

**Permanent Peoples' Tribunal  
on Industrial Hazards and Human Rights**

**Fourth and Final Session**

**London, 28 November - 2 December 1994**

**To mark the tenth anniversary of the Bhopal Disaster**

**Findings and Judgment**

Permanent Peoples' Tribunal  
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## **Permanent Peoples' Tribunal on Industrial Hazards and Human Rights**

The Permanent Peoples' Tribunal (PPT) on Industrial Hazards and Human Rights convened in London from 28 November to 2 December 1994 for its fourth and final session. The judges heard expert testimony for three days. The Tribunal was opened by Charles Secrett of Friends of the Earth and by a delegation of victims from Bhopal. The Indictment was presented by Graham Reid, Barrister at Law, and the Defence was presented by Andreas O'Shea, Barrister at Law.

The evidence was heard by six judges:

Professor François Rigaux (Chairman), Professor of Law, Catholic University of Louvain, Belgium, and President of the PPT.

Dr. Rosalie Bertell, President, Institute of Concern for Public Health, Canada

Sulak Sivaraska, Santi Pracha Dhamma Institute, Thailand

Justice Subhan, former Judge, Bangladesh Supreme Court

Tina Wallace, Development Administration Group, University of Birmingham, formerly coordinator of the Gender and Development Unit, Oxfam

Dr. Timothy Weiskel, Director, Harvard Seminar on Environmental Values, USA

Who were assisted by:

Dr. Gianni Tognoni, Epidemiologist at Mario Negri Research Institute, Milan and Secretary General of the PPT.

Joe Verhoeven, Professor of International Law, Catholic University of Louvain, Belgium, was the expert adviser to the judges

The judges pronounced their findings and judgment at a press conference at the House of Commons on 2 December, hosted by Harry Cohen, MP, and John Hendy, QC.

## **1. The question of jurisdiction**

As a self-appointed heir to the International Tribunal on the American War Crimes in Vietnam and the Second Tribunal Russell on Latin America, the Permanent Peoples' Tribunal (PPT) assumes a surrogate function for the lack or inadequacy of international tribunals and the inaccessibility of peoples, individuals and NGO's to such courts which are exclusively empowered to adjudicate upon interstate litigations or under a strictly regulated mandate.

According to its previous practice the PPT adjudicates upon the claims it has deemed admissible on the ground of international law and of the Algiers Universal Declaration of the Rights of Peoples. It does not entertain jurisdiction on cases which should be exclusively submitted to rules of municipal law under the sole jurisdiction of states' courts.

The question can be raised whether industrial hazards fall within the Tribunal's jurisdiction. There are three grounds for an affirmative answer. First, many industrial or environmental hazards have transborder effects, as was illustrated by the Chernobyl disaster by the contamination of transboundary river systems and by marine pollution. Second the protection of workers and of the population which can be affected by an accident raises fundamental questions of human rights: the health and the life of human beings are jeopardised, the effects of some accidents can even threaten the integrity of the unborn and of future generations. Third, the most dangerous industrial plants are managed by transnational corporations whose very nature requires the setting up and enforcement of international standards.

## **2. The Indictment**

The indictment accuses four categories of institution:

- the global economic and political system which enforces rather than reduces the existence of industrial hazards;
- the national and international systems of hazard prevention;
- the national and international systems of post-disaster relief, medical assistance and rehabilitation
- the national and international systems of legal accountability

The alleged facts emphasised the special vulnerability of women, chemical and pesticide hazards and the nuclear industry. The geopolitical range of the evidence produced is very broad. A special case, the mining operations conducted in Bougainville, is particularly relevant for the Tribunal since it combines with the environmental damage a violation of the right to self-determination of the people of Bougainville.

The indictment is based also on the evidence brought by an International Medical Commission composed of 13 independent experts who visited Bhopal in January

1994 to assess the medical conditions of the survivors and to evaluate the present health care system.

The deficiencies at the four levels distinguished above are emphasised in the indictment and will be addressed in more detail in the relevant parts of this judgment.

### **3. The Defence**

The defence appointed by the Tribunal dealt with the four accusations brought against systems and institutions. It did not take a stand on any particular case.

As for the international economic and political system, it does cope as adequately as it can with the problems involved in the aid to development. The World Bank recognised some mismanagement in these matters, and has lent support to more environmentally friendly loans. Several Conventions have been framed which should ameliorate the conditions of workers and the protection against disasters to the environment. The defence dismissed as unworkable any attempt to broaden the access to the International Court of Justice.

National laws are at variance concerning the accountability for industrial hazards: but since industrial activity is by itself useful to society at large a balance has to be struck between the legitimate interests of enterprises which by and large concur with the general interest and the compensation due to injured workers. The interpretation given to the right to life and to health in the international instruments on human rights is too broad if it encompasses the loss of life even when minimal negligence is not established.

