

To: Dr. Jalaja
National Human Rights Commission
Sardar Patel Bhavan, Parliament Street
New Delhi 110001

30 August, 2004

Dear Dr. Jalaja:

Pasted below are the submissions made by Shweta Narayan (The Other Media) and Nityanand Jayaraman (The Other Media) at the JSA/NHRC public hearing held in Chennai on 29 August, 2004. Recommendations for each case follow at the end of the submission.

Sincerely,
Nityanand Jayaraman
The Other Media
H19/4 Gangai Street, Kalakshetra Colony
Chennai 600 090

CASE 1: SIPCOT, Cuddalore: Special Needs of Pollution Impacted Communities Ignored

The SIPCOT chemical industrial estate in Cuddalore is one among many such clusters of polluting industries in India. The needs of communities and workers in such areas is remarkably different from those of communities not living in polluted places. In unpolluted places, the health of communities would be the responsibility of the municipality and/or the health department. In pollution-impacted communities, the causes and sources of pollution are often within the jurisdiction of agencies such as the Pollution Control Board and the Factories Inspectorate, whereas the health of the workers outside the factory and residents comes under the purview of the District Administration and the public health system. Given the peculiarities of this situation, it is important that any approach to addressing health issues in such areas is done in coordination among these bodies.

The pollution-related health problems in SIPCOT, Cuddalore have been mentioned by community residents since at least 1984. However, till date no official study has been commissioned to enquire into the reported health problems in the area.

In her submission to the Indian People's Tribunal on Environment & Human Rights, Dr. R. Sukanya, a public health specialist notes of the SIPCOT environment:

"Health problems among people due to exposure to environmental toxins is an important public health problem. Threat of emerging antibiotic resistance, eye problems, chronic compromise of lung functions, high morbidity among children, lack of proper medical care and rehabilitation, medical apathy are all highlighted in the case studies from Eachangadu." In conclusion, Dr. Sukanya notes the need for a comprehensive health

assessment of the villagers and SIPCOT workers, and "active measures to stop the contamination from the nearby factories and to restore the quality of the water to prevent further damage to health of all."

While the kinds of industries and the number of people living within the impact range of pollution may differ from place to place, the problems faced by and the demands of workers and communities living along or near the fence line of polluting factories is identical throughout the country.

The following issues inevitably arise with regard to health in pollution-impacted communities:

- High rates of morbidity among exposed people, especially women and children. Because women, children stay at home and, hence, in a polluted atmosphere all day long, they (along with and factory workers living within the pollution-impacted community) are worse affected than men or others who may leave the pollution to work elsewhere.
- Children are routinely identified as one of the most affected groups in SIPCOT, Cuddalore.
- Symptomatic treatment for chronic illnesses caused by exposure to pollution
- No specialized treatment for cases of industrial poisoning
- Medical expense disproportionately higher than income
- Loss of income due to lost work days
- Standing the Precautionary Principle on its Head: Anecdotal evidence, testimonies of pollution-impacted people, complaints and even simple studies seem to be inadequate to move district authorities, the health department and the Pollution Control Board into action. Rather than act on this evidence, they demand conclusive proof of harm from complainants or belittle their claims as exaggerated.
- No preventive action: Ongoing exposure – Many officials at regulatory authorities believe that pollution is inevitable. They also recommend "reason" and "patience" saying that the pollution has to be reduced gradually keeping in mind the need to balance the interests of the industry and the community. In a sense, this attitude condones pollution and authorizes the ongoing exposure of communities to pollution. Alarming, the Health Department is noticeably absent from the discussion around the issue of health in pollution-impacted communities. In the absence of any steps to stop exposure to pollution, there is little that can be done to improve the health status of pollution-impacted communities.
- Lack of specialized infrastructure in the event of a disaster or emergency.

Recommendations:

- Notify areas around polluting industries as "Zones of Environmental Health Concern."
- In the health administration infrastructure (ESI, PHC, GH etc) covering "Zones of Environmental Health Concern," deploy specialised environmental

health cells or retrain existing health department staff to deal with a) long-term monitoring health among pollution-impacted communities; b) providing long-term specialised health care to people living, working within such Zones; c) cases of acute poisoning by industrial chemicals.

