

# Corporate Crimes

The need for an international instrument on corporate accountability and liability

Greenpeace presents the Bhopal Principles on Corporate Accountability and Liability, a comprehensive set of principles to ensure that human rights, food sovereignty and clean and sustainable development are not threatened by corporate activities.

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## Introduction

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At the Johannesburg Earth Summit, Greenpeace is calling upon Governments to endorse the Bhopal Principles on Corporate Responsibility (see Chapter 2). Experience in the post-Rio Decade has shown that the adoption of these ten Principles is urgently needed. They form a comprehensive set of measures that would ensure that corporations act in a manner that is consistent with Principles 13 (Liability), 14 (Double Standards), 15 (Precautionary Principle) and 16 (Polluter Pays Principle) of the Rio Declaration.

States are ultimately responsible for public welfare, and they must not abdicate this responsibility to the private sector. Unfortunately states are increasingly doing just this, by relying on voluntary agreements, and by failing to develop international instruments to prevent transnational corporations from slipping through holes in the net of national legislation. The few voluntary initiatives with which some corporations are willing to comply, such as the Global Reporting Initiative, the OECD guidelines, and the UN Global Compact, are just not enough.

Corporations benefit from a global market for the development of their business but are not held globally accountable. Therefore, current moves to ensure sustainability require an international instrument of corporate responsibility, accountability and liability. Now is the time for an international instrument that ensures rights and duties, reporting, monitoring, and verification of consistent responsible corporate behaviour. Such an instrument should encompass, *inter alia*, compensation for damages, remediation, right to know, and respect for human and community rights.

Corporate accountability is a subject of concern for a wide range of groups campaigning on issues including human rights, environment, development and labour. Corporate crimes committed on all continents across a range of industrial activities in various sectors (e.g. chemicals, forestry, oil, mining, genetic engineering, nuclear, military, fishing, etc.) clearly point towards the need for greater control, monitoring and accountability of corporate activity in a globalised economy.

Resistance from governments or industry to an international instrument on corporate accountability would only increase the public's perception of increasing corporate control of governments and create public suspicion regarding the real intentions of any corporate social and environmental programme.

## The Ten Bhopal Principles on Corporate Accountability

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1. **Implement Rio Principle 13.** States must as a matter of priority enter into negotiations for a legal international instrument, and adopt national laws to operationalise and implement Principle 13 of the Rio Declaration, to address liability and compensation for the victims of pollution and other environmental damage.
2. **Extend Corporate Liability.** Corporations must be held strictly liable without requirement of fault for any and all damage arising from any of their activities that cause environmental or property damage or personal injury, including site remediation. Parent companies as well as subsidiaries and affiliated local corporations must be held liable for compensation and restitution. Corporations must bear cradle to grave responsibility for manufactured products. States must implement individual liability for directors and officers for actions or omissions of the corporation, including for those of subsidiaries.
3. **Ensure Corporate Liability for Damage beyond National Jurisdictions.** States must ensure that corporations are liable for injury to persons and damage to property, biological diversity and the environment beyond the limits of national jurisdiction, and to the global commons such as atmosphere and oceans. Liability must include responsibility for environmental cleanup and restoration.
4. **Protect Human rights.** Economic activity must not infringe upon basic human and social rights. States have the responsibility to safeguard the basic human and social rights of citizens, in particular the right to life; the right to safe and healthy working conditions; the right to a safe and healthy environment; the right to medical treatment and to compensation for injury and damage; the right to information and the right of access to justice by individuals and by groups promoting these rights. Corporations must respect and uphold these rights. States must ensure effective compliance by all corporations of these rights and provide for legal implementation and enforcement.
5. **Provide for Public Participation and the Right to Know.** States must require companies routinely to disclose to the public all information concerning releases to the environment from their respective facilities as well as product composition. Commercial confidentiality must not outweigh the interest of the public to know the dangers and liabilities associated with corporate outputs, whether in the form of pollution by-products or the product itself. Once a product enters the public domain there should be no restrictions on public access to information relevant to environment and health on the basis of commercial secrecy. Corporate responsibility and accountability must be promoted through environmental management accounting and environmental reporting which gives a clear, comprehensive and public report of environmental and social impacts of corporate activities.
6. **Adhere to the Highest Standards.** States must ensure that corporations adhere to the highest standards for protecting basic human and social rights including health and the environment. Consistent with Rio Declaration Principle 14, States must not permit multinational corporations to deliberately apply lower standards of operation and safety in places where health and environmental protection regimes, or their implementation, are weaker.
7. **Avoid Excessive Corporate Influence over Governance.** States must co-operate to combat bribery in all its forms, promote transparent political financing mechanisms and eliminate corporate influence on public policy through election campaign contributions, and/or non-transparent corporate-led lobby practices.

