UCC, UCIL and UCE and the nine accused individuals, including Warren Anderson.

From November 1988 until Warren Anderson’s death in 2014, the CJM launched several attempts to have him extradited back to India, to no avail.¹⁴⁵ Prosecutors also made repeated efforts to have UCC and UCE, through their legal representatives, face the criminal charges against them, but none of the companies ever appeared before the CJM. UCE ceased to exist in 1991, and staff of UCC, being outside of India, simply refrained from ever stepping back onto Indian soil. In 1992, the CJM declared UCC to be a “proclaimed absconder.”¹⁴⁶ An attachment order for seizure of its property in India was issued; this remains in place to this day. UCC therefore still faces serious outstanding criminal charges in India concerning its role in the disaster.

The CJM then turned its attention to Dow, after the US-based chemicals giant became UCC’s parent company in 2001. Over the course of 18 years, starting in 2005, the CJM issued seven summonses for Dow to attend the criminal proceedings to explain why its fully owned subsidiary and proclaimed absconder from justice, UCC, had not appeared in court. However, just like UCC before it, Dow ignored the majority of these summonses until it finally paid heed to them in late 2023 following an order from the US Department of Justice, 18 years after the first summons was issued.¹⁴⁷ (See *Dow’s October 2023 appearance before the Criminal Court* below.)

143 For a full account of the criminal proceedings, see Amnesty International, *Injustice Incorporated* (previously cited), pp. 41-43.

144 R. Reinhold, “Indians arrest and then free U.S. Executive”, *The New York Times*, 8 December 1984. For a comprehensive account, see Dan Kurzman, *A Killing Wind: Inside Union Carbide and the Bhopal Catastrophe*, 1987, p. 122.

145 Including an interlude of over 32 months from February 1989, when an out-of-court settlement endorsed by the Supreme Court of India terminated the criminal action, to October 1991, when the Supreme Court reinstated the criminal proceedings. The US government in particular played a significant role in obstructing extradition efforts (see *Post-disaster: Continuing meddling by US government and other actors* below).

146 *Bano v. Union Carbide Corporation*, 99 Civ 11329 (JFK) amended class action complaint.

147 Summons were issued in 2005, 2013, 2014, 2015, 2017, 2019 and 2023 (all summons on file with the authors).



India's Ministry of Home Affairs © Shutterstock 2016

Once issued by the court, a summons is sent to India's Ministry of Home Affairs to be communicated to the US government in accordance with the Treaty on Mutual Legal Assistance in Criminal Matters between the Republic of India and the United States of America (MLAT). The US government is then expected to serve the summons on the individual in the US who is subject to it. Under the terms of the MLAT, the US government has an obligation to employ its best efforts, and promptly effect service when requested.

Since Amnesty International published the report *Injustice Incorporated* in 2014 about the many frustrated attempts to serve summonses on Dow, five more summonses have been issued. In response to the second request for assistance to the US government in September 2015 (for a hearing before the CJM scheduled for December 2015), the US Department of Justice advised that more information was needed before they could action the request.¹⁴⁸ Much of the requested information was clearly unnecessary, such as the request to clarify whether the summons concerned civil or criminal procedures, when it was obvious that it concerned the latter. The Government of India provided the requested information and, given the proximity of the hearing, insisted on the need for serving notice through two consecutive formal communications in October and November 2015.¹⁴⁹ However, the December 2015 hearing came and went with no show from Dow, and no further communication from the US government. By December 2015, India had sent four requests to the US government to serve notice of summons on Dow, all of which were ignored.¹⁵⁰

148 Letter from US Department of Justice, Criminal Division, dated 25 September 2015, to Mr S K Ahuja, Under Secretary to the Government of India (on file with the authors).

149 Letters on file with the authors.

150 Letter to the Central Bureau of Investigation (CBI) from the Bhopal Group for Information and Action, "Seeking harsher punishment against The Dow Chemical Company (TDCC) if it refuses to show up in Bhopal Court on July 13 2016", 1 July 2016, www.bhopal.net/wp-content/uploads/2019/05/A2-Letter-to-CBI-July-2016.pdf



United States Department of Justice headquarter building in Washington D.C. © Shutterstock

In May 2016, Bhopal campaigners in the USA launched a petition directed at the US President, accusing the Department of Justice of shielding UCC and Dow, and demanding that the US government immediately serve notice upon Dow.¹⁵¹ The petition collected more than 127,500 signatures, forcing the US government to issue a response.¹⁵² In response, the White House declined to comment on the issue, arguing that asking the Department of Justice to serve notice on Dow would be exercising “improper influence”.¹⁵³ Further summonses were issued in 2017 and 2019. The latest summons, issued in March 2023 for appearance at a hearing scheduled for 3 October 2023, was unexpectedly served on Dow by the US Department of Justice in May 2023.¹⁵⁴ Around this time, a draft letter from 12 congresspeople urging this action had been circulating within the US Congress.¹⁵⁵

151 ICJB, “We the people ask the Federal Government to tell us what the Federal Government is doing about an issue: Uphold international law! Stop shielding Dow Chemical from accountability for corporate crime in Bhopal, India”, 15 May 2016, www.bhopal.net/tag/2016-white-house-petition-campaign/

152 The petition required 100,000 signatures to warrant a response from the White House. It received widespread coverage, particularly in India. See for example, The Quint, “Bhopal gas leak: Over 1 lakh sign petition against Dow Chemicals”, 13 June 2016, www.thequint.com/news/world/bhopal-gas-tragedy-white-house-petition-dow-chemical-petition-against-over-one-lakh-signatures-barack-obama

153 A.R., “Uphold international law! Stop shielding Dow Chemical from accountability for corporate crimes in Bhopal, India”, 15 May 2016, <https://petitions.obamawhitehouse.archives.gov/petition/uphold-international-law-stop-shielding-dow-chemical-accountability-corporate-crimes-bhopal-india/>

154 Copy of the summons, of the Indian government’s letter of request for assistance to serve notice to the US Department of Justice dated 21 March 2023, and of the US Office of International Affairs’ confirmation of receipt of such request, on file with the authors. Letter from the US Department of Justice to M.K. Chahar, Under Secretary, India’s Ministry of Home Affairs, dated 24 May 2023, communicating the service of notice on Dow on 22 May 2023 (copy on file with the authors). See also ICJB, “Survivor orgs celebrate as Bhopal court’s summon is served upon Dow, demand CBI to ensure speedy prosecution”, 2 October 2023, www.bhopal.net/survivor-orgs-celebrate-as-bhopal-courts-summon-is-served-upon-dow-demand-cbi-to-ensure-speedy-prosecution/#more-27704

155 Letter to Ms. Lisa O. Monaco, Deputy Attorney General, U.S. Department of Justice, 23 September 2023, www.bhopal.net/wp-content/uploads/2023/09/2023.09.06-Bhopal-Letter-Final.pdf

In the words of the court, the evidence adduced was sufficient to prove beyond reasonable doubt “the negligent conduct of all the accused persons”, who could have prevented the disaster.

In response to the summons formally communicated to them by the US government, Dow filed a two-page memo with the Indian CJM through its Indian lawyers. In this memo, the lawyers argued that the summons had not been served in conformity with the MLAT and that, in any case, the Indian courts had no personal jurisdiction over Dow.¹⁵⁶ (See *Dow’s October 2023 appearance before the Criminal Court* below.)

While Dow may have only been formally notified of the summons in May 2023, the company should have been aware of the many outstanding requests for it to appear before the CJM from previous years. In January 2017 the CJM took the route of notifying the latest summons through an email directly to Dow. In this email the CJM required the company to appear at a hearing scheduled for 13 February 2017.¹⁵⁷ Displaying the same contempt for the Indian judicial system as UCC, Dow did not appear. A post on Dow’s website seeking to clarify its relationship with Bhopal also acknowledged the CJM’s pending summons, which the company stated had not been served in the manner required under Indian law.¹⁵⁸ Dow could have appeared before the Indian court to cooperate with the court’s legitimate requests at any point, had it wished to, without a need to wait for the summons to be formally notified.¹⁵⁹

While these decades-long efforts were underway to prosecute foreign defendants Warren Anderson and UCC, and to see Dow appear before the Criminal Court, the Indian accused were tried and convicted. On 7 June 2010, UCIL and seven Indian nationals were found guilty of causing death by negligence, 23 years after charges were first registered. They were ordered to pay a fine, and the individuals were also sentenced to the maximum prison sentence of two years.¹⁶⁰ In the words of the court, the evidence adduced was sufficient to prove beyond reasonable doubt “the negligent conduct of all the accused persons”, who could have prevented the disaster.¹⁶¹ By contrast, UCC, its former CEO Warren Anderson, and Dow have each evaded justice simply by remaining abroad, finding a safe haven enabled by their home country.

156 Memo of Appearance on Behalf of Dow Chemical Company, 2 October 2023 (copy on file with the authors).

157 Email communication on file with the authors.

158 Dow Corporate, “Criminal proceedings”, 5 February 2019, <https://corporate.dow.com/en-us/about/legal/issues/bhopal/criminal-proceedings.html>

159 Under the UN Guiding Principles, companies are expected to cooperate in remediation through legitimate processes, such as court proceedings, when they identify, or others allege (for example, through complaints before judicial mechanisms), that they have caused or contributed to adverse human rights impacts. See UN Guiding Principles, Guiding Principle 22 and Commentary, 18 July 2017, UN Doc. A/72/162, paras 67-68. The Commentary to Guiding Principle 22 adds: “Some situations, in particular where crimes are alleged, typically will require cooperation with judicial mechanisms.”

160 Court of Chief Judicial Magistrate Bhopal, Madhya Pradesh, State of Madhya Pradesh v. Warren Anderson (Absconder) and Others, Cr. Case No.8460 / 1996 - Date of Institution 1 December 1987, Judgment of 7 June 2010. One of the accused, Assistant Works Manager Roy Choudury, had died in the late 1990s. See Amnesty International, “India: First convictions for 1984 Union Carbide disaster too little, too late”, 7 June 2010, <http://www.amnesty.org/en/for-media/press-releases/india-first-convictions-1984-union-carbide-disaster-too-little-too-late-2010> UCIL and the seven convicted individuals appealed the sentence shortly after it was issued and, while the appeal was underway, three more individuals, K.V. Shetty, Vijay Gokhale and Keshub Mahindra, passed away. As the appeal is still ongoing, 14 years after the convictions, no individual has actually served their prison sentence. ICJB, “Bhopal District Judge orders UCIL & its convicted officials to present all its arguments from 25-29 April 2022”, 26 March 2022. S. Sarkar, “For Bhopal gas tragedy survivors, some happiness and continuing travails in 2023” (previously cited). For further background, see Amnesty International, *Injustice Incorporated* (previously cited), pp. 42-43.

161 State of Madhya Pradesh v. Warren Anderson (Absconder) and Others (previously cited), para. 193.

DOW'S OCTOBER 2023 APPEARANCE BEFORE THE CRIMINAL COURT



In May 2023, 18 years after the first summons was issued by the Indian Criminal Court, the US Department of Justice finally served the summons upon Dow.¹⁶² On 2 October 2023, Dow's Indian lawyers filed a short memo with the CJM stating that the "Show Cause Notice" (the summons) had been mailed to Dow, and therefore not served in conformity with the MLAT. The lawyers described their appearance in court as "limited" (the legal meaning or consequences of which are unclear), and argued that Indian courts, and the CJM in particular, had no jurisdiction over Dow. Consequently, they stated the CJM had no jurisdiction to issue the Show Cause Notice to Dow, or to undertake any further proceedings or pass any further orders against Dow.¹⁶³

At a subsequent hearing in November 2023, Dow filed a new briefing repeating its objection to the Court's jurisdiction, arguing that it was a foreign company with no presence in India, and that it was not present in India or connected with UCC at the time of the disaster in 1984.¹⁶⁴ Dow also objected to the notion that it may come under the jurisdiction of the CJM by virtue of its merger with UCC, as it denied, once again, that the companies had merged.¹⁶⁵ In line with the position held by many independent legal experts, BGIA argued before the CJM that "Dow and UCC are one and the same", and that liability resided with Dow entirely, as successor in interest of UCC.¹⁶⁶ As a result, BGIA argued, Dow is under the jurisdiction of the Indian Criminal Court just as UCC is. Citing the expert opinion of Kellye Testy, Dean and Professor of Law at the School of Law, University of Washington, BGIA maintained that "a company may not avoid its obligation by merger, and a non-merger transaction that accomplishes the same result should be judged by its nature and actual consequences, not the title put on it by the parties".¹⁶⁷

The corporate form often provides a fictional separation between companies that are, in practice, fully integrated and unified under a common interest, control and ownership. The separate legal personality between members of corporate groups is often used strategically to avoid liability, or, as in this case, the jurisdictional reach of courts and other authorities.¹⁶⁸ Often, it will be necessary for adjudicators to recognize the operational reality of a multinational group and be prepared to uphold substance over form to ensure substantive justice.

162 ICJB, "Survivor orgs celebrate as Bhopal court's summon is served upon Dow, demand CBI to ensure speedy prosecution" (previously cited).

163 Memo of Appearance on Behalf of Dow Chemical Company, 2 October 2023 (copy on file with the authors).

164 Objection on behalf of Noticee i.e. The Dow Chemical Company as to the lack of personal jurisdiction of this Hon'ble Court to entertain proceedings against the noticee and to issue show cause notice dated 11 March 2023 and other related proceedings or orders – Criminal Case No RC-3 (S)/1984-CBI-ACU.I MJC No. 91/92 in the matter of *Central Bureau of Investigation vs Warren Anderson & Ors*, paras A.2.vii and viii.

165 Objection on behalf of Noticee (previously cited), paras B.9-11.

166 Written submission on behalf of BGIA, in the Court of Hon. VII Civil Judge-1, Vidhan Maheshwari, District Court, Bhopal - MJC No. 91/92, in the matter of *Central Bureau of Investigation vs Warren Anderson & Ors*, p. 7, pp. 13-14.

167 Written submission on behalf of BGIA (previously cited), p. 13. Professor Testy's opinion is enclosed as Annexure 12.

168 For challenges to effective human right protection entailed by the corporate form, see Barnali Choudhury, "Corporate law's threat to human rights: Why human rights due diligence might not be enough", February 2024, *Business and Human Rights Journal*, Volume 8, Issue 2.

In its submission, Dow also objected to the manner in which the summons was served, arguing that “mailing it along with the accompanying documents” did “not result in a valid and legal service of notice”, and warning that the company reserved “its right to raise objections and contentions in this regard” at an appropriate stage.¹⁶⁹ However, Dow failed to explain how the Department of Justice’s manner of notification was illegal or somehow invalid under the MLAT’s terms. Regardless, there is nothing in this manner of notification (as against whatever alternative Dow may believe should have been followed) that is unfair, abusive, or somehow puts the company’s rights or interests at a disadvantage. Acting in good faith and in line with the UN Guiding Principles’ expectation that companies “cooperate in remediation through legitimate processes”,¹⁷⁰ Dow should consider itself appropriately served.

The Court did not take a decision on the question of jurisdiction, and instead ordered the parties to present further arguments at a hearing scheduled for 6 January 2024.¹⁷¹ At least six lawyers were present at the hearing on behalf of Dow.¹⁷² For the Bhopal victims, one victim and one BGIA advocate were present. CBI remained quiet, relying fully on BGIA for arguments. For the 6 January hearing, at least 10 lawyers for Dow travelled to Bhopal on a private jet.¹⁷³ The Bhopal victims were represented by one lawyer, who travelled from Delhi on an ordinary passenger airline. The contrast in access to resources, and power, could not be more stark.



MIC holding tank at the derelict plant © Giles Clark 2014

169 Objection on behalf of Noticee (previously cited), para. A.2.ii.

170 UN Guiding Principles, Guiding Principle 22 and Commentary (previously cited), paras 67-68.

171 Order dated 25 November 2023 (copy on file with the authors).

172 As per the court’s order dated 25 November 2023 (copy on file with the authors).

173 Reported to Amnesty International by a Bhopal activist who was present at the hearing. The Times of India reported “a battery of 15 lawyers appearing for Dow Chemical”. The Times of India, “CJM Court reserves judgment on Dow contention of jurisdiction”, 8 January 2024, <https://timesofindia.indiatimes.com/city/bhopal/cjm-court-reserves-judgement-on-dow-contention-of-jurisdiction-in-bhopal-gas-disaster-criminal-case/articleshow/106621874.cms>

8.2 CIVIL CLAIMS IN US COURTS

In February 1985, all civil claims filed against UCC in US courts were assigned to Judge Keenan of the US District Court for the Southern District of New York. In March 1985, the Indian government passed the Bhopal Gas Leak Disaster (Processing of Claims) Act, giving the government the exclusive right to pursue claims on behalf of victims. Based on this Act, the Indian government took over the US action on behalf of more than 200,000 Indian plaintiffs. Although the Act was legally challenged on the grounds that it deprived citizens of their rights and breached several provisions of the Indian Constitution, the Supreme Court of India upheld it in 1990.¹⁷⁴

In May 1986, Judge Keenan dismissed the claim, declaring US courts to not be the proper forum for a decision on the claims.¹⁷⁵ He rejected the Government of India's contention that litigation in India would result in endemic delays and considered that India would provide an adequate alternative venue for the proceedings.¹⁷⁶ Many other legal actions against UCC were initiated in the US, all of them assigned to, and eventually dismissed by, Judge Keenan on different grounds.¹⁷⁷ In May 2016 the US Court of Appeals for the Second Circuit of New York affirmed Judge Keenan's dismissal of the last pending US claim.¹⁷⁸ With this, US courts dealt survivors the final stroke, shielding UCC from civil liability for the deaths, injury and environmental damage from its pesticide plant, and ending all hopes of accessing remedy in the USA. US courts have consistently ignored compelling evidence about the central role played by UCC in designing, equipping and overseeing the UCIL plant, and in enabling UCIL to produce one of UCC's own products (see *The corporate games* below).¹⁷⁹

Many other legal actions against UCC were initiated in the US, all of them assigned to, and eventually dismissed by, Judge Keenan on different grounds.

