

Permanent Peoples' Tribunal on Industrial Hazards and Human Rights

CHARTER ON INDUSTRIAL HAZARDS AND HUMAN RIGHTS

Preamble

The Permanent People's Tribunal on Industrial Hazards and Human Rights,

Having convened four Sessions in New Haven, Bangkok, Bhopal and London since 1991 to receive testimony and deliberate on issues relating to the right to life, occupational health and safety, environment protection, risk management and damage reduction in the wider global context of hazardous production;

Having drafted over a period of four years a charter of rights designed to reflect the views and concerns of persons injured and distressed by industrial hazards, and having issued on the second day of December 1994 a Draft Charter for comment and discussion among individuals and non-governmental organisations, including trade unions;

Following the Universal Declaration of the Rights of Peoples, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the United Nations Convention on the Rights of the Child, the Vienna Declaration and Programme of Action of the World Conference of Human Rights and other relevant international human rights instruments;

Guided by the Rio Declaration on Environment and Development, Agenda 21, the Draft Declaration of Principles on Human Rights and the Environment, the Draft Declaration on the Rights of Indigenous Peoples and other relevant instruments for prevention of industrial and environmental hazards;

Guided further by International Labour Organisation conventions and recommendations, including the Convention on Freedom of Association and Protection of the Right to Organise, the Convention on the Right to Organise and Collective Bargaining and the Convention Concerning the Prevention of Major Industrial Accidents;

Gravely concerned by the widespread diffusion of hazardous products and processes resulting in industrial practices which cause human, social and environmental destruction, threatening in particular the habitat, life, economy, society and culture of indigenous peoples;

Deeply concerned by the frequency of small-scale but harmful hazardous events, as well as the magnitude and nature of major industrial accidents, including the incidents in Seveso, Chernobyl, Bhopal, Basel and elsewhere;

Concerned by the ineffectual national and international system of hazard prevention, post-disaster relief, medical and legal assistance and legal accountability which in their current forms have failed both to adequately prevent occupational and environmental hazards and to bring to account those responsible for world-wide deaths and injuries;

Noting that urgent action is needed to prevent future degradation to human life, animal life and the environment and to adequately remedy the harms caused by industrial hazards;

Recognising that the personal experience and repeated demands of community members and workers affected by hazards provide the most sound basis for the enunciation of rights;

Cognizant of the inherent limitations of national and international law, as well as the vital role of community organisations and people's movements in preventing and ameliorating industrial hazards;

Convinced that new national and international systems of prevention, relief and legal accountability must be formulated and established;

DECLARES THE FOLLOWING:

**PART I
RIGHTS OF GENERAL APPLICATION**

Article 1 *Non-discrimination*

1. Everyone is entitled to all the rights and freedoms set forth in this Charter, without distinction of any kind, such as race, colour, sex, language, religion, nationality, political opinion or affiliation, ethnic or social origin, disability, age, property, sexual orientation, birth, income, caste or any other status.
2. On account of the particular discrimination faced by women, both as waged and unwaged workers, attention should be given to the specific application of the rights stated below where women may be affected.
3. On account of their vulnerability and exploitation in the labour market, special protection should be accorded to children exposed to industrial hazards.
4. On account of the connection between low wages and hazardous working environments and the disproportionate impact of industrial hazards on racial and ethnic minorities, special protection should be afforded low income groups and racial minorities.

Article 2 *Relation to other rights*

The rights in this charter and other human rights, including civil, political, economic, social and cultural rights, are universal, interdependent and indivisible. In particular, freedom from hazards, including the right to refuse hazardous employment and the right to organise against hazards, depends upon the full implementation of social and economic rights, including the rights to education, health and an adequate standard of living.

Article 3 *Right to accountability*

All persons have the right to hold accountable any individual, company or government agency for actions resulting in industrial hazards. In particular, parent companies, including transnational corporations, shall be liable for the actions of their subsidiaries.

