CNDP
Coalition for Nuclear Disarmament & Peace

28/6/2010

To
Dr. T. Subbarami Reddy,
The Chairman,
Parliamentary Standing Committee on Science & Technology, Environment & Forests,
New Delhi

Sub: Supplementary Submission on 'Civil Liability for Nuclear Damage Bill 2010'
Ref.: Our Oral Deposition on 24 06 2010 before the Standing Committee and earlier Written Submission dated 18 06 2010

Sir,

Pursuant to your advice in response to our presentation before the Hon'ble Standing Committee on June 24 by our representatives, Praful Bidwai and Sukla Sen, we are making the following supplementary (written) submission.
It is, of course, a sequel to our earlier/original written submission dated June 18 2010. However, this could be taken as a stand-alone (upgraded) entity.
The *submission is divided into three parts*: one, the background/explanatory notes/comments provided in the original submission dated June 18; two, major points made/discussed during our deposition on the 24th; *three, updated list of specific suggestions*.

I. Background Note
The defining features of the Bill, to our understanding, *are as under:*

One, it is an attempt to enact a law defining and tackling civil liability for nuclear damage, which does not obtain as of now, to facilitate participation of foreign players in Indian nuclear market.

Two, the Bill is also a move towards joining the Convention on Supplementary Compensation (CSC) regime by enacting a law in alignment with that.

Three, the Bill is a stepping stone to ensure entry of private players, whether foreign or indigenous, as "operators", as had been demanded by the FICCI in its June 2009 Report.
But the Bill proposes to go way beyond the CSC framework to roll out a red carpet for the prospective private players to assume the mantle of "operator".

Our major concerns, in brief, *are as under:*

A. The entry of private players as "operators" is too dangerous given the unique nature of nuclear power industry and its catastrophic potentials, as chillingly illustrated by the Chernobyl Disaster on April 26 1986. The fact is that profit maximisation is the very *raison d'etre* of a private enterprisegiving rise to the consequent innate tendency to cut corners in terms of safety measures. Regulatory mechanisms can at best only "regulate". Hence, the envisaged ushering in of private players as "operators" of nuclear power plants is an open invitation to disaster. What is of great relevance here is that the CSC framework in no way obliges the country to open doors to private players, foreign or indigenous, as "operators" of nuclear power plants.

B. There must not be any overall "cap" on the quantum of compensation to potential victims. That is too unjust and inhumane. It has to relate to the actual damages caused. The overall “cap” of 300 million SDR, which works out to about 460 million US$, is even lower than the compensation amount of US$ 470 million ratified by the Indian Supreme Court to the victims of Bhopal Gas Disaster way back in 1989.

The CSC, again, does NOT so obligate. It actually allows for a three-tier compensation regime. Up to a limit, or “cap”, of 300 million SDR, in the first tier, to be paid by the “operator” or the national government, as per the law of the land. Then another tier, to a further 300 million SDR or so to be drawn from the common pool of funds maintained by the CSC. And then the national government may, at its own option, pay even beyond the upper limit of this second tier limit without any “cap” whatever.

C. The Bill pegs the “liability” of the private “operator” at Rs. 500 crore per incident, with the further proviso to lower it down to even paltrier Rs. 100 crore. And the state, i.e. the Indian taxpayers/citizens, will have to pay, in case of an accident in a privately operated nuclear power plant, the amount of “liability”, i.e. compensations for damages, exceeding the “cap” for a private "operator" subject to the overall limit of 300 million SDR.

Even in this case, The CSC does NOT obligate to peg the "cap" for the "liability" of any "operator" any lower than 300 million SDR, which amounts to around Rs. 2,100 crore or 460 million US$ (depending on the exchange rate obtaining). And while the CSC obligates that there must be a cap of 300 million SDR, it does not envisage any overall cap on the compensation to be made available to the victims by a member nation.