Strong reservations were registered against extending the principle of the 'right to know' advocated by several witnesses. The international conventions relating to nuclear accident and on civil liability for damages resulting from activities dangerous to the environment can be deemed appropriate answers to the actual risks, since such a principle would violate equally important principles of confidentiality and intellectual property protection.

The direct application of international law to multinational corporations has to be avoided: it would give them the status of international law subjects and consequently strengthening their position instead of curbing it. The critics addressed to the *forum non conveniens* doctrine and its application in the Bhopal case have also to be dismissed: the self-restraint of the American judiciary did respect Indian sovereignty in a case where India was by far the most interested country. Articles 5,6,8 and 11 of the Algiers Declaration emphasise the sovereignty of Southern States and encourage them to resist such encroachments upon their right to self-determination as they were proposed by several witnesses.

### **4. Proceedings and Evidence**

#### ***4.1 Conventions cited:***

Charter of the United Nations, 1945

Universal Declaration of Human Rights, 1948

International Covenant on Civil and Political Rights 1966  
International Covenant on Economic, Social and Cultural Rights, 1966  
Universal Declaration of the Rights of Peoples, Algiers, 1976.  
ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries, 1989

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African Charter on Human and People's Rights 1981  
American Convention on Human Rights 1969  
Asbestos Convention, 1986 (of the ILO)  
Bamako Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1991  
Barcelona Convention for the Protection of the Mediterranean Sea against Pollution and its Related Protocols, October 1989  
Basel Convention on the control of the Transboundary Movements of Hazardous Waste, 1992  
Bergen Ministerial Declaration on Sustainable Development in the ECE Region, Norway, 16 May 1990  
Convention 155 and Recommendation 164 Concerning Occupational Safety and Health and the Working Environment, ILO.  
Convention 170 on Safety in the Use of Chemicals at Work, 1990, ILO.  
Convention 174 Concerning the Prevention of Major Industrial Accidents, and its Recommendation 181 Concerning the Prevention of Major Industrial Accidents, 1993, ILO.  
Convention Concerning Safety in the Use of Chemicals at Work, 1990, ILO.  
Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, 1993, Council of Europe.  
Convention on Environmental Impact Assessment in a Transboundary Context, 1991, UN-ECE.  
Convention on the Elimination of All Forms of Discrimination Against Women International Convention on the Elimination of all Forms of Racial Discrimination Stockholm Declaration of the UN Conference on the Human Environment, 1972  
Convention on Occupational Health Services, 1985, ILO.  
Convention on the Transboundary Effects of Industrial Accidents, 1992, UN-ECE.  
Council of the European Communities Decision concerning chlorofluorocarbons in the environment (80/372/EEC), 26 March 1990  
Council of the European Communities Decision concerning the conclusion of the Vienna Convention for the protection of the ozone layer and the Montreal Protocol on substances that deplete the ozone layer, 14 October 1988.  
Declaration of Alma-Ata, in the Report of the International Conference on Primary Health (a)7ug10(n94 O)6.96 a











exchange necessary to service the outstanding foreign debt. As a result these countries have witnessed a debt-generated pattern of 'resource drawdown' and environmental decline, involving rapacious mining practices, massive timber exploitation and wholesale conversion of arable land out of food production and into export-oriented commodity production.

While economies in the South have experienced these patterns of resource extraction and environmental decline, the economies in Northern countries have also been transformed over the last few decades. Unprecedented large waves of mergers took place among the TNCs in the United States and the United Kingdom in the 1980s due in part to government policies of wholesale deregulation. Thus, by 1989 of the 100 largest economies in the world 47 were corporations, not countries.

"Six hundred TNCs have sales which exceed \$1.0 billion a year, creating one fifth of the total industrial and agricultural production in the world's market economies...

Thus, within the global economy as a whole and within the advanced national economies in particular, very large corporations are now the major economic actors." (Pearce & Tombs, p. 3)

The conjuncture of economic transformations in both the South and the northern countries has created a markedly new global terrain for the activities of TNCs. Structural adjustment programs imposed on many southern debtor countries have required the specific roll back of state power and provided for an equally explicit expansion of private companies, including TNCs. For countries of the South, grappling with debt payments, the need to earn foreign exchange has become paramount, leading them to invite in often hazardous industry and foreign investment in order to generate the needed money. The unequal power relations between often poor or even bankrupt debtor governments and TNCs allow the latter to dictate the terms of their investment—terms which often include no unions, tax incentives, low wages and few or no environmental controls. This is particularly disturbing in relation to the chemical industry.