Article 4 *Right to organise*

1. All community members and workers have the right to organise with other local communities and workers for the purpose of seeking to ensure a working environment free from hazard.
2. In particular, the right to organise includes:
 - (a) the freedoms of expression, association and peaceful assembly;
 - (b) the right to form local, national and international organisations;
 - (c) the rights to campaign, lobby, educate and exchange information;
 - (d) the right to form trade unions;
 - (e) the right to strike or take other forms of industrial action.

Article 5 *Right to appropriate health care*

1. All persons have the right to appropriate health care.
2. In particular, the right to appropriate health care includes:

- (a) the right of individuals and groups to participate in the planning and implementation of health care;
- (b) the right of equal access of individuals and families to health care the community can afford;
- (c) the right to relevant health care services, including where appropriate access to hospitals, neighbourhood clinics, specialist clinics, as well as the services of general practitioners, other medical professionals and health care workers drawn from the affected community;
- (d) the right to independent information on the relevance and reliability of health care services and treatments including allopathic, homeopathic, nutritional, physiotherapeutic, psychotherapeutic, indigenous and other approaches;
- (f) the right to health care systems which recognise and take account of the different ways in which hazards affect women, men and children;
- (g) the right to health education;
- (h) the development of national, regional and international networks to facilitate sharing of information and experience.

Article 6 *Right of refusal*

1. All communities have the right to refuse the introduction, expansion or continuation of hazardous activities in their living environment.
2. All workers have the right to refuse to work in a hazardous working environment without fear of retaliatory action by the employer.
3. The right to reject inappropriate legal, medical or scientific advice shall not be infringed.

Article 7 *Permanent sovereignty over living environments*

1. Each state retains the right of permanent sovereignty over the living environments within its national jurisdiction. No state shall exercise this right so as to injure the health or living environments of its people, nor to cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.
2. Each state has the right and the obligation to regulate and exercise authority over hazardous and potentially hazardous enterprises in conformity with the interests and well-being of its people and their environment.
3. No state shall be:
 - (a) refused external finance or assistance on the grounds of its refusal to import or establish hazardous products or processes;
 - (b) Compelled to grant preferential treatment to foreign investment;
 - (c) Made subject to external threats or coercive measures, whether military, diplomatic, social or economic, intended to affect regulations or policies regarding hazardous production.
4. Transnational corporations and multinational enterprises shall not intervene in the internal affairs of a host state.

PART II COMMUNITY RIGHTS

Article 8 *Right to living environment free from hazards*

1. All persons have the right to a living environment free from hazards. In particular, this right applies where hazards arise from:
 - (a) the manufacture, sale, transport, distribution, use and disposal of hazardous materials;
 - (b) any military or weapons application, regardless of national security.

2. Any person has the right to raise a bona fide complaint to the owner or occupier of an economic enterprise regarding activities of the enterprise which he or she believes are hazardous to the living environment.

3. Any person living in an environment from which it is impossible to eliminate a hazard shall have the right to protective safety systems necessary to eliminate any such hazard as far as possible. The owners or occupiers of the concerned hazardous enterprise may not refuse to provide the most effective systems available on the grounds of cost or inconvenience.

Article 9 *Right to environmental information*

1. All persons have the right to be given reasonable notice of any proposal to establish, expand or modify a hazardous industry in such location or in such a manner as may put at risk public health or the living environment. To achieve the full realization of this right, the following steps shall be taken:

(a) All states shall ensure that communities, individuals and non-governmental organisations have the right of access to full information regarding the proposal. This right shall be effective well in advance of official authorization and shall not be abridged by claims of commercial secrecy.

(b) All states shall ensure that prior to official approval of any hazardous enterprise, independent and thorough assessments of the impact upon the environment and public health be conducted in consultation with the community. The methods and conclusions of such impact assessments shall be made available for public debate.

2. All persons have the right to be informed in their own language and in a manner which they are able to comprehend, of any possible hazards or risks associated with any product or process used by any enterprise with which they may come into contact.

3. All persons have the right to be informed of the safety record of any economic enterprises whose manufacturing or industrial processes could affect their living environment, including the number of accidents, the types of accidents that have occurred, the extent of injuries resulting from such accidents and any possible long-term adverse health effects.