This is evidently a brazen attempt to favour private enterprises at the cost of Indian citizens. And a lower “cap” for a private “operator” would only further strengthen its intrinsic propensity to cut corners in the realm of “safety”, with nightmarish prospects.

II. Major Issues Raised/Discussed

A. The entry of private players as “operator” (of nuclear power plant):

Some members of the Standing Committee claimed that the Bill does not mention “private operator” and thereby there no is no reasonable ground the apprehension, as voiced by the CNDP, that the Bill is meant to usher private players in as operators.

In response it was pointed out that:

The Cl. 6. (1) provides: “The maximum amount of liability in respect of each nuclear incident shall be rupees equivalent of three hundred million Special Drawing Rights [Rs. 2,100 crore approx – subject to the exchange rate applicable at any given point of time].”

The Cl. 6. (2), *inter alia*, provides: “The liability of an operator for each nuclear incident shall be rupees five hundred crores.”

The Cl. 7, *inter alia*, provides:

Quote

The Central Government shall be liable for nuclear damage in respect of a nuclear incident, –

(a) where the liability exceeds the amount of liability of an operator specified under sub-section (*2*) of section 6, to the extent such liability exceeds such liability of the operator;

(b) occurring in a nuclear installation owned by it; …

Unquote

Read together, the above clearly means the following:

One, there are two categories of “operators”: one, the Central Govt. itself (as is the case right now without any exception whatever); two, other than the Central Govt.

Two, The Central Govt, as operator will have a liability cap of 3 million SDR, the other class of operators will have a liability cap of Rs. 500 crores (which is adjustable and may in fact be as low as Rs. 100 crore at the *discretion* of the concerned authority).

Evidently, this second category is “private” operators for whom the liability cap is kept ridiculously lower.

It was further pointed out that given the catastrophic potentialities of the nuclear industry, apart from serious routine hazards, entry of private operators, in the compulsive hunt for private profit, could just spell disaster. Both the recent oil spill in the Gulf of Mexico, where the BP is the operator, and the Bhopal gas disaster where the UCC/UCIL was the operator graphically illustrate that.

B. **Total Cap on Liability**:

It was claimed by some members of the Standing Committee that there is no cap on total liability.
The CNDP reps. pointed out that the Cl. 6. (1) Unambiguously provides: "The maximum amount of liability in respect of each nuclear incident shall be rupees equivalent of three hundred million Special Drawing Rights."
So, *that's the total cap laid down*.

As the cost of damage/disaster may run into billions and billions of SDRs, no (total) cap whatever is acceptable. And this cap of 300 million SDR, let alone Rs. 500 (actually reducible to 100) crore, is too paltry.

C. **The need for the operator to deposit money in an escrow account before setting up of a reactor.**

D. **The AERB must be made autonomous of the DAE. Its functioning must be monitored by an independent experts' body**.

And, in case of the AERB not notifying an "incident", the right of any private citizen to draw the attention of the AERB must be explicitly acknowledged in the Bill.
Some recent instances of "incident" where the AERB remained in the dark initially were cited, the radioactive isotope in Delhi scrap market, in particular.

E. **The Claims Commission must include member(s) of the medical profession** with an established track record of engaging with people's health issues to ensure the proper assessment of the health impact of an "incident".

III. Specific Suggestions (Updated – based on oral presentation on 24 06 2010)

Contentious Clauses	Draft Bill Provides	**Suggestion/Amendment**	Explanation/Comment
1. **Atomic Energy Regulatory Board to notify incident** **(Chapter II, Cl. 3)**		**Any private citizen, or group, will have the right to draw the attention of the AERB to an alleged "incident' in case it is not notified by the AERB *suo moto*. The AERB shall duly examine and respond to such request.**	The AERB must be made autonomous of the DAE. Its functioning must be monitored by an independent experts' body.
2. **Channelising the liability to "operator".** **(Chapter II, Cl. 4 (1))**	The operator for the nuclear installation shall be liable for nuclear damage …		This is a welcome provision as otherwise there would be no pre-designated (singular) source from which the compensations for the victims to be obtained. And the whole process could turn utterly cumbersome and lengthy. *However, there must be adequate provisions for the operator to claim compensations, in turn, from the supplier/designer/consultant etc., as the case may be, without diluting its liability to the victims.*

