



## PERMANENT PEOPLES' TRIBUNAL

### **INDUSTRIAL HAZARDS AND HUMAN RIGHTS**

Second session, London, 28 November - 2 December 1994

#### **Members of the Tribunal**

FRANÇOIS RIGAUX (Belgium), President  
ROSALIE BERTELL (Canada)  
SULAK SIVARASKA (Thailand)  
JUSTKE K. M. SUBHAN (Bangladesh)  
TINA WALLACE (United Kingdom)  
TIMOTHY WEISKEL (USA)

#### **Procedure**

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 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.

#### **Competence of the Tribunal**

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.

*Firstly*, 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.

*Secondly*, 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.

*Thirdly*, the most dangerous industrial plants are managed by transnational corporations whose very nature requires the setting up and enforcement of international standards.

## **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 risks and the nuclear industry. The geopolitical range of the evidence produced is very broad. A particular case, the mining operations conducted in Bougainville, is especially relevant for the Tribunal since it combines the environmental damage with a violation of the right to self-determination of the people of Bougainville.

The indictment is also based 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.

## **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 environmentally conscious loans. Several Conventions have been framed which should ameliorate the conditions of workers and the protection against disasters to environment.

The defence dismissed any attempt to broaden the access to the International Court of Justice.

National laws are varied in their approach concerning the accountability for industrial hazards; 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 compensations due to injured workers.

The interpretation given to the right to life and to health in the international documents on human rights is too broad if it encompasses the loss of life even when minimal negligence is established.

Strong reservations were registered against extending the principle of the “right to know”, a principle advocated by several witnesses. The international conventions relating to nuclear accidents and civil responsibility for damages resulting from acts which endanger the environment, can be deemed to be appropriate answers for the actual risks, since 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 would consequently strengthen their position instead of curbing it.

The criticisms addressed to the *forum non conveniens* doctrine and its application to the Bhopal case also has to be dismissed: the self-restraint of the American judiciary respected 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 was proposed by several witnesses.

## **Proceedings and Evidence**

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

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 Care, Alma-Ata, USSR, 6-12 September 1978, WHO Health for All Series No. 1, Geneva 1978, ISDN 92 4 154135 0

Draft Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental freedoms (UN Doc.E/CN.4/1992/53).

Environmental Bill of Rights of the Government of Canada, February 1994

European Charter on Environment and Health, 1989, WHO.

European Convention on Human Rights, 1950

Final Ministerial Declaration, Second World Climate Conference, Geneva, 7 November 1990.

Inter-Governmental Forum on Chemical Safety established April 1994.

International Code of Conduct on the Distribution and Use of Pesticides 1985, amended 1989 to incorporate the Prior Informed Consent (PIC) principle, currently being drafted into a legally binding instrument

London Guidelines on Exchange of Information on Chemicals in International Trade 1987 amended 1989 to incorporate the PIC principle (as above).

Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 16 September 1987, amended 29 June 1990.

Paris Commission (PARCOM), recommendation 89/1, 22 June 1989

Rio Declaration of the United Nations Conference on Environment and Development, 1992

Second International Conference on the Protection of the North Sea, Ministerial Declaration, London 25 November 1987.

Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, UN Conference on Trade and Development, UN 1981.

Third International Conference on the Protection of the North Sea, Ministerial Declaration, The Hague, 8 March 1990.

Treaty of Rome, Article 130r, and the final declaration of the Maastricht Summit 9/10 December 1991, amending the Treaty of Rome, new Article 130R

UN Centre on Transnational Corporations: Criteria for Sustainable Development Management, New York, 1990

## **Survey of the Facts: Overview of Hazards**

### Oral Evidence

Reg Green - Chemical hazards - an international perspective

Bernice See - Pesticides and Cordillera women: the right to health and sustainable development

Lajos Focze - Survey of Occupational and Environmental Hazards, Hungary

Serghiy Fedorynchuk - Conclusions from the first eight years of Chernobyl's experiences

Kenny Bruno - Greenpeace submission: Chemical proliferation since Bhopal: Moving South

Rosemarie Gillespie - Ecocide-Industrial chemical contamination and the corporate profit imperative: the case of Bougainville.

Axel Köhler-Schnura - Coordination against Bayer dangers

### Written Evidence

Barbara Dinham - The international regulation of pesticides

Fundepublico - Summary of the environmental situation in Colombia.

