

**REQUEST TO OPEN
INVESTIGATIONS & REQUEST
FOR REPARATIONS**

REGARDING THE

**CRIMES AGAINST
HUMANITY OF
CLIMATE CHANGE**



submitted under
Article 15 of the Rome Statute of the
International Criminal Court

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INTRODUCTION

Climate change is the apex of all crimes. British Petroleum and the British government are central to the origin story of the climate crisis. Senior leaders have known for decades that their contributions to the common purpose of maximising petroleum profits would lead to the infliction of great suffering globally through climate change on a widespread and systematic scale.

This submission to the International Criminal Court (“ICC”) calls for the opening of an investigation into the crime against humanity of climate change pursuant to Article 15 of the Rome Statute. This submission also seeks the payment of reparations to victims of climate change through the loss and damage mechanisms under Article 8 of the United Nations Framework Convention on Climate Change’s Paris Agreement. The assessment of financial liability is based on attribution science assessment of BP’s portion of the costs of climate change harm remediation.

Climate change is the apex of all crimes

This request to open investigations is made in the name of youth standing in solidarity from both sides of the colonial structures which are the foundation of the climate crisis: Students for Climate Solutions in Aotearoa New Zealand (a former British colony) and UK Youth Climate Coalition in the United Kingdom (the former and current imperial coloniser).



Both youth groups are united across the former colonial divide through the shared experience of great suffering from climate change resulting from the common purpose of BP senior executives in collusion with British government officials.

Civilian populations all over the world are experiencing great suffering, serious injury, and serious bodily and mental health impacts due to the widespread and systematic harm from climate change. These extreme harms include: death, forced displacement, grave illness, persecution of groups vulnerable to extreme weather events, annihilation of place-specific culture, destruction of livelihoods, mental torture pursuant to the loss of entire nations in a manner more complete than any conceivable crime of aggression, and the loss of a secure planetary future.

This great suffering is a result of the systematic policy of maximizing fossil fuel profits regardless of the severe global harm from climate change. Senior leaders knew of the harm that would be caused by climate change pursuant to their common purpose to maximize fossil fuel profits. But regardless of this knowledge, they intentionally made significant contributions to the common purpose through creating doubt, dependency, delay, deception, and dominance over political processes. The sheer scale of the exponential suffering posed by the continuing crime of climate change shocks the conscience of humanity.

There are many misconceptions about this crime, the first being that it is not a crime at all. To counter this misconception and prove that climate change is a crime worth conviction, this submission demonstrates that there is a reasonable basis to proceed with an investigation at the ICC under Article 15 of the ICC Rome Statute. This submission highlights the key legal components of international criminal law which establishes the crime of climate change under the legal elements of the crime against humanity of “other inhumane acts”. This submission also demonstrates how climate change meets the legal threshold test of “widespread or systematic attack against a civilian population.” And finally, this submission will set out the means by which senior corporate executives knowingly made significant contributions to their common purpose to maximize fossil fuel products regardless of the great suffering from climate change.

This analysis seeks to serve as a potential template to be utilized by communities across all manifestations of the climate change crisis.

For example, sea-level rise in the Pacific could be investigated with respect to corporate executives and government officials furthering common purposes centered on the maximizing of fossil fuel profits regardless of the great suffering from climate change for Small Island Developing States. Likewise, the template in this submission could be utilized by indigenous communities around the Arctic circle experiencing extreme suffering from climate change-induced melting of sea ice and permafrost. The senior leaders of governments around the world which are resisting mitigation emissions reduction policies similarly could be assessed against this individual responsibility framework of international criminal law. There may also be scope for considering ecocide within the ambit of “other inhumane acts” and demonstrating that the corresponding legal elements regarding human, animal, and ecological suffering can be established through assessing the consequences of harm to the environment.

This Article 15 submission is therefore an invitation to individuals and communities who seek to correct the current misconceptions regarding climate crime through assessing the impacts of climate change as a crime against humanity. The ICC was established to end impunity for grave crimes. Climate change is a result of one of the most pernicious criminal cabals in human history and must not go unpunished.