8. **Protect Food Sovereignty over Corporations.** States must ensure that individual States and their people maintain sovereignty over their own food supply, including through laws and measures to prevent genetic pollution of agricultural biological diversity by genetically engineered organisms and to prevent the patenting of genetic resources by corporations.
9. **Implement the Precautionary Principle and Require Environmental Impact Assessments.** States must fully implement the Precautionary Principle in national and international law. Accordingly, States must require corporations to take preventative action before environmental damage or health effects are incurred, when there is a threat of serious or irreversible harm to the environment or health from an activity, a practice or a product. The existence of scientific debate or uncertainty must not deter the adoption of safer alternatives where they are known to be available. Governments must require companies to undertake environmental impact assessments with public participation for activities that may cause significant adverse environmental impacts.
10. **Promote Clean and Sustainable Development.** States must promote clean and sustainable development, and must establish national legislation to phase out the use, discharge and emission of hazardous substances and greenhouse gases, and other sources of pollution, to use their resources in a sustainable manner, and to conserve their biological diversity.

### **Why the Bhopal principles?**

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The Bhopal Principles address concerns about corporate accountability across a wide range of issues. We have chosen to call them the 'Bhopal' Principles because this disaster, more than any other, highlights the current failure of governments to protect public welfare and the failure of corporations to observe basic standards e.g. the avoidance of liability by parent corporations, and the avoidance of responsibility for compensation and environmental cleanup.

On 3 December, 1984, the world witnessed the worst chemical disaster ever when a gas leak in the Union Carbide plant in Bhopal, India, killed at least 8,000 workers and residents in the first three days after the disaster and caused permanent and debilitating injuries to more than 150,000. The tragedy, caused by the leakage of a cocktail of methyl isocyanate and other lethal chemicals into the area surrounding the plant was caused mainly by insufficient safety systems and cost-cutting measures by Union Carbide.

Eighteen years after this tragic disaster, the legacy of poisoning continues. Even today chronically ill survivors remain in desperate need of medical attention. Thousands of survivors and the children born since the disaster continue to suffer debilitating health problems. Many are unable to work. The now abandoned chemical plant is a toxic hotspot, strewn with toxic wastes and materials that have been either dumped or haphazardly stored in rotting sacks and barrels. There is evidence that the residual contaminants have migrated off-site, creating new problems, including contamination of groundwater used by families living near the site for their daily drinking and washing needs.

By deflecting responsibility for the disaster to the Indian government, Union Carbide managed to escape its obligations. By constantly downplaying the damage to limit its liability, Union Carbide has shown its ethical and moral bankruptcy. Recently, Union Carbide merged with Dow Chemicals, resulting in the creation of the world's biggest chemical company. Dow shows no sign of taking responsibility for the Bhopal legacy. Justice remains more elusive than ever for the victims of this disaster.

The lessons of Bhopal have still to be learned. With increasing regularity, similar scenarios continue to be played out around the world. Environmental disasters—both chronic and immediate—caused by irresponsible corporate practices are becoming more frequent. Transnational corporations have learned to downplay damage, and to focus attention and liability on the local company in order to elude criminal and/or civil liability.

To curb these abuses, governments must act globally to ensure that both transnational and national corporations are held liable for their actions, particularly in developing countries and countries with economies in transition where companies operate in less regulated environments.