174 Supreme Court of India, *Sahu v. Union of India and Others* (1990) 1 SCC 613; 22 December 1989, AIR 1990 SC 1480. The Court considered that the state had rightly taken over the exclusive right to represent and act on behalf of every person entitled to make a claim as the majority of the victims were poor and illiterate. Consequently, the exclusion of the victims from filing their own cases was held to be proper.

175 In *Re Union Carbide Corporation Gas Plant Disaster at Bhopal, India* in December, 1984, 634 F Supp 842 (S.D.N.Y. 1986).

176 In *Re Union Carbide Corporation Gas Plant Disaster at Bhopal, India* in December, 1984, 634 F Supp 842 (S.D.N.Y. 1986), p. 849. Critics argue that, in underestimating delays in Indian courts, Keenan failed to acknowledge pertinent case law settled in the US courts just two years previously and clearly outlined in India's *amici curiae*. The case involved the crash of an Air India plane near Bombay in 1978. Litigation brought in Washington against Boeing, the aircraft's manufacturer, was allowed to proceed in spite of *forum non conveniens* objections by the defence. The problem of endemic delays in the Indian legal system formed the basis of the forum decision. Yet Judge Keenan left the problem of delay essentially unexamined in his Bhopal ruling, and the implications of the Air India case were entirely unaddressed. See In *re Air Crash Disaster near Bombay*, 531 F. Supp. 1075 (W.D. Wash 1982), reproduced in Upendra Baxi, *Inconvenient Forum and Convenient Catastrophe: The Bhopal case*, 2008, <http://14.139.60.116:8080/jspui/handle/123456789/739>, pp. 252-77.

177 For further details, see Amnesty International, *Injustice Incorporated* (previously cited), pp. 46-47.

178 EarthRights International, "Sahu v. Union Carbide - In Bhopal, India, people continue to suffer from water contamination. And no one is taking responsibility", (n.d.), <https://earthrights.org/case/sahu-v-union-carbide/>

179 In the 28 years that followed the first judgment dismissing the claim on *forum non conveniens* grounds, Judge Keenan and the Second Circuit Court of Appeals issued an additional 16 rulings related to Bhopal claims, all of them adverse to the claimants. Even though some of Judge Keenan's rulings were reviewed on appeal, they were all either confirmed or remanded, the latter being eventually reaffirmed by Judge Keenan. For an assessment of the role of the US courts in the various Bhopal claims, see Jayanth K. Krishnan, "Bhopal in the Federal Courts: How Indian victims failed to get justice in the United States", Spring 2020, Rutgers University Law Review, Volume 72, Issue X, (evidence regarding UCC's potential liability and how Judge Keenan dealt with it is discussed from page 139). See also Upendra Baxi, *Inconvenient Forum and Convenient Catastrophe* (previously cited), pp. 5-6 & 23-27.

8.3 THE LEGAL ACTION IN INDIA AND THE 1989 SETTLEMENT

Following dismissal of the US proceedings, on 5 September 1986 the Government of India filed a claim against UCC for US\$3.3 billion in the Bhopal District Court. The Government of India alleged UCC liability based on a number of grounds, including enterprise liability; absolute liability for ultra-hazardous and inherently dangerous activity, and negligence. UCC rejected these arguments alleging that it was purely a US-based corporation and that it had no operations in India or elsewhere outside the USA, in direct contradiction to internal documents showing its direct control of UCIL and involvement in the Bhopal plant. While an order to pay interim relief was being contested, the parties reached an out-of-court settlement for US\$470 million which was approved by the Supreme Court of India on 14 February 1989.¹⁸⁰ Despite the settlement's sweeping consequences, including a waiver of all pending and future claims against UCC or UCIL for the Bhopal tragedy, the affected communities were never consulted. The merits of the claim, including the liability of the corporate actors, were never examined. Importantly, the settlement did not take into account damages for environmental pollution generated by the plant's operations (see *Ongoing environmental pollution – the second catastrophe* above).

The amount of US\$470 million agreed by the parties was less than 15% of the initial amount sought by the Government of India, and far less than most estimates of the damage at the time. The arbitrariness and insufficiency of the award amount became clearer as years went by and the figures for gas-related deaths and permanent injury increased. For example, the number of survivors suffering injury and disability rose from an initial estimate of 102,000 in 1989, to 568,293 in 2010. This is more than five times the figure for injured and disabled people used by the Supreme Court of India to calculate the settlement award.¹⁸¹

The mechanism put in place to disburse the money was also inadequate.¹⁸² The process to claim compensation involved innumerable trips to hospitals, government offices, lawyers, banks and the courts. For people who were ill, poor or illiterate, the process itself proved both prohibitively costly and almost impossible to navigate. Survivors also often had to pay bribes to unscrupulous intermediaries who took advantage of their extreme vulnerability.¹⁸³ Because of incomplete medical tests and inadequate assessments of the impact of health conditions on survivors' ability to maintain normal levels of activity, many claimants were wrongly categorized, or deemed to be unaffected. As a result, they received no compensation, or were only offered the lowest amount payable. For various reasons, thousands of claims were not registered at all. These include gas-exposed children under the age of 18, and children born to gas-exposed parents whose health has also been severely affected, as described in peer-reviewed research. This is so even though the Supreme Court expressly recognized the entitlement of later born children who might manifest congenital or pre-natal MIC-related afflictions (as explained above).

180 Supreme Court of India, *Union Carbide Corporation v. Union of India*, (1989) SCC 540; 14 February 1989, AIR 1990 SC 273.

181 Amnesty International, *Injustice Incorporated* (previously cited), pp. 49-50.

182 BGIA, *Compensation Disbursement - problems and possibilities, a report of a survey conducted in three gas affected bastis of Bhopal*, January 1992. For a fuller account of problems related to the compensation mechanism, see Amnesty International, *Injustice Incorporated* (previously cited), pp. 50-51.

183 Amnesty International, *Injustice Incorporated* (previously cited), pp. 50-51.

8.4 THE 2010 CURATIVE PETITION TO THE SUPREME COURT OF INDIA

In December 2010 the increase in gas-related injuries led the Government of India to file a Curative Petition with the Supreme Court of India.¹⁸⁴ The petition sought to amend, or, if necessary, invalidate and renegotiate, the 1989 settlement agreement in light of new information about the scale of injuries suffered by Bhopal's communities. It asked for a maximum additional amount of approximately INR 78 billion (about US\$1.7 billion at the time) from UCC, UCIL (now Eveready), McLeod Russel India (the owner of UCIL/Eveready), and Dow.¹⁸⁵ While welcoming the government's action, advocate groups believed that the amount sought was too low. In April 2011, five of these groups¹⁸⁶ (from now on, the intervenors or intervenor groups) filed an application in which they contested the government figures and sought much higher damages.¹⁸⁷ Twelve years of protracted litigation followed, marked by a conspicuous waning of the government's interest in pursuing the action.¹⁸⁸ On 14 March 2023 the Supreme Court of India handed down its decision dismissing the claim, the reasons for which are set out below.¹⁸⁹ While some expected this outcome,¹⁹⁰ the negative decision nevertheless dealt a heavy blow to survivors and those working at grassroots level to achieve justice.¹⁹¹

The Curative Petition sought to rectify a gross miscarriage of justice. While the Government of India's calculation of the shortfall may have been wrong, their basic premise was correct: the factual basis on which compensation was agreed was wrong, thus leading to an unjust result. In their initial application of 2011, the intervenor groups alleged that the figures used by the government to calculate the additional compensation were again underestimated. In 2016, based on the discovery of new evidence, they filed a supplementary application to argue that evidence showed that UCC had finalized the settlement through fraud. The vast majority of survivors had been offered compensation for minor or temporary injury, even though UCC knew, but did not disclose at the time, that injury from gas exposure, even in small doses, would likely be both major and permanent.

184 Curative Petition (C) No. 345-347 of 2010 (against the impugned Judgment and Order dated 14th and 15th February 1989, 4th May 1989 and the Judgment and Order dated 3rd October 1991 passed by this Hon'ble Court), in *Union of India v. Union Carbide Corporation and Ors.*

185 This figure includes interest that would have accrued had that amount been paid in 1989 under the original settlement agreement.

186 Bhopal Gas Peedith Mahila Stationery Karamchari Sangh, Bhopal Gas Peedit, Bhopal Gas Peedit Mahila Purush Sangarsh Morcha, Children Against Dow-Carbide, and Bhopal Group For Information And Action.

187 Application for Directions, in *Union of India v. Union Carbide Corporation and Ors* (previously cited), paras 144-145. In recent years, government agreed to revise the figures in line with the demands of the survivor organizations, but it never actually submitted new figures to the Supreme Court. ICJB, "Bhopal survivors organisations launch campaign to hold state & central govts to honour their promises on additional compensation", 1 November 2022, www.bhopal.net/bhopal-survivors-organisations-launch-campaign-to-hold-state-central-govts-to-honour-their-promises-on-additional-compensation/#more-27524

188 ICJB, "Bhopal survivors to launch peaceful mass action to make central & state govt fulfill its promises on revision of figures in the curative petition", 20 December 2022, www.bhopal.net/bhopal-survivors-to-launch-peaceful-mass-action-to-make-central-state-govt-fulfill-its-promises-on-revision-of-figures-in-the-curative-petition/; ICJB, "Survivors Of Union Carbide gas disaster condemn the Indian govt for failing to prepare for the Curative Petition for additional compensation", 20 September 2022, www.bhopal.net/survivors-condemn-the-indian-govt-for-failing-to-prepare-for-the-curative-petition/

189 Order of the Supreme Court, 14/03/2023 in *Union of India & Ors vs M/S. Union Carbide Corporation & Ors.* Curative Pet © No. 345-347 of 2010.

190 The repeated judicial setbacks over the years have caused many survivors and campaigners to expect little from the courts.

191 ICJB, "Survivor organisations claim that the 34 page Judgement of the Supreme Court shows bias for Union Carbide – a proclaimed absconder", 20 March 2023, www.bhopal.net/survivor-organisations-claim-that-the-34-page-judgement-of-the-supreme-court-shows-bias-for-union-carbide-a-proclaimed-absconder/

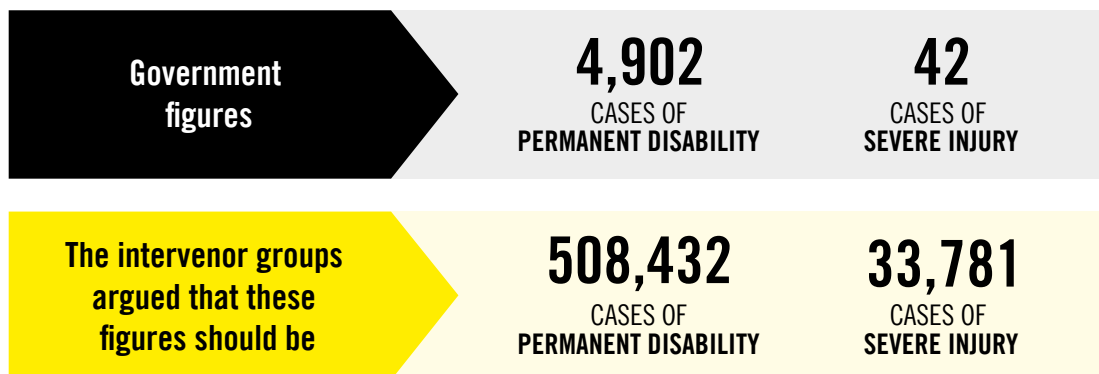
The long-term effects of gas exposure, which include severe, chronic disability and death, and the impact on children born of MIC-exposed parents, as described above, have been consistently underestimated or ignored.

8.4.1 NEW GOVERNMENT FIGURES FOR DEATHS AND INJURY STILL GROSSLY UNDERESTIMATED

While the government put forward a revised death toll of 5,295 people, the intervenors argued that the actual number of gas-related deaths was at least four times higher.¹⁹² In addition, the intervenors claimed that the revised injury figures proposed by the government were also underestimated. In its petition, the government claimed that there were 4,902 cases of permanent disability and 42 cases of severe injury. The intervenor groups argued that these figures should be 508,432 and 33,781 respectively.¹⁹³ To substantiate their arguments, the intervenors submitted evidence from the ICMR, mortality projections based on ICMR data, expert testimony, and figures from the Madhya Pradesh state government.¹⁹⁴

The government’s miscalculation was partly a result of the deficient system of categorization of injuries and registration of victims put in place after the out-of-court settlement was agreed in 1989.¹⁹⁵ However, it was also due to wilful disregard for existing research and a lack of understanding of the long-term effects of gas exposure. In the years and decades after the leak, thousands of people have died from health conditions caused by gas exposure. Some people may have been asymptomatic initially, but their MIC-related health conditions manifested some time after exposure. Many of these conditions worsened over time.¹⁹⁶

The long-term effects of gas exposure, which include severe, chronic disability and death, and the impact on children born of MIC-exposed parents, as described above, have been consistently underestimated or ignored.¹⁹⁷



192 Application for Directions, in *Union of India v. Union Carbide Corporation and Ors* (previously cited), paras 75-76.

193 Application for Directions, in *Union of India v. Union Carbide Corporation and Ors* (previously cited), para. 144.

194 Application for Directions, in *Union of India v. Union Carbide Corporation and Ors* (previously cited), paras 75-81, 110 & 120-121.

195 Application for Directions, in *Union of India v. Union Carbide Corporation and Ors* (previously cited), paras 82-97, 115 & 123-124.

See also Amnesty International, *Injustice Incorporated* (previously cited), p. 50.

196 Dr Swarum Sarkar, “Affidavit on morbidity and mortality caused by exposure to methyl isocyanate in Bhopal”, in Curative Petition (C) No.345-347 of 2010 in the matter of *Union of India v. Union Carbide Corporation and Ors*, para. 7 (November 2022), para. 8.7.

197 Amnesty International, *Injustice Incorporated* (previously cited), p. 50.

8.4.2 UCC KNEW THAT EXPOSURE TO MIC WOULD LIKELY LEAD TO “MAJOR RESIDUAL INJURY”

Long before the 1989 out-of-court settlement, and indeed long before the gas leak itself, UCC knew that injury from MIC exposure, even in small doses, would likely be both major and permanent. Internal studies documented the serious health effects, including death, of animals exposed to MIC in amounts much lower than those to which Bhopal communities were exposed.¹⁹⁸ But UCC did not disclose these documents during the settlement negotiations; they came to light only in 2011 and 2014.¹⁹⁹ One of these documents, a confidential UCC “safety consideration report” dated December 1974, describes the chemical as a “hazardous material by all means of contact”, a “poison to humans by inhalation”, and warns that, if inhaled, “major residual injury is likely in spite of prompt treatment”. The company suppressed its internal documents during negotiations.²⁰⁰ In August 1988, while the civil action that culminated in the 1989 settlement was underway, the Supreme Court ordered UCIL and UCC to produce all studies they held about MIC. In requesting this information, Mr Justice Pathak said that symptoms were likely to reappear if the toxic gas had penetrated deep into the victim’s system, and noted that this would “have a bearing on the compensation to the victims especially if future generations are likely to be affected”.²⁰¹

During compensation negotiations, UCC proposed the categories of injury which formed the basis of the 1989 settlement.²⁰² Based on UCC’s proposals, the government created the categories of “minor injury” and “temporary disability” – categories which in all probability did not represent the reality for most survivors. Ultimately, 93% of victims received the equivalent of around US\$1,500 at the time of the settlement;²⁰³ the lowest amount of compensation payable based on these categories.²⁰⁴ Moreover, 94.5% of cancer patients and 96.6% of renal failure patients had been categorized as having suffered only minor injuries, with the remainder being categorized as having “temporary disability”.²⁰⁵

198 These studies are: The Mellon Institute, *Range Finding Tests on Methyl Isocyanate, Special Report 26-75*, 1 August 1963; Chemical Hygiene Fellowship, Carnegie-Mellon University, *Methyl Isocyanate: Acute Inhalation Toxicity, Human Response to Low Concentrations, Guinea Pig Sensitization, and Cross Sensitization to Other Isocyanates, Special Report 33-19*, 5 March 1970; Union Carbide Corporation Engineering Department, *Phosgene Unit and Methyl Isocyanate Unit Safety Consideration Report*, 16 December 1974. Affidavit on behalf of Petitioners No. 2 to 6 dated 26th January, 2016, in Curative Petition (C) No. 345-347 Of 2011 (against the impugned Judgment and Order dated 14 and 15 February 1989, 4 May 1989 and the Judgment and Order dated 3 October 1991 passed by this Hon’ble Court), in the *Matter of Union of India v. Union Carbide Corporation and Ors*, paras 2.1(j) to (o). Also, Note on Arguments on behalf of Petitioners No. 2-6 - Dated 12.01.2023, paras II.6, III.9-12 & III.18.