REQUEST FOR REPARATIONS FOR VICTIMS OF THE CRIME OF CLIMATE CHANGE

BP senior executives have overseen the third largest cumulative emissions contribution to the climate change crisis compared to all other investor-owned carbon majors in the world.¹

Since the early 2000s² attribution science has developed methods for modeling of anthropomorphic and fossil fuel contributions to the climate crisis³ including extreme weather events such as severe storms,⁴ droughts,⁵ fires,⁶ floods,⁷ glacier retreats⁸ and sea level rise.⁹ In 2015 attribution science analysis demonstrated that the fossil fuel industry was responsible for 91% of global industrial greenhouse gas emissions and around

1. Muffett, C. and Feit, S. (2017) Smoke and fumes—the legal and evidentiary basis for holding big oil accountable for the climate crisis <https://perma.cc/UT88-STQJ>; Carbon Majors Update to 2013: Carbon Major Entities Cumulative Emissions to 2013 Ranked, Climate Accountability Institute <http://www.climateaccountability.org/pdf/SumRanking%20Dec14%208p.pdf>
2. <https://www.nature.com/articles/nature03089>;
3. <https://www.worldweatherattribution.org/>; Heede, R. (2014) Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854–2010. *Climatic Change*. 122:229–41; Kenner D, Heede R. (2021) White knights, or horsemen of the apocalypse? Prospects for Big Oil to align emissions with a 1.5°C pathway. *Energy Research & Social Science*:102049; Frumhoff PC, Heede R, Oreskes N. The climate responsibilities of industrial carbon producers. *Climatic Change*. 2015; 132:157–71.
4. Risser, M., Wehner, M. (2017). Attributable human-induced changed in the likelihood and magnitude of the observed extreme precipitation during hurricane Harvey. *Geophys. Res. Lett.* 44(24), 12,457-12,464.
5. Cowan, T., et.al. (2020) Present-day greenhouse gases could cause more frequent and longer Dust Bowl heatwaves. *Nat. Clim. Chang.* 10, 505–510.
6. Hegerl, G. C., et. Al. (2006). Climate Change Detection and Attribution: Beyond Mean Temperature Signals. *Journal of Climate*, 19(20), 5058-5077.
7. Schaller, N., et.al. (2016). Human influence on climate in the 2014 southern England winter floods and their impacts. *Nature Clim Change*. 6, 627–634.
8. Stuart-Smith, R.F., et.al. (2021). Increased outburst flood hazard from Lake Palcacocha due to human-induced glacier retreat. *Nat. Geosci.* 14, 85–90.
9. Hegerl, G. C., et.al. (2006). Climate Change Detection and Attribution: Beyond Mean Temperature Signals, *Journal of Climate*, 19(20),

70% of all anthropogenic greenhouse gas emissions.¹⁰ Within this, twenty corporations are responsible for approximately one third of all global carbon emissions from 1965 to 2017.¹¹ BP senior executives have overseen the emission of more than 34 billion metric tons of carbon dioxide equivalent emissions from their fossil fuel products since 1965.¹²

Establishing BP's percentage of fossil fuel emissions enables the calculation of the corresponding percentage share of the costs of adaptation to climate change and addressing loss and damage. This cost analysis forms the basis of the request for reparations attached to this Article 15 submission to open an investigation into BP senior executives for the crime against humanity of climate change. The ICC provides for the payment of reparations to victims of international crime through the Trust Fund for Victims under Article 75 of the Rome Statute, which was established to restore justice and relieve suffering to the extent that is possible following the conviction of an accused. Reparations may be awarded on a collective basis, and may include monetary compensation, rehabilitation, medical support, victims' services centers, restitution and repair of property, and symbolic measures such as apologies or memorials.¹³ Previous reparations against individuals without corporate wealth reached USD\$30 million.¹⁴

