

**Mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes**

REFERENCE: OL  
IND 8/2014:

21 November 2014

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes pursuant to Human Rights Council resolution 27/23.

I am pleased to hear the announcement of your Excellency's Government to reconsider the official figures on the number of people affected by the catastrophic leak of toxic gas in Bhopal in 1984, and provide compensation for the many survivors who still have gone unpaid for the past 30 years. While this is a welcome step, I write to bring to your attention that financial compensation alone is not sufficient. An effective remedy must include environmental remediation.

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. While the business enterprises must "respect" human rights, according to principle 25 of the United Nations Guiding Principles on Business and Human Rights ("Guiding Principles"), "as part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure [...] that when such abuses occur within their territory [...] those affected have access to effective remedy."

Financial compensation alone is an ineffective remedy for human rights victims of toxic chemicals, given the ongoing nature of the impacts of toxic and otherwise hazardous chemicals on present and future generations. Where remedy for toxic chemical pollution is required, prevention of harm is an essential component of an "effective remedy" (Principle 25 of Guiding Principles). Indeed, the Guiding Principles comments that "remedy may include the prevention of harm." In order to prevent harm, environmental remediation is essential. Exposure to toxic chemicals, at all stages of life—but particularly during critical pre- and post-natal periods of development by young children—can result in life-long adverse health effects.

High-levels of toxic contamination in Bhopal, caused by operations at the factory while still functioning, including the irresponsible disposal of toxic waste, continues to pose a serious health risk to local communities. For several decades the soil and groundwater at the old factory site remain contaminated despite the fact people live in and around the affected area. In 2013, the Centre for Science and Environment (CSE) analyzed the results of 15 previous studies, finding consensus over the presence of soil contamination linked with the production processes at the plant.<sup>1</sup> Despite some variation, most of the studies analyzed by CSE also found that groundwater was contaminated.

India, as a party to the Convention on the Rights of the Child since 1992, has had for two decades an obligation “to pursue the full realization of the right of the child to the enjoyment of the highest attainable standard of health taking into consideration the dangers and risks of environmental pollution” (Article 24, paragraph 2(c)). Many people who live in the vicinity but who were not exposed to the gas leak have developed health problems similar to those who were exposed, including cancers and reproductive health issues among women and girls. Present and future generations have a right to the highest attainable standard of health, and other rights that are determinants of health, such as the right to safe drinking water, rights which are stipulated in the International Covenant on Economic, Social and Cultural Rights to which your Excellency’s Government has been party to since 1979.

The failure of your Excellency’s Government to prevent harm to present and future victims, and protect the rights of the child, through the environmental remediation of the toxic waste left behind by Union Carbide is a violation of human rights. Without remediation, the number of victims of the toxic legacy left by Union Carbide will continue to grow, and, together, Indian Government’s financial liability to a growing number of victims. For thirty years, new victims of Bhopal are born every day, and suffer life-long from adverse health impacts. It is long overdue that action is taken to stop the ongoing violations.

I respectfully ask that your Excellency’s Government immediately begin a comprehensive environmental remediation program, including safe disposal of toxic wastes, at the old factory site and surrounding areas. In conjunction, I also ask that your Excellency’s Government conduct an official study to monitor any ongoing health impacts of the disaster, and the effectiveness of any remediation undertaken.

Furthermore, I would be grateful for any additional information and/or comment(s) you may have regarding the announcement to reconsider the official figure on the number of people affected by the toxic gas in Bhopal. I would appreciate receiving a response within 60 days.

Additionally, concerns regarding the adverse human rights effects of the Bhopal disaster have been raised in a previous communication sent to your Excellency’s Government on 6 October 2005. I note that no reply has been received from your Government to date.

It is my intention to publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention.

Your Excellency's Government's response to this letter will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Baskut Tuncak  
Special Rapporteur on the implications for human rights of the environmentally sound  
management and disposal of hazardous substances and wastes

---

<sup>i</sup> Centre for Science and Environment, Action Plan: Environmental Remediation in and around UCIL, Bhopal, Expert Roundtable, April 25-26 2013, August 2013.