ILSA - Latin America-hazards in Colombia and Argentina  
Paul Johnston and Ruth Stringer - *Environmental significance and regulation of organochlorines*  
John Kuelekaha - *Report on the Moshi pesticides project, Tanzania*  
Barrie Lambert - *Nuclear hazards*  
Karen Messing - Occupational health of women workers  
Claudio Palos - Pollution in Argentina  
Geraldine Reardon - Women, the global economy, industrial hazards and the international gender division of labour: the case of the electronics industry  
Faiza Salie - Industrial hazards in South Africa  
Satinath Sarangi - The movement in Bhopal and its lessons  
Marek Sieminski - Evidence from Poland  
Tani Yoichi - Industrial hazards and pollution in Asia

### **The Accused: National and International Medical and Scientific Community**

#### Oral Evidence

Tony Fletcher - Toxic exposure - the role of epidemiology  
Françoise Barten and Suzanne Fustukian - Occupational health needs of workers: the need for a new international approach  
Birger Heinzow - Results of the International Medical Commission on Bhopal  
Gianni Tognoni - Epidemiology after Bhopal  
Alistair Hay - Toxicology and the assessment of occupational and environmental risks  
Christopher Williams - Environmental victims: the failure of cooperation between science and the law

### **The Accused: Aspects of the International Economic System**

#### Oral Evidence

Michael Barratt-Brown- Third World debt and the international trading system  
Ward Morehouse - Accountability, regulation and control of multinational corporations

#### Written Evidence

Marcus Arruda- *The New World Order: the dominant development model and democratic alternatives*  
Fernando Bejarano - *The impact of NAFTA on industrial and environmental hazards; implications of GATT*  
Vandana Shiva - *GATT and free trade: a prescription for environmental apartheid*

### **The Accused: National and International Techniques of Hazard Prevention and Accountability**

#### Oral Evidence

Pradeep Mehta - *The failure to achieve a UN Code of Conduct on Transnationals*  
Steve Tombs and Frank Pearce - *Regulating Hazards: Class, Law and Hazards*

Radha Kumar- *Institutions and accountability: how UN and other international institutions could become more accountable*

Paul Orum - *The right to information on chemical hazards - an international agenda*

Ed Mayo- *Strategies for socialising the economy: TNCs and accountability*

Riva Krut and Harris Gleckman - *Towards a new international system to regulate international companies*

#### Written Evidence

Simon Gerrard and Philip Grey - *Risk communication and trends in the international response to industrial hazards*

ICC - *ICC Business Charter for Sustainable Development and tools for implementation*

ILO, compiled by Sapna Malik - *How adequate is international law in the prevention of industrial hazards?*

UNEP/Department of Humanitarian Affairs - *UNEP role in responding to environmental disasters*

### **THE ACCUSED: The National and International Legal System**

#### *-Civil Law*

##### Oral Evidence

Michael Napier and Martin Day - *Mass disaster litigation and the issue of settlement*

Rob Hager - *Locking the victims out of the citadel: Multinational corporations, the Bhopal disaster and forum non conveniens dismissal of foreign plaintiffs from the US courts*

Peter Muchlinski - *Multinational liability - a new agenda*

##### Written Evidence

Julian Fulbrook - *Levels of compensation - how should they be assessed*

Richard Meeran - *Legal accountability for the transfer of hazardous technology by corporation*

#### *-Criminal Law*

##### Oral Evidence

Gary Slapper (Presented by David Bergman) - *Commerce, carnage and the criminal law bringing those responsible*

Upendra Baxi - *Criminal accountability and the Bhopal disaster*

##### Written Evidence

Geoff Gilbert - *Multinational corporations and extradition*

#### *-Human Rights Law*

##### Oral Evidence

Michael Anderson - *To what extent does existing human rights law protect people from industrial hazards?*

James Cameron and Ruth Mackenzie - *The implementation of rights in relation to industrial hazards*

##### Written Evidence

Clarence Diets - *New rights required to protect people from industrial and environmental hazards*

## **1. LINKS OF THE LONDON SESSION ON INDUSTRIAL HAZARDS AND HUMAN RIGHTS TO PREVIOUS SESSIONS OF THE PERMANENT PEOPLES' TRIBUNAL**

The request to examine human rights abuses arising from industrial hazards was presented to the Permanent Peoples' Tribunal (PPT) in 1989 by the International Coalition for Justice in Bhopal; and was subsequently supported by the International Network for Victims of Corporate and Government Abuses. The gathering of evidence had to be distributed over four distinct sessions over three years to allow for a thorough consideration of complaints as well as technical and doctrinal complexities.

Occupational and environmental hazards had been addressed indirectly by the Tribunal in the session dedicated to the IMF and World Bank Policies (Berlin, 1988). Its verdict underlined the direct relationship between models of development rigidly based on market criteria and the worsening of workplace and environmental conditions, the dominance of so-called "economic laws" on constitutional rights and basic entitlements as well as on fundamental human rights.

