

The Permanent People's Tribunal Session on Agrochemical Transnational Corporations

The People's Call for Justice

Almost 30 years ago, the world was brought to a standstill when a pesticide plant in Bhopal, India, exploded. It instantly killed almost 8,000 people and poisoned hundreds of thousands more who are suffering to this day. December 3, 1984 – the day of the Bhopal Tragedy – was a wake-up call on the destructive and unmerciful nature of pesticides. The company responsible for the tragedy should have been punished and rendered powerless to inflict more suffering to humanity. Yet it managed to escape the full extent of its liability for the horrific crime.



Dow Chemical Company remains unaccountable for lives lost in Bhopal almost 30 years ago. (Photo courtesy of Wikimedia Commons)

Agrochemical corporations have not only escaped accountability for crimes such as the Bhopal Tragedy, but have grown tremendously in wealth and power, profiteering from the hazardous products and technologies that they have pushed into agriculture, the heart of the world's food system.

Exposure to highly poisonous chemicals is a tragedy that happens every single day in almost every part of the globe. A woman plantation worker in Malaysia mixes deadly chemicals with her bare hands, a child in Paraguay inhales the toxic fumes of pesticides used on a field of genetically-engineered crops, a mother in Alaska feeds her infant breast milk contaminated with pollutants.

This December 3 to 6, 2011, a Permanent People's Tribunal (PPT) will convene to indict agrochemical transnational corporations (TNCs) for cases brought by farmers, agricultural workers, Indigenous Peoples, fisherfolk, women, children and youth, scientists, consumers, and activists. Whether as individuals or as a community, the Complainants are victims and survivors of gross, widespread, and systematic human rights violations by agrochemical TNCs.

The indictment will be brought through Pesticide Action Network (PAN) International, a

global network of more than 600 organisations in over 90 countries. For nearly three decades, PAN has been working to eliminate the use of pesticides and other hazardous technologies, based on the principles of food sovereignty, gender justice, and environmental sustainability. In this landmark Tribunal, PAN International will represent those who are without effective recourse to justice.

The PPT is an international opinion tribunal that aims to raise public awareness of situations of massive human rights violations when such situations receive no institutional recognition or response. Started in 1979 using a rigorous legal process, the PPT has held 35 sessions exposing various forms of human rights abuses through alternative judgments and legal articulations. The PPT was borne out of people's struggles against exploitation and oppression and has become a vital part of these struggles. Unlike existing legal mechanisms controlled by the interests of a few, the PPT draws its legitimacy and authority from the people.

Institutionalised lies

Worldwide, it is estimated that 355,000 people are killed by pesticides every year. This means that a thousand men, women, and children die every day at the unseen hands of

silent killers: pesticides manufactured and sold by agrochemical TNCs.

Agrochemical TNCs have full knowledge of their toxic and irreversible effects on human health and the environment. In fact, they have tried to cover up the harmful effects of these pesticides. For instance, Monsanto Company suppressed studies in the 1960s that showed the toxicity of dioxin, found in its herbicide 2,4,5-T, on its workers. Instead, the herbicide was sold to the U.S. government as one component of Agent Orange, which was sprayed on thousands of innocent civilians during the Vietnam War. The Union Carbide Company (now owned by Dow Chemical Company) also claimed that methyl isocyanate, the deadly chemical which leaked in Bhopal, was merely a “mild throat and ear irritant.”

The lies with which agrochemical TNCs promote pesticides and hazardous technologies today are as treacherous as ever. It must be remembered that the pesticide industry started off as producers of noxious gases that were produced for chemical warfare during the First World War. Today, agrochemical TNCs have formed their own corporate empire—an empire that was built solely on lies about “feeding the world.” Under this mantra, the Green Revolution was launched in the 1960s with the aid of governments and international financial institutions. The Green Revolution made farmers around the globe dependent on chemical inputs. It immensely benefited agrochemical TNCs, which wilfully manufactured and sold these products while knowing of the extreme harm that they could inflict upon people and the environment.