199 Through discovery granted by the United States District Court, S.D. of New York in *Sahu v. Union Carbide Corp.* 262 F.R.D. 308 (S.D.N.Y. 2009) in September 2009, the Petitioners were able to access an internal UCC document (*MIC Internal Safety Report of 16 December 1974*) in March 2011. The Petitioners discovered the other relevant studies, which had been conducted by UCC at Carnegie Mellon in 1963 and 1970, through an online search in August 2014, the earliest date at which the internet archive records them to be available. Note on Arguments on behalf of Petitioners No. 2-6 - Dated 12.01.2023, paras III.10 & III.11.

200 Affidavit on behalf of Petitioners No. 2 to 6 (previously cited), para 2.1(p). Also, Note on Arguments on behalf of Petitioners No. 2-6 - Dated 12.01.2023, paras III.12 & III.19 (quoting *Naidu v. Jagannath*, (1994) 1 SCC 1, and *Ashok Leyland Ltd. v. State of T.N.*, (2004) 3 SCC 1 in which suppression of documents was considered tantamount to fraud).

201 Times of India, “SC asks Carbide for information on MIC”, 11 August 1988.

202 Application for Directions, in *Union of India v. Union Carbide Corporation and Ors* (previously cited), paras 57-59 & 86. See also Note on Arguments on behalf of Petitioners No. 2-6 - Dated 12.01.2023, para III.14-16.

203 Reserve Bank of India, *Handbook of Statistics on Indian Economy*, 16 September 2013, www.rbi.org.in/scripts/PublicationsView.aspx?id=15268

204 Affidavit on behalf of Petitioners No. 2 to 6 (previously cited), para. 2.1(o). These claimants later received an additional INR 25,000 on account of interest and the devaluation of the rupee. Note on Arguments on behalf of Petitioners No. 2-6 - Dated 12.01.2023, para. I.4.

205 Note on Arguments on behalf of Petitioners No. 2-6 - Dated 12.01.2023, para. III.19. The petitioners cite as evidence an Office of the Welfare Commissioner’s report obtained through a Right to Information request filed in November 2022. The report details that, out of 10,515 gas-related cancer cases, 570 were categorized as temporary disability and 9,945 as minor injury; while, out of 1,717 gas-related renal cases, 57 were classified as temporary disability and 1,660 as minor injury.

To substantiate their position, the intervenor groups submitted not only the UCC studies, but also additional reports and expert testimony that point to the permanent health effects of MIC exposure.²⁰⁶ Additionally, studies carried out in late 2020 show that Bhopal victims were highly susceptible to contracting Covid-19 due to their permanently compromised immunity resulting from MIC exposure; their mortality rates from Covid-19 were four times higher than unexposed populations.²⁰⁷

One of the documents, marked

“Top Secret”

manually dated
28 February 1985

describes a meeting between UCC’s then Vice President and Treasurer, Rolf H. Towe, and Indian government representatives



8.4.3 UCC PROPOSED THE COMPENSATION CATEGORIES IN SECRET NEGOTIATIONS WITH THE GOVERNMENT

Just over two months after the disaster, UCC officials held meetings with Indian government officials in which UCC proposed the various categories under which the settlement amounts were to be disbursed. The intervenors obtained the details of these meetings through a Right to Information request in December 2010. One of the documents, marked “Top Secret” and manually dated 28 February 1985, describes a meeting between UCC’s then Vice President and Treasurer, Rolf H. Towe, and Indian government representatives. It refers to a forthcoming UCC “proposal containing the parameters for a negotiated settlement”.²⁰⁸ Another document, a letter from Rolf H. Towe to the Ministry of Chemicals and Fertilizers dated 4 March 1985, proposes the “concepts by which a comprehensive settlement of the claims of the victims of the Bhopal gas leak disaster might be achieved”.²⁰⁹ These documents formed the basis of the categories finally proposed under the 1985 Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme.²¹⁰ Despite a requirement of “due regard” for the views of the victims under Section 4 of the Bhopal Gas Leak Disaster (Processing of Claims Act) 1985, the victims’ views were not sought prior to the matter being settled.²¹¹ The Government of India chose to listen only to the perpetrator, whose interest clearly was to eliminate, or reduce as much as possible,

206 These include studies demonstrating the chronic and permanent nature of the MIC-induced ailments, including evidence of chronic disease of those categorized as mildly exposed. For example, the ICMR report on long term epidemiological studies in Bhopal (1985-94) concluded that survivors continued to suffer multisystem disorders long after gas exposure. Another ICMR study on chronic kidney disease noted a gradual increase in cancer among gas leak-affected people and their children. See note on Arguments on behalf of Petitioners No. 2-6 - Dated 12.01.2023, para. III.13-15. See also, expert testimony of Swarup Sarkar, “Affidavit on morbidity and mortality caused by exposure to methyl isocyanate in Bhopal” (previously cited).

207 Note on Arguments on behalf of Petitioners No. 2-6 - Dated 12.01.2023, para I.4. Swarup Sarkar, “Affidavit on morbidity and mortality caused by exposure to methyl isocyanate in Bhopal” (previously cited), para. 8.6(a). At the height of the pandemic, figures were even higher. See, Calculations for excess deaths and mortality rates, November 2020, www.bhopal.net/wp-content/uploads/2020/11/Calculations-for-Excess-Deaths-Mortality-Rates.pdf See also, ICJB, “Survivor organizations demand compensation for long term injuries as Covid-19 shows high death rate”, 24 November 2020, www.bhopal.net/survivor-organizations-demand-compensation-for-long-term-injuries-as-covid-19-shows-high-death-rate/

208 On file with the authors.

209 Letter from Mr Rolf H. Towe, Vice President and Treasurer, UCC, to Mr B. B. Singh, Secretary, Ministry of Chemicals and Fertilizers, 4 March 1985 (on file with the authors).

210 Application for Directions, in Union of India v. Union Carbide Corporation and Ors (previously cited), paras 57-61 & 115. Also, Note on Arguments on behalf of Petitioners No. 2-6 - Dated 12.01.2023, para. III.16. (Documents on file with the authors.)

211 Application for Directions, in Union of India v. Union Carbide Corporation and Ors (previously cited), paras 30 & 61.

the amount of compensation it would have to pay. The intervenor groups claimed that the systematic mis-categorization and underestimation of affected people resulted in large numbers of victims being undercompensated, or not compensated at all. They argue that the intentional suppression of information, the false or incorrect information on which the 1989 settlement rested and the lack of scientific data to understand the permanent effects of MIC²¹² all justified invalidating the settlement and reopening the compensation process.

The Supreme Court of India gave a number procedural and substantive reasons for its dismissal of the Curative Petition. It stated that the petition did not meet the restrictive basis for a curative procedure, and that the Government of India had in the past opposed attempts to reopen the settlement.²¹³ It also noted the definitive nature of the settlement, which was necessary to provide victims immediate relief in the aftermath of the tragedy.²¹⁴ The Supreme Court highlighted the fact that it had been agreed in the settlement that any shortfalls would be covered by the state, that the settlement amount had proven to be sufficient to compensate all claims, that claimants had in fact received more than what was actually due to them, and that there remained a surplus amount from the compensation fund that had yet to be disbursed.²¹⁵

The court noted that a decision to overturn the settlement might be justified based on fraud, but noted that no such fraud had been pleaded by the government.²¹⁶ However the Court did not engage with the intervenors' allegation of fraud. The Court also chose not to address the increased figures of deaths and serious injuries alleged by the intervenor groups. In fact, besides describing their intervention as an attempt to "ride piggyback" on the Curative Petition,²¹⁷ the court did not engage with the intervenors' substantive arguments at all. The intervenors believe that the Supreme Court deliberately ignored the allegation of fraud and the evidence presented by them to substantiate it.²¹⁸ They also strongly contest the argument that survivors received in excess of what was due to them, noting the judges' lack of understanding of the chronic nature of the diseases deriving from gas exposure. In their public response to the decision, they noted the Supreme Court's "derisive attitude towards them", and its "bias for Union Carbide", "by completely omitting to mention that the corporation continues to abscond from the criminal case on the disaster".²¹⁹ Undeterred by the Supreme Court's decision, survivor groups claimed that they would "continue their struggle for justice in Bhopal till all survivors are adequately compensated".²²⁰

212 Affidavit on behalf of Petitioners No. 2 to 6 (previously cited), paras 2.1 & 4.1. Note on Arguments on behalf of Petitioners No. 2-6 - Dated 12.01.2023, para. III.19.

213 Order of the Supreme Court, 14/03/2023 in *Union of India & Ors vs M/S. Union Carbide Corporation & Ors*. Curative Petition (C) No. 345-347 of 2010, paras 26-28 & 46.

214 Order of the Supreme Court, 14/03/2023 (previously cited), paras 41, 44 & 50.

215 Order of the Supreme Court, 14/03/2023 (previously cited), paras 42, 45-46 & 48.

216 Order of the Supreme Court, 14/03/2023 (previously cited), paras 47.

217 Order of the Supreme Court, 14/03/2023 (previously cited), para. 14.

218 They base this belief on the Supreme Court's unexplainable disregard for a serious, potentially course-changing allegation of suppression of documents and fraud which, at a minimum, should have been addressed (even if it was to reject it), and its use of derogatory and dismissive language to depict the intervenors and their submissions.

219 ICJB, "Survivor organisations claim that the 34 page Judgement of the Supreme Court shows bias for Union Carbide – a proclaimed absconder" (previously cited).

220 ICJB, "SC's dismissal of Curative Petition is a judicial assault on the constitutional and legal rights of Bhopal survivors", 14 March 2023, www.bhopal.net/scs-dismissal-of-curative-petition-is-a-judicial-assault-on-the-constitutional-and-legal-rights-of-bhopal-survivors/#more-27597

9. CORPORATE GAMES

Beginning in the immediate aftermath of the disaster, the companies responsible used various tactics to avoid or minimize liability. UCC and UCIL suggested the discredited theory that the leak had been caused by sabotage.²²¹ They argued that the plant's safety equipment and standards were as high as those employed in UCC's West Virginia plant in the USA.²²² The companies also alleged that responsibility lay with the Indian government, which had failed to enforce applicable laws and regulations.²²³ As outlined above, UCC and UCIL also downplayed the toxic nature of MIC to limit the extent of their potential liabilities, undermining medical treatment and causing further harm.²²⁴ The companies even suggested that the high mortality and morbidity rates were caused by a combination of undernourishment, lack of education and poor hygiene practices.²²⁵

9.1 THE CORPORATE VEIL

To avoid being held responsible for the disaster, the companies involved took advantage of the corporate law doctrine of 'separate legal personality' (also known as 'the corporate veil') under which each separately incorporated member of a corporate group is considered to be a distinct legal entity that holds and manages its own separate liabilities. This is the tactic that multinational companies typically use to distance themselves from subsidiaries when these subsidiaries become embroiled in legal matters, including human rights abuses, in the countries in which they operate.²²⁶

Both UCC and Dow have sought to absolve themselves from liability by raising the separate legal personality doctrine, arguing that all responsibility, and any potential liability emerging from the Bhopal disaster, reside with their subsidiaries. For example, in the legal action against UCC in the USA, UCC argued that it could not be held accountable for the gas leak at Bhopal since it exercised no control over UCIL.²²⁷ However, it has been amply proven that UCC exercised extensive managerial and operational control over UCIL at the time of the disaster. Although UCC has always contested this point, the evidence is overwhelming, even from UCC's own manuals and other corporate materials, as outlined in Amnesty International's earlier research.²²⁸ More corroborating accounts have emerged over the years demonstrating the degree of control that UCC exercised over UCIL's activities. For example, L.J. Couvaras, a UCC employee between 1971 and 1981, explained to a US court in 2014 that he was

221 Amnesty International, *Injustice Incorporated* (previously cited), p. 37. The conviction of seven Indian individuals in 2010, and Dow/UCC's subsequent statement that "all the appropriate people - officers and those who actually run the plant on a daily basis - were convicted of negligence", made the sabotage theory all the more dishonest. See UCC, "Criminal litigation", www.bhopal.com/bhopal-litigation-india-pages/criminal-litigation.html (accessed on 4 March 2024). The 2010 conviction actually expressly rejected that the case may have been one of "fraud or a deceit of the subordinate officers of the UCIL". *State of Madhya Pradesh v. Warren Anderson (Absconder) and Others* (previously cited), para. 148.

222 I. Eckerman and T. Børse, "Corporate and governmental responsibilities for preventing chemical disasters: Lessons from Bhopal", 2018, *HYLE-International Journal for Philosophy of Chemistry*, Volume 24, Issue. 1, p. 34, <https://hyle.org/journal/issues/24-1/eckerman.pdf>

223 P. Muchlinski, "The Bhopal case: Controlling ultra-hazardous industrial activities undertaken by foreign investors", 1987, *Modern Law Review*, Volume 50.

224 Amnesty International, *Injustice Incorporated* (previously cited), p. 37.

225 Ravi Rajan, "What disasters tell us about environmental violence: The case of Bhopal", in M. Watts and N. Peluso (eds.), *Violent Environments*, 2001.

226 For an extensive discussion of the separate legal personality doctrine, and how this impacts on corporate accountability and remedy efforts, see Amnesty International, *Injustice Incorporated* (previously cited), pp. 115-122 & 140-151.

227 Memorandum of law in support of Union Carbide Corporation's motion to dismiss these actions on the grounds of *forum non conveniens*, in *Re Union Carbide Gas Plant Disaster at Bhopal, India* in December 1984, MDL Docket No.626, 85 Civ. 2696 (JFK) (S.D.N.Y. filed 31 July 1985)

228 Amnesty International, *Injustice Incorporated* (previously cited), pp. 124-127.

responsible for supervising the Indian team overseeing the building of the Bhopal plant, and that he did so on behalf of UCC. He also described UCC's direct role in designing and controlling the plant's construction from afar.²²⁹ This was further corroborated by the declaration of a former UCIL employee, T.R. Chauhan, who also in 2014 explained to the US court that UCC conducted periodic safety and environmental audits of the plant and was aware of all risks, including the risk of contamination. He added that UCIL personnel had to report any concerns regarding the plant to UCC.²³⁰

Since it acquired UCC in February 2001, Dow has consistently maintained that UCC remained a separate company with its own assets and liabilities, and that, as a result, it had inherited no liabilities from Bhopal.²³¹ However, Dow purchased UCC by way of convoluted corporate transactions designed to keep a semblance of separateness, while in fact gaining full control over its newly acquired subsidiary. The deal was, in all material respects, a classic merger. As such, many legal experts have argued that the companies should be regarded as one, and their assets and liabilities should be considered fully integrated.²³² While no court has so far determined the issue of Dow's liability for Bhopal,²³³ UCC has been able to use the separate legal personality doctrine to defeat many of the legal claims against it in the USA.²³⁴ Both UCC and Dow raised the separate legal personality between them, as well as that between UCC and UCIL, to reject any suggestion of liability potentially emerging from the Curative Petition.²³⁵

The separate legal personality doctrine remains a strong tenet of corporate law around the globe, even in cases where parent companies exercise full control, in law or in practice, over their subsidiaries' activities. Bhopal is the epitome of this fictional and unjust corporate law device that does not reflect the reality of corporate groups, and how they operate in practice. It is a doctrine that has led to widespread

229 Exhibit A - *Jagamath Sahu et al v. Union Carbide Corp and Madhya Pradesh State* (Sahu II), <https://earthrights.org/wp-content/uploads/bhopal-couvaras-decl.pdf>

230 Exhibit A - *Jagamath Sahu et al v. Union Carbide Corp and Madhya Pradesh State* (Sahu II), [bhopal-couvaras-decl.pdf](https://earthrights.org/wp-content/uploads/bhopal-couvaras-decl.pdf) (earthrights.org); See also, EarthRights International and Sharma and Deyoung LLP, "New evidence shows Union Carbide's role in designing and building Indian chemical plant that killed thousands and continues to pollute Bhopal's water - Government of Indian state now named as a party in New York suit by Bhopal residents", 5 February 2014, https://earthrights.org/wp-content/uploads/eri-bhopal-press_release-feb_2014.pdf In May 2016, the Second Circuit Court of Appeals affirmed the dismissal of the case. The appeals court accepted Couvaras' statement, but found that, even if he was employed by Union Carbide, he had been "loaned" to the Indian subsidiary, and therefore Union Carbide was not liable for his actions. Although the plaintiffs sought rehearing of the case, the court declined to reconsider its decision. EarthRights International, "Sahu v. Union Carbide - In Bhopal, India, people continue to suffer from water contamination. And no one is taking responsibility", <https://earthrights.org/case/sahu-v-union-carbide/>

231 For example, Dow requested a stay of summons for it to appear before the criminal proceedings before the CJM, arguing that Dow and UCC were separate legal entities. *Dow Chemical International Pvt. Ltd v. Bhopal Gas Peedith Sangharsh Sahayog Samiti & Ors.* Misc Criminal Case No.1377 of 2005 (re Criminal Case No.91 of 1992, *State v. Warren Anderson & others*), February 2005. Dow argued this point again to request that its name be removed from the 2004 Public Interest litigation on environmental matters before the Madhya Pradesh High Court. Madhya Pradesh High Court Order dated 30/03/05 in the case of *Alok Pratap Singh v. Union of India & Ors.* W.P. No.2802 of 2004 (on file with the authors).