SAPs also promote increased agricultural production as a way of generating export earnings—a strategy unlikely to succeed given the drastic fall in the prices of primary commodities over the past 15 years. the relative powerlessness of millions of fragmented producers in the South and the concentrated power of buyers in the North—where prices are set. Two companies, for example, have come to dominate the entire global coffee buying market.

To increase agricultural production requires the use of new high yielding seeds, fertilisers, pesticides and machinery—all of which need to be imported or produced nationally. Southern countries lack the capital and technology, and so they have to rely on TNCs to supply them with either the products or the industrial plant to manufacture these products. This has greatly expanded the markets for northern manufactures and in particular, farm machinery, pesticides, herbicides, etc.

"Even some of the most controversial and damaging sections of the industry such as acutely hazardous pesticides... have proliferated. In part they [TNCs] have done this by shifting production to the South. Industry analysts predict this will continue" (Greenpeace, p. 4).

Evidence presented to the Tribunal made it clear that under the terms of the newly completed Uruguay Round of the General Agreement on Tariffs (GATT) and the outlined provisions for the World Trade Organisation (WTO) the rules governing world trade have greatly increased corporate rights without specifying any corresponding responsibilities or limitations on irresponsible corporate behaviour. While the GATT accord represents an agreement among nation-states, it is clear that in countries like the United States and the United Kingdom TNCs lent the full weight of their resources and influence to make sure that its terms were negotiated in their favour and that the respective elected representatives would duly endorse it. In return the TNCs received an agreement crafted to increase their freedom and enforce their rights to expand on a global scale. Numerous witnesses before the Tribunal detailed the implications of the newly emergent 'globalisation' strategies of TNCs with their capacity to move capital and shift production from region to region in a global labour market.

"GATT forces deregulation of commerce, and through deregulation it weakens the instruments and institutions of both the state and civil society in protecting the environment and preventing disasters like Bhopal....By removing national barriers and weakening national sovereignty in the domain of investment and economic policy, GATT creates the conditions for the export of hazards to poorer countries with weaker laws." (Shiva, p. 3).

It was made clear in repeated testimony that nation-state governments frequently worked to protect the interests of TNCs. In the case of Bougainville, for example, the Tribunal heard evidence elaborating how local populations rose up against the disruption and environmental destruction caused by a subsidiary of RTZ. This eventually led to a full-scale war between Bougainville and Papua New Guinea (PNG), fuelled, furnished and financed by the Australian government.

"PNG government must protect Australian investments and be seen to protect those investments. The Australian Government offered aid funds to assist with the formation of Rapid Deployment Police force to counter any more actions directed at foreign mining operations." (Gillespie)

Current economic trends in the majority of countries in the South of cutting back state services such as education, health provision, infrastructure development under the strictures of IMF structural adjustments policies, and the promotion of private enterprise in both the formal and informal sectors have hit women especially hard, exacerbating in many cases their already vulnerable and subservient position.

The reduction in the role of the state as a major employer and as a promoter of key services has seen women previously employed as nurses, teachers, civil servants pushed out of government employment. Moreover, women have effectively been required to 'make up' for declining services by promoting health care for their families, walking further for water, providing key social services to those around them.

In many countries of South East Asia and parts of Latin America especially women's key employment opportunities in the formal sector now lie in private sector employment, particularly in the multinational sector. They are frequently concentrated in industries which are dangerous, using highly toxic chemicals and gases. So called 'clean' industries such as micro-electronics are in fact hazardous and

polluting. The health effects on women of the processes and chemicals used in the micro electronic (and other) industries have not been researched: "the industry has avoided investigating its known high rate of occupational injury and illness" (Reardon, p. 7). Little research has been done anywhere in the world on the specific impact of different industrial processes on women's health, including their reproductive health: "scientists involved in occupational health research have concentrated on men's jobs, bodies, and lifestyles." (Messing, p. 2).

Women's work in these industries is defined as 'unskilled' allowing them to be paid low wages: "almost everywhere it is socially acceptable to pay women less than men" (Reardon, p. 3). Many of the skills required for the jobs—eg. patience, manual dexterity, intense concentration, high precision—are defined as 'natural feminine attributes' rather than learned or perfected skills.

Production in electronics is highly mobile and can be easily relocated so TNCs in these industries focus on areas where unions are banned, tax incentives are good and labour costs are lowest. Work in these industries is often heavy, demanding and takes a high toll in women's health, leading to a high turnover of labour. Medical problems include back and eye injuries, negative effects on reproductive health and stress caused by repetitive work, over-crowding, lack of privacy, intense periods of work and lack of freedom of movement. Women are often ejected from the workplace in poor physical condition, having worked for months or years for very little economic return.