At the Johannesburg Earth Summit, Governments will be looking at what has and has not been done to implement the Rio commitments. The Bhopal case shows that it is important to hold corporations liable and to provide compensation for victims of pollution and other environmental damage, that responsibility for liability and cleanup should be enforceable not only against the local corporate entity, but also against the multinational parent.

## Cases of corporate crime

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### Introduction

This report compiles 48 cases from various industrial sectors, including chemical, forest, mining, genetic engineering, nuclear energy and oil industries in different parts of the world. They illustrate the urgent need for governments to force corporations to uphold the law and become more accountable to the public.

These cases show that irresponsible corporate behaviour continues to severely affect both the environment and people's health, and that the companies who are responsible fail to respond in an adequate manner. They show how companies routinely fail to compensate and/or assist impacted communities, how they evade obligations to clean up or remediate damaged environments, and, by and large, how they violate human and community rights by failing to monitor, report and provide essential information concerning their products and processes. Such behaviour is no less than criminal, and it is becoming increasingly difficult - sometimes impossible- to seek justice, and to hold these companies accountable and liable for their crimes.

As this report goes to press, British Nuclear Fuels Limited (BNFL) is shipping enough plutonium to make 50 nuclear weapons from Japan to the UK. The material concerned is being returned from Japan after an earlier scandal. In 1999, BNFL shipped its first ever consignment of plutonium MOX fuel around the globe from Sellafield to Japan. During the transit, it was revealed that BNFL had deliberately falsified critical quality control data during the production of the fuel. BNFL ultimately was forced to admit the falsification, and its Japanese clients demanded the material be returned. If the fuel had been loaded into a Japanese reactor, the potential risk for accident could have been significantly increased. The shipment itself is also of concern because in the event of an attack or accident, this shipment could put at risk dozens of coastal nations on its 30,000 kilometre voyage back from Japan. The failure of the UK and Japan to provide an adequate liability arrangements is of major concern to en-route states

The cases below provide information on the relevant companies, the type of incident, the effect on people and the environment, the outcome of legal procedures, the amount of damage and the conclusion regarding the (ir)responsibility of the company. The cases are divided into industry sectors. The report starts with a cluster of cases on Dow Chemicals due to its intolerable lack of action to help the Bhopal victims. Not surprisingly, this corporation is also involved in several other cases of corporate crime around the world.

An important aspect in many of the cases is the apparent difference in behaviour of a company in a rich "western" country which has relatively strict rules protecting people and the environment, and the disappointing behaviour of the same company in "poor" countries where the laws are lax and hardly enforced. The cases show that the global markets make it possible for corporations to practise double standards, misusing lax standards in poorer countries to save on costs and to maximise profits. For example, asbestos can be handled more cheaply in industrialising countries in Asia without the stringent rules protecting workers that exist in the USA or Europe.

It is not only global companies that act in an irresponsible manner. National, state-owned or even employee-owned companies can also fail to act in an acceptable way. In countries such as the Czech Republic, Russia or India where the state occupies a very strong position in the companies concerned, the situation can be even worse. A global international instrument is also needed to address these particular circumstances.

The cases listed here are not exhaustive or final. The intention was neither to cover all categories of industry nor to present only the most important cases. These cases should simply be seen as a preliminary register of corporate crimes with huge and very long lasting impacts on people and the environment—positive proof of the need for urgent international action.

