

Congress of the United States

Washington, DC 20515

September 6, 2023

Ms. Lisa O. Monaco
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Ms. Monaco:

This December marks the 40th commemoration of the chemical disaster in Bhopal, India. Those charged with criminal responsibility for this tragedy have shockingly never been held accountable. Still pending criminal investigations have generated seven summonses for The Dow Chemical Company to appear in an Indian court. We urge you to take immediate actions to address this injustice by serving India's legal summons upon Dow, as requested under the terms of a Mutual Legal Assistance Treaty on Criminal Matters, signed by India and the United States on October 17, 2001.¹

Experts estimate that the Bhopal disaster poisoned more than half a million people with highly toxic methyl isocyanate (MIC) gas and killed more than 7,000.² The chemical disaster was not an isolated event and its reverberating effects on the Bhopal community can still be felt to this day with at least 15,000 additional deaths linked to the disaster's impacts. While registration of deaths related to the spill ended 26 years ago, mortality rates in areas of the city deemed to be mildly exposed to gas were found to be 27% higher than those not exposed in a study from 2010.³ Many survivors continue to suffer with various kidney diseases, cancers, and neurological disorders, while many children are afflicted with birth defects, mental disabilities, and stunted growth.^{4,5}

Police in Bhopal named Union Carbide among the accused within hours of the disaster.⁶ A subsequent three-year investigation by India's Central Bureau of Investigation found that Union Carbide was responsible for inadequate technology, double standards in safety and emergency-preparedness, and reckless cost-cutting of security systems within the pesticides plant from which the poison gas leaked. Several serious charges were brought against Union Carbide including culpable homicide, which is the equivalent to criminally negligent manslaughter under U.S. law.⁷

In the aftermath of the disaster, Indian law enforcement leveled serious charges against Union Carbide and sent repeated summonses requiring company officials to appear before courts in the country, all of which were

¹ Treaty between the Government of the Republic of India on Mutual Legal Assistance in Criminal Matters, United State of America and Republic of India, Oct. 17, 2001, Senate Treaty Document 107-3, accessed Feb. 9, 2023, <https://www.congress.gov/107/cdoc/tdoc3/CDOC-107tdoc3.pdf>.

² *India: Summary of Clouds of Injustice – Bhopal Disaster 20 years on*, Amnesty International, (Nov. 29, 2004), accessed Feb. 9, 2023, <https://www.amnesty.org/en/documents/ASA20/104/2004/en/>.

³ N.D. Jayaprakash, *The Handling of the Bhopal Gas Tragedy Reveals Our Callousness Towards Victim-Survivors*, The Wire, (Jan. 24, 2023), accessed Feb. 9, 2023, <https://thewire.in/rights/bhopal-gas-tragedy-curative-petition>.

⁴ Hannah Ellis-Petersen, *'Bhopal's tragedy has not stopped': the urban disaster still claiming lives 35 years on*, The Guardian, (Dec. 8, 2019), accessed Feb. 9, 2023, <https://www.theguardian.com/cities/2019/dec/08/bhopals-tragedy-has-not-stopped-the-urban-disaster-still-claiming-lives-35-years-on>.

⁵ Daya R Varma, Ritesh Pal, Diana Katgara, Satinath Sarangi, Tasneem Zaidi, Steven Holleran, Rajashekhar Ramakrishnan, and Shree Mulay, *Catch-up growth in males affected by the Union Carbide disaster of 1984 in Bhopal, India*, Federation of American Societies for Experimental Biology, (Mar. 1, 2008), accessed Feb. 9, 2023, https://faseb.onlinelibrary.wiley.com/doi/abs/10.1096/fasebj.22.1_supplement.1137.1.

⁶ Committee on Government Assurances report (2003–2004), Thirteenth Lok Sabha, twelfth report (Extradition of Former Chairman, Union Carbide Corporation). Chapter 2, para. 7.

⁷ U.S. Prasad, *Charge Sheet*, Office of the Senior Public Prosecutor C.B.I. A.C.U.I. New Delho, (Nov. 30, 1987), accessed Feb. 9, 2023, <https://www.bhopal.net/wp-content/uploads/2019/05/CBI-Charge-Sheet.pdf>.

ignored.⁸ Indian courts declared the company an “absconder,” or fugitive from justice, leading to an unsuccessful attempt to force Union Carbide to appear in court in India through a judicially ordered seizure of its assets in 1992.⁹

In February 2001, Union Carbide became a wholly owned subsidiary of Dow Inc. Dow has perpetuated UCC’s non-compliance with Indian law by failing to ensure the appearance of the company in the criminal hearings.¹⁰ As a result, Dow was issued a ‘show cause notice’ requiring its appearance in August 2013. The notice, relevant documentation, and case files were then delivered through diplomatic channels to the Department of Justice’s Criminal Division, Office of International Affairs, in August 2014. Four subsequent requests have been sent to the Department after the initial outreach. The most recent was received by trial attorney Linda McKinney in July 2019, and the Department has regrettably not taken any action since.¹¹

Of the 31 years Union Carbide has spent evading India’s criminal justice system, 22 have been under Dow’s stewardship. At the time of Dow’s acquisition of Union Carbide, Bhopal survivors, supporters, and Dow shareholders warned Dow against acquiring the company because of its pending liabilities.¹² Although Dow set aside \$2.2 billion in 2002 to put towards Union Carbide’s pending asbestos liabilities in the United States,¹³ it has continued to evade the liabilities it inherited from Bhopal. As the parent company of Union Carbide, Dow bears the responsibility for Union Carbide’s liabilities.