Moreover, it is increasingly the case that women's work is being moved out of the factories into people's homes, that is, into the 'informal sector.' This sector is being vigorously promoted by the World Bank and other agencies as the new engine for economic growth, and women are concentrated throughout the South in this informal sector. This sector remains largely unregulated, exposing both women and children—who are increasingly also employed in the informal sector—to unacceptable hazards. "Sewing, packing, and electronics assembly are all done at home now. In addition to long working hours, women and their families live in the midst of dust and toxic substances" (Reardon, p. 15).

"Children of young people make up a large and growing percentage of the workforce. Millions of children, some as young as 5 years old, spend their time in economically productive activities that deprive them of formal education, good physical health and psycho-social well-being" (Barten, Health Action, p. 5)

Women work long hours in this sector, whether at home or away, often putting in 9-12 hours. On top of this work they also have to undertake all the household chores, even when they are pregnant, which adds several more hours to their working day. They consistently earn less than men performing similar jobs.

The informal sector lacks any regulation or organised health services, and the health needs of the majority—the women and children working in this sector—are uncounted and unrecognised. Yet often they are working with dangerous or polluting substances—e.g. lead in battery works, glue in shoe assembly, solvents in furniture painting—which will have both a negative impact on their own health and that of all residents in the vicinity.

As poverty grows, the poverty of women grows even faster. They are now the majority among the poorest around the world, often entirely responsible for their households. In order to survive they are forced to take jobs in low paid formal employment or eke out a living in the informal sector, combined with a growing domestic role and increasingly deprived of government services under SAPs.

The overwhelming focus now is on market and money-centred development. The defence council in the Tribunal argued that around the world "everyone wants economic growth." Economic growth is seen as a route to ensure that people have access to food and other essentials. The generation of wealth through the expansion of the market is seen as the way to address environmental problems; the money generated can be used to clean up environmental problems.

However, there are other perspectives, and it was argued that other goals for development exist. The reasons for this are several: first, a growth dominated strategy does not meet the needs of all or even the majority of existing populations. As one witness phrased it: "Inequality, exploitation and exclusion are the other face of the process of income wealth and power creation" (Arruda, p. 3). Second, the current market system does not generate goods in a way which is accessible to many people. So while it was argued that the 'green revolution' increased food production, it is clear that access to the product was unequal and malnutrition could rise at the same time as food production increased because those who grow food did not control its distribution.

Third, the 'hidden' costs of pursuing market-driven growth strategies were elaborated in many papers presented in evidence to the Tribunal, including several which highlighted the misery, degradation and pollution of the fast growing urban centres in the South. For example, in Buenos Aires 15,000 industries were discharging waste into the rivers with little or no government control (CEDCA); in Nicaragua the problem of lead poisoning among the poor in Managua was emphasised; in Bhopal, the largest 'civilian' disaster in history attacked the poorest sections of the urban population.

Evidence of alternative visions of the development process was presented at the Tribunal --alternatives which focused on issues of sustainability, citizen and community participation and distributional equity.

"The long term goal is to reintegrate the economy in the overall socio-economic system; to convert it from an end in itself into a means of generating material well-being of each and all citizens and to support their human fulfilment." (Arruda, p. 11)

It was made clear to the Tribunal that development is not the same thing as economic growth. Rather, it was argued, development needs to be a comprehensive economic, social, cultural and political process. To achieve this requires a return to taking account of the needs of the local economy and ecology as well as the local society and culture. Further, it was argued that such a strategy must be fully participatory, requiring a strong democratic state which sees education, research and technological development as national priorities.

Evidence presented to the Tribunal suggested that the current national and international pre-occupation with expanding trade under the new GATT accord was dangerously misdirected since it substitutes a fascination with abstract, macro-

economic measures of welfare for a more empirically-grounded concern for the lives and environments of peasant populations and the urban poor. As Vandana Shiva put it: "The alternative to GATT is a deeper focus on local and national economics. The strengthening of local economies everywhere, and with it the rebuilding of the local community and policy is the strongest defense against industrial and environmental hazards." (Shiva, p. 6).

In short, the information offered in evidence before the Tribunal made it clear that the normal and continuous operation of current international structures of production, trade, and finance have led in the last several decades to a measurable decline in living standards, health and welfare of the vast majority of the world's population. This has led some observers to suggest that the current global economy generates ongoing violence.

"The problem is that there are several kinds of violence. The clearest is direct violence ... not only the thought of murder, but also carrying it out and the resulting death....