The PPT has since examined other cases which are worth reiterating briefly to place industrial and environmental hazards in a more comprehensive framework.

### *Verdict on Brazilian Amazonia (Paris, 1990)*

The massive violation of the fundamental rights of indigenous peoples (with the scale and characteristics of genocide) is the precondition for, and the product of, the destruction and degradation of the Amazonian rivers and forests. There is a general tendency to acknowledge the environmental threat to the world, but to dissociate it from the more direct and dramatic impact on the life of people.

### *Verdict on Impunity for Crimes Against Humanity (Bogota, 1991)*

The Tribunal heard evidence of widespread and systematic human rights abuses perpetrated by individuals who could act with impunity either under domestic law or because the existing laws were not enforced against them. The coexistence of dictatorship and democracy is made possible by neo-liberal models of development which require the impunity of individuals involved in repressive practices and dirty wars, as they are also the controllers of the financial sector and therefore privileged partners in an international relationship. This further extends social degradation and corrupts community and societal life, with the majority of the populations being excluded from political participation and being denied their rights to nutrition, health, and education, which are the concrete expressions of the fundamental right to human life.

### *Special Session on the Conquest of America and International Law (Padua-Venice, 1992)*

While representing a critically important and irreversible step forward, the present system of international relations based on the UN Charter is clearly insufficient to provide the protection and promotion of the fundamental rights of peoples. The system is being openly distorted to become a tool to re-legitimize the conduct of war. Under this regime, the economic, social and cultural well-being of the 80% of humanity under the pressure of structural adjustments (which serve the other 20%), is deteriorating, putting further stress on human and physical environments. International law, which was born as the justification and legitimation of the Conquest of America in 1492, in the name of the right to commerce for the main benefit of a small group of states, has acted against the rights of peoples, and must face the challenge of democratising its institutions and broadening the base of its *cogens* authority to the domain of economic relationships, where new wars are waged and

peoples rights denied or violated.

*Hearing Sessions on Industrial and Environmental Hazards (Yale, 1991; Bangkok, 1991; Bhopal, 1992)*

Ample evidence was presented from more than 30 countries of widespread human suffering and death as a result of hazardous activities. The discussion of such facts as accidents, statistical inevitabilities, as the natural costs of development reflects a twisted and pathological approach to social and economic change. While the overwhelming quantity of evidence available prompted the pronouncement of a definitive judgement, it was decided that the final session of the proceedings should be devoted to broader issues of how human rights standards should and could be applied to industrial and environmental hazards. *It is clear that it is of little difference if the death which comes to the sleeping victim in the middle of the night is caused by a politically motivated death squad or by a cloud of poisonous gas. In either case the right to life is violated in an inexcusable manner, the basic moral impulse of humanity is brutally transgressed, and the international community has a profound interest in taking steps to ameliorate the effects of the violation and to prevent its repetition.*

*Session on the Policies of the International Monetary Fund (IMF) and World Bank (Madrid, 1994)*

The years since the Berlin Session (1988) have seen not only a widening of the gap between the richest and the poorest members of humanity, but an ever-increasing institutionalization of a practice where pure financial considerations and interests provide the basis for decisions taken by an even smaller number of states, corporations and individuals. The structural adjustment policies are directly linked to worsening socio-economic indicators in victim-countries; beyond the asepsis of statistical estimates, the growing and planned inequalities are producing avoidable deaths. Using general principles of law adopted by any court when assessing liability for damage or death to an individual, it was qualified that the policies of the IMF and the World Bank have led to culpable homicide.

There is no doubt that the issues presented to the present session on Industrial Hazards and Human Rights occupy a priority position in this larger perspective.

## 2. ANALYSIS OF THE SOCIAL AND ECONOMIC BACKGROUND

The deliberations of the Permanent People's Tribunal in this London session are focused upon the problems of Industrial Hazards and Human Rights. Evidence presented to the Tribunal in oral and written form underscored the complex linkages between these issues and emphasised the need to analyse individual incidents and abuses as part of several related patterns that have become apparent in the recent evolution of international economic structures and global ecological circumstances.

Concerning the evolution of international economic conditions, the tribunal heard evidence indicating that over the last three decades the gap between the industrialised nations of the North and the primarily agricultural nations of the South has grown substantially. The secular decline in commodity prices combined with a concomitant increase in the cost of manufactured goods has meant that the barter terms of trade have shifted markedly against the poorest nations of the world. This trend has forced many poor countries to borrow more heavily from international sources to purchase food and to meet shortfalls in their national accounts. As a result, the debt burden of the poorest nations of the world has increased substantially in both relative and absolute terms. Debt service payments have come to represent a major and growing proportion of national expenditure in these countries, whilst the need for further loans also increases.