## List of cases

	Location	Category
<b>Dow cases</b>		
Dow	Bhopal, India	Chemicals
Dow	Brazil	Chemicals
Dow	India	Pesticides
Dow	New Zealand	Chemicals
Dow	USA	Chemicals
<b>Chemical cases</b>		
AZF Toulouse	France	Chemicals
Bayer S.A.	Brazil	Chemicals
Ebara Corporation	Japan	Chemicals
Genco	Thailand	Chemicals
Haifa Chemicals	Israel	Chemicals
ICI Argentina SAIC	Argentina	Chemicals
Novartis	Switzerland	Chemicals
Orica Botany	Australia	Chemicals
Rhodia S.A./Aventis	Brazil	Chemicals
Shell Brazil S.A.	Brazil	Chemicals
Solvay	Brazil	Chemicals
Spolana	Czech Republic	Chemicals
Thor	South Africa	Chemicals
Unilever	India	Chemicals
<b>Pesticide cases</b>		
Anaversa	Mexico	Pesticides
Bayer AG	Peru	Pesticides
D&P	Paraguay	Pesticides
Hindustan Insecticides	India	Pesticides
Plantation Corporation Kerala	India	Pesticides
Shell Brazil S.A.	Brazil	Pesticides
Shell Netherlands	Global	Pesticides
<b>Nuclear cases</b>		
BNFL	UK	Nuclear
JCO Co. Ltd.	Japan	Nuclear
<b>GE cases</b>		
Aventis	USA	GE
Monsanto and Aventis	Canada	GE
<b>Mining cases</b>		
Bolidén	Spain	Mining
Cape	South Africa	Mining
OK Tedi	Papua New Guinea	Mining
Omai	Guyana	Mining
Esmeralda/ Aurul	Romania	Mining
Placer Dome	Philippines	Mining

	<b>Location</b>	<b>Category</b>
<b>Forest/Paper cases</b>		
Concord	Papua New Guinea	Forest
DLH	Global	Forest
Hazim	Cameroon	Forest
OTC	West Africa	Forest
Stora	Finland	Forest

<b>Oil cases</b>		
Exxon	Alaska	Oil
Shell Argentina	Argentina	Oil
TotalFinaElf (Erika)	France	Oil
Total	Russia	Oil
Total Raffinage Dist SA	France	Oil
<b>Shipping industry cases</b>		
Euronav, Bergesen, Vroon	Europe	Shipbreaking
Jönsson, Novator, Gbuch	Europe	Shipping waste

## Dow (formerly Union Carbide) (Bhopal, India)<sup>1</sup>

<b>Company details</b>	<p>Union Carbide India Limited, Bhopal, India. Main products: Pesticides, Battery cells, Bulk Chemical Intermediaries.</p> <p>At the time of the disaster Warren Andersen was CEO of the corporation.</p> <p>Today the company is merged with DOW and Ravi Muthukrishnan is the CEO. The Indian operations mainly supply chemicals to industry and make only a few end consumer products. After the merger with Union Carbide, DOW emerged as the largest chemical corporation in the world. The group headquarters of DOW is in Midland-Michigan, USA.</p>
<b>Location of damage</b>	Bhopal, India
<b>Company Activity</b>	Chemical production. Primarily methyl isocyanate production for pesticide manufacture
<b>Type of incident</b>	Accident that led to leak of gases, chiefly methyl isocyanate (MIC), mono methylamine, carbon monoxide and possibly 20 other chemicals. Date: December 3 <sup>rd</sup> 1984.
<b>Type of damage</b>	Loss of life. More than 8,000 people died in the first three days. 520,000 people were exposed to poisonous gases. 150,000 victims are still chronically ill, with even now one person dying every two days.
<b>Range of damage, amount of loss</b>	<p>Conservative figures are at least 20,000 thousand dead. The gas leak killed many thousands instantly. Of the affected people who survived the initial leak, many died over the years due lack of proper care. Improper diagnosis led to ineffective medical treatment. The improper diagnosis was due to refusal by Union Carbide India Limited (UCIL) to disclose all the details regarding the leaked gases. Misinformation and lying by the company<sup>2</sup> led to confusion, making treatment difficult. The delay in providing timely medical aid made the situation of the victims even worse. Late and inadequate compensation compounded the situation and more lives were lost.</p> <p>Today the survivors suffer from lung fibrosis, impaired vision, bronchial asthma, tuberculosis, breathlessness, loss of appetite, severe body pains, painful and irregular menstrual cycles, recurrent fever, persistent cough, neurological disorders, fatigue, weakness, anxiety and depression. Tens of thousands of children born after the disaster suffer from growth problems and far too many teenage women suffer from menstrual disorders. In the years following the disaster, the stillbirth rate was three times, perinatal mortality was two times and neonatal mortality was one and a half times more than the comparative national figures. Tuberculosis is several times more prevalent in the gas-affected population and cancer cases are on the rise. Chromosomal aberrations in the exposed population indicate a strong likelihood of congenital malformations in the generations to come. Some of this is already apparent. A third generation of victims is emerging. These are the children born to parents born after the gas leak and they are suffering from various abnormalities.</p>

<sup>1</sup> Source: Factsheet on the Union Carbide Disaster in Bhopal, Greenpeace, 2002

<sup>2</sup> Union Carbide's doctor of Health, Safety and Environmental Affairs, Jackson B. Browning, described the gas a few days after the disaster as "nothing more than a potent tear gas".