"There is also structural violence, violence which kills slowly and is built into a social structure....[T]here is no thought of murder. Death, however, is the end result. But the result of what? Death does not result from direct violence but from a desperately unjust social structure that gives too much to the few and too little to the many...." (S. Sivaraksa, *A Buddhist Vision for Renewing Society*, p. 286)

Thus, in the course of the voluminous evidence presented to the Tribunal it became apparent that acute industrial accidents and more pervasive industrial pollution in the South demonstrate a pattern of corporate, governmental and international negligence, irresponsibility and indifference toward basic human rights.

## **7. The Liabilities**

Three points must be distinguished when deciding the (legal) responsibility related with industrial hazards:

- who is responsible
- under what law
- on what grounds

### **7.1 Who is responsible**

From the aforementioned findings, it clearly results that several persons and/or legal entities must bear total or partial responsibility for the industrial hazards and their catastrophic consequences.

#### *7.1.1 Economic Actors*

Responsibility primarily rests on the economic actor whose activities caused the damaging event. Usually this actor is a private one and has adopted the form of a corporation. Consequently, the rules governing of corporate responsibility must normally be applied, that does not necessarily exclude personal responsibility of either those controlling the corporation or acting in its interest or on its behalf.

It is now common knowledge that TNC's play a dominant role in world economy, multiplying investments in low wage (developing) countries in order to increase, sometimes enormously, their profit. It is not consequently surprising that many, if not most, of the industrial hazards are attributable to legal persons whose financial assets and managing personnel are totally controlled, from abroad, by TNCs. In accordance with the international practice providing for the piercing of the corporate veil, when it results in abusive consequences, the TNCs must in such a case assume responsibility for the acts of their subsidiaries which were ordered by the TNCs or which constitute the implementing measures of TNCs decisions and policies.

### *7.1.2 States*

Independently from private economic actors, states must assume responsibility in most industrial hazards.

This is quite obvious in cases where the disaster was caused by a state owned enterprise and need not be further detailed.

Apart from that, the State primarily concerned with an industrial hazard is surely the one on the territory of which the relevant plants, equipment or other facilities are located. Its responsibility is mainly to be questioned when

- it has delivered the necessary permissions or licences without due consideration to the conditions that should have been imposed in order to secure the health and security of the people and the safeguard of the environment;
- it has not carefully watched over the due compliance with the conditions listed in those permissions by their beneficiaries;
- it has failed to adopt the various measures that were required after the damaging event did occur, among others to assist its victims or to punish those responsible.

Finally, responsibility could also rest on the home state of the legal person in charge of the industrial undertaking, at least when such a state is different from the host state referred to above. The former state includes the home state of the parent company whose subsidiary is established in a third country. Such home state must bear responsibility when it has either incited companies to investments or other activities without due consideration to all relevant risks or failed to exert reasonable control on those activities. Such a responsibility should be presumed when the state officially exempts companies from complying abroad with rules or requirements that are nationally imposed, something that can only be justified when the latter contradicts provisions territorially in force at the seat of the subsidiary or at the location of the plant.

### *7.1.3 Private Third Parties*

Apart from any public authority, attention must also be paid, in either the home or host state, to the conduct of private third parties, bearing originally no specific responsibility in the industrial hazard.

*Inter alia*, the Bhopal case has clearly showed in this respect that professional groups such as lawyers—or at least many of them—are naturally inclined towards looking at industrial hazards as a mere source of benefit, without serious concern with the sufferings of the people or the damages to the environment. This is totally unacceptable. The Tribunal notes also the failure of the medical profession on both national and international levels to ensure the proper, professional and equitable long term treatment of survivors of industrial, technological and military disasters. While immediate medical response is good, and often heroic, response to long term disability is clearly inadequate. It notes in particular in Bhopal, the failure to provide patients with their medical and pharmaceutical records, lack of continuity of care, failure to undertake tests of drugs being administered, probable iatrogenic damage to survivors and accusations that health reports were bought. It holds medical professionals responsible for seeing that survivors are not re-victimised in the post-trauma context through improper or inadequate medical care or through unreasonable requirements of documentary proof of injury. Medical and legal professionals should not falsify or sell documentation for victims' miseries.

Trade unions play a fundamental role in defending and representing the rights of workers. However it is unacceptable when, in contradiction to this basic purposes, the become accomplices of the abuses committed by the economic actors or the public authorities. The legitimate wish of fighting unemployment, in particular, does not offer a valid ground for accepting violations of health and safety standards or for fighting for adequation compensation after a hazardous event causing death, injury or damage to the environment.