232 For more detail, see Amnesty International, *Injustice Incorporated* (previously cited), pp. 56-57.

233 In 2008, the Ministry of Law of India gave an opinion stating that "if there was any liability for Bhopal, it would have to be borne by Dow", and this was "irrespective of the manner in which UCC has merged or has been acquired by Dow Chemicals." Department of Chemicals & Petrochemicals, draft Cabinet Note regarding the Dow Chemical Company's legal liability for environmental remediation (containing advice received from the Ministry of Law and Justice), 7 February 2008. However, the matter remains controversial even within the Indian government, for political if not legal reasons. The issue of Dow's liability is being examined in the context of the 2004 Public Interest proceedings in the Madhya Pradesh High Court, and has also been raised in the context of the criminal proceedings before the CJM in which Dow was issued with court summons.

234 For example, in *Sahu v. Union Carbide Corporation* 418 F Supp 2d 407 (S.D.N.Y 2005) and its appeal: *Sahu v. Union Carbide Corporation*, No. 12-2983-cv, Summary Order of the United States Court of Appeals for the Second Circuit (27 June 2013). Also, in *Sahu v. Union Carbide Corporation* 2006 WL 3377577 (S.D.N.Y. 20 November 2006) (No.04 Civ. 8825JFK).

235 Counter Affidavit on behalf of Union Carbide Corporation / Respondent No 1 in Response to Curative Petition, November 2011, in *Union of India v. Union Carbide Corporation and Ors*, para 3(iv)(b), and "Response to Claim III - (i). Counter Affidavit on behalf of the Respondent No.2/The Dow Chemical Company, USA", in Response to the Curative Petition along with its Annexures (November 2011) in India Supreme Court (Civil Appellate Jurisdiction) Curative Petition (C) No. 345-347 Of 2010, in the Matter of *Union Of India (Petitioner) vs Union Carbide Corporation & Others* (Respondents), paras 11 & 24. See also, Dow, "Q and A with respect to the government of India's request for a Curative Petition related to the 1989 Bhopal Settlement", 28 February 2011, p. 2 (stating: "While UCC's stock is owned by Dow, UCC remains a separate company as a Dow subsidiary. Under well-established principles of corporate law, both in India and the United States, Dow did not assume UCC's liabilities as part of the 2001 acquisition transaction.").

abuse and exploitation of vulnerable individuals and communities affected by the activities of corporate groups around the globe, and to impunity for the perpetrators.²³⁶ For years, campaigners have criticized this doctrine, showing its deleterious effects on people and the planet. However, over the last decade or so, the corporate accountability movement has finally seen major strides towards making parent or controlling companies accountable for the harmful behaviour of their subsidiaries, including through the development of new legal standards.²³⁷ This legal shift will take time to spread across the globe, as Bhopal still demonstrates, but the trajectory is clear.²³⁸

9.2 CORPORATE RESTRUCTURE LIKELY TO UNDERMINE ACCOUNTABILITY

As the Curative Petition was underway, the defendant companies underwent further restructuring, throwing additional confusion onto an already complex corporate landscape. In December 2015, Dow and DuPont announced that they had entered into an agreement under which the companies would merge to create a new holding company, DowDuPont. Within the next two years, DowDuPont would separate into three independent, publicly traded companies, and DowDuPont ceased to exist.²³⁹

In an expert affidavit submitted to India's Supreme Court in July 2017, Philip Lochner, a former Commissioner of the US Securities and Exchange Commission and Associate Dean at the State University of New York Law School, warned that the proposed merger between Dow and DuPont "is likely to make it far more difficult to collect a future judgment".²⁴⁰ Philip Lochner explained that the merger agreement was largely silent with respect to any liabilities that either Dow or DuPont may have and that, as a result, the companies did not appear to have taken reliable measures to preserve assets to meet these liabilities.²⁴¹ He added that additional features in the corporate relationship made collecting a future award potentially challenging. He indicated that, as a result of a revolving loan and credit agreement, Dow was entitled to "withdraw capital from UCC in 30 days or less, potentially leaving UCC unable to meet obligations" emerging from the Curative Petition.²⁴² In addition, after the

236 See Amnesty International, *Injustice Incorporated* (previously cited), pp. 116-117. Also, B. Santoso, "Just business – is the current regulatory framework an adequate solution to human rights abuses by transnational corporations?", 2017, *German Law Journal*, Volume 18, Issue 3.

237 By ascribing on parent companies, or companies with "leverage", responsibilities over the activities of subsidiaries, the international soft-law standards on business and human rights have begun to dismantle the sacredness of the separate legal personality principle. In more recent years, this has been expressly entrenched in law, with many human rights due diligence laws either tabled or enacted in Europe, and debates about such legislative proposals around the globe. See for example, European Coalition for Corporate Justice, "Comparative table: Corporate due diligence laws and legislative proposals in Europe", 21 March 2022, <https://corporatejustice.org/publications/comparative-table-corporate-due-diligence-laws-and-legislative-proposals-in-europe-2/>. Also, European Parliament News, "Corporate sustainability: Firms to tackle impact on human rights and environment", 25 April 2023, www.europarl.europa.eu/news/en/press-room/20230424IPR82008/corporate-sustainability-firms-to-tackle-impact-on-human-rights-and-environment. Courts, particularly in the UK, the Netherlands and Canada, have also been advancing the idea that, under certain circumstances, parent companies can be held liable for the harmful acts of their subsidiaries. See Norton Rose Fulbright, "Cross-border guide to parent company liability for foreign subsidiaries", (n.d.), www.nortonrosefulbright.com/en-gb/knowledge/publications/44841678/cross-border-guide-to-parent-company-liability-for-foreign-subsidiaries

238 In fact, the European Court of Justice (ECJ) has already applied this approach to Dow. On 13 July 2011, the ECJ ruled in an antitrust case that Dow Chemical, as 100% owner of three European subsidiaries (Dow Deutschland, Dow Deutschland Anlagengesellschaft, and Dow Europe), had exercised decisive influence on these subsidiaries' actions. Since Dow was unable to rebut this presumption, it confirmed the European Commission's decision that Dow should be considered jointly liable with its subsidiaries for an antitrust infringement. See Judgement of the General Court (First Court) on 13 July 2011, *The Dow Chemical Company and others v. European Commission*, case T-42/07, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=107313&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=359821>

239 Dow, "Dow and DuPont announce DowDuPont Inc form S4 registration statement declared effective by SEC", 10 June 2016, <https://corporate.dow.com/en-us/news/press-releases/dow-and-dupont-announce-dowdupont-inc-form-s4-registration-statement-declared-effective-by-sec.html>

240 Affidavit of Philip Lochner concerning the availability of assets after implementation of merger agreement between Dow Chemical Company and E.I. Dupont Nemours & Co., 27 July 2017, para. IV.1.

241 Affidavit of Philip Lochner (previously cited), paras I.6 & III.1.

242 Affidavit of Philip Lochner (previously cited), para III. 3 & 4.

merger with DuPont, DowDuPont could move assets between subsidiaries and could, for example, move all existing Dow assets to DuPont, leaving Dow without any assets against which to proceed.²⁴³ The separation of DowDuPont into three independent companies would make asset tracking even more difficult.²⁴⁴ He stated that it was unclear, based on publicly available information, how existing Dow and DuPont liabilities would be divided among the three spin-off companies.²⁴⁵

Philip Lochner concluded that, “in fact, the corporate parties could in the end orchestrate other merger options that make it even harder to meet the current potential liabilities, should they become actual liabilities.”²⁴⁶

Philip Lochner believed that it would be prudent for the Supreme Court of India to “at least order Dow to maintain a sufficient amount of assets in India and submit proof thereof to the Court pending resolution of the Appellants’ claims.”²⁴⁷ However, as explained above, the Supreme Court of India never actually considered these matters, or the potential liability of the defendants, as it dismissed the Curative Petition on procedural and other preliminary considerations. The DowDuPont merger was successfully completed in 2017.²⁴⁸ The dissolution of DowDuPont and creation of the three spin-off companies was completed on 1 June 2019.²⁴⁹ Had the Supreme Court decided in favour of re-opening the 1989 settlement, it is not clear where the petitioners would have turned to collect any additional compensation. Any pending or new legal action against UCC or Dow will have to contend with this new corporate set-up.

243 Affidavit of Philip Lochner (previously cited), para. III.5.

244 Affidavit of Philip Lochner (previously cited), para. III.6.

245 Affidavit of Philip Lochner (previously cited), para. III.7

246 Affidavit of Philip Lochner (previously cited), para. IV.1

247 Affidavit of Philip Lochner (previously cited), para. IV.3.

248 Dow Corporate, DowDuPont Merger Successfully Completed, 1 September 2017, <https://corporate.dow.com/en-us/news/press-releases/dowdupont-merger-successfully-completed.html>

249 Becoming Dow (former materials science division), Corteva Agriscience (former agriculture division) and Du Pont (former speciality products division). See www.dow-dupont.com/



Survivor organizations hold a torch rally from Sindhi colony to the Union carbide factory to press for acceptance of their demands on the eve of 31st anniversary of Bhopal Gas tragedy on 2 December, 2015 in Bhopal, India. © A M Faruqui/Anadolu Agency/Getty Images

9.3 THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

Despite the complex corporate and legal tangle, one issue is clear: Dow is failing to live up to its responsibility to respect human rights under the UN Guiding Principles and other international business and human rights standards.

Dow exercises effective control over UCC. In the language of the UN Guiding Principles, this means that the company has significant “leverage” over the conduct of its subsidiary. The UN Guiding Principles indicate that leverage exists “where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm”. They make clear that, when leverage exists, companies should exercise it to prevent or mitigate adverse impacts to the greatest extent possible.²⁵⁰ In choosing not to exercise this control or leverage when it can, Dow is failing to live up to its responsibilities under the UN Guiding Principles and other international business and human rights standards.²⁵¹

According to the UN Guiding Principles on Business and Human Rights, business enterprises may become involved in adverse human rights impacts either because they *cause* or *contribute* to them through their own activities, or because the adverse impacts are *directly linked* to their operations, products or services, even though they are caused by a separate business, with which they have a relationship.²⁵² The responsibility to remediate is triggered where a company *causes* or *contributes* to adverse impacts.²⁵³ Where companies are *directly linked* to them, their responsibility entails exercising leverage over the business relationship that is *causing* or *contributing* to the harm to prompt prevention,

250 UN Guiding Principles, Commentary to Guiding Principle 19.

251 As well as the UN Guiding Principles, the OECD Guidelines also emphasize the need to exercise leverage to prevent or mitigate adverse impacts by business relationships. See Chapter IV: Human Rights, https://www.oecd-ilibrary.org/finance-and-investment/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_81f92357-en paras 3 & 48.

252 UN Guiding Principles, Guiding Principles 13 & 19, and Commentary to Guiding Principle 19. Also, OECD Guidelines (previously cited), Chapter IV: Human Rights, paras 2, 3, 47 & 48.

253 UN Guiding Principles, Guiding Principle 22 and Commentary. Also, OECD Guidelines (previously cited), Chapter IV: Human Rights, para. 6.

mitigation and remediation.²⁵⁴ However, international business and human rights standards also clarify that a company's relationship to harm is not static and may change over time.²⁵⁵ As such, a company that may initially be *directly linked* to an abuse, can over time shift to a position of *contribution*, depending on the circumstances and their own behaviour.²⁵⁶ Dow may not have *caused* the gas leak, or the plant site contamination, but it became *directly linked* to their adverse human rights impacts, and the ongoing failure at remediating them, from the moment it purchased UCC in 2001. Even if Dow were, as it argues, a distinct and separate legal entity from UCC, and even if it were only *directly linked* to the adverse impacts caused by UCC, Dow is still expected to exercise leverage over UCC. Dow's ongoing failure to do so over a prolonged period is sufficient basis to argue that the company is now knowingly *contributing* to all outstanding abuses. This, in turn, triggers the obligation to cease its contribution, and to remediate all adverse impacts.



Mercury rising from the ground in factory site © Giles Clark 2014

254 UN Guiding Principles, Guiding Principle 13(b), and Commentary to Guiding Principle 19. The OECD Guidelines specify that enterprises “directly linked” to an adverse impact are responsible for “using leverage alone or in co-operation with other entities, to influence the entity causing the adverse impact to prevent, mitigate or remediate that impact”. See OECD Guidelines (previously cited), Chapter II: General Policies, para. 23. See also Chapter IV: Human Rights, para. 48.

255 OECD Guidelines (previously cited), Chapter II: General Policies, para. 16; and OECD Due Diligence Guidance on Responsible Business Conduct, 2018, <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf> p. 71.

256 This understanding, now reflected in both the OECD Guidelines and the 2018 OECD Due Diligence Guidance on Responsible Business Conduct (another OECD instrument that provides practical support and explanations on how to implement the due diligence recommendations of the OECD Guidelines) builds from expert commentary and interpretation by Professor Ruggie and OHCHR, both of whom talk about a “continuum” between categories. See John Ruggie, “Comments on Thun Group of Banks discussion paper on the implications of UN Guiding Principles 13 & 17 in a corporate and investment banking context”, February 2017, <https://www.businesshumanrights.org/sites/default/files/documents/Thun%20Final.pdf>; Letter from John Ruggie to Prof. Dr. Roel Nieuwenkamp Chair, Working Party on Responsible Business Conduct, OECD, March 2017, <https://www.businesshumanrights.org/sites/default/files/documents/OECD%20Workshop%20Ruggie%20letter%20-%20Mar%202017%20v2.pdf>; OHCHR response to request from BankTrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector, June 2017, <https://www.ohchr.org/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf> p. 6-7.

In 2007, Dow became a member of the UN Global Compact, a UN-backed voluntary initiative for companies to implement sustainability principles, including human rights.²⁵⁷ As such, it publicly committed to human rights and the protection of the environment, which the company says “are reflected in our strategy, culture and day-to-day operations”.²⁵⁸ The company also claims that it “operates in full accordance with the U.N. Guiding Principles on Businesses and Human Rights”, and that “[h]uman rights are embedded in Dow’s long-term commitment to the United Nations (U.N.) Sustainable Development Goals (SDGs)”. However, at no point in all its ethical and sustainability materials does Dow explain how its stance on Bhopal fares when assessed against the UN Guiding Principles. In fact, contrary to these clear prescriptions, the company has never implemented, or published, the results of a human rights due diligence process in relation to Bhopal.

Dow also indicates that the company has “an established process for due diligence and implementation phases of mergers, acquisitions and joint venture formations, which includes a review of human rights, environmental and labour risks prior to the completion of an acquisition or the formation of a new business venture”.²⁵⁹ While Dow’s acquisition of UCC in 2001 may predate this commitment, the company would have applied some form of corporate due diligence process prior to purchasing UCC, as per typical practice. This would undoubtedly have detected at least existing legal claims and procedures linked to Bhopal, including the fact that UCC was a declared absconder from justice from one of the largest emerging markets in the world. The company knew, or should have known, about outstanding human rights concerns in Bhopal, yet it made a conscious decision to sweep them under the carpet in outright contradiction to any credible human rights commitment.

Dow’s approach to Bhopal proves that the company is far from abiding by the human rights standards and other social and environmental commitments it professes. This is perhaps why it fails to mention Bhopal in any of its sustainability literature. Instead, the company has built a special “Bhopal” website to rebut criticism from an overly technical standpoint and without addressing its human rights responsibilities, as if the case were devoid of human rights considerations and did not relate to, or in any way engage, Dow’s commitments to meet the UN Guiding Principles.²⁶⁰

9.4 LESSONS FOR A STRONGER NORMATIVE FRAMEWORK

Many corporate human rights abuses have long-term impacts. As Bhopal shows, the harm they cause may last for years, decades and sometimes generations. The UN Guiding Principles indicate that the scale and complexity of a company’s response to risks of adverse human rights impacts will vary depending on their severity, and that the “scale, scope and irremediable character” of the impacts are key factors in the assessment of severity.²⁶¹ In certain high-risk scenarios, such as those involving the use, storage and processing of highly toxic and hazardous substances, certain corporate activities should not go ahead at all, or should be significantly altered to reduce to a minimum the level of potential harm.²⁶² However, the potential for causing long-term or irreversible harm should also be factored into plans and provision for remedy. If harm does occur, as in Bhopal, remedy must

257 UN Global Compact, “Homepage”, <https://unglobalcompact.org/> (accessed on 11 March 2024). For Dow’s membership, see UN Global Compact, “The Dow Chemical Company”, <https://unglobalcompact.org/what-is-gc/participants/9210-The-Dow-Chemical-Company> (accessed on 11 March 2024).

258 Dow, *2022 Progress Report*, <https://corporate.dow.com/content/dam/corp/documents/about/066-00432-01-2022-progress-report.pdf#page=4> p. 5.

259 Dow, “Human rights”, <https://corporate.dow.com/en-us/about/legal/conduct/human-rights.html> (accessed on 4 March 2024).

260 UCC does not appear to have any human rights or sustainability commitments of its own.

261 UN Guiding Principles, Guiding Principle 14 and Commentary.

262 Working Group on the issue of human rights and transnational corporations and other business enterprises, Report on access to effective remedy for business-related human rights abuses, 18 July 2017, UN Doc. A/72/162, para. 70.

be of a nature and scale sufficient to cover the full range of long-term needs of those affected.²⁶³ In a case such as Bhopal, this entails life-long financial support, medical care and economic and social rehabilitation.