In order to qualify for continued international loans and to meet escalating foreign debt payments, many of the world's poorest countries have been forced to pursue a two-fold strategy of response.

*First*, they have been compelled to accept "structural adjustment programmes" (SAPs), often imposed as a condition by the IMF for further loans from both the World Bank and from private capital sources. The Tribunal heard evidence indicating that, as a rule, these SAPs have simultaneously increased the level of misery in Third World areas and weakened the autonomy and independence of the Third World states concerned. Many of these states have been forced to decrease spending on physical and social infrastructure, education and health delivery systems whilst simultaneously having to implement measures to protect and expand the freedom of action for private enterprise, including most notably the activities of transnational corporations (TNCs).

*Secondly*, the tribunal heard evidence demonstrating that structural adjustment programs of the IMF and the World Bank have effectively compelled poor countries - often in direct co-ordination with TNCs - to pursue unsustainable forms of resource extraction or export-oriented agriculture in order to generate foreign 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.

Whilst 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. Therefore, by 1989, 47 of the world's 100 largest economies were corporations, not countries.

"600 TNCs have sales which exceed \$1.0 billion a year, which equals to one fifth of the total

industrial and agricultural production of the world's market economies...

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

The conjuncture of economic transformations in both Southern and Northern countries has created a 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 the role of private companies, including TNCs. For Southern countries struggling with debt the need to earn foreign exchange often becomes paramount, leading them to invite in often hazardous industries and foreign investments in order to generate the needed money. The unequal power relations between poor or even bankrupt debtor governments and TNCs allow the latter to dictate the terms of their investment - 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 and 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, dominate the entire global coffee buying market.

Increasing agricultural production means using 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 so have to rely on TNCs to supply them with either the products or the plant to manufacture these products. This has greatly expanded the markets for northern manufactures, in particular those of 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 amongst 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 them. In return the TNCs received an agreement crafted to increase their freedom and to strengthen 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 testimonies 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. In addition, there is the requirement that they “make up” for declining services by promoting health care for their families, walking further for water and providing key social services to those around them.

In many South East Asian countries and parts of Latin America, 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 often dangerous, as they use highly toxic chemicals and gases. *So called “clean” industries such as micro-electronics are in fact hazardous and polluting.* The health effects on women caused by processes and chemicals used in the micro electronic (and other) industries are not known: “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 - e.g. patience, manual dexterity, intense concentration, high precision - are defined as “natural feminine attributes” rather than learned or perfected skills.

Production in the electronics sector is highly mobile and can thus be easily relocated so that focus can be 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 on 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 conditions, 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, made up majorly of women in the south, is being vigorously promoted by the World Bank and other agencies as the new engine for

economic growth.

It 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 often 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 pregnant, which adds several more hours to their working day. In addition, they consistently earn less than men performing similar jobs.

This 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 they are often working with dangerous or polluting substances - e.g. lead in battery works, glue in shoe assembly, solvents in furniture painting - which will have a negative impact on both 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 amongst the poorest around the world and are often entirely responsible for their households. In order to survive they are forced to take jobs either in low paid formal employment or in the informal sector. This is combined with a growing domestic role and an increasing diminishment of needed 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 strategy dominated by growth 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 grew the food did not control its distribution.

*Third*, the "hidden" costs of pursuing market-driven growth strategies were elaborated in many papers presented 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.

Alternative visions of the development process were 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 into 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 mere economic growth*. Rather, it was argued, *development needs to be a comprehensive economic, social, cultural and political process*. Achieving this requires a return to taking into account the needs of the local economy and ecology as well as of 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.

The testimonies 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 both peasant and urban populations. 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 the testimonies 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).

### 3. 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

#### *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.

#### *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 corporate responsibility must be applied, which do 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.

#### *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 controlled the application of 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 the 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.

### *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 for 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 their basic purposes, they 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 not fighting for adequate compensation after a hazardous event causing death, injury or damage to the environment.

### *International Organisations*

Even if they normally have no direct industrial involvement, international organisations should not be completely exempt from accountability for industrial hazards. The reason for this 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. There is no doubt that 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.

### *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.

#### *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 prevails 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 the preferred choice 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 will not be absolutely uniform. It would however 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.

### *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.

### **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 in regard to 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 may be in such a case imposed on the industrial operator. This 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 on 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 within a completely 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 regarding 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, without regards to what part they effectively played in its 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.

#### 4. JUDGEMENT

- 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;
- 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, executing the 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 - 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 giving of compensation to 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.