Through victims’ eyes: Crimes by agrochemical TNCs

“I used to mix paraquat with my bare hands because I was not aware of what this would do to me,” said Nagama, an oil palm plantation worker in Malaysia. “The nozzle of the spray tank was clogged, so I tried to open and clean it. But the spray mixture splashed into my eyes... The next morning, my eyes were swollen and I could not see,” said Mardiah, another paraquat sprayer.

Paraquat is considered as one of the most toxic herbicides introduced in the last 40 years. But it continues to be used in over 100 countries. In Malaysia alone, an estimated 30,000 women are pesticide sprayers, and most have been using paraquat and have been suffering from acute poisoning marked by nosebleeds, skin sores,

discoloration and loss of nails, deterioration of muscles and bone, and blindness. Direct ingestion has been known to cause multiple organ failure and death within hours or days. Latest science shows that paraquat exposure is linked to Parkinson’s disease. Grave cases of paraquat poisoning and deaths throughout the years have been recorded in Sri Lanka, Thailand, United Kingdom, U.S., Brazil, Costa Rica, and South Africa.



Paraquat is manufactured by the Swiss corporation Syngenta International AG, which has actively lobbied against measures to ban the herbicide. Syngenta convinced the Malaysian government to rescind the Ministry of Agriculture’s ban on paraquat through pressure tactics and a media blitz which claimed that the pesticide was “safe”. Ironically, paraquat is banned in Switzerland itself, but continues to be used extensively by sprayers in Malaysia and other Third World countries.

(Above) A banana plantation worker in China sprays toxic pesticides without any protective equipment, a common practice in many countries. (Photo courtesy of Pesticide Eco Alternative Center)

Another toxic pesticide that was widely used in past decades is endosulfan, which is linked to congenital and neurological disorders, birth defects, and delayed puberty. Nowhere are these effects more evident than in the village of Kasargod, Kerala, India, where an estimated 4,000 people have died due to the aerial spraying of endosulfan over cashew nut plantations around the village for more than two decades. Endosulfan passes through the placental barrier, resulting in intergenerational health effects. Many children in Kerala have been born with congenital diseases. One of them is the 18-year old Shruthi. Each hand only has four fingers, and her severely deformed right lower limb was recently amputated. Her mother had been exposed to endosulfan while pregnant with Shruthi, and died of cancer six years ago.



(Above, clockwise) A woman paraquat sprayer in Malaysia afflicted with skin disease; a man exposed to pesticides via aerial spraying in Southern Philippines; Shruthi, a survivor of endosulfan poisoning in Kerala, India. (Photos courtesy of PAN Asia Pacific)

(Far right) Through aerial spraying, pesticides drift several kilometers beyond the targeted areas, poisoning people, animals and other crops. (Photo courtesy of Wikimedia Commons)

In many countries in South Africa, thousands of cotton farmers have also fallen ill and died due to endosulfan exposure. A survivor, 29-year old Tamou Yaro Orou Boko of Kassakou, Benin, recalled how in 2004, he almost drank endosulfan, thinking it was water. He immediately spewed out the pesticide, but it still caused hot flashes, dizziness, and vomiting of blood even a year after the accident. "The after effects are still present. Today, the slightest smell of chemicals makes me fall into a coma-like state," he said.

Endosulfan has also been associated with death of bee populations in India, fish kills in Senegal, and cattle deaths in Uruguay. Despite this, endosulfan was only banned worldwide under the Stockholm Convention on Persistent Organic Pollutants (POPs) last April 2011. The original manufacturer, German corporation Bayer CropSciences AG, claims that it discontinued endosulfan production in 2007. Nonetheless, it remains unaccountable for decades of poisoning caused by endosulfan, and its other pesticides. Bayer's earlier banned pesticide methyl parathion, for instance, caused the poisoning of 50 children, of which 24 died, in Taucamarca, Peru, in 1999 when it was accidentally mixed into their breakfast cereals. The pesticide was packaged in a plastic bag without any indication of its toxic content—only a label written in Spanish that the Quechua-speaking farmers could not read.