4. All persons have the right to be informed of types and quantities of hazardous substances used and stored at the facility and emitted from the facility and contained in any final products. In particular, the right to information includes the right to regular toxic release inventories where appropriate. All persons living in the neighbourhood of hazardous facilities have the right to inspection of factory premises and to physical verification of hazardous substances and processes.

5. All persons who live in environments in which they may come into contact with materials or processes that are known to be seriously hazardous and which emanate from the activities of an economic enterprise, have the right to be examined regularly by an independent medical expert provided by the owner or occupier of the enterprise.

Article 10 *Right to community participation*

1. All persons have the right to participate in planning and decision-making processes affecting their living environment.

2. All persons have the right to planning and decision-making proceedings which are:

(a) public and open;

(b) accessible to all in timing and location;

(c) widely advertised in advance;

(d) not restricted by literacy, language or format of contributions.

3. All persons have the right to express their concerns and objections relating to hazards associated with establishing, modifying or expanding any economic enterprise.

4. All persons have the right to participate in the design and execution of on-going studies to determine the nature of any hazards to the living environment resulting from an economic enterprise.

Article 11 *Right to environmental monitoring*

1. All persons have the right to regular and effective monitoring of their health and the living environment for possible immediate and long-term effects caused by hazardous or potentially hazardous economic enterprise.
2. All persons have the right to be consulted on the frequency, character and objectives of environmental monitoring. The right to organise non-professional monitoring strategies, such as lay epidemiology, shall be protected. The rights of women, whose experience in providing health care may reveal otherwise unidentified consequences of hazards, are particularly affirmed.
3. Any person who bona fide believes that his or her community environment is endangered by the actions of any economic enterprise, has the right to an immediate and thorough investigation, to be carried out by an independent agency at no cost to the person acting bona fide.

Article 12 *Right to community education*

1. All persons have the right to the effective dissemination of information regarding hazards in the community. This right extends to instruction based upon the best available information and standards, drawn from both national and international sources.
2. States shall take effective steps to provide for:
 - (a) clear and systematic labelling of hazardous substances;
 - (b) appropriate education of the community, including children, on hazardous products and processes;
 - (c) training of police, medical professionals and other service providers on hazardous products and processes.

Article 13 *Right to community emergency preparedness procedure*

1. All persons have the right to an appropriate emergency preparedness procedure. Such procedure shall include warning systems for impending dangers and systems for immediate relief efforts.
2. All states shall take steps to provide communities with adequate emergency services, including the provision of police, fire fighting, medical and paramedical facilities and disaster management services.

Article 14 *Right to enforcement of environmental laws*

1. All persons have the right to have their local environment adequately and frequently inspected by a trained environmental inspector who will rigorously enforce the law and take punitive legal action when serious breaches have taken place.
2. All persons have the right to environmental management legislation in compliance with the precautionary principle, so that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason to postpone cost-effective measures to prevent hazards and environmental degradation.

Article 15 *Rights of indigenous peoples*

1. Indigenous peoples have the right to protect their habitat, economy society and culture from industrial hazards and environmentally destructive practices by economic enterprises.

2. Indigenous peoples have the right to control over their land and resources management of their land which includes the right to assess potential environmental impacts and the right to refuse to allow environmentally destructive or hazardous industries to be set up on their land.

PART III RIGHTS OF WORKERS

Article 16 *Specific Rights of Workers*

In addition to their rights as members of the community, workers have specific rights applicable to their working environments.

Article 17 *Right to working environment free from hazards*

1. All workers, both waged and unwaged, have the right to a working environment free from any existing or potential hazard arising directly or indirectly from the activities of any economic enterprise in particular from manufacturing or other industrial processes.
2. Any worker has the right to raise bona fide complaints to the employer or any outside parties regarding conditions or practices in the working environment that he or she believes are harmful or hazardous without fear of retaliatory action or other discriminatory action by the employer.
3. Any individual working in an environment from which it is impossible to eliminate any hazard, shall have the right to have provided, fitted free of charge and maintained in fully effective order, protective safety devices including personal protective equipment necessary to eliminate any such hazard as far as is possible. Employers may not refuse to provide the most effective equipment available on the grounds of cost or inconvenience.
4. All workers have the right to safe systems of work. All employers have the duty to devise, provide, maintain and regularly update safe systems of work based on the best available information at all times.
5. No worker shall be subjected to exposure to a chemical, product or process when a less hazardous one could be substituted.
6. Governments and employers are responsible for ensuring hazard-free working environments. The inaction by either employer or government shall not be an adequate excuse for a derogation of duty by the other.