#### *7.1.4 International Organisations*

Even if they normally have no direct industrial involvement, international organisations should not be totally exempt from accountability for industrial hazards. The reason for that is that they are constituent parts of an economic and political system where the obsessional pursuit of profits generates intolerable risks in the conduct of industrial activities. International organisations should indeed assume direct responsibility when:

- they induce states or enterprises to alleviate requirements intended to safeguard the security of the people and the integrity of the environment;
- they endorse plans or projects whose risks, and corresponding counter measures, have not been duly estimated;
- they suggest policies (such as the SAPs referred to above) that could have in the long term disastrous consequences for the environment.

This is true for both global and regional organisations. No doubt, official duties rest in this respect on the UNIDO and on the World Bank group, or other inter-governmental organisations called to finance or otherwise support industrial initiatives throughout the world.

## **7.2 Under what law**

A distinction has to be made between civil and criminal issues when deciding on the law governing the responsibility for industrial hazards.

### 7.2.1 Civil liability

The law governing civil liability for hazardous activities has to be determined in accordance with the generally accepted choice of law rules.

It is a fact that, for the time being, this governing law will generally be the law in force at the place where the damage was either caused or suffered (*ex loci delicti commissi*), as interpreted by the court before which the claim is brought. Apart from any difficulty in litigating before national courts, experience has proved that this can result in unsatisfactory compensation. Proposals are consequently made below in order to facilitate the compensation due to the victims, both substantively and procedurally.

Before these proposals are effectively implemented, some important points are still to be emphasised:

- principles generally accepted in international practice, as expressed for instance in numerous multilateral treaties, cannot be disregarded by national authorities in deciding on liability issues. International law generally prevailing over state law, national provisions should not be applied as long as they contradict internationally accepted standards and techniques of compensation. It goes without saying that national provisions must be preferred when they are more favourable to the victims;
- due consideration is to be paid to the basic rights of human beings, and especially to the right to life, to health and to a safe and healthy working environment, in assessing the legality of the conduct that generated the damage. These basic rights impose corresponding duties of paramount importance not only on states but also on any other (private) person within the jurisdiction of a state;
- it is a part of human rights that the victims of the violation of any of these rights must be provided with effective remedies intended to redress such illegality. Due compensation for the prejudice caused is part of these effective remedies;
- it is understandable that the criteria governing the amount of the compensation be not absolutely uniform. It would be inconsistent with the basic equality between human beings that this amount varies totally from one country to another, as a result of purely economic considerations. In case of doubt, the standards most favourable to the victims are to be preferred.

Each of those responsible for the industrial hazards that have been previously identified must bear an equitable part of the compensation due. The victims should have the right to obtain full compensation from the economic actor to which the damaging event is immediately attributable. If this one is unable for whatever reason to satisfy them, the victims should be entitled to get full compensation from either the host or the home states concerned. Adequate measures should be adopted internationally in case the resort to states proves to be ineffective. One possibility could be to set up an international compensation fund.

### 7.2.2 Criminal liability

In the absence of internationally agreed provisions, it is for each state to decide on the indictment and corresponding penalties related to industrial hazards.

It must however be emphasised that each state has the duty to punish those whose reckless or negligent conducts have resulted in immense sufferings and catastrophic consequences. Appropriate legislation must be enacted in case the existing law does not organise such a punishment.

In case it decides not to prosecute those responsible for industrial hazards, the state must give effect to requests for extradition that are introduced by other states, as long as the requirements of a fair trial appear to be satisfied.

Needless to say, the fact that a corporate entity is at stake does not exclude either its officers or itself be held criminally responsible and adequately punished. Foreign states have to concur in such a punishment when the former or the latter try abusively to elude it.

### **7.3 On what grounds**

Civil liability is currently ascertained in accordance with the rules generally prevailing in law. It normally supposes that

- a fault be established on the part of the perpetrator of the damaging event
- a damage be established as regards its victim
- some causal link be established between the damage of the latter and the fault of the former.

It is specific to hazardous activities that a fault is often difficult to demonstrate in case of injuries. Contemporary practice as sanctioned in numerous statutes, treaties or judicial awards, accepts that a strict liability be in such a case imposed on the industrial operator, that makes him responsible for any injury that has been caused, irrespective of any violation of legal rules. This is simply the price to pay for making profit in developing activities whose harmful consequences are potentially enormous.

The only remaining problem is consequently to ascertain to what extent the alleged injury has been caused by the conduct, be it lawful or not. This difficult causation has given rise to numerous controversies about direct or indirect damage. It is not for the Tribunal to decide such an issue. In accordance with contemporary practice, any harmful consequence linked with the damaging event must be compensated as long as it is not established that its only cause lies in a totally different factor.

As far as criminal law is concerned, it is for each state to decide on what conditions the person responsible for industrial hazards might be held criminally liable, on the basis of either general or specific incriminations. Obviously no difficulty exists in this respect as regards the punishment of those who have wilfully caused, either by acting or non-acting, catastrophic injuries. This, however should not be the only case of criminal responsibility. Violation of the (general) duty of care is sufficient indeed to punish those whose negligent conduct is at the origin of such injuries, no matter in principle what part it effectively played in their occurrence.