The corporate responsibility to respect human rights should also extend to the unresolved human rights abuses of acquired companies. Similarly to the legal concept of “successor liability”,²⁶⁴ a company that merges with, or absorbs, another company must also assume its pending human rights responsibilities. A company that acquires another, even if it remains a separate legal entity, must also exercise its newly acquired “leverage” to address outstanding human rights concerns.

The Office of the High Commissioner for Human Rights (OHCHR) has clearly indicated that: “if an enterprise acquires another enterprise that it identifies as being, or having been, involved in human rights abuses, it acquires the responsibilities of that enterprise to prevent or mitigate their continuation or recurrence.” If remedy is still pending for abuses which the acquired enterprise caused or contributed to, OHCHR further indicates that, “the responsibility to respect human rights requires that the acquiring enterprise should enable effective remediation itself”.²⁶⁵ Even where acquired companies continue to operate as independent entities, as UCC claims it did after being acquired by Dow, the acquiring company has now gained the leverage (or “ability to effect change”) on which responsibility is predicated under the UN Guiding Principles.²⁶⁶ If pending human rights abuses are not addressed prior to the purchase (for example, as a pre-condition for the purchase), the new parent company has a responsibility to exercise leverage to ensure its newly acquired company respects human rights, and this includes addressing any past and unresolved human rights abuses that still attach to it.

Yet the failures of soft law instruments to deliver justice for the survivors of Bhopal underscore the need for binding national and global regulations requiring companies such as UCC and Dow to respect human rights and prevent human rights abuses. Stronger regulation does not mean that the corporate gamesmanship, political pressure and government connivance that shaped the story of Bhopal will miraculously disappear. But it will provide a more powerful check and counterbalance to these forces, helping to prevent future disasters.²⁶⁷ In the quest to advance strong and effective corporate accountability laws, and adjust and improve those already in place, Bhopal offers two critical lessons. First, corporate accountability laws must take into account, and adequately address, the long-term impacts of corporate abuses on human rights. Second, corporate accountability laws must consider, and adequately address, legacy issues.

263 Working Group on the issue of human rights and transnational corporations and other business enterprises (previously cited), (noting that the adequacy of remedies should be judged by considering “not only the current needs of the victims, but also their future long-term needs”, and that while “the finality of agreed remedies is a legitimate goal, there should be some built-in flexibility to respond to harm discovered after the conclusion of compensation agreements.”)

264 Successor liability is premised on the assumption that, if a corporation acquires or merges with another, it assumes the liabilities of its acquisition target as a “successor-in-interest”, standing in the shoes, so to speak, of the company it purchased. H. R. Sharma, “Veil of deception”, 29 March-11 April 2008, *Frontline*, Volume 25, Issue 7.

265 OHCHR, *The Corporate Responsibility to Respect Human Rights – An Interpretive Guide*, 2012, www.ohchr.org/sites/default/files/Documents/Publications/HR.PUB.12.2_En.pdf p. 38.

266 UN Guiding Principles, Guiding Principle 19 and Commentary.

267 In its report *Injustice Incorporated*, Amnesty International provides a detailed account of the national and international political, economic and regulatory structures that permit, and in fact often encourage, multinational companies to abuse human rights across borders with impunity. To be fully effective, corporate accountability laws must be accompanied by changes to these structures too. See Amnesty International, *Injustice Incorporated* (previously cited), pp. 173-197.

10. POLITICAL SUPPORT AND LOBBYING

UCC, and later Dow, benefited from a great deal of political support and lobbying from powerful actors before, during, and after the disaster. Most of this was covert and intended to advance corporate interests by aggressively promoting a dubious project, and then seeking to minimize or remove liability.

10.1 PRE-DISASTER

When, in the early 1970s, UCC was developing its business plans for India, the company faced a number of regulatory challenges. The Indian Foreign Exchange Regulation Act 1973 (FERA) required UCC, as a foreign company, to reduce its stock in UCIL to no more than 40%. At the time, UCC held a comfortable 60% stock in UCIL, and this new requirement went against UCC's corporate policy of ensuring control over its subsidiaries through a majority shareholding.²⁶⁸ Seeking a way to subvert this rule, UCC proposed to build the MIC plant in Bhopal in return for an exemption from FERA on the grounds that MIC production would need high technology inputs not available in India. Under a change to the FERA guidelines, this promised high technology input would grant UCC an exception to the 40% rule and allow it to retain a majority share in UCIL. Building the MIC plant therefore become imperative for UCC's control policy.²⁶⁹ UCC faced an additional hurdle. Investment needed to build the MIC plant had to come from non-Indian loans, as Indian loans could turn into equity and reduce UCC's share in UCIL, threatening its control over its subsidiary.

Other regulations were also getting in the way of UCC's plans. India's Industrial Development and Regulation Act 1951 reserved the production of pesticides exclusively to small Indian companies. In addition, the State of Madhya Pradesh Development Plan for Bhopal (part of the Bhopal Town and Country Planning Act) required all hazardous or polluting industries to be located in an area of the city away from, and downwind of, densely populated areas.²⁷⁰ On this basis, in 1975 a local commissioner ordered the relocation of the UCIL plant.²⁷¹

Within a few years, all hurdles had been lifted. UCC obtained a waiver of the requirement to grant pesticide manufacturing licences to small Indian businesses only.²⁷² In October 1972, the Madhya Pradesh state government granted the company a 100-year lease on the land for the plant.²⁷³ On 31 October 1975, the Indian government granted UCIL a licence to manufacture and store MIC at the

268 UCC, *Corporate Policy Manual*, 5 December 1975; UCC Legal Control of a 50-50 Joint Venture Affiliate (listing a number of "devices or expedients" on how to retain control of an affiliate); UCC, *Master Guidelines and Check List for Matters to be Considered in Organizing and Reorganizing Equity in an Affiliate* (detailing how to accomplish control over an affiliate). See also, Memorandum of Law, Michael V. Ciresi, Stanley M. Chesley and F. Lee Bailey, in *Re Union Carbide Corporation Gas Plant Disaster at Bhopal, India* in December 1984, MDL Docket No.626, Misc. Nos. 21-38, 85 Civ. 2696 (JFK), US District Court for the Southern District of New York, p. 4.

269 K. Subramanian, "Corporate responsibility for Bhopal - How Union Carbide exploited a government loophole", 17 January 2015, <https://www.epw.in/journal/2015/3/reports-states-web-exclusives/corporate-responsibility-bhopal.html>

270 *Bano v. Union Carbide Corporation and Warren Anderson*, (No.99 Civ 11329 JFK), amended class action complaint, para. 78.

271 Robert Reinhold, "Disaster in Bhopal" (previously cited).

272 Surya Deva, *Regulating Corporate Human Rights Violations, Humanizing Business*, 2012, p. 27.

273 "Deed of Lease between the State of Madhya Pradesh and UCIL", reproduced in Themistocles D'Silva, *The Black Box of Bhopal* (previously cited), pp. 183-7.

site.²⁷⁴ The order to relocate (mentioned above) was also successfully opposed by UCC and others in the Madhya Pradesh administration.²⁷⁵ In July 1980, the Reserve Bank of India allowed UCC to hold a stake exceeding 50% in UCIL because of the need for the need for the high technology transfer related to the MIC plant,²⁷⁶ and UCC was also allowed to finance construction of the plant with US loans.

Historical diplomatic cables made available by Wikileaks in 2014 show that UCC was not alone in navigating the regulatory hurdles. A September 1975 cable from the US embassy in India to the US Secretary of State shows the scale of the US government's helping hand:

"We are trying to take advantage of the opening provided by... [a senior Finance Ministry official's] interest in solving economic problems by asking for finance action to resolve a large variety of problems such as... pending investment proposals such as Union Carbide... as well as an easing of the more onerous FERA guidelines (as this cable was being prepared Union Carbide telephoned to say that its proposal had been suddenly approved after 6 months of waiting) We hope to get more results."²⁷⁷

Another cable from the US Embassy in India to the US Secretary of State dated April 1973 reveals UCC/UCIL's efforts to enlist the support of the then US Deputy Secretary of State, Kenneth Rush, to persuade the Indian government to allow UCIL to borrow funds from a US source rather than an Indian source, since the alternative might have resulted in UCC losing its majority stake in UCIL. This was because Indian banks, which were nationalized, might have required equity stakes and seats on the company board in exchange for loans.²⁷⁸ By February 1975, a further cable showed that India had granted UCC exceptions "not usually available to Indian borrowers" and that, after six months of negotiation, had allowed UCC to raise funding from commercial lenders, as well as the EXIM bank, the official export credit agency of the USA.²⁷⁹ Two other cables show that the then US Secretary of State, Henry Kissinger, facilitated the US EXIM bank loan.²⁸⁰

These documents, which only became publicly available in 2014, show the extent to which UCC sought, and apparently received, the support of the US government, as it built its plant in Bhopal.

274 The government of India had given "letter of intent" approval on 13 March 1972, but only approved the licence in late 1975. Ministry of Petroleum and Chemicals, "Reply from Indian government to UCIL on MIC-based Pesticides", in Themistocles D'Silva, *The Black Box of Bhopal* (previously cited), pp. 197-200. The state of emergency imposed across the country in June 1975 by the then Indian Prime Minister Indira Gandhi may have also helped skip regulatory hurdles, or created the political opportunity for interested parties to push regulatory flexibilities. See Priscilla Jeberaj, "Did Emergency allow Carbide to produce MIC in India?", *The Hindu*, 15 June 2010, www.thehindu.com/news/national/Did-Emergency-allow-Carbide-to-produce-MIC-in-India/article16244251.ece See also, Tim Edwards, "When Elvis died in Bhopal, justice was buried in America", 16 June 2016, *HuffPost*, www.huffpost.com/entry/when-elvis-died-in-bhopal-justice-was-buried-in-america_b_5762fe44e4b02081542ff452

275 Larry Everest, *Behind the Poison Cloud: Union Carbide's Bhopal Massacre*, 1987, p. 130. Also see Surya Deva, *Regulating Corporate Human Rights Violations, Humanizing Business*, 2012, p. 29.

276 K. Subramanian, "Corporate responsibility for Bhopal" (previously cited).

277 "INDO-US Relations: Atmospheric: Positive Vibrations", in Public Library of US Diplomacy – Wikileaks, www.wikileaks.org/plusd/cables/1975NEWDE12918_b.html

278 "Dep Sec Visit to South Asia", in Public Library of US Diplomacy – Wikileaks, https://wikileaks.org/plusd/cables/1973NEWDE03990_b.html

279 "Union Carbide Application for EXIM Loans", in Public Library of US Diplomacy – Wikileaks, https://wikileaks.org/plusd/cables/1975NEWDE01606_b.html

280 "EXIM Bank financing for Union Carbide India Ltd", in Public Library of US Diplomacy, WikiLeaks, https://www.wikileaks.org/plusd/cables/1975STATE272385_b.html; "Press Release, on EXIM Bank credit to India", WikiLeaks, www.bhopal.net/wp-content/uploads/Events/2014_30th_Anniversary/Electronic-Telegram-Dated-January-5-1976.pdf



UC chemical processing area with flare tower © Giles Clark 2014

10.2 POST-DISASTER: CONTINUED MEDDLING BY US GOVERNMENT AND OTHER ACTORS

A confidential letter obtained by Bhopal activist groups in 2014 under a Right to Information request shows that Henry Kissinger continued to use his influence to further UCC's interests after the gas leak disaster. The letter, dated May 1988, is written by Indian steel magnate J.R.D. Tata on Henry Kissinger's behalf, and addressed to the Indian Prime Minister, Rajiv Gandhi. At the time, Henry Kissinger was no longer in government but was a "consultant and adviser to many governments and large corporations, including Union Carbide in America".²⁸¹ The letter seeks to convey Henry Kissinger's concerns about the delays in reaching an agreement on the compensation, and his message that UCC's offer would be seen as a fair and generous settlement which would help allay criticism of the government.²⁸² Such a settlement also included waivers on legal action which would permanently shield UCC from liability in India. In June 1988, the Indian Prime Minister's Office wrote back to J.R.D. Tata to acknowledge receipt of his letter and note that "the suggestions will be given consideration"²⁸³ This communication took place while UCC was secretly proposing injury categories that would exclude many of the serious acute and chronic illnesses resulting from the gas leak and subsequent pollution, as detailed above.

281 The Herald, "Revealed 30 years on: Secret role of Henry Kissinger in Bhopal tragedy", 7 December 2014, www.heraldscotland.com/news/13192711-revealed-30-years-secret-role-henry-kissinger-bhopal-tragedy/

282 Letter from J.R.D. Tata to Rajiv Gandhi, 31 May 1988, www.bhopal.net/wp-content/uploads/Events/2014_30th_Anniversary/Kissingers-msg-to-Rajiv-Gandhi-May-31-1988.jpg

283 Letter from Rajiv Gandhi to J.R.D. Tata, 14 June 1988, www.bhopal.net/wp-content/uploads/Events/2014_30th_Anniversary/Rajiv-Gandhis-response-to-Kissingers-advice-June-14-1988.jpg

The Indian Express also published allegations by former CBI Director S.K. Dutta that, between 1992 and 1993, the Prime Minister's Office had put pressure on CBI not to pursue extradition of Warren Anderson. S.K. Dutta was reportedly asked by government officials to explain why CBI was proceeding against Warren Anderson and was warned that his actions were preventing foreign investment.

Over the years, campaigners have filed many other Right to Information requests relating to the US government's handling of the Bhopal disaster. Although many confidential documents have been obtained in this way, many requests have been denied by the US government on various grounds.²⁸⁴ However, additional revelations have gradually come out through the testimony of law enforcement officials directly involved in the case.²⁸⁵ The Indian newspaper, The Hindu, published an interview with the Indian Foreign Secretary at the time of the disaster, M.K. Rasgotra, who explained how he personally had processed UCC CEO Warren Anderson's request to be granted safe passage if he visited Bhopal. He claimed that arresting Warren Anderson and putting him on trial might affect how corporations viewed India as a country in which to invest. Releasing him, he remarked, "was obviously in India's interest" since "India needed investment".²⁸⁶

This context explains the political pressure exerted on the CBI. In another interview, former CBI Director Joginder Singh told the Indian newspaper DNA, that the central government never gave the CBI permission to conduct necessary inquiries at UCC's offices in the USA and Hong Kong.²⁸⁷ The Indian Express also published allegations by former CBI Director S.K. Dutta that, between 1992 and 1993, the Prime Minister's Office had put pressure on CBI not to pursue extradition of Warren Anderson. S.K. Dutta was reportedly asked by government officials to explain why CBI was proceeding against Warren Anderson and was warned that his actions were preventing foreign investment.²⁸⁸ Another former Joint Director of the CBI, B.R. Lull, also claimed that, in 1994, officials from India's Ministry of External Affairs forced the CBI not to press for extradition.²⁸⁹

284 Tim Edwards, "When Elvis died in Bhopal, justice was buried in America" (previously cited).

285 Much of this happened in the aftermath of the June 2010 convictions of the Indian accused. The lesser charges on which they were convicted and, consequently, the minor penalties imposed on them, caused an outcry and prompted the Indian media to dig out past scandals. Amnesty International, *Injustice Incorporated* (previously cited), p. 43.

286 Karan Thapar, "Granting passage... was the right thing to do – interview with M.K. Rasgotra", The Hindu, 18 June 2010, www.thehindu.com/news/national/Granting-passage%E2%80%A6-was-the-right-thing-to-do-Interview-with-M.K.-Rasgotra/article16268963.ece (Transcript of an interview with the Foreign Secretary at the time who processed the safe passage of Warren Anderson).

287 Baljeet Parmar, "We were stopped in US: CBI ex-director", DNA, 21 June 2010, <https://www.dnaindia.com/india/report-we-were-stopped-in-us-cbi-ex-director-1399159>

288 Ritu Sarin, "Rao PMO furious, said going after Anderson would hit FDI: Ex-CBI chief", The Indian Express, 26 December 2010, <https://indianexpress.com/article/news-archive/web/rao-pmo-furious-said-going-after-anderson-would-hit-fdi-excbi-chief/>

289 Rahul Tripathi, "Govt told CBI not to seek Anderson's extradition", The Times of India, 9 June 2010, <https://timesofindia.indiatimes.com/india/Govt-told-CBI-not-to-seek-Andersons-extradition/articleshow/6025567.cms> After these revelations, campaigners sought to access the reported communications through further requests, but a new law passed in June 2011 exempted all CBI communications from Right to Information requests, frustrating their efforts. NDTV, "Government defends CBI's exemption from RTI, cites national security", 21 June 2011, www.ndtv.com/india-news/government-defends-cbis-exemption-from-rti-cites-national-security-459016

More correspondence has since come to light that reveals further the extent to which US officials have lobbied on behalf of the chemical company. An internal email for US Department of Justice officials, dated May 2003, warns colleagues of the forthcoming Government of India extradition request and explains that “there had been extensive discussions with India in the past about [how] pursuing a criminal homicide case against UCC executives would not be helpful”. The email goes on to say:

“A virtual who’s who of high-powered law firms have represented Union Carbide and [Warren] Anderson, the U.S. Chamber of Commerce, and who knows who else with respect to the Bhopal case and potential civil and criminal action in India [against] UCC and its executives and have in the past met with various officials at State (and perhaps also Justice) and provided written submissions.”²⁹⁰

When Dow became embroiled in the legal battles, the US government also began acting on its behalf. In 2014, Amnesty International described many diplomatic cables between Indian government officials that provide an insight into the pressure applied on them to drop all claims against Dow.²⁹¹ Since then, more confidential communications have come to light.