It is clear that agrochemical TNCs have violated the right to health and life, which includes the right to safe working conditions and the right to a healthy environment. They continue to manufacture and distribute pesticides while knowing of their hazards and risky conditions of use, especially in farms and

plantations in the Third World where regulation is most lax.

In many countries, chemicals manufactured by agrochemical TNCs 'trespass' into homes and communities through aerial spraying and volatilization drift, when pesticides travel through the air as gasses well after applied. Many pesticides drift several kilometers beyond the targeted areas, poisoning people, animals and other crops along the way. In the village of Kamukhaan, Davao del Sur, Philippines, people scurry inside their huts whenever a nearby banana plantation company aerially sprays pesticides—still, they cannot escape the toxic fumes. Many of the villagers have suffered numerous diseases over the years linked to the pesticides sprayed over them on a regular basis. The majority of those killed by pesticides are beneficial organisms and wildlife. Pesticides applied by aerial spraying in New Zealand kill dogs, sheep, cows, horses, deer, wild pigs, bats, and native birds. As a Maori tribe member said, "It is culturally offensive to Maori as the mauri (life force) of wildlife is attacked. Traditional kai (food) also suffers." Their right to self-determination (the right to freely pursue their economic, social and cultural development) has been violated.

As agrochemical TNCs know very well, certain pesticides have particularly long-lasting effects. Called Persistent Organic Pollutants (POPs), they persist in the environment, bioaccumulate through the food web, and can

travel long distances over air and in the oceans. The highest concentrations of POPs pesticides have been found among indigenous peoples of the Arctic, and in particular in the nursing milk of mothers. "Our children's bodies are being contaminated against their will and knowledge," said Shawna Larson, a resident of Alaska. Their food source, such as marine mammals, also had the highest concentrations of POPs in their bodies. Meanwhile, in Lake Apopka in Florida, U.S., POPs are still found in soil sediments around the lake, even though these pesticides were used and banned decades ago.

The 2008 International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD), participated in by 400 experts from all over the world, stated that the old paradigm of pesticide-reliant agriculture was an outdated concept. The IAASTD concluded that small-scale farming and agro-ecological practices are capable of feeding the world population and provide the way forward. Yet agrochemical TNCs continue to peddle "more of the same" hazardous technologies in the guise of wanting to feed the world.

More profits, more crimes

Agrochemical TNCs' insatiable thirst for profits ushered in the commercialisation of genetically engineered (GE) crops. The so-called Gene Revolution has ushered in a new era of even greater suffering, especially for small food producers and traditional seed keepers. Like pesticides, GE crops were introduced to the market through false claims of safety and solving world hunger. But in reality, even bribery has been used to push these highly controversial products. Monsanto, the world's top seed and biotechnology company, paid hundreds of thousands of dollars to Indonesian government officials from 1997 to 2002 in order to secure the approval of its genetically-engineered Bt cotton.

GE crops raise serious safety concerns, as genetic engineering is considered by many scientists as a highly imprecise technology. GE organisms can produce unexpected and unpredictable effects that are potentially harmful or even fatal. Animal studies have shown that the Bt toxins from Bt crops can create "holes" in the intestinal wall, and cause liver damage and reproductive disorders. Among humans, the toxins can adversely affect the immune response, and has been detected in umbilical cord blood.