Article 18 *Right to health and safety information*

1. All workers have the right to be given reasonable notice of any proposed changes to their working environments which may pose a threat to worker health and safety.
2. All workers have the right to be informed in their own language and in a manner they are able to comprehend, of any known health hazard associated with any substance, material or process with which they come into contact during the course of their employment.
3. All workers have the right to be informed of the safety record of the work environment in which they are employed, including the number and type of accidents that have occurred, the extent of the injuries resulting therefrom and any known long-term adverse health risks that result from the substances, materials and processes used by the employer. Workers have the right to be regularly informed of the safety records of any economic enterprise affiliated by common ownership to the economic enterprise in which they work, and which uses any similar substance, material or process to that used in their work environment.
4. All workers employed in hazardous work environments have the right to be examined by an independent medical expert provided by the employer at the commencement of employment and

thereafter at periodic intervals defined on the basis of the most conservative estimate of potential risks, but in any case not exceeding one year and to be furnished with the resulting medical information.

Article 19 *Right to worker participation*

1. All workers have the right to participate effectively in management decision-making affecting health and safety.
2. All workers have the right to elect safety representatives. Such representatives have the right to participate in joint committees, composed of worker and management representatives in equal number, which meet regularly to address health and safety matters.
3. All workers have the right to participate in the design and execution of ongoing health and safety studies in their working environments to determine the nature of any risks to health and safety.
4. All workers have the right to establish and associate with community hazards centres and information networks. Governments and employers have a responsibility to support such organisations and programmes.

Article 20 *Right to health and safety monitoring*

1. All workers have the right to a work environment that is regularly and effectively monitored for possible harmful effects to the health and safety of the workers employed therein.
2. Notwithstanding the duty of employers to monitor working environments, the right of workers to seek independent or worker-based monitoring shall not be infringed. This right includes the right to regular monitoring for possible adverse, long-term effects which may result from contact with the substances, materials or processes used in the working environment.
3. Any worker who bona fide believes that his or her health and safety is being or will be endangered by any substance, material or process used in the work environment has the right to an immediate and thorough investigation, to be carried out by the employer, an independent agency or by other means, at no cost to the worker.

Article 21 *Right to instruction and practical training*

1. All workers in contact with hazardous or potentially hazardous substances, materials or processes have the right to ongoing instruction and practical training regarding management of the hazard. The right to instruction and practical training based on the best available information, drawn from both national and international sources, is affirmed.
2. All workers and supervisors have the right to know and be fully instructed about the proper use and handling of any hazardous materials, the proper execution of any processes, the precautions necessary to protect health, safety and the living environment, and any procedures which should be followed in the event of an emergency.

Article 22 *Right to workplace emergency preparedness procedure*

1. All workers have the right to an emergency preparedness procedure appropriate for the conditions or practices in their work environment which shall include warning systems for impending dangers and systems for immediate relief efforts, with full scale emergency preparedness rehearsals and desk top exercises to be held frequently.
2. Emergency preparedness procedures shall take account of the particular needs of individual workers, including those with visual, hearing or mobility impairments.
3. All workers have the right to adequate emergency services, including police, fire fighting, medical and paramedical facilities and disaster management.

Article 23 *Right to enforcement of health and safety laws*

1. All workers have the right to have their work environments adequately and frequently inspected by a trained health and safety inspector who will rigorously enforce the law and take punitive legal action when serious breaches have occurred.

2. All workers have the right to adequate planning control legislation in compliance with the precautionary principle, so that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason to postpone cost-effective measures to prevent hazards and environmental degradation.