A confidential briefing from the US Embassy in India, dated October 2010, informs of a phone call with Dow’s CEO, Andrew Liveris, and US co-chair of the India-US CEO Forum, David Cote, regarding assistance from the embassy to manage the Bhopal issue and objectives for an upcoming US Presidential visit to India.²⁹² The briefing shows the extent of Dow’s concerns over Bhopal, but it also demonstrates the company’s political clout. Referring to the US President’s visit, the briefing informs that “Liveris will not participate, as he faces possible arrest here”. It also states that, “Dow Chemical has a close working relationship with Mission India”, and that the ambassador had already met with the company’s president for Southeast Asia and India, “to hear about the issues Dow faces overcoming the Bhopal legacy”. It further explains that Dow “continues to try to highlight its problems as investment climate issues”. The briefing then informs of the key two objectives of the phone call, which are: first, to “listen to Liveris’ concerns about the heightened problems his company has faced since the June 7 court decision”; and second, to get the ambassador “to stress [his] support for Dow’s business in India” during the US President’s visit.²⁹³

290 Email dated 1 May 2003 entitled “Mike or Bruce may start getting calls on Indian extradition request in Bhopal case”. Released in part by the US Department of State through a Freedom of Information request on 27 May 2005 (on file with the authors).

291 Amnesty International, *Injustice Incorporated* (previously cited), pp. 61 & 183.

292 U.S. Department of State, “Briefing Memorandum, Phone Call with Honeywell Chairman and CEO David Cote and Dow Chemical CEO Andrew Liveris to discuss Bhopal legacy issues”, 8 October 2010. This was shared with Bhopal campaigners by a US reporter who worked with the US organization Citizen’s United. Citizen’s United had obtained the briefing as one of many confidential documents released in 2016 through a Right to Information request.

293 It appears that Embassy officials cautioned Liveris and Cote that “[t]he USG [US government] cannot be seen as trying to interfere in the Government of India legal process”. Elsewhere in the briefing, they also note that the “USG does not have an interest in becoming involved publicly on this issue”.

11. ENVIRONMENTAL RACISM

11.1 A SACRIFICE ZONE

In many countries, low-income, racialised and marginalised communities face the brunt of industrial pollution and environmental damage because of systemic discrimination and inequities.²⁹⁴ Systemic discrimination based on colour, race, descent etc, that results in disproportionate exposure to harm is increasingly known as environmental racism. Environmental racism is the manifestation of past and present government rules, policies and decisions, corporate policies and practices, and poor enforcement of environmental standards such that harmful land use and industrial activities are disproportionately sited in or near communities that face discrimination.²⁹⁵ This results in these communities being exposed to toxic and hazardous substances and waste.²⁹⁶ Residents and workers in these areas may experience chronic exposure as well as acute events, such as a harmful release or an explosion, as in the case of Bhopal.²⁹⁷ Environmental racism describes numerous interconnected human rights violations that include the adverse impacts of environmental degradation on the rights to life, health, an adequate standard of living, education and other substantive rights, the encroachment on the right to a clean, healthy and sustainable environment, and the violation of the right to freedom from discrimination.²⁹⁸

The UN Special Rapporteur on human rights and the environment has coined a name for places affected in this manner: “sacrifice zones”. In a 2022 report, the Special Rapporteur specifically referenced chemical accidents, such as Bhopal, which have a “catastrophic impact on health, human rights and the environment”.²⁹⁹ He described a sacrifice zone as “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”.³⁰⁰

294 OHCHR, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume - Ecological crisis, climate justice and racial justice, 25 October 2022, UN Doc. A/77/549, para. 21 (referring to caste-based discrimination) and para. 50 (noting, more broadly, that “race, colour, descent and national and ethnic origin remains a critical determinant of climate and environmental harms experienced by individuals and communities”).

295 A racialized community is a community that has a socially constructed ethnic and/or religious identity externally projected on it based on social structures and power relations. The process of racialization triggers systemic discriminatory practices by state institutions, private entities and individuals.

296 See for example, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume - Ecological crisis, climate justice and racial justice (previously cited), para. 22.

297 See for example, Environmental Justice For All, *Life at the Fenceline: Understanding Cumulative Health Hazards in Environmental Justice Communities*, September 2018, <https://ej4all.org/life-at-the-fenceline>

298 Non-discrimination and the prohibition on racial discrimination are peremptory norms of public international law. See, UN General Assembly, Report of the International Law Commission, 2022, UN Doc. A/77/10; UN General Assembly, Fourth report on peremptory norms of general international law (*ius cogens*) by Dire Tladi, Special Rapporteur, 31 January 2019, UN Doc. A/CN.4/727. See also, Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970; Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971. Non-discrimination and equality obligations are also broadly enshrined in international human rights treaties including the ICCPR, Article 2; ICESCR, Article 2; Convention on the Rights of the Child, Article 2; International Convention on the Elimination of All Forms of Racial Discrimination, Article 1; Convention on the Elimination of All Forms of Discrimination against Women, Article 1; Convention on the Rights of Persons with Disabilities, Article 2; and ILO Convention 111 of 1958, para. 1(a).

299 OHCHR, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: The right to a clean, healthy and sustainable environment: non-toxic environment, 12 January 2022, UN Doc. A/HRC/49/53, para. 10.

300 OHCHR, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: The right to a clean, healthy and sustainable environment: non-toxic environment (previously cited), para. 27.



Union Carbide plant on 31 October, 2014 in Bhopal, India. © Hindustan Times via Getty Images

The Special Rapporteur went on to elaborate that:

“Often created through the collusion of Governments and businesses, sacrifice zones are the diametric opposite of sustainable development, harming the interests of present and future generations. The people who inhabit sacrifice zones are exploited, traumatized and stigmatized. They are treated as disposable, their voices ignored, their presence excluded from decision-making processes and their dignity and human rights trampled upon.”³⁰¹

The UN Special Rapporteur explained that that, “in sacrifice zones there is a catastrophic market failure, as businesses maximize profits while externalizing health and environmental costs onto vulnerable and marginalized communities.”³⁰²

Such descriptions aptly apply to the Bhopal disaster, which has been driven, above all, by the enormous power imbalance of US multinational corporations on the one hand, and low income and marginalized communities in India on the other. The areas adjacent to the plant which have been hardest hit by the tragedy consist mainly of Muslim and lower caste (known as Scheduled Castes) communities living in poverty.³⁰³ This poverty has been hugely exacerbated by the disaster and its aftermath. The indifference and disdain with which the survivors and their descendants have been treated ever since the gas leak, the lack of proper and effective accountability of both state and corporate actors for both the gas leak and ongoing contamination, and the failure to ensure a reparations programme that adequately addresses all past and ongoing harms have been enabled by entrenched environmental racism.

301 OHCHR, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: The right to a clean, healthy and sustainable environment: non-toxic environment (previously cited), para. 29.

302 OHCHR, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: The right to a clean, healthy and sustainable environment: non-toxic environment (previously cited), para. 66.

303 The Madhya Pradesh Department of Gas Relief and Rehabilitation’s website describes them as “the lower strata of society”, [Bhopal Gas Tragedy Relief and Rehabilitation \(mp.gov.in\)](http://Bhopal.Gas.Tragedy.Relief.and.Rehabilitation(mp.gov.in)).

In the 2010, the CJM ruled that UCIL's managers had caused death by negligence, and provided the following summary:

“The tragedy was caused by the synergy of the very worst of American and Indian cultures. An American corporation cynically used a third world country to escape from the increasingly strict safety standards imposed at home. Safety procedures were minimal and neither the American owners nor the local management seemed to regard them as necessary. When the disaster struck there was no disaster plan that could be set into action. Prompt action by the local authorities could have saved many, if not, most victims. The immediate response was marred by callous indifference.”³⁰⁴

11.2 DOUBLE STANDARDS

Campaigners have long accused first UCC, and then Dow, of having double standards – of managing their operations and treating the surrounding populations differently in the USA and in India.

Some of the arguments presented by UCC in the US litigation help to sum up the companies' beliefs about the standards of protection owed to foreign communities living in poverty – and that US standards should not apply to practices in India. Referring to the interest of US multinational businesses operating abroad, the company argued that, “it would surely be unfair to apply ingrained American approaches to liability or damages to U.S. Corporations owning stock in foreign companies”. UCC further referred to,

“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 [Bhopal plant] by itself confirms that the Indian forum is overwhelmingly the most appropriate. Such abject poverty and the 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 certainly operated differently in the two countries. In its 2004 report, Amnesty International compared safety measures at UCC's pesticide plant in West Virginia in the USA with those at the Bhopal plant.³⁰⁵ In testimony before the US Congress shortly after the accident, Ronald Wishart, a Union Carbide Vice-President, said: “With respect to our safety standards, we meet the higher of the two, whether it be Union Carbide or the local standard.”³⁰⁶ If this were true, then the UCC plants in Bhopal and West Virginia should have had the same safety standards. But this was not the case. While in the West Virginia plant, MIC was processed quickly and was never stored for long periods of time, MIC was stored in large quantities for long periods in Bhopal. The West Virginia plant counted on safe and reliable monitoring, cooling, maintenance and emergency systems as well as employee training that the Bhopal plant did not have. Unlike the West Virginia plant, certain safety measures such as a

304 State of Madhya Pradesh v. Warren Anderson (Absconder) and Others, in the Court of Chief Judicial Magistrate Bhopal, Madhya Pradesh, Cr. Case No.8460 / 1996 - Date of Institution 1 December 1987, Judgment of 7 June 2010.

305 Amnesty International, *Clouds of Injustice* (previously cited), p. 42. I. Eckerman and T. Børse, “Corporate and governmental responsibilities for preventing chemical disasters: Lessons from Bhopal”, (previously cited).

306 Testimony of Ronald Wishart, Hearing before the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, House of Representatives, 98th Congress, 2nd Session, 12 December 1984, p. 56.



Discarded chemicals in UC lab © Giles Clark 2014

refrigeration unit and nitrogen pressure, though in place, were turned off in Bhopal. UCC had also failed to set up any comprehensive emergency plan or system in Bhopal to warn local communities about leaks, even though it had such a plan in place in West Virginia.³⁰⁷

Following the accident, there is further evidence of double standards. In 1989, UCC settled the civil claim against it for an amount that was less than 15% of the initial figure pursued by the Government of India. This amount was based on inaccurate estimates and a categorization of injuries that UCC knew was false.³⁰⁸ While the deal has since been derided by survivor groups as inadequate given the number of deaths and persistent nature of the injuries, Dow claims that the financial compensation paid by UCC in 1989 was fair and sufficient. A Dow spokesperson then made a comment justifying the level of compensation; a comment that has inflamed opinion in India ever since. “\$500 is plenty good for an Indian”, she said.³⁰⁹

307 Amnesty International, *Clouds of Injustice* (previously cited), pp. 42-43. Ravi Rajan, “What disasters tell us about environmental violence: The case of Bhopal” (previously cited), p. 382. While the difference in standards and operating practices between the West Virginia and Bhopal plants may have been stark, this is not to say that the West Virginia plant has been free of problems, or that it is not in itself evidence of environmental racism. It sits in one of the state’s only majority-Black communities, and this community has also experienced leaks and explosions, and has been raising the alarm about pollution and impacts on health for decades. See Ken Ward Jr., “How Black communities become ‘sacrifice zones’ for industrial air pollution”, ProPublica and Mountain State Spotlight, 21 December 2021, www.propublica.org/article/how-black-communities-become-sacrifice-zones-for-industrial-air-pollution

308 See “The legal action in India and the 1989 settlement” above.

309 NDTV, “Why did India accept a mere \$500 for every Bhopal life?”, 11 June 2010, www.ndtv.com/india-news/why-did-india-accept-a-mere-500-for-every-bhopal-life-420494 The infamous phrase was used as the title for a short documentary 33 years after the gas tragedy: see, YouTube, “500 dollars is plenty good for an Indian”, (n.d.), www.youtube.com/watch?v=fUXomlkBZFw

A Dow spokesperson made a comment justifying the level of compensation; a comment that has inflamed opinion in India ever since. “\$500 is plenty good for an Indian”, she said

As discussed above, Dow claims that, as a separate legal entity, it has no responsibility for any pending liabilities UCC may still have regarding Bhopal in India. However, in the USA, Dow has defended, negotiated or settled a large number of asbestos-related claims on behalf of UCC and UCC’s subsidiary, Amchem Products Limited, since it purchased UCC in 2001, revealing a double standard in their acceptance of liability.³¹⁰ In all filings with the US financial regulator the Securities and Exchange Commission (SEC) since the acquisition, Dow has consistently reported on ongoing asbestos litigation, its involvement with the legal strategy to combat these claims, and the actual and potential impacts of liability on its earnings. In contrast, Dow has never mentioned any Bhopal-related liabilities connected to UCC in its submissions to the SEC. On this point, Phillip Lochner, expert witness in the Curative Petition and a former SEC Commissioner, noted: “The fact that since its merger with UCC, Dow has failed to disclose any potential liability with regard to the Bhopal disaster in its SEC filings, may imply a differential treatment of First World and Developing World liabilities.”³¹¹

Dow claims that it has never actually paid asbestos claims on behalf of UCC, but the company’s proactive approach to asbestos liabilities in the USA is in stark contrast to its attitude regarding Bhopal liabilities.³¹² Not only does Dow deny that any liabilities are still pending, the company is also shielding the absconder UCC from pending criminal charges, has failed itself to respond to court summons for 18 years, and is now questioning the jurisdiction of the Indian courts.³¹³

310 In 2002, Dow reported a US\$828 million charge on its earnings on account of UCC’s asbestos-related liabilities (as well as an increase in UCC’s reserve for future liability claims to US\$2.2 billion). The Dow Chemical Company, *2002 Annual Report*, 2002, pp. 3 & 27-29, www.annualreports.com/HostedData/AnnualReportArchive/t/NYSE_DOW_2002.pdf; The Dow Chemical Company, *Form 10-K – Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 – For the year ended December 31, 2002*, https://www.sec.gov/Archives/edgar/data/29915/000110465903003205/j7856_10k.htm

311 Affidavit of Philip Lochner concerning the availability of assets after implementation of merger agreement between Dow Chemical Company and E. I. Dupont de Nemours & Co, 27 July 2017, para. IV.2.

312 Dow Corporate, “Dow and the Bhopal Tragedy”, <https://corporate.dow.com/en-us/about/legal/issues/bhopal/tragedy.html> (accessed 4 March 2024).

313 The media in India has often reported on Dow’s double-standards. See for example, Subodh Varma, “Bhopal gas tragedy: Dow’s double standards exposed”, *The Times of India*, 3 July 2010, <https://timesofindia.indiatimes.com/india/bhopal-gas-tragedy-dows-double-standards-exposed/articleshow/6122640.cms>

12. STORIES OF CHANGE AND SUCCESS

12.1 CAMPAIGN VICTORIES

Beginning in the immediate aftermath of the disaster, survivor groups and supporters have mobilized for justice in what has become a social movement spanning four decades. They have been creative and bold in their actions. As well as innumerable rallies, demonstrations and vigils, they have held sit-ins, 'chain-ins' and 'die-ins', organized mimicking events (such as the Bhopal Special Olympics) and frequently disrupted everyday life to remind people of the ongoing injustice. In 2008, dozens of survivors completed an 800km-long Padyatra (march) from Bhopal to Delhi to call for justice and relief.³¹⁴ In December 2011, more than 30,000 survivors joined a protest that prevented trains passing through Bhopal for 11 hours.

Survivor groups have initiated or intervened in many legal actions, often leading to significant improvements in the lives of the affected communities. In 1991 they managed to reinstate criminal charges that had been dropped following the 1989 out-of-court settlement. It was a request by the BGIA in 2004 that led the CJM to begin issuing summonses on Dow. In 2006, a request by survivor organizations resulted in the Supreme Court of India ordering the municipal authority to provide piped drinking water to four additional communities who were still drinking contaminated water, increasing the number from 14 to 18. With additional pressure from campaigners, this was later increased to 22 and then to 42. In 2010, they convinced the government to initiate the Curative Petition to correct the gross injustice of the 1989 out-of-court settlement. Also in 2010, campaigning for the widows of Bhopal victims resulted in a fivefold increase in the pension promised to widows, and the number of widows receiving this benefit was raised from around 1,000 to 5,000.³¹⁵ In 2012, the Supreme Court gave specific directions to official agencies to improve medical care and research in response to petitioner organizations' submissions.