In accordance with general principles, extenuating circumstances or justificatory causes, if any, may be admitted. If need be, it must be pointed out in this regard that compliance with the order of a superior does not offer such a valid justification.



## **Judgment**

Confirming the application of the procedural principles and rules of accountability which have been made by the Tribunal on the special case of the Bhopal disaster in the judgment concluding its third Session on Industrial Hazards and Human Rights; stating that no change has occurred, specifically as to the criteria for the allocation and payment of compensation; and inviting the competent authorities to pursue without any further delay the proceedings related to the extradition of the former chairman of Union Carbide, Warren Anderson (in execution of an order of the Indian Court),

## **The Tribunal**

### **affirms that:**

- development must be sustainable, participatory and concerned with equity. It is an economic, social, cultural and political process, and the current dominance of economic values should not be allowed to justify the infringement of fundamental human rights;
- enterprises have a duty to take all necessary measures to ensure that the life and health of workers and of all persons living within the range of an industrial plant are not jeopardised by accidents which are foreseeable by a reasonable person;
- States, public bodies and agencies are accountable for the life, health and well-being of the whole people of the State and are under an obligation to control all industrial activities within their territory; they must prevent their corporations from running businesses abroad which entail risks to human life, health and well-being which would not be permissible under their own domestic law;
- national and international organisations should subject transnational corporations to binding rules of conduct, especially in the field of industrial hazards;
- following the experience of widely-publicised disasters, more restrictive legislation has been adopted in some countries of the North, but this should not encourage the movement of industrial hazards to the less protected countries of the South.

### **makes an appeal to**

- labour unions for their active participation to achieve safer working conditions;

- NGO's for the building up of an international action affirming that the prevention of industrial hazards and the compensation of the incurred damages are an essential tenet of human rights;
- the scientific community for the pursuing of independent research in the matter of industrial hazards and their consequences on human beings and the environment giving particular attention to the most vulnerable and least researched ones—women and children;
- lawyers for the development of a legal practice which would contribute to a prompt and adequate compensation of injuries inflicted through industrial hazards;
- the medical profession to consider for its scientific and ethical priorities the development of a community-oriented approach, when called to assess the risks and the consequences of industrial hazards;
- the international community to establish an 'international compensation fund' in order to facilitate the compensation of the victims of industrial hazards;

**recommends that**

- communities exposed to or affected by the consequences of industrial hazards should have access to international commissions independent of the government and industry to provide professional information and advice. In such commissions the competences requested to respect the rights of women and children should be specifically represented. The existing International Medical Commission should be recognised on a permanent basis to assist the victims of industrial, technological and military disasters subsequent to the emergency period;
- the Charter of Health, Safety and Environmental Rights of Workers and Communities, which has been submitted to its attention by a broad group of NGOs, witnesses and experts, and which is proposed as an annex to this verdict, be circulated to all interested parties and actors:
  - to receive comments and contributions within the next six months
  - to be adopted as an operational platform for the defence and promotion of the respect of human rights.