**PART IV
COMMON RIGHTS TO RELIEF**

Article 24 *Right to relief and compensation*

1. All persons injured or otherwise detrimentally affected by any hazardous economic activity have the right to swift, comprehensive and effective relief. This right applies to all persons affected by hazards or potential hazards, including persons not yet born at the time of injury or exposure, and those injured, bereaved or economically and socially disadvantaged, whether affected directly or indirectly.

2. This right includes the right to fair and adequate monetary compensation, paid to cover all costs associated with hazardous or potentially hazardous activities, including the costs of:

- (a) drugs, tests, therapies, hospitalisation and other medical treatments;
- (b) travel and other incidental costs;
- (c) lost wages, bridging loans and other pecuniary loss;
- (d) redundancy and unemployment in the case of plant shutdown;
- (e) additional unwaged work, including health care, born by family and community;
- (f) any purchase, measure or lost opportunity caused directly or indirectly by hazardous processes or products;
- (g) environmental rehabilitation.

3. All persons affected by hazards have the right to effective and innovative policies to reduce, abate or compensate for hazardous activities. To achieve the realization of this right, the steps taken by states and businesses shall include:

- (a) plant shutdown;
- (b) pollution abatements or cessation;
- (c) guarantee by liable defendants to keep assets unencumbered;
- (d) forced liquidation of the assets of a corporation whose liability is equal to or greater than its measurable assets;
- (e) placement of corporate assets in annuity funds controlled by the persons affected or their representatives for the interests of persons affected;
- (f) fair and adequate compensation for the costs of the medical monitoring of symptoms;
- (g) other remedies that may be deemed to be necessary for the benefits of persons affected.

4. Funds shall be established adequately to satisfy the claims for the persons affected and of those affected in future.

Article 25 *Right to immediate interim relief*

1. All persons adversely affected by any hazardous economic activity have the right to immediate and adequate interim relief to alleviate their injuries and suffering during the time that liability and compensatory damages are being determined. States shall ensure that all hazardous or potentially hazardous enterprises provide financial resources, through insurance or other means, adequate to cover potential interim relief costs.

2. Where an economic enterprise fails to provide interim relief, it shall be the duty of the state to do so. Interim relief so provided will not be set-off against any final compensation allowed by the court.

Article 26 *Right to medical information*

All persons immediately or subsequently affected by hazardous activities, including persons unborn at the time of the exposure to hazard, have the right to obtain relevant documents pertaining to injuries, including medical records, test results and other information. This right may be exercised at the earliest opportunity and may not be made subject to delay or non-compliance by either government or industry. Such disclosure shall not be made in a manner so as to prejudice the affected person's right of access to any service, insurance, employment or any social or welfare opportunities.

Article 27 *Right to professional services*

1. All persons adversely affected by hazardous activity have the right of access to effective professional services, including the services of lawyers, journalists, scientific experts and medical professions.

2. Where questions of a scientific or medical nature are in dispute, all affected persons, or their representatives, have the right to genuinely independent advice, free from fear or favour. The right to seek independent or multiple advice is affirmed.

3. Professionals and experts shall refrain from:

- (a) giving advice on the basis of inadequate information or expertise;
- (b) obstructing the efforts of workers and communities to seek information, conduct research or gather data through lay epidemiology or other means;
- (c) acting in concert against the interests of workers and communities.

4. All professionals having control of any information concerning the health of any injured or hazard-affected person shall have a primary duty of care towards the well being of that person. This duty shall at all times take precedence over any allegiance to any third party, including any government, professional organisation or commercial enterprise.

Article 28 *Right to effective legal representation*

1. All persons adversely affected by hazardous activities shall have the right to employ independent legal counsel.

2. All states shall provide free legal representation and legal assistance by an independent legal expert, in any case where the interests of justice so require.

3. In the determination of any suit, the persons affected shall be entitled to consolidate the claims under:

- (a) the auspices of a workers' or community organisation; or
- (b) class action laws in which the rights of any persons affected are determined in one action.

4. All persons bringing or attempting to bring legal action have the right to inspect any relevant legal files held by their legal representative.