- In such zones, set up Local Area Committees, involving elected panchayat leaders, representatives from women's self-help groups and public interest organizations with a demonstrated commitment to working on issues of pollution and/or health. Such committees should be vested with authority and provided training to monitor health and the functioning of health care infrastructure, report on pollution incidents, and supervise efforts to reduce pollution.
- Stop Ongoing Exposure, Stop Pollution: Working with the Ministry of Environment and the Central Pollution Control Board, the Ministry of Health should deploy a plan for toxics use and release inventories in factories, and for reducing the use of toxics in a timebound manner.
- Deploy an emergency plan to contain the damage already done to children's health, and initiate measures for the rehabilitation of children's health.
- Operationalise the Polluter Pays Principle: Polluting industries maximize their profits by externalizing the costs of pollution to the community in the form of transferred health care costs to repair pollution-related health damage. These industries should be made to pay for the health care of pollution-impacted communities and for the specialized health care infrastructure required in such communities.
- Operationalise the Precautionary Principle, and use the Precautionary Principle rather than a cost-benefit analysis to guide decision-making on the matter of environmental health.

CASE 2: Industrial Accident Leading to Death

On 9 April, 2004, R. Radhakrishnan – a contract worker from Periyapillaiarmedu, SIPCOT, Cuddalore – began work as a daily-wage labourer hired by a contractor at Tanfac Industries Ltd.

On 11 April, 2004, R. Radhakrishnan – a contract worker from Periyapillaiarmedu, SIPCOT Cuddalore – was exposed to concentrated sulphuric acid fumes while cleaning an acid tank at TANFAC Industries Ltd. Immediately upon exposure, he climbed out of the acid tank and fainted. After he recovered, he was given something to drink and sent back to clean the acid tank where he was exposed further.

Upon returning home, his wife reports that he was coughing and complained of a heaviness in the head, and difficulty in breathing. The problem worsened, and he was taken to the Government Hospital in the early hours of 12 April, 2004.

On the same day, the doctors at the GH recommended his relocation to a private hospital. He was moved to Kannan Hospital, Cuddalore. No ambulance or hospital vehicle was provided to convey him to the Private Hospital.

On 22 April, 2004, Radhakrishnan was transferred to JIPMER, Pondicherry, after his complications failed to subside. He succumbed to his exposure on 30 April, 2004.

His post-mortem report identifies the cause of death as “chemical pneumonitis.” A chemical analysis report prepared by the chemical examiner of the Public Health Laboratory, Pondicherry, confirms the “presence of corrosive acid such as sulphuric acid.”

This case demonstrates a prevalent problem – failure of regulatory authorities such as the Factories Inspectorate to sincerely implement the rules relating to industrial safety, health and hygiene. Victims of such failures are almost always workers, particularly contract workers.

Radhakrishnan, an untrained contract worker, was sent to do a highly specialized and hazardous job. The acid tank was not certified free of toxic fumes as required by law. There was no first aid available, and the worker was sent back to the toxic work atmosphere.

Through this presentation, the following points are sought to be made:

- Lack of preventive care: Ensuring health practices within industries is the mandate of the Factories Inspectorate. In practice, this department serves as the Government’s arm on onsite industrial health and hygiene. The Factories Inspectorate failed to ensure the rules in TANFAC, thereby eliminating any possibility of preventing harm from happening. The absence of substantial punitive measures against violators is tantamount to condoning violations and represents a failure to prevent injury or health damage.
- Lack of emergency response: Again, the failure of the Factories Inspectorate to rigorously implement the rules has led to a situation where Radhakrishnan had no access to first-aid and sensible advice after the accident. It is not

unlikely that he would have survived had he had access to first aid onsite and quality medical care subsequently.

- Lack of adequate and appropriate facilities in Government Hospital: Despite its proximity to an industrial area notorious for its pollution- and accident-related injuries and deaths, the Government Hospital in Cuddalore seems ill-equipped to deal with cases of chemical poisoning. This is clear from the fact that Radhakrishnan had to relocate to a “better” hospital within hours of getting himself admitted at the GH.
- Challenges in Accessing Redressal: If accessing health care for Radhakrishnan was difficult, the task of accessing compensation and assistance from the District Authorities and the ESI is proving to be even more complicated. The widow has received no interim relief. No case has been filed against the violator till date – Tanfac. Pension under ESI is still several files away. These complications are very much related to the failure in regulating industrial safety and health, and in maintaining appropriate health systems.