		To be further added: **The operator shall deposit a sum of 300 million SDR in an escrow account for each nuclear reactor to be operated before start of operation.**	This will eliminate much of possible complications in the event of an "incident".
3. **Exceptions to the operator as regards liability** **(Chapter II, Cl. 5(1) i & ii)**	"grave natural disaster …" The list of exceptions, under Cl. 5(*1*) (*ii*), includes "terrorism".	**To be dropped in entirety.** **To drop "terrorism" from the list.**	The corresponding CSC clause - Annex, Article 3, 5. b. - provides that national law may have provision to drop such circumstances from the list of exceptions. It does not figure in the corresponding CSC clause: Annex, Article 3, 5. a. The concept of "strict liability" being the foundational concept, such exceptions, and consequent transfer of liability for damage under such circumstances to the "Central Government", and thereby to the Indian taxpayers, in case of a private operator, is wholly undesirable and unjustified.
4. A. **The total cap on liability** **(Chapter II, Cl. 6(*1*)**	The maximum amount of liability in respect of each nuclear incident shall be the rupee equivalent of three hundred million Special Drawing Rights.	***In case of an "incident" of exceptional gravity, the cap on the liability of the Central Government shall stand withdrawn through due notification by the Claims Commission.***	There must not be any cap on total liability. This, by the way, does not contradict the provisions of the CSC. Three hundred million SDR (equivalent to about US $ 450 million, depending on the exchange rate obtaining) is, in any case, too paltry. In case of Bhopal gas disaster, the compensation amount settled (to be paid by the UCC) back in 1989 was 470 million US $. That was pretty much inadequate.

B. **Limits of liability of a (private) operator** **(Chapter II, Cl. 6(*2*) and 7(*a*) and (*c*))**	Rs.500 crore as operator liability ceiling, with a provision for reduction to Rs. 100 crore. The balance, if any, up to 300 million SDR to be paid by the Central Government.	**This provision to be dropped.** **The operator is to be held liable for compensation up to 300 million SDR, as in case of the Central Government as operator under Cl. 7 (*b*).**	In case, of oil spill in the Gulf of Mexico, the BP has committed an *initial* amount of US $ 20 billion. And there will be no cap. In the US, in case of a nuclear accident, the first 300 million US $ to come from the respective insurance cover, then up to US $ 10 billion from a common pool of funds maintained by the nuclear industry. Beyond that, the Federal Government, without any cap. (Ref.: P. 2/4 of 'The Price-Anderson Act: Background Information: November 2005' at <http://www.ans.org/pi/ps/docs/ps54-bi.pdf>.) No lower limit of liability for (private) operator. Clauses (6 & 7, in particular) to be modified accordingly. The Convention for Supplementary Compensation (CSC) *does not obligate* the GoI to go in for such differentiated liabilities, one for private operator and another for the state affiliated operator.
C. **Cl. 6. (*2*), para 4**	Provided also … cost of proceedings.	**Cl. 6 (2), para 2 & 3 shall be deleted, in any case.** To be amended as: **Provided also that the amount of liability as provided above is exclusive of any interest or cost of proceedings.**	The discretionary provision for lowering the limit any further (to Rs. 100 crore), under Cl. 6 (*2*), para 3, is utterly unjustified. That makes nonsense of the "cap" of Rs. 500 crore. And the whole process of determining the "cap" appears to be entirely *discretionary*.