<p><b>Who is responsible</b></p>	<p>The storage of huge volumes of MIC in a densely inhabited area was itself in contravention of company policies strictly practised in its other plants. A total of 67 tons were stored in Bhopal against a permissible maximum in Europe of only 0.5 tons. The company ignored protests and built large tanks in a crowded community. MIC is required to be stored at extremely low temperatures, but the safety measures were reduced to cut operating costs. The air conditioning plant was 'expensive' to run and cost-cutting measures (saving USD 50 per day) led to less than optimal conditions in this critical area. The company cut down the size of the preventive maintenance staff to save money and then provided insufficient training even to this reduced few. Safety training was slashed to two weeks as against the standard 24 weeks. Routine maintenance was neglected and critical equipment, which should have been replaced every six months, was often replaced only after two years. Scrubber systems were inadequate. The company never created Disaster Management Plans for the community who lived around the factory.</p> <p>State authorities are also culpable for failing to implement the law. The proposition to store large volumes of MIC on site caused a public outcry, but the company 'managed' the government and got it built. Pollution control measures and mandatory safety measures were not met as many departments of the governments failed in their duties.</p>
<p><b>Legal and/or public action taken</b></p>	<p>The Supreme Court of India directed Union Carbide Corporation (UCC) and UCIL to pay a total of USD470 million in full settlement of all claims arising from the tragedy. The government, UCC and UCIL agreed and the two companies paid in full on February 24, 1989.</p> <p>Public action has included court cases, health surveys, protests at government establishments and the parliament, targeted campaigns against company officials and government bodies, rallies, international showcasing etc.</p>
<p><b>Subsequent behaviour of company</b></p>	<p>Initially the company attempted to conceal the nature of the damage, by saying that gas was just potent tear gas, and refused to release data on the gas mixture, thereby preventing proper diagnosis and treatment.</p> <p>After the Bhopal leak the company went against the advice of experts and reopened operations to use the 15 tons of MIC left in one tank. Around 400,000 people left town and many stayed away for a month due to this dangerous action.</p>
<p><b>Legal outcome</b></p>	<p>Because of government's friendly attitude towards industry, the legal processes have been only marginally effective. That the company made deals with government is known but remains difficult to prove. Judgement was made without meaningful participation from the affected people who were not party to the negotiated settlement between the government and the company. Later the Supreme Court, strangely, also issued an opinion explaining why the settlement was adequate, even though the obvious reality was starkly contradictory.</p> <p>Although the court allowed the criminal case to be reopened and directed the Government to purchase medical insurance for the 100,000 presently asymptomatic persons who may later develop symptoms, very little has been actually implemented on the ground. The courts passed pious orders that the government ignored.</p>
<p><b>Final Greenpeace statement</b></p>	<p>The Bhopal accident led to some changes in the way large corporations operate. In Europe and the US laws were promulgated to prevent such disasters. India too passed some laws. But in practice nothing changed. The company was allowed to sell and leave, and the final merger with Dow is almost a final break. It continues to evade responsibility and even today denies access to the gas leak data, on the grounds that it would be an infringement of corporate secrets.</p>

The most basic principles of justice have been denied. Misinformation and lying has been the norm. Profits are pursued irrespective of the costs to humans and environment.

Today there is a move to remedy this gross injustice. A recent victory in the US Second Circuit Court Of Appeals in a decision that affirms the environmental damage claims of the survivors is likely to have far reaching consequences for Dow.

**Greenpeace  
Keizersgracht 176  
1016 DW Amsterdam  
Netherlands**

**T (31)20 523 6222  
F (31)20 523 6200**

**[www.greenpeace.org](http://www.greenpeace.org)**