## Annex 1

### Expert witnesses

- Anderson, Michael. Lecturer of International Law, School of Oriental and African Studies,
- BARTEN, Françoise. Nijmegen Institute for International Health, Netherlands.
- BAXI, Upendra. Former Vice Chancellor of Delhi University, currently visiting Professor of Law at the Washington College of Law.
- BERGMAN, David, PPT Industrial Hazards and Human Rights secretariat, UK. David Bergman is a researcher and journalist focusing on the issue of corporate criminal accountability and industrial hazards.
- BARRATT-BROWN, Michael. Twin Trading. Michael Barratt-Brown lectured for many years at the extra-mural department of Sheffield University and has written extensively on the political economy of trade and development.
- Cameron, James, Barrister-at-Law, and Foundation for International Law and Development, UK.
- DAY, Martin, Solicitor, Leigh Day & Co.,
- FeDoryNchyk, Serhiy. Green World, Ukrainian Environmental Group, Ukraine
- FLETCHER, Dr. Tony, Senior Lecturer in the Environmental Epidemiology Unit, London School of Hygiene and Tropical Medicine, UK.
- FOCZE, Lajos, President, Federation of the Chemical Workers Union, Hungary.
- Fulbrook, Julian, LLM, PhD, Law Lecturer, London School of Economics and Political Science and Barrister-at-Law.
- GERRARD, Simon, University of East Anglia, UK.
- GRAY, Philip, Jülich Research Centre, Germany
- Green, Reg, Occupational Health, Safety and Environment Officer, International Federation of Chemical, Energy and General Workers Unions (ICEF), Brussels.
- Hager, Robert, Public Interest Lawyer, USA. Dr.
- Hay, Dr. Alistair, Reader in Chemical Pathology, Department of Pathological Sciences, School of Medicine, University of Leeds, UK
- HEINZOW, Dr. Birger, Toxicologist, Institute of Environmental Toxicology in Kiel, Germany, and Member of International Medical Commission on Bhopal.
- JAYAPRAKASH, N.D., Bhopal victim tour.
- JEWELL, Topsy, Greenpeace International Toxic Trade Project.
- KÖHLER-SCHNURA, Axel, Coordination against Bayer dangers
- KRUT, Riva, Benchmark Environmental Consulting, USA.
- KUMAR, Radha, India, former Director of the Helsinki Citizens Assembly and currently a MacArthur fellow.
- Lambert, Barrie, BSc, MSc, PhD., Dept of Radiation biology, Barts Hospital, UK.
- MAYO, Ed, New Economics Foundation (NEF), UK.
- MEHTA, Pradeep. Consumer Unity & Trust Society (CUTS)/member organisation of IOCU, India.
- Morehouse, Ward, is the director of the International Council on International and Public Affairs and the International Coalition for Justice in Bhopal, USA.
- Muchlinski, Peter, Law Lecturer, Law Department, London School of Economics, UK.
- Napier, Michael, Association of Personal Injury Lawyers, UK.
- ORUM, Paul, CO-ordinator, Working Group on Community Right to Know, USA.
- REARDON, Geraldine, freelance researcher, writer and editor on gender, work and the environment and founder member of Women Working Worldwide.
- SEE, Bernice, Secretary-general, Innabuyog, GABRIELA, Cordilera and Cordillera Womens' Education and Resource Centre, Philippines.
- TOGNONI, Dr. Gianni, Secretary, Permanent Peoples' Tribunal, Italy.
- WILLIAMS, Dr. Christopher, Global Security Programme, Cambridge University, UK.
- TOMBS, Steven, Reader in Sociology, Liverpool Business School, UK.

### WRITTEN EVIDENCE

- ARRUDA, Marcus, International Council of Voluntary Agencies, Brazil
- BEGUM, Rehana, Bhopal victim/Bhopal victim tour
- Dias, Clarence, International Center for Law and Development, USA.
- DINHAM, Barbara, The Pesticides Trust, UK
- FUSTUKIAN, Suzanne, Co-Director, Appropriate Health Resources and Technologies Group (AHRTAG), UK.
- FUNDEPUBLICO, a public interest NGO in Colombia.
- Gilbert, Geoff, Dept of Law, University of Essex, UK
- GILLESPIE, Rosemarie, Human Rights Lawyer, Australia
- GLECKMAN, Harris, Benchmark Environmental Consulting, USA, formerly of the UN Centre on Transnational Corporations. (Paper written jointly with Riva Krut, who presented it)
- JOHNSTON, Dr. Paul, Earth Resources Centre, UK.
- KUELEKAHA John, Journalists' Environmental Association of Tanzania
- MACKENZIE, Ruth, Foundation for International Law and Development, UK
- MEERAN, Richard, Leigh Day & Co., Solicitors, UK.
- MESSING, Dr. Karen, Professor of Biological Sciences at the University of Québec and Director of the Centre of Biological Interactions between Health and Environment.
- PALOS, Claudio, CEDEA, Argentina
- PEARCE, Frank, Sociology Dept, University of Toronto, Canada.
- SALIE, Faiza, Industrial Health Unit, University of Natal, South Africa
- Sarangi, Satinath, Bhopal Group for Information and Action, India.

Shiva, Vandana, Prominent Indian Civil Rights Activist, India  
SIEMINSKI, Marek, President, The Ecology and Health Foundation, Poland  
SKINNER, Ruth, Earth Resources Centre, UK (paper written jointly with Dr. Paul Johnston)  
SLAPPER, Gary, Law lecturer, University of Staffordshire, UK  
YOICHI, Tani, Solidarity Network Asia and Minamata, Japan.

**Institutional evidence submitted:**

International Chamber of Commerce, UK  
International Labour Organisation, Switzerland  
UN Environment Programme/Department of Humanitarian Affairs, Switzerland

**RAPORTEURS**

DINHAM, Barbara, The Pesticides Trust, UK.  
FAULKNER, Stephen, Commonwealth TUC, UK  
GRAY, Philip, Jülich Research Centre, Germany  
JAI SINGH, Indira, Advocate of Law, India  
WILLIAMS, Dr. Christopher, Global Security