Reparations are particularly necessary in contexts where the perpetrator profits from the crime, and many corporate entities have greatly profited from causing climate change suffering. As recently stated by BP Chief Executive Bernard Looney, BP "is a cash machine"¹⁵ and the exorbitant profits flowing from the crime of climate change must be returned to local communities to implement accountability and climate justice. This submission therefore seeks reparations on a collective basis through the loss and damage mechanisms under Article 8 of the United Nations Framework Convention on Climate Change's Paris Agreement¹⁶

10. Griffin, P. (2017). The Carbon Majors Database. *CDP Carbon Majors Report* <https://cdn.cdp.net/cdp-production/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf?1501833772> page 7.

11. <https://www.theguardian.com/environment/2019/oct/09/revealed-20-firms-third-carbon-emissions>

12. <https://www.theguardian.com/environment/2019/oct/09/revealed-20-firms-third-carbon-emissions>

13. <https://www.icc-cpi.int/about/victims>

14. <https://www.icc-cpi.int/news/ntaganda-case-icc-trial-chamber-vi-orders-reparations-victims>

15. <https://www.reuters.com/business/energy/bps-third-quarter-profit-beats-forecasts-lifted-by-energy-prices-2021-11-02/>

16. <https://unfccc.int/topics/adaptation-and-resilience/the-big-picture/introduction-to-loss-and-damage>; <https://www.carbonbrief.org/cop27-why-is-addressing-loss-and-damage-crucial-for-climate-justice/>; <https://qrist.org/international/cop27-loss-and-damage-climate-reparations/>. Muffett, C. and Feit, S. (2017) Smoke and fumes—the legal and evidentiary basis for holding big oil accountable for the climate crisis <https://perma.cc/UT88-STQJ>; Carbon Majors Update to 2013: Carbon Major Entities Cumulative Emissions to 2013 Ranked, Climate Accountability Institute <http://www.climateaccountability.org/pdf/SumRanking%20Dec14%208p.pdf>

STRUCTURE OF ARTICLE 15 SUBMISSIONS

Under Article 15 of the ICC Rome Statute the Office of the Prosecutor (“OTP”) may determine there is a “reasonable basis to proceed with an investigation” into allegations of crimes within the jurisdiction of the Court. Under Article 15(2) the OTP may receive information regarding potential crimes from “non-governmental organizations, or other reliable sources that he or she deems appropriate.”¹⁷ This means it is open to any person or community group to submit a request to the OTP to initiate investigations into climate crime.

There are no set legal requirements in the Rome Statute regarding the structure or content of Article 15 submissions, nor is there any official guidance from the ICC on how to present information in requesting the OTP to open an investigation.¹⁸ Similarly, there is no specification from any official ICC sources as to what information should be provided in an Article 15 submission, including whether there is any requirement to name specific individuals of interest or potential accused persons.

However, it is possible to identify concepts which assist in guiding the scope of Article 15 submissions. Under the ethical principle of do-no-harm, it is particularly important for submitters to prioritize assessing security risks regarding sharing information, both for themselves and for people associated with the Article 15 submission to the OTP.¹⁹ These security objectives could be achieved through measures such as maintaining complete confidentiality around the Article 15 submission, or by sharing

17. <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

18. The ICC recently issued practical guidelines for documenting and preserving information on international crimes, although this did not extend to guidance on Article 15 submissions: <https://www.icc-cpi.int/news/icc-prosecutor-and-eurojust-launch-practical-guidelines-documenting-and-preserving-information> There are Article 15 guides by civil society groups, e.g. Global Rights Compliance <https://globalrightscompliance.com/wp-content/uploads/2021/12/GRC-Article-15-Communication-Template-Final-1.pdf>

19. On ethics, see: <https://justpeacelabs.org/category/ethics/> On security, see: <https://secfirst.org/>

a public version with redactions or summaries of the fuller version sent to the OTP in order to protect the persons involved from any potential retaliation. This current Article 15 submission follows this latter approach and will not share publically any information which was not already in the public domain and will not publically name specific individuals as potential persons of interest for the request to open an investigation.