5. **Claims Commission** **(Chapter III, Cl. 9 (*2*))**		**The Claims Commission must include member(s) of the medical profession with an established track record of engaging with people's health issues to ensure the proper assessment of the health impact of an "incident".**	
6. **Operator's "right of recourse"** **(Chapter IV, Cl. 17 (a), (b) and (c))**		To be added: **The contract between any and every operator and its supplier(s) (of equipment, material or services, as the case may be) must include in writing a provision to the effect that the operator shall have the right of recourse in case of an "incident" without any exception, <u>including as regards the damage to the equipment/plant/site</u>.**	The reported move of dropping the Cl. 17 (b) is utterly objectionable, as explained above (at entry 2). This will make the supplier all the more cautious about the quality and with the Central Govt. as the operator it will not be able to waive the right of recourse clause under the pressure of lobbying or whatever. This evidently will benefit the Indian taxpayers in case of an "incident".
7. A. **Extinction of right to claim** **(Chapter IV, Cl. 18)** B.	The right to claim compensation for any nuclear damage caused by a nuclear incident shall extinguish if such claim is not made within a period of ten years from the date of incident notified … (Para 2) Provided that where a nuclear damage is caused …. But, in no case, it shall exceed a period of twenty years …	The limit of 10 years is too short. To be made 30 years at least. . **Under such circumstances, the Central Government must duly examine a claim and pay appropriate compensation by routing the case through the AERB.**	This would, however, be a departure from the norms of the CSC It means that, under the present provisions, in case of a damage arising out of a nuclear incident caused by some nuclear material stolen more than twenty years back, the victim will have no right to any

			compensation. That is totally unfair and unacceptable.
8. **Exclusion of jurisdiction of civil courts** **(Chapter V, Cl. 35)**		**While no civil court must have any right to intervene in the conduct of proceedings by the claims commission and ready implementation/enforcement of its award/order, much as in case of the Election Commission; there must be provision to for appeal to an appellate authority – High Court or Supreme Court, without affecting the immediate implementation/enforcement of the award/order by the claims commission.**	Otherwise, it would be violation of natural justice.
9. **Offences and penalties (Chapter VI, Cl. 39 (*1*))**	… shall be punishable with imprisonment for a term which may extend to five years or with fine or both.	To be amended as: shall be punishable with imprisonment for a term which may extend to ten years, with or without fine.	The provision for penalty for not complying with the award, Cl. 36 (1) (b), for example, is too paltry. In any case, this is only *maximum*. And, the provision for imprisonment must not be substitutable by fine.
10. **Offences by companies (Chapter VI, Cl. 40 (*1*), para 2)**	Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act, if he proves that offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.	This has to be amended as: **Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act, if he proves he exercised all due diligence to prevent the commission of such offence.** **"that offence was committed without his knowledge or": to be deleted.**	This clause, in its present form, violates the principle of command responsibility and thereby would ensure that minions are punished in case of violations and senior officers go scot free.
11. **Immunity to Central Government and its employees**	No suit … thereunder.	**This is to be dropped in entirety.**	No such immunity in operating a nuclear plant/installation is called for. Such immunity will only engender criminal

(Chapter VII, Cl. 47)			negligence and worse.
12. **Power to remove difficulties** **(Chapter VII, Cl. 49 (*1*), para 2)**	Provided that no order shall be made under this section after the expiry of three years from the commencement of this Act.	**This para is to be dropped in its entirety.**	If the Indian Constitution needs be amended even after sixty years of coming into force, why the limit of "three years" here?
13. **General point** **Compensation for environmental damage**		Any public spirited group or citizen, apart from public bodies like Gram Sabha, panchayat, municipality etc. and affected persons, must be entitled to raise such claims. There must be a clear provision towards that. And, also who will receive such amount?	Under "Definitions" (ref. Chapter I, Cl. 2 (f) (iv), "nuclear damage" covers "impaired environment". It is, however, not provided who can lodge claims for "costs of measures of reinstatement" as mentioned therein.

Thanking you,

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Praful Bidwai
Sukla Sen

Anil Chaudhary

For the Coalition for Nuclear Disarmament and Peace (CNDP)

Cc.: Members of the Standing Committee:

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