Groups have also implemented practical initiatives in the absence of sufficient state and corporate support. In 1994, survivor groups fundraised for the Sambhavna Trust Clinic to fill the void left by government research and healthcare providers. About a decade later, they opened the Chingari Rehabilitation Centre. Thousands of gas- and contamination-affected adults and children have benefitted from the highly specialized and professional medical care and rehabilitation provided by these institutions – unparalleled by any of the government-run facilities. Survivor groups' research on groundwater contamination, health and other ongoing concerns has brought clarity to a large number of areas, often providing a much-needed counter to incorrect, biased or insufficient government figures. In May 2001, for example, a flawed report on contamination of soil and groundwater by two government agencies, NEERI and NGRI, was scrapped by the Peer Review Committee following interventions by survivor organizations. In October 2010, NIREH was set up in Bhopal in response to demands from survivor organizations for the resumption of medical research.³¹⁶

314 ICJB, "Bhopalis Launch 800-Km March for Justice", 20 February 2008, www.bhopal.net/bhopalis-launch-800-km-march-for-justice-announce-global-stir/

315 Department of Bhopal Gas Tragedy Relief and Rehabilitation, "Social rehabilitation" (previously cited).

316 See an account of some of these successes from 2010 to 2014 in ICJB, "Timeline: Major actions & achievements in last five years", 8 October 2014, www.bhopal.net/timeline-major-actions-achievements-in-last-five-years/#more-20698



Women survivors protesting outside factory gates © Giles Clark 2014

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Survivor organizations have also unearthed numerous confidential documents and brought to light obscure dealings between high-ranking government and corporate officials. They have moreover gathered high-profile support, and the signatures of thousands of concerned citizens, in support of their petitions. In August 2010, for example, they obtained the signatures of 64 members of the Indian Parliament from 20 political parties for a petition demanding medical care and site remediation. In 2016, they received more than 127,500 online signatures for a petition to the US government demanding immediate action on Dow’s summons. In November 2022, 40 Members of Parliament (MPs) from five different political parties in the UK, as well as three independent MPs, signed on to an Early Day Motion that called for those responsible for the disaster to be brought to justice, and for Dow “to urgently rectify the environmental damage and properly compensate the victims”.³¹⁷ During the debates that preceded this vote, parliamentarians urged the UK government to “seek answers from their allies in India and the US on why they continue to block further investigations and further compensation claims, given the scale and impact of the tragedy”.³¹⁸ In September 2023, twelve members of the US Congress wrote to the US Department of Justice to urge it to serve India’s legal summons upon Dow.³¹⁹ The Department’s inaction, the letter states, “is creating an indelible stain upon our nation’s reputation for upholding international legal and moral standards”.

317 ICJB, “Survivors express gratitude for UK Parliamentarians who have signed an Early Day on Bhopal”, 1 December 2022, www.bhopal.net/survivors-express-gratitude-for-uk-parliamentarians-who-have-signed-an-early-day-on-bhopal/#more-27532

318 Hansard, “Bhopal Gas Explosion Investigations”, Commons debate, 15 November 2022, Volume 722, <https://hansard.parliament.uk/Commons/2022-11-15/debates/16527559-8DDF-4886-A7CA-DF2DFAA9F05E/BhopalGasExplosionInvestigations>

319 Letter to Ms. Lisa O. Monaco, Deputy Attorney General, US Department of Justice, 23 September 2023, www.bhopal.net/wp-content/uploads/2023/09/2023.09.06-Bhopal-Letter-Final.pdf While Dow had been served notice by that point, this was not known publicly. As stated earlier, a draft version of this letter had been circulating within Congress since early in the year, and it is possible that knowledge of this letter prompted the US Department of Justice to finally take action and serve notice on Dow.

Survivor protests have spanned the world, with international supporters often holding protests and other actions in cities around the globe.³²⁰ Survivor groups have also taken action beyond Bhopal to support other vulnerable communities in India. In June 2010, for example, they joined demonstrations at the office of the Madhya Pradesh Pollution Control Board to highlight the injury by toxic substances of six workers at the Madhya Pradesh Waste Management Facility at Pithampur. In September 2012 they held a solidarity protest in support of the struggle against Kudankulam Nuclear Power Plant and, in December 2020, joined demonstrations by farmers calling for the scrapping of recently passed farm laws.³²¹ In so doing, they have transcended Bhopal, bringing their expertise and solidarity to other social struggles in India.

12.2 DOW'S BUSINESS IMPAIRED AS IT STRUGGLES TO SHAKE OFF ITS SHAMEFUL ROLE AND LEGACY

Relentless campaigning by survivors and their supporters has also ensured that the Bhopal legacy follows Dow around the globe. Despite its best efforts, the company has been unable to dissociate itself from the Bhopal disaster, and its continuing refusal to address outstanding issues has affected its reputation and business.

Ever since it purchased UCC in 2001, Dow has resorted to all manner of tactics to avoid liability for the Bhopal disaster. It has pressured high-ranking US and Indian government officials to stop legal action against it, resisted periodic shareholder proposals to force the company to deal with Bhopal, and defended its reputation through its purpose-built Bhopal website.³²² During this time, Dow has seen many business projects and deals in India cancelled and has had to face the negative backlash resulting from its highly visible marketing and philanthropic campaigns.

A legal claim brought in 2004 in Connecticut, USA, by a former UCC distributor threw light onto Dow's real challenges concerning its business activities in India. During the 1990s, UCC was unable to sell its products in India because of the unresolved criminal case. For this reason, it employed third-party agents to distribute its products within the country. Following the Dow-UCC merger in 2001, these agents brought proceedings against Dow in relation to UCC's pre-existing contract with them. The complaint alleged that UCC undertook efforts to establish Dow, untainted by the Bhopal tragedy, in place of the plaintiffs as a direct seller of UCC products to end-users in India.³²³ Dow's selling of UCC products under its own name was the manner through which the company sought to circumvent court attachment orders in India.³²⁴ Internal email communications confirm the extent of Dow's difficulty in selling UCC products in India, and concerns over the legal implications for Dow.³²⁵ As described above, from 2005 Dow itself began receiving summons to attend the ongoing criminal proceedings against UCC, and the financial press has reported regularly on the issue ever since.³²⁶

320 See for example, ICJB, "Boston commemorates 30th anniversary of Bhopal gas disaster with vigil, chants calls for continuing struggle for justice and ensuring 'no more Bhopals'", 14 December 2014, www.bhopal.net/category/press-releases/page/18/; ICJB, "Scottish Trades Unions' Solidarity with Bhopal", 2 December 2014, www.bhopal.net/scottish-trades-unions-solidarity-with-bhopal/; India Environment Portal, "Gas victims present broom to Dow Chemicals CEO", 26 October 2002, <http://admin.indiaenvironmentportal.org.in/news/gas-victims-present-broom-dow-chemicals-ceo>

321 ICJB, "Bhopal gas victims protest in support of agitating farmers and ask for repeal of new laws which are designed to help corporations maximize their profits", 21 December 2020, www.bhopal.net/bhopal-gas-victims-protest-in-support-of-agitating-farmers-and-ask-for-repeal-of-new-laws-which-are-designed-to-help-corporations-maximize-their-profits/

322 See for example, Dow Corporate, "Dow and the Bhopal Tragedy" (previously cited).

323 US District Court – District of Connecticut, *MM Global Services, Inc. v. Dow Chemical Co.*, 329 F. Supp. 2d 337 (D. Conn. 2004), http://www.ctd.uscourts.gov/sites/default/files/opinions/O81104.AVC_MMGlobal.pdf p. 3.

324 Amnesty International, *Injustice Incorporated* (previously cited), p. 56.

325 An email from a company lawyer notes that legal opinions might be adverse to, or uncertain about, Dow's position on "the UCC issues in India", and warns: "We may end paying a lot more". Email from Lawrence Cheung, obtained through discovery in US District Court – District of Connecticut, *MM Global Services, Inc. v. Dow Chemical Co.*, 329 F. Supp. 2d 337 (D. Conn. 2004). Dow's Pacific division also advised against Dow selling UCC products in India, "due to the threat of litigation and the protest incident of a couple of months ago". Email exchange between Ako Serizawa, Dow Pacific Customer Interface, and Edward R.J. Neunuebel, Dow Pacific Legal, obtained through discovery in *MM Global Services, Inc. v. Dow Chemical Co.*, 329 F. Supp. 2d 337 (D. Conn. 2004).

326 Gary Demarzo, "Basic material new highs: Dow Chemical (NYSE:DOW), Total (NYSE:TOT), EOG Resources (NYSE:EOG), E I Du Pont De (NYSE:DD)", 3 March 2014, www.gaininggreen.com/basic-material-new-highs-dow-chemical-nysedow-total-nysetot-eg-resources-nyseeog-e-i-du-pont-de-nysedd/1211915/

Ever since it purchased UCC in 2001, Dow has resorted to all manner of tactics to avoid liability for the Bhopal disaster. It has pressured high-ranking US and Indian government officials to stop legal action against it, resisted periodic shareholder proposals to force the company to deal with Bhopal, and defended its reputation through its purpose-built Bhopal website.

In 2014, Amnesty wrote about Dow's extensive involvement in covert efforts to solve its Bhopal "legacy issue", and pave the way for its investment plans in India.³²⁷ Amnesty described a number of confidential letters from Dow, and from its corporate friend the influential steel giant Tata Group, to high-ranking Indian officials, as well as letters between the latter. These letters came to light through Right to Information requests. Dow's pressure on the Indian government, and its attempts to have politicians interfere with judicial matters, became apparent. While these letters reveal the magnitude of Dow's political clout, they also show the extent of its concerns.

In addition to legal matters, Dow's business plans in India have also been disrupted by campaigners. A campaign by survivor organizations against a proposed US\$2 million technology deal between the state-owned India Oil Corporation and Dow caused the deal to fail in 2005.³²⁸ Activists claimed that the technology being offered by Dow belonged to UCC.³²⁹ Another successful campaign by Bhopal supporters frustrated Dow's plans to build a research facility in the city of Pune. The campaign included blocking Dow's recruitment efforts across college campuses in Madras, Kharagpur, Kanpur and Mumbai,³³⁰ and building alliances with local Pune groups who mounted protests and sit-ins at the planned construction site. In October 2008, the state Chief minister ordered a halt on the project. Two years later, the project was abandoned.³³¹ Campaigners also opposed a planned joint venture between Dow and Gujarat Alkalies and Chemicals (GACL), announced in 2008, to build a manufacturing facility in the State of Gujarat.³³² Following the uproar caused by the June 2010 conviction of UCIL and former UCIL employees, the Gujarat government begun to show reservations about the plan.³³³ In September 2012, the agreement between GACL and Dow was shelved.³³⁴

327 See Amnesty International, *Injustice Incorporated* (previously cited), pp. 59-62, 183-186 & 195-196.

328 N. D. Sharma, "IOC cancels deal with Dow: Bhopal gas leak survivors rejoice", 18 July 2005, www.tribuneindia.com/2005/20050719/nation.htm#1

329 ICJB, "Bhopalis call for boycott of Indian Oil", 24 May 2005, www.bhopal.net/bhopalis-call-for-boycott-of-indian-oil/

330 The Hindu, "Dow Chemical recruits graduates from city engineering colleges", 21 March 2012, www.thehindu.com/news/cities/chennai/dow-chemical-recruits-graduates-from-city-engineering-colleges/article3017583.ece; Arijit Sen, "IITS snub Dow Chem for Bhopal tragedy", 3 December 2007, www.bhopal.net/iits-boycott-dow-chemicals-for-bhopal-gas-tragedy/

331 Jean Francois Tremblay, "Bhopal legacy - Dow shelves major India R&D centre in face of local opposition", Chemical & Engineering Archives, 20 September 2010, <http://pubs.acs.org/doi/abs/10.1021/CEN092010172807>

332 The Economic Times, "GACL ventures with Dow Chemicals", 24 July 2008, <https://economictimes.indiatimes.com/industry/indl-goods/svs/chem-/fertilisers/gacl-ventures-with-dow-chemicals/articleshow/3274899.cms>

333 Rajiv Shah, "Bhopal gas tragedy cloud over GACL-Dow deal?", Times of India, 15 June 2010, <https://rajivnews.wordpress.com/2010/06/15/bhopal-gas-tragedy-cloud-over-gacl-dow-deal/>

334 Kalpesh Damor, "GACL snaps ties with Dow", Business Standards, 19 January 2013, www.business-standard.com/article/companies/gacl-snaps-ties-with-dow-112092800068_1.html

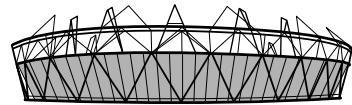
Despite Dow's rhetoric, survivor groups found themselves vindicated when a confidential cable made available by Wikileaks uncovered the extent of Dow's frustration. The cable, sent in late 2008 by the US Consulate in Mumbai to various US and Indian government departments, revealed that Dow representatives had told consular officials that the company did not have infinite patience for the political and other problems faced by their business in India, and that it feared it would face similar protests and harassment wherever it went. The cable also highlights Dow's mistake in continuing to underestimate the political ramifications of its connection to the legacy of Bhopal and UCC.³³⁵ Referring to Pune and other frustrated projects, another leaked cable from the US Embassy dated June 2009 reveals that Dow was now reluctant to go ahead with a planned US\$5 billion investment programme in India due to Bhopal legacy issues.³³⁶

Dow has meanwhile been forced periodically to defend itself against criticism from shareholders over the last two decades. In November 2013, for example, stockholders Unitarian Universalist Association, Calvert Investments Management Inc, and Amnesty International USA requested that Dow prepare a report assessing the impacts of failing to resolve the legacy of the Bhopal disaster on the company's business opportunities.³³⁷ Dow rejected the proposal arguing that it had updated materials on its website that already provided this information. However, similar shareholder proposals, now with DowDuPont management as the target, did go to vote in 2018.³³⁸ One of these proposals gained 38% of the total shareholder votes.³³⁹

The London Assembly stated that Dow's sponsorship had

“caused damage to the reputation

of the London 2012 Olympic and Paralympic Games”



Dow's marketing campaigns have also often backfired because of its stance on Bhopal. The company's sponsorship of the Olympic Games has brought a barrage of bad publicity for the company. In 2010, Dow became a "Worldwide Olympic Partner", and in 2012 signed a deal with the London Olympic Committee to provide a decorative wrap for London's Olympic Stadium. A simple Google search of Dow's association with the 2012 Olympic Games shows a deluge of negative news.³⁴⁰ As the BBC put it at the time: "The resulting publicity has been almost entirely negative".³⁴¹ India's Olympic Association

335 US State Dept, "Dow Continues to Run the Gamut of Indian Politics", 15 October 2008, https://wikileaks.org/plusd/cables/08MUMBAI491_a.html Also discussed in Sarah Hiddleston and Nirupama Subramanian, "Sops for chemicals?", 1 April 2011, www.thehindu.com/news/the-india-cables/Sops-for-chemicals/article14666741.ece

336 US State Dept, "Twenty-five years later, Bhopal disaster now haunts Dow Chemical", 22 June 2009, https://wikileaks.org/plusd/cables/09MUMBAI265_a.htm

337 As part of its shareholder activism, Amnesty International USA holds a small proportion of shares in selected companies to be able to demand action as a shareholder. See Amnesty International USA, "Amnesty International: Shareholder activist", www.amnestyusa.org/updates/amnesty-international-shareholder-activist/ (accessed on 12 March 2024).

338 DowDuPont, "2018 Proxy Statement - Notice of Annual Meeting of Stockholders", 25 April 2018, p. 77 (on file with the authors).

339 DowDuPont, "Form 8-K – Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 – 1 May 2018", Agenda Item 9, p. 4, www.sec.gov/Archives/edgar/data/1666700/000119312518146665/d580705d8k.htm

340 See for example, BBC News, "London 2012: Dow Chemical in Olympics sponsorship row", 23 January 2012, www.bbc.co.uk/news/uk-16089139; Juliette Jowit and Owen Gibson, "London 2012: Hindu groups fight to oust Dow Chemical from Olympics", The Guardian, 20 March 2012, www.theguardian.com/sport/2012/mar/20/london-2012-dow-chemical-olympics; Isaac Pino, Charlie Kannel and Tom Gardner, "How Dow Chemical can end the Bhopal tragedy", The Motley Fool, 27 July 2012, <https://uk.style.yahoo.com/2012-07-27-how-dow-chemical-can-end-the-bhopal-tragedy.html?guccounter=1>; Paul Sonne, "Dow's Olympic goals - chemical giant sponsors games to burnish business, despite a chorus of critics", 8 August 2012, www.wsj.com/articles/SB10000872396390443991704577577370414589082

341 BBC News, "London 2012: How does Dow Chemical gain From Olympics?", 23 January 2012, www.bbc.co.uk/news/uk-16661107

urged the International Olympics Committee to end Dow's sponsorship.³⁴² The London Assembly stated that Dow's sponsorship had "caused damage to the reputation of the London 2012 Olympic and Paralympic Games".³⁴³ The chair of the Commission for a Sustainable London 2012 issued a statement recommending that future sponsorship deals be linked to Olympic values and ethical behaviour, questioning the process that allowed Dow to become an Olympic sponsor.³⁴⁴ While Dow did not lose its 10-year Worldwide Olympic Partner status, the stadium wrap for which it paid £7 million never carried its logo because Dow chose to waive this right.³⁴⁵

In April 2010, Bhopal campaigners managed to disrupt former US politician Al Gore's worldwide "Live Earth Run for Water" event, sponsored by Dow, by orchestrating protests across 15 locations in seven countries. They also caused several sponsors to cancel their planned events after finding out about Live Earth's affiliation with Dow.³⁴⁶ And when, in 2021, Dow's CEO Jim Fitterling bragged about his company's non-discrimination credentials by being on the Advisory Board of an LGBTI organization, survivor organizations exposed the company's hypocrisy on its non-discrimination stance.³⁴⁷ Activist Peter Tatchell followed with a personal letter to Jim Fitterling, welcoming Dow's commitment to "taking action to accelerate change and address racism, inequality, and injustice", but pointing out that "the best place to begin such action is with that which it is within our power to remedy", and calling on the company to "remedy 50 years of racism, inequality and injustice in Bhopal".³⁴⁸

Despite receiving letters from Amnesty International over the years, no Dow official has ever accepted to meet, or hold a personal dialogue with, Amnesty about Bhopal. It has been 40 years since the gas disaster, but survivor organizations have kept the fight for justice for Bhopal alive. They have been successful in ensuring that UCC's and Dow's refusal to take responsibility has negative implications for the two companies. As financial analysts put it after the Olympic sponsorship debacle:

"Dow's failure to take responsibility for Bhopal has hit the company's bottom line well beyond the associated legal costs. The unaddressed liability has hurt its reputation, resulted in protests and media backlash, and even limited its ability to invest overseas."³⁴⁹

If ever Dow thought, when acquiring UCC in 2001, that buying a company so embroiled with large-scale human rights abuses was a safe move, history has proven it wrong.