There is guidance from procedural law which affirms that the primary responsibility for investigations rests with the OTP and as a result, it is preferable if Article 15 submissions stay within the ambit of “lead- evidence” i.e. material which does not constitute a full investigation but instead only conveys sufficient information to enable independent investigations by the OTP.²⁰ As a result, this submission does not contain any witness interviews or collection of physical material other than the public documents readily available as potential lead evidence, including in some contexts whistleblower information which has entered the public domain.

The structure of this submission will follow the analysis phases the OTP undertakes once they receive an Article 15 submission, as set out in the OTP Policy Paper on Preliminary Examinations,²¹ and also the structure of the OTP’s final report following the preliminary examination process, namely, the Article 53 Report.²² The primary objective of this structure is to demonstrate how international criminal law applies to the facts of climate change and to support global communities in assessing whether to send their own Article 15 submission to the OTP regarding their experience of harm from climate change.

This submission pays particular heed to the OTP’s emphasis on environmental harm in the official OTP Case Selection Paper²³ and the OTP Policy Paper on Preliminary Examinations which asserts that the OTP “will pay particular consideration to crimes committed on a large scale, as part of a plan or pursuant to a policy.”²⁴ Indeed, nothing is more large scale than a coordinated global effort to achieve a common purpose of maximizing fossil fuel production which causes great suffering, serious physical injury, and harm to mental health.

STEP 1: CASE SYNOPSIS

Public versions of the OTP Article 53 Report begin with a description of the key facts which constitute the contextual background to the alleged crimes. The purpose of this section is to indicate the geographic locations where the allegations took place and to establish a general timeline of the facts. Of particular concern is describing the nature of the harm and the persons experiencing the harm, as well as the particular individuals or groups implicated in the harm i.e. the accused persons. However, there is no necessity to publically name any individuals. The case synopsis should be relatively brief since the specific facts regarding the allegations should be presented under the latter factual and legal assessment analysis under “step 3” set out below which forms the main part of this current Article 15 submission.

20. See Whiting, A (2009). Lead evidence and discovery before the International Criminal Court: The Lubanga Case. *UCLA Journal of International Law and Foreign Affairs*, 14(1), 207–233. <http://www.jstor.org/stable/45302339>

21. <https://www.icc-cpi.int/situations-preliminary-examinations>

22. See for example [https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-COM-Article_53\(1\)-Report-06Nov2014Eng.pdf](https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-COM-Article_53(1)-Report-06Nov2014Eng.pdf)

23. https://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915 OTP-Policy_Case-Selection_Eng.pdf See paras 7, 40, 41.

24. https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf Page 19

STEP 2: PRECONDITIONS TO JURISDICTION

Under the official phases set out in the OTP Paper on Preliminary Examinations, phase 2 involves an assessment of the preconditions to jurisdiction.²⁵ These are set out under Article 12 of the Rome Statute, namely that (i) the crime must have been committed within the timeframe specified in Article 11 of the Statute (temporal jurisdiction); and (ii) there must be personal and/or territorial jurisdiction (i.e. a national citizen and/or on the territory of a Member State of the ICC).

Therefore, for any potential climate change case, the submission should demonstrate that the underlying facts (i) occurred after the date of ratification of the Rome Statute for at least one country specified in the case synopsis,²⁶ and (ii) relate to either a potential accused who is a national citizen of a Member State of the ICC, or otherwise, that the facts described in the case synopsis occurred on the territory of at least one Member State i.e. a country which has ratified the Rome Statute.²⁷

There are additional factors from the caselaw on jurisdiction which are useful in the context of climate crime. Recent cases have demonstrated that jurisdiction can be established when the crime occurs across multiple countries, even if not all of those countries are ICC Member States, so long as a component of the crime occurred on the territory of a Member State.²⁸ Caselaw has also established that nationals of a country which is not a Member State may still be liable under the ICC Rome Statute if their acts are linked to the territory of a Member State.²⁹