The Indian government’s actions relating to Bhopal, including the summons served to UCIL and Dow, are entirely lawful under the terms of a Mutual Legal Assistance Treaty on Criminal Matters (MLAT) signed between our countries in 2001.¹⁴ The MLAT between India and the U.S. was signed for the “common objective of law enforcement” and types of assistance provided for under the Treaty include “serving documents.” The grounds for denying assistance under the U.S.-India MLAT are limited to cases under military law, national security issues, or offences of a political nature. None of these exceptions credibly apply to the chemical disaster in Bhopal. The Department’s failure to fulfil India’s requests is a clear breach of American obligations under international law that you are required to uphold.

Bhopal is widely regarded as the worst industrial disaster in human history, a catastrophe with widespread implications for the chemical industry, globalization, and human rights. The disaster continues to negatively impact the lives of thousands in the region and remains an acute focus of civil society groups and law makers outside of the United States. For instance, during a Westminster debate last November, British parliamentarians cited the Department of Justice’s “refusal” to serve India’s summons to Dow Chemical’ on “six separate occasions” and urged the UK government to “seek answers from their allies in India and the U.S. on why they continue to block further investigations and further compensation claims, given the scale and impact of the tragedy.”¹⁵ The Department’s inaction is creating an indelible stain upon our nation’s reputation for upholding

⁸ *30 Years On UCC Still Absconding from Justice*, Bhopal Medical Appeal, (Feb. 10, 2022), accessed Feb. 9, 2023, <https://www.bhopal.org/union-carbide-2/30-years-on-ucc-still-absconding-from-justice/>.

⁹ Gulab Sharma, *Proclamation of Absconder*, Bhopal Chief Judicial Magistrate, (Feb. 1, 1992), <https://www.bhopal.net/wp-content/uploads/2019/05/CJM-Order-1-Feb.1992-on-proclaimed-absconder.pdf>.

¹⁰ *Timeline: Indian Court Cases 1990-Present*, International Campaign for Justice in Bhopal, accessed Feb. 9, 2023, <https://www.bhopal.net/what-happened/1990-present/timeline-indian-court-cases/>.

¹¹ *Submission of Death Investigation Field Report of Mr. Warren Anderson*, Inspector Dharmendra Kumar CBI AC.1 New Delhi, (Dec. 11, 2014), accessed Feb. 9, 2023, <https://www.bhopal.net/wp-content/uploads/2015/05/TDCC-Notice.pdf>.

¹² Re: Dow Chemical Bhopal v. Popoff, et al, CASE #: 1:00-cv-03364-DC

¹³ The DOW Chemical Company 2002 Annual Report, DOW Chemical, accessed Feb. 9, 2023, https://www.annualreports.co.uk/HostedData/AnnualReportArchive/t/NYSE_DOW_2002.pdf.

¹⁴ Treaty between the Government of the Republic of India on Mutual Legal Assistance in Criminal Matters, United State of America and Republic of India, Oct. 17, 2001, Senate Treaty Document 107-3, accessed Feb. 9, 2023, <https://www.congress.gov/107/cdoc/tdoc3/CDOC-107tdoc3.pdf>.

¹⁵ Bhopal Gas Explosion Investigations Volume 722: debated on Tuesday 15 November 2022, Parliament of the United Kingdom, House of Commons, (Nov. 15, 2022), accessed Feb. 9, 2023, <https://hansard.parliament.uk/Commons/2022-11-15/debates/16527559-8DDF-4886-A7CA-DF2DFAA9F05E/BhopalGasExplosionInvestigations>.

international legal and moral standards that must be corrected.

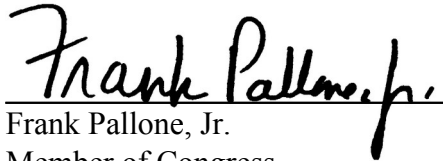
We strongly urge the Department of Justice to take immediate steps to serve the Indian government's summons upon Dow Inc. and any other action necessary to uphold its treaty requirements with India.

We appreciate your consideration of these requests and look forward to hearing how you plan to address these 40 years-long injustices.

Sincerely,



Rashida Tlaib
Member of Congress



Frank Pallone, Jr.
Member of Congress



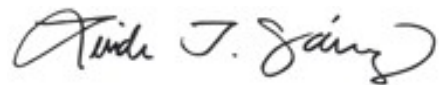
Pramila Jayapal
Member of Congress



James P. McGovern
Member of Congress



Raúl M. Grijalva
Member of Congress



Linda T. Sánchez
Member of Congress



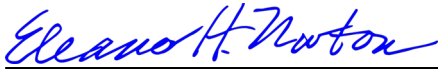
David J. Trone
Member of Congress



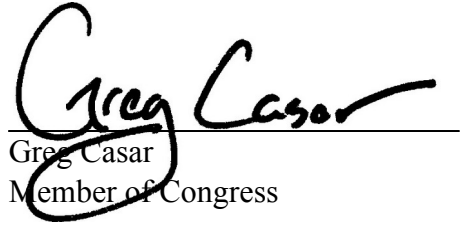
Barbara Lee
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Jamie Raskin
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Eleanor Holmes Norton
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Greg Casar
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Cori Bush
Member of Congress