RECOMMENDATIONS:

1. The Health Department should play a proactive role in ensuring that practices to prevent harm are followed within industries. They should do this by coordinating with the Factories Inspectorate.
2. The Health Department should facilitate the routine monitoring of workers health data required to be collected under the Factories Rules to identify problems (if any) of occupational diseases among them.
3. The Factories Inspector should be directed to diligently perform his/her functions, particularly in regard to maintaining industrial safety and ensuring emergency response by industry. The Inspector should also ensure that only trained workers are deployed on hazardous jobs and contract workers are not used for such activities.
4. Hospital infrastructure in the areas near polluting industries should have trained personnel and equipment to deal with cases of industrial injury and poisoning.
5. The District Administration should be instructed to assist the victim or his/her survivors in accessing compensation and/or pension. An interim compensation fund should be created with advance contributions from polluters.
6. The Health Department should pursue the Factories Inspectorate to initiate statutory criminal proceedings against the TANFAC with a view to delivering exemplary punishment that will serve as a deterrent to corporate negligence on matters related to industrial safety and hygiene.

CASE 3: Injury to Fishermen as a Result of Water Pollution

In September-October 2002, fisherfolk working in the river Uppanar, that runs behind SIPCOT, Cuddalore, stopped fishing after all active fishermen began developing serious skin problems. They attributed the problems to an illegal discharge of acidic effluents from Pioneer Miyagi Chemicals -- a routine occurrence, according to them.

The company uses large quantities of hydrochloric acid to dissolve bones (and manufacture Ossein). The New Jersey Department of Health warns: "Contact [with hydrochloric acid] can cause severe skin burns and severe burns of the eyes, leading to permanent damage with loss of sight. Exposure to dilute solutions may cause a skin rash or irritation."

A submission by the Joint Director of Health Services, Cuddalore, corroborates the charges by the fisherfolk against Pioneer Miyagi for discharge of untreated acidic effluent into the river. "On 20.9.02, 13 persons (fishermen) suffered chemical burns due to effective/discharge from SIPCOT industries into Uppanar River," the statement read.

The fisherfolk said medicines from the Government hospitals and private hospitals did little to ease their problem. No systematic treatment was provided for the victims of acid burns.

When the fisherfolk approached the District Collector for assistance, the Collector is reported to have dismissed their concerns and advised them to look for an alternative livelihood. This attitudinal malady that afflicts many bureaucrats and people in regulatory agencies is the most serious obstacle to implementing the Precautionary Principle, or taking any sensible steps in the matter of health.

In October 2002, NGOs FEDCOT and CorpWatch requested public health specialist Dr. R. Sukanya (M.D) to look into reports of the September 2002 occupational injuries among fisherfolk, and the general state of health in SIPCOT. In her report submitted to the Indian People's Tribunal on Environment and Human Rights, Dr. R. Sukanya states: *"In the fishing village of Sonnanchavadi, chemical contamination of the river poses a serious and ongoing occupational health threat. The fact that the villagers have been forced to stop fishing - and suffer wage losses - is a violation of their fundamental and constitutional guaranteed right to livelihood."*

Through this presentation, the following points are sought to be made:

1. Lack of preventive care: Adequate efforts have not been made to eliminate pollution-related health injury.
2. Absence of appropriate treatment: Fisherfolk received no effective treatment for their ailments. Only symptomatic and ineffective treatment was provided.
3. Difficulties in accessing redressal (including compensation)
4. Lost wages and added expenses due to health care costs
5. No punitive action against industry to deter future violations

RECOMMENDATIONS:

1. **Stop Exposure by Stopping Pollution:** Pollution control acts are often not enforced rigorously as a concession to industries. This cannot be tolerated. Polluters must be punished, and repeat offenders must be closed down. The NHRC should direct the Pollution Control Board to show zero tolerance to polluters.
2. **Health Care facilities:** NHRC should direct the Health Department to set up specialized health care facilities to cater to the special needs of pollution-impacted communities.
3. **Local Oversight:** Such health care facilities should be supervised and held accountable by local area committees comprising panchayat leaders and representatives of women's self-help groups.
4. **Interim Compensation:** District Administration should be directed to dispense interim compensation to victims, even while assisting them to initiate civil claims against the polluter.