This effectively means that most countries and nationals in the world fall within the jurisdiction of the ICC regarding the crime of climate change, since the crime of climate change impacts all countries around the world. For example, in the same way that CIA officials (as non-Member State nationals from the United States of America) were investigated due to their acts on Afghanistan (an ICC Member State), it is conceivable that an Article 15 submission may be made regarding Exxon officials (as non-Member State nationals from the United States of America) and their contribution to the crime of climate change occurring throughout the Pacific (the highest regional representation of Member States of the ICC).

In the current submission regarding BP senior executives and the crime of climate change, the preconditions to jurisdiction are met since BP is incorporated in the UK³⁰ which became a Member State when the Rome Statute entered into force in 2002³¹ and many executive meetings occur in the UK where most BP directors reside in the UK or hold UK nationality.³²

The UK therefore constitutes a territory where part of the crime occurred which therefore captures the full scope of the crime even if it occurs on non-Member State territory (such as US-based planning meetings) or involving non-Member State nationals (such as BP directors who are US nationals). The harmful impacts of climate change are occurring across all Member States.

25. https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf Page 19; https://www.icc-cpi.int/sites/default/files/itemsDocuments/SASMaliArticle53_1PublicReportENG16Jan2013.pdf Page 12.

26. By clicking on the region of Member States, the start date of temporal jurisdiction for each country is listed below the flag images, see for example: <https://asp.icc-cpi.int/states-parties/asian-states>

27. See the list of the 123 Member States: <https://asp.icc-cpi.int/states-parties>

28. See for example, the opening of an investigation in Afghanistan (a Member State) and the inclusion of events in non-Member States concerning non-Member State nationals which were considered "sufficiently linked" to the situation under investigation: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_00828.PDF

29. See for example, the opening of an investigation in Palestine (a Member State) and the inclusion of events in non-Member States: <https://www.icc-cpi.int/palestine>

30. <https://www.bp.com/en/global/corporate/what-we-do/bp-at-a-glance/key-business-addresses.html>

31. <https://asp.icc-cpi.int/states-parties/western-european-and-other-states/united-kingdom>

32. See for example <https://www.bp.com/en/global/corporate/who-we-are/board-and-executive-management/leadership-team.html>; Hobbs, G. (2019). British Imperialism and Oil: A History of British Petroleum, 1901-2016. PhD thesis. SOAS, University of London. <http://eprints.soas.ac.uk/32458>.

Regarding temporal jurisdiction, it is feasible to assess pre-2002 temporal jurisdiction facts in order to establish the broader context of the common purpose between fossil fuel senior corporate executives, such as demonstrating that senior corporate executives shared knowledge of climate change science, including with future incoming corporate leadership, since at least the 1950s.³³ For the temporal jurisdiction of this current Article 15 submission, the alleged crimes continued subsequent to the date of UK ratification in 2002 and are escalating unabated as a continuing crime.

STEP 3: FACTUAL & LEGAL ASSESSMENT OF THE CRIMES

The bulk of an Article 15 submission should comprise the information which can constitute lead evidence i.e. the facts which are the subject of the Article 15 request to open an investigation. The remainder of this current Article 15 submission is therefore dedicated to detailing the factual and legal assessment of the crime against humanity of climate change. The legal summary is potentially applicable across the global climate change crime scenes.

Under the official OTP process for preliminary examinations, this section is known as the “subject matter jurisdiction” analysis since it examines the subject of the potential crimes. The OTP states that this stage involves the “thorough factual and legal assessment of the crimes allegedly committed in the situation at hand with a view to identifying the potential cases falling within the jurisdiction of the Court.”³⁴ It is important that this analysis follows the three steps in the legal framework of proving an international crime, namely, establishing the crime base, the threshold test, and the mode of responsibility. These three components of an international crime are set out in the legal analysis section of this current Article 15 submission.