342 BBC News, "London 2012: India Olympics body in 'drop Dow' bid", 20 December 2011, www.bbc.co.uk/news/uk-16267091

343 Amnesty International UK, "Dow has caused damage to reputation of London 2012 - Amnesty welcomes London Assembly vote", 11 July 2012, <https://www.amnesty.org.uk/press-releases/dow-has-caused-damage-reputation-london-2012-amnesty-welcomes-london-assembly-vote>

344 Commission for a Sustainable London 2012, "Shaun McCarthy clarifies media inaccuracies re stadium wrap procurement", 2 February 2012, www.cslondon.org/2012/02/shaun-mccarthy-clarifies-media-inaccuracies-re-stadium-wrap-procurement/

345 BBC News, "London 2012: Olympic wrap will not feature Dow branding", 19 December 2011, www.bbc.co.uk/news/uk-16250903

346 ICJB, "Bhopal groups subvert Dow-funded Live Earth Run for Water in Delhi", 18 April 2010, www.bhopal.net/press-release-bhopal-groups-subvert-dow-funded-live-earth-run-for-water-in-delhi/

347 ICJB, "On the 37th anniversary of the gas disaster, survivor organizations in Bhopal condemned Dow USA for its systematic discrimination against victims of the ongoing disaster", 2 December 2021, www.bhopal.net/on-the-37th-anniversary-of-the-gas-disaster-survivor-organizations-in-bhopal-condemned-dow-usa-for-its-systematic-discrimination-against-victims-of-the-ongoing-disaster/#more-27458

348 Letter from Peter Tatchell, Director of the Peter Tatchell Foundation, to Jim Fitterling, CEO Dow Inc., 1 December 2021, www.bhopal.net/wp-content/uploads/2021/12/Peter-Tatchell-Letter-To-Dow-CEO-Dec2021.pdf

349 Isaac Pino, Charlie Kannel and Tom Gardner, "How Dow Chemical can end the Bhopal tragedy" (previously cited).

In April 2010, Bhopal campaigners managed to disrupt former US politician Al Gore’s worldwide “Live Earth Run for Water” event, sponsored by Dow, by orchestrating protests across 15 locations in seven countries.

12.3 LEGAL REFORMS IN INDIA

Another legacy of the gas leak is a set of legal reforms that have strengthened environmental protection in India. The Factories Act was amended in 1987 to incorporate new provisions dealing with “hazardous processes”, and two new laws were enacted: the Environmental (Protection) Act 1986 (accompanied by the Environment Protection Rules of 1986, and the Hazardous Wastes Management and Handling Rules of 1989), and the Public Liability Insurance Act 1991.³⁵⁰ Section 7 of the Environmental (Protection) Act prohibits the discharge or emission (or permitting such discharge or emission) of any environmental pollutant in excess of certain prescribed standards. Section 8 regulates the handling of “hazardous substances”. Section 16 deals with offences by, and the responsibility of, companies.³⁵¹ Over the years that followed, the Supreme Court of India developed a number of key environmental principles in line with international standards on the protection of the environment:



- 1. The precautionary principle** – the duty to take precautions to avoid environmental pollution.
- 2. The “polluter pays” principle.**³⁵²
- 3. The principle of restitution** – the polluter must restore the environment to its prior state, and repair the harm done to victims.³⁵³

All this points to the fact that in spite of 40 years of unaccomplished aims, unheeded demands and setbacks, survivors and their local and international supporters have won several battles. Whatever measure of remedy, compensation and accountability has been obtained is the result of their steadfast commitment to bring justice to the people of Bhopal.

³⁵⁰ Surya Deva, *Regulating Corporate Human Rights Violations, Humanizing Business*, 2012, p. 27.

³⁵¹ Section 16 prescribes: “Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.” Furthermore, a person will not be liable if “he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.” The Environment (Protection) Act, 1986.

³⁵² *Indian Council for Enviro Legal Action v. Union of India* (1996) 3 SCC 212, AIR 1996 SC 1446; *Vellore Citizens Forum v. Union of India* (1996) 5 SCC 647, AIR 1996 SC 2715; *S. Jaganath v. Union of India* (1997) 2 SCC 87, AIR 1997 SC 811.

³⁵³ *Bhavani River – Shakti Sugars Ltd* (1998) 6 SCC 335, AIR 1998 SC 2578.

13. CONCLUSION

“Whatever little compensation we have received so far is thanks to the struggle that survivors have waged for years... Neither the central government, the state government or the companies have given us justice.”

-Hazra Bee, Bhopal survivor and activist, Union Carbide Gas Affected Women's Collective.³⁵⁴

Four decades after the gas leak, Bhopal communities 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, and to address the ongoing environmental contamination, continue to impair affected communities' human rights to life, health, an adequate standard of living, a clean, healthy and sustainable environment, education, work, access to information, freedom from discrimination and remedy.

Remedy remains elusive. Legal action in the USA has proven ineffective at bringing any measure of remedy and accountability for survivors, instead reinforcing unequal power dynamics and parent company impunity. Far from holding UCC and Dow accountable, the US government has shielded the companies from accountability, and often lobbied on their behalf.

Apart from sporadic attempts by some Indian officials to bring justice to survivors, the Indian government has for the most part remained subservient to transnational corporate interests, prioritizing foreign investment over the human rights of Bhopal communities. By becoming a party to the various lawsuits, seemingly acting on victims' behalf, the Government of India's own failures have never been fully exposed. The culpability of Indian officials who, by way of action or omission, allowed the gas leak disaster and plant site contamination to occur, has never been properly examined.

While international standards on business and human rights may not have existed, or may have been in their infancy, when the gas leak occurred, they emerged and were strengthened during the first decade of the 21st century. Yet the important corporate accountability developments of the last few decades have somehow not changed the situation in Bhopal. Ultimately, lack of political will, economic and corporate interests outweighing human rights, as well as the apparent apathy and indifference of most people in positions of power, have prevented meaningful action.

This report depicts a very sombre and disheartening picture and Bhopal remains a story of pain, impunity and injustice. But there is also a positive and inspiring side to Bhopal. In spite of everything, the survivors and their supporters have not given up their struggle. Whatever measure of accountability and reparation survivors have been able to access has not been the result of government or corporate action, but of their relentless campaigning. Perhaps greatest among the successes has been the struggle itself, which has kept the tragedy of Bhopal alive in the public and political consciousness for 40 years.

³⁵⁴ Hazra Bee, Bhopal survivor and activist, Amnesty International interview, 30 March 2012.

14. RECOMMENDATIONS

Bhopal is not merely an historical case study. The human rights abuses resulting from the gas leak and site contamination are unresolved and ongoing. It is time for the Indian and US governments, the State Government of Madhya Pradesh, UCC and Dow to live up to their human rights obligations and responsibilities. Others must act too. 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.

In addition, Amnesty International calls on all states and companies to strengthen their respective normative frameworks and practices to ensure effective corporate respect for human rights and guarantee that corporate human rights disasters like Bhopal never happen again.

RECOMMENDATIONS TO DOW AND ITS SUBSIDIARY UCC

- Provide additional compensation to Bhopal survivors, their children and grandchildren, to cover the actual number of deaths and injuries caused by the gas disaster.
- Provide compensation for the adverse health, economic and social impacts caused by the ongoing contamination at the plant site and of the groundwater.
- Contribute an appropriate and fair financial sum towards clean-up works at the contaminated plant site and surrounding areas, and towards the cost of health monitoring and healthcare for the affected population.
- Disclose all information about MIC and the reaction products released on the day of the leak, including their toxicity, long-term impact on people's health, and most appropriate medical treatment.

ADDITIONAL RECOMMENDATIONS TO DOW

- Reassess its responsibility regarding Bhopal through the lens of the UN Guiding Principles and fully disclose all findings.
- Cooperate fully with the Chief Judicial Magistrate's Court (Bhopal) and compel UCC to appear before the criminal court to face pending criminal charges.

ADDITIONAL RECOMMENDATIONS TO UCC

- Cease to abscond from justice and answer charges in the criminal case pending before the CJM.

RECOMMENDATIONS TO THE GOVERNMENT OF INDIA AND STATE GOVERNMENT OF MADHYA PRADESH

In consultation with affected communities:

- Work with survivor organizations to establish a mechanism for the fair, prompt and transparent distribution of all outstanding compensation still held by the government.
- Make up any shortfalls in compensation to all those directly and indirectly affected by the gas leak, including those who were wrongly categorized as suffering from mild and temporary injury, while pursuing efforts to obtain additional compensation from Dow/UCC.
- Invite UNEP or another independent expert body to conduct a comprehensive scientific assessment of the nature, depth and extent of environmental contamination at the plant site and surrounding areas, and provide a detailed remediation plan.
- Act immediately on the remediation plan to remove and dispose of toxic waste safely and effectively.
- Ensure that the CBI continues to press for UCC to appear before the CJM in the pending criminal case.
- Ensure a prompt and effective resolution of the appeal of the June 2010 conviction of the Indian accused.
- Regularly test the water supplies of all Bhopal communities, and urgently provide safe drinking water to communities whose water supplies are found to be contaminated, including communities beyond those closest to the plant site.
- Make sure that drinking water facilities are regularly and adequately maintained so that the water supply is uninterrupted, reliable and safe for all Bhopal communities.
- Significantly strengthen economic rehabilitation and social protection support, including the utilization of gas disaster funds to generate jobs for survivors and their children, income for those who cannot work through social security benefits, and the payment of an adequate and commensurate monthly pension to all women widowed by the disaster, including those who are still awaiting recognition.
- Significantly strengthen health monitoring and ensure high-quality, free healthcare for all people whose health has been affected, or who have been rendered destitute, because of the gas leak and/or groundwater contamination.
- Provide rehabilitation and medical care to all children with congenital disabilities because of gas or contamination affecting their parents or grandparents.
- Ensure that NIREH resumes systematic and ongoing assessments of the long-term health damage caused by exposure to the gas and contaminated groundwater, publishes the results and feeds them into the development of medical treatment protocols.
- Develop standard treatment protocols for the safe and appropriate medical treatment of gas- and contamination-affected people.
- Do not permit any new investments by Dow in India until the company has begun addressing outstanding concerns as listed above.

RECOMMENDATIONS TO THE GOVERNMENT OF THE USA

- Cooperate with the Government of India to ensure that UCC faces criminal charges in the ongoing criminal case in Bhopal.
- Engage in bilateral discussions with the Government of India to support plant site remediation, as well as all other outstanding medical, economic and social needs, and make public the nature, date and content of all communications and meetings.

RECOMMENDATIONS TO UNEP

- Continue to offer assistance to the Government of India for the comprehensive scientific assessment of environmental contamination at the plant site and surrounding areas and provision of a detailed remediation plan.

RECOMMENDATIONS TO THE UN HUMAN RIGHTS COUNCIL

- Draw attention to the ongoing human rights concerns in Bhopal and publicly call for tangible action to address these concerns.
- Support efforts to obtain effective remedy for those affected by the ongoing human rights impacts of the gas leak and plant site contamination.

RECOMMENDATIONS TO UN SPECIAL PROCEDURES

These recommendations are addressed to: the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Special Rapporteur on the human rights to safe drinking water and sanitation; 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 to an adequate standard of living and on the right to non-discrimination in this context; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extreme poverty and human rights; and the Working Group on the issue of human rights and transnational corporations and other business enterprises:

- Issue public statements calling for tangible action to address the ongoing human rights issues in the lead up to the 40th anniversary of the disaster.
- Conduct a visit to Bhopal to investigate the situation of affected communities and lack of adequate redress.
- Support Amnesty International's recommendations to the Government of India, the State Government of Madhya Pradesh, the Government of the USA, Dow and UCC, as outlined above.

RECOMMENDATIONS TO OTHER GOVERNMENTS

ON BHOPAL

- Request explanations from the US and Indian governments about the lack of progress on outstanding matters concerning criminal proceedings, compensation and clean up.
- Raise concerns with Dow and/or UCC, and demand concrete action on outstanding matters, when dealing directly with these companies.
- Do not provide any benefit, contract, award or recognition, or any form of financial, commercial or diplomatic support to Dow and/or UCC until the companies have begun to satisfactorily address outstanding concerns in Bhopal.

IN GENERAL

- Legally require companies to conduct human rights due diligence on their global operations, and report publicly on their due diligence policies and practices in accordance with international standards.
- Establish and/or strengthen effective state-based mechanisms for holding to account all companies involved in human rights abuses, whether domestically or abroad.
- Provide effective and accessible avenues for individuals and communities affected by corporate human rights abuses to claim reparations, in line with their human right to an effective remedy.



The derelict Union Carbide plant sits on a 49-acre site in Bhopal's Old Town... © Judah Passow 2018.

RECOMMENDATIONS TO COMPANIES WITH A BUSINESS RELATIONSHIP TO DOW AND UCC, INCLUDING INVESTORS

- Raise concerns with Dow and UCC, and use or seek to increase leverage (either as a buyer, supplier, financier, business partner or other) as required by the UN Guiding Principles, to demand action on outstanding concerns in Bhopal.
- End any relationship with Dow and UCC if the companies fail to take meaningful action within a reasonable period.

IN GENERAL

- Conduct human rights due diligence in line with international standards to ensure respect for human rights along the entire value chain and across all business activities and operations.
- Publicly report on human rights due diligence policies and procedures, as well as specific risks to, and impacts on, human rights identified, and actions taken to mitigate, prevent and/or remedy them.

RECOMMENDATIONS TO THE UN GLOBAL COMPACT

- Explain the decision-making process that led to the admission of Dow as a member of the UN Global Compact, and the extent to which Bhopal was considered in this decision.
- Require Dow to include Bhopal in its annual Communication on Progress reports, including the company's assessment of its approach to Bhopal under the lens of the UN Guiding Principles.



ANNEX: COMPANY RESPONSES

March 4, 2024

[REDACTED]

Head of Business Rights
Amnesty International
Peter Benenson House,
1 Easton Street,
London, WC1X 0DW,
United Kingdom

Dear [REDACTED]

Thank you for your letter to Union Carbide dated February 20, 2024, regarding Bhopal. The 1984 gas leak in Bhopal was a horrific tragedy that understandably continues to evoke strong emotions, now nearly 40 years later.

I encourage you to visit our website, <http://www.bhopal.com>, and carefully consider the factual information presented there. I hope it will facilitate a more balanced perspective of the Bhopal tragedy and Union Carbide's efforts.

Sincerely,

[REDACTED]

Union Carbide Information Center

From: [REDACTED]
Sent: Monday, March 4, 2024 7:43 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Letter regarding Bhopal

Hi [REDACTED]

I am contacting you in response to your letter to Dow.

The 1984 gas release from a plant in Bhopal, India was a tragedy that none of us will ever forget. It is important to recognize that The Dow Chemical Company (TDCC) never owned or operated the plant; it was owned and operated by Union Carbide India Limited (UCIL). Union Carbide Corporation (which itself was a separate company from UCIL) did not become a subsidiary of TDCC until more than 16 years after the tragedy, and 12 years after the \$470 million Bhopal settlement agreement – paid by Union Carbide Corporation and UCIL – was approved by the Indian Supreme Court. The plant site today is under the control of the Madhya Pradesh state government. For facts about the tragedy, please visit [Bhopal | Issues | Dow Corporate](#).


Thank you,


[REDACTED]
Corporate Communications Advisor
Dow



**AMNESTY INTERNATIONAL
IS A GLOBAL MOVEMENT
FOR HUMAN RIGHTS.
WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

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BHOPAL: 40 YEARS OF INJUSTICE

December 2024 marks 40 years since the Bhopal gas leak disaster, one of the worst industrial catastrophes and corporate negligence cases in living memory. This report provides an update on the situation of Bhopal survivors since 2014, when Amnesty last reported comprehensively on the case. As well as assessing progress and setbacks, this report has three additional objectives. Firstly, to commemorate the thousands of people who died or were seriously and chronically injured as a result of the gas leak and pay tribute to the survivors and their unwavering fight for justice and accountability over the last four decades. Secondly, it seeks to remind the world that Bhopal is not an issue of the past, since remedy and accountability have never been fully achieved, and pollution continues to poison thousands of people. Finally, with this report Amnesty International wishes to join Bhopal survivors and campaigners in their calls for justice and reparations, laying out specific recommendations for the United States-based chemical companies that are involved, as well as the Indian and US governments.

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March 2024

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