Agrochemical TNCs' claims that GE crops will reduce pesticide use have been proven to



(Above) Agrochemical TNCs' insatiable thirst for profits ushered in the commercialisation of genetically engineered crops, which is resisted by communities. (Photo courtesy of PAN AP)



(Left) 11-year old Silvino Talavera died due to exposure to Monsanto's Roundup Ready herbicide being sprayed on GE soy. (Photo courtesy of Altervida)

be untrue. Herbicide use increased by almost 200 million kilograms over the first 13 years of the commercial use of GE crops in the U.S., with Monsanto's Roundup Ready soybean accounting for most of the increase. RR soybean is resistant to the toxic herbicide glyphosate, which is being sold by Monsanto along with the seeds. In 2003, Silvino Talavera, an 11-year old Paraguayan, died upon exposure to pesticides used on RR soybeans.

With the aid of free trade agreements, patents for GE crops are protected under the intellectual property rights of agrochemical TNCs. Globally, corporations have already patented more than 900 rice genes. They use these patents to charge exorbitant fees for GE seeds. Farmers, especially women, used to conserve and freely share traditional seeds. Now, seed biodiversity is under threat of contamination by GE seeds.

MONSANTO



Bayer CropScience

syngenta



The Chemical Company

The six largest agrochemical TNCs will be tried by the Permanent People's Tribunal for violations of the right to life, health, and livelihood, among other basic human rights.

Genetic contamination violates farmers' rights to seed and livelihood. In several states in India, thousands of Bt cotton farmers have committed suicide because of high cultivation costs and low yields. In the U.S., Monsanto has sued hundreds of farmers charged with "seed piracy." Monsanto has been paid millions of dollars in damages for infringement of patent rights, even if the real damage was borne by the farmers whose fields have been contaminated with GE seeds against their will. Genetic contamination affects innocent consumers as well. In 2007, rice stocks all over the world were reported to be contaminated with Bayer's genetically-engineered LibertyLink Rice 601, prompting food recalls in Europe and other countries. The centre of maize biodiversity, Mexico, was also contaminated with Monsanto's Bt corn in 2001, destroying the natural heritage of indigenous farmers in the country.

Faced with mounting evidence of the hazards of their products and people's opposition, agrochemicals TNCs have resorted to harassment and violence against scientists and human rights defenders. Scientists Ignacio Chapela and David Quist were forced to retract their critique of Bt Corn. Syngenta tried to stop the publication of Dr. Tyrone Hayes' study linking the pesticide atrazine to endocrine disruption in frogs. Filipino scientist Dr. Romeo Quijano was sued for a public statement on the adverse effects of endosulfan, and for exposing aerial spraying in Kamukhaan.

And, in a most disturbing incident in 2007, activist Valmir Mota died after being shot by security guards in a protest against the illegal planting of GE crops in a plantation that was owned by Syngenta's subsidiary in Brazil. Farmer Isabel Nascimento de Souza was also shot in the head and lost an eye.

Quest for accountability and justice

Agrochemical corporations have committed gross, widespread, and systematic human rights violations. And they have amassed billions of dollars in profits along the way. Through acquisitions and mergers, today only six corporations-Monsanto, Syngenta, Bayer, Dow, DuPont, and BASF Group-control 75 per cent of the global pesticides market and 67 per cent of the seeds market. They continue to grow in power while innocent people continue to suffer, unheard and unrecognised as victims and survivors of crimes.

The PPT is a giant step towards ending the impunity with which agrochemical TNCs commit these crimes. Defendants Monsanto, Syngenta, Bayer, Dow, DuPont, and BASF will be charged with violations of more than 20 instruments of international human rights law. Before a distinguished panel of international jurors, witnesses will provide valuable testimony against these corporations for violations of the right to health and life; right to safe working conditions; right to a safe environment; right to livelihood; right to food and food sovereignty; right to freedom from interference with the family and home; right to self-determination; right to participation and information; rights of human rights defenders; and rights of women and children.

Similarly, the governments of the U.S., Switzerland and Germany, home states of the Defendant TNCs, will be charged for failing to regulate the production and sale of the hazardous pesticides all by the Defendant TNCs and for failing to hold them accountable for their wrongful acts and omissions. Instead, they have aided in the expansion of these TNCs, reflecting their own imperialistic interests for economic and political dominance. The U.S. government, for instance, has pushed GE crops as food aid to Africa, and U.S. diplomats have pressured other governments to suppress resistance to genetically modified organisms. Collusion is rampant between U.S. government and TNCs through the "revolving door" policy and secret meetings between officials, which undermine effective regulation.