Article 29 *Right to choice of forum*

1. All persons adversely affected by hazardous activities have the right to bring law suit in the forum of their choice against alleged wrongdoers, including individuals, governments, corporations or other organisations. No state shall discriminate against such persons on the basis of nationality or domicile.
2. All states shall ensure that in the specific case of any legal claims arising from the effects of hazardous activities, any legal rule otherwise impeding the pursuit of such claims, including legislative measures and judicial doctrines, shall not prevent affected persons from bringing suit for full and effective remedies. In particular, states shall review and remove where necessary, legal restrictions relating to inconvenient forum, statutory limitations, limited liability of parent corporations, enforcement of foreign money judgements and excessive fees for civil suits.

Article 30 *Right to pre-trial documentation*

All persons adversely affected by a hazardous activity and their representatives, have the right to seek and receive relevant documents, records or other information for submission in court or other independent tribunal or forum, for establishing individual, corporate, organisational or governmental liability during litigation.

Article 31 *Right to fair procedure*

All persons adversely affected by hazardous activities shall have the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Included in this right is the right to the due process of law, including:

- (a) the right to opt out of class actions;
- (b) the right to a reasonable notice and communication before an out-of-court settlement in a civil suit is reached;
- (c) the right to bring lawsuit notwithstanding the period of limitation set by administrative, legislative or judicial or any other means.

Article 32 *Right to freedom from fraud and delay*

All persons adversely by hazardous activities shall have the right to be protected against fraud by corporations, government or other organisations. Also prohibited is intentional delay or obstruction of the legal process, including:

- (a) declaration of bankruptcy;
- (b) abuse of the legal process to prolong adjudication;
- (c) fabrication of evidence.

Article 33 *Right to enforcement of judgements or settlements*

All persons adversely affected by hazardous activities and their representatives, shall have the right to enforce any judgement or settlement against the assets of the liable or settling party in any other countries and it shall be the duty of each state to provide under domestic law such comprehensive instruments as assist any of its citizens so affected.

Article 34 *Right to shift the burden of proof*

1. Where there is prima facie evidence that death or injury was caused by an industrial hazard, the hazardous economic enterprise has the burden of proving that it was not negligent.
2. No person adversely affected by hazardous activity shall be subjected to excessive documentation requirements or strict standards of proof in establishing that the hazardous activity caused their illness or symptoms. The link between hazards and illness shall be presumed if the affected persons establish

- (a) they suffer from symptoms commonly associated with any harmful substance, or any component thereof, which contaminated the environment; and
- (b) either
 - (i) they were present within the geographical area of contamination during the period of contamination; or
 - (ii) they belong to a group of persons commonly identified as secondary victims, including the siblings, partners, children or close associates of the original victims of the hazard.

Article 35 *Right to corporate or state criminal accountability*

1. All persons who have suffered injury or death from industrial hazards, have the right to a full criminal investigation into the conduct of the economic enterprise, any concerned government officials and any other concerned individual or organisation. The investigation shall be both immediate and rigorous and shall include an assessment of whether potential criminal offences, including homicide or manslaughter, have been committed. Where sufficient evidence exists prosecution shall be pursued promptly and vigorously.

2. Where criminal liability of a company and or individual is proved, such fines and or prison sentencing are to be imposed as to have a punitive, exemplary and deterrent effect.

Article 36 *Right to secure extradition*

Where a person accused of a criminal offence in connection with hazardous activities resides or is located in a state other than that in which the trial is being or will be conducted, the right to demand and secure the extradition of the accused to the trial state is hereby affirmed.

**PART V
IMPLEMENTATION**

Article 37 *Corresponding duties*

All persons, individually and in association with others, have a duty to protect the rights set out in this Charter. Employers and government officers are under a strict duty of care in vigilant application of the rights. Special responsibility for the realization of the provisions of this Charter lie with trade unions, community groups and non-governmental organisations.

Article 38 *State responsibilities*

All states shall respect and protect the rights of workers and communities to live free from industrial hazards. Accordingly, they shall adopt legislative, administrative and other measures necessary to implement the rights contained in this Charter.

Article 39 *Non-state action*

The absence of state action to protect and enforce the rights set out in this Charter does not extinguish the duties of employers, trade unions, non-governmental organisations and individuals to protect and assert these rights.

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