Also charged in the PPT are the International Monetary Fund, World Bank, and the World Trade Organization. Through structural adjustment programmes and free trade agreements, these institutions have ensured that governments of Third World countries allow and promote the use of the agricultural inputs supplied by agrochemical TNCs.

PAN International adheres to the Precautionary Principle, including full protection of health and the environment over business interests. This principle states that extensive scientific data and exhaustive analysis of risks should not be preconditions to policy formulation and action on toxic chemicals, when long-term impacts of toxic chemicals are difficult to predict and often impossible to prove. Thus, affected communities need not carry the burden of proof of harm. They can push for preventive action and policies, and resist the corporate push for hazardous chemicals. All of the defendants have failed to exercise the Precautionary Principle and exposed millions of people and the environment to unconscionable harm.

The existing state of law, both national and international, has provided legal loopholes and safe havens for TNCs. Most international human rights laws and conventions only recognise the obligations of States to protect the rights of their own citizens. They do not address violations by private actors such as corporations. Currently, there is no international forum with the power to enforce international human rights law in relation to violations committed by agrochemical TNCs. The International Court of Justice, the judicial arm of the United Nations, only has jurisdiction over U.N. member States while the International Criminal Court only has jurisdiction over natural persons, and not corporations.

As mentioned, home states lack the political will to hold agrochemical TNCs legally accountable even for horrific crimes. When foreign nationals file a case in TNCs' home states, national courts refuse to hear it on the grounds that it is best heard in the host countries where the violation took place. An example is the Bhopal victims' tragic quest for justice. Since the dismal out-of-court settlement in 1989, cases have been filed in the U.S. against Dow, the new owner of Union Carbide. But U.S. courts refuse to exercise jurisdiction over them. No company official has been punished to this day.

To fill the enforcement gaps in current international human rights laws and mechanisms, the International Commission of Jurists (ICJ) established a set of criteria to determine corporate liability and complicity in gross human rights abuses. According to the ICJ, in order for liability to arise, there must be both causation and state of mind (*actus rea* and *mens rea*). Causation is established if the corporation has **enabled, exacerbated or facilitated** the gross human rights violation/s. State of mind means that there is actual intent—that the corporation knew or ought to have known that the violation or abuse would take place. A corporation's "don't ask, don't tell" approach is deemed as the same as actual intent.

Complicity between two parties is also established via **close proximity**. Close proximity can mean geographic closeness and the duration, frequency, intensity and/or nature of the connection. There is also complicity when a company or its officials exercise such authority over the principal perpetrator/s, such that their **silent presence** is deemed as approval and moral encouragement to commit abuses. Ordinary business transactions where corporations receive **economic benefits** can also establish liability if the circumstances surrounding the transaction have enabled, exacerbated or facilitated specific human rights abuses.

Clearly, the Defendant TNCs are liable, directly and through complicity, for innumerable human rights violations that have been committed with utmost impunity and disregard for humanity. Their lies of "feeding the world" cannot hold sway any longer after the Food Crisis in 2008/2009 when the number of hungry people rose to over a billion, after almost five decades of the Green Revolution and two decades of the Gene Revolution.

In this light, the PPT will now rise up to the challenge of hearing the stories and addressing the demands of the many victims and survivors of violations by the Defendants. PAN welcomes the support of any individual, organization, or institution that is willing to be part of this remarkable quest for justice, as part of the continuing people's struggles against corporate injustice and greed. **Please sign on to show your support and solidarity for this people's tribunal, the PPT, for corporate accountability, and for justice !**

Support the tribunal. Sign the petition at <http://www.agricorporateaccountability.net/petition>.



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