Regarding assessing the role of fossil fuel senior corporate executives, the factual information regarding the mode of liability is particularly important for an Article 15 submission. The legal framework regarding command responsibility and co-perpetration is set out in more detail in the legal analysis in this submission. Particularly important is establishing the modalities by which climate change science was known to the senior corporate executives. Proof of any steps taken regarding climate change science (such as doubt, dependency, delay, deception and dominance) establish the individual contributions to the common purpose and the individual failures to prevent corporate organizational policy amounting to climate change crime as an “other inhumane act” of crimes against humanity.

STEP 4: ADMISSIBILITY

Under Article 17 of the Rome Statute, even if the grounds of jurisdiction are established, it is still necessary to assess whether the situation is admissible at the ICC. Admissibility is comprised of “complementarity” and “gravity.”³⁵ These two legal tests are required because the ICC can only intervene as a court of last resort, thereby encouraging Member States to take up investigations of grave crimes directly themselves. This means that even if ICC jurisdiction may be established, a case may be declared inadmissible if the national jurisdiction of a Member State is willing and able to pursue the case.

33. See for example, the referring to a speech pre-temporal jurisdiction in the Libya situation: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2011_08499.PDF Generally, see discussion in <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1369&context=plir>

34. https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf Para 81.

35. See <https://asp.icc-cpi.int/complementarity> and <https://www.ictj.org/sites/default/files/subsites/complementarity-icc/>

For most climate change situations, especially involving corporate executives, complementarity is unlikely to prevent a case at the ICC on grounds of inadmissibility since most national laws do not permit national investigators to "pierce the corporate veil" to hold corporate executives responsible for criminal wrongdoing associated with their business activities.³⁶

Similarly, the component of admissibility which requires demonstration that the allegations concern a sufficient "gravity" is also unlikely to be a block to admissibility, since climate change is causing extreme harm such as forced transfer of populations through the displacement of millions of people as sea-levels rise; persecution through the loss of entire environment-centered indigenous cultures; and many other manifestations of extreme harm which thereby reach a similar level of gravity to constitute the "other inhumane act" of climate change.

In the current submission regarding BP senior executives and the crime of climate change, there are no relevant on-going proceedings in the UK or in any other Member State which would render the case inadmissible. Similarly, the allegations concern the loss of nationhood, the loss of life, and severe physical and mental suffering from climate change which meets the legal test of gravity for admissibility.

STEP 5: INTERESTS OF JUSTICE

The final phase in the analysis of an Article 15 submission is the most nebulous, namely, the "interests of justice" test under Article 53 of the ICC Rome Statute.³⁷ This acts as a countervailing factor which the OTP may apply if their analysis demonstrates that, despite establishing jurisdiction and admissibility, there are reasons wherein an ICC case would not advance the interests of justice.

The OTP has indicated that this test is "exceptional in its nature"³⁸ meaning that should all the prior steps be established, it is only in rare factual circumstances that the interests of justice would prevent an investigation if there were sufficient countervailing factors ensuring that non-investigation was the best way to achieve the "objects and purposes of the Statute – namely the prevention of serious crimes of concern to the international community through ending impunity."³⁹ Examples of countervailing circumstances could include the views of victims and the particular circumstances of the accused⁴⁰ or on-going peace processes.⁴¹

In the current submission regarding BP senior executives and the crime of climate change, there are no countervailing factors which would suggest the interests of justice weigh in favor of not pursuing an investigation at the ICC. Indeed, the interests of justice point firmly in the direction of opening an investigation into BP senior executives who bear the most responsibility for contributing to the common purpose of maximizing petroleum profits regardless of the suffering from climate change, and overseeing the corporate structures creating the extreme impacts on physical and mental health due to the climate change crisis.

36. See general discussion on limited liability for corporate executives and limits to piercing the corporate veil: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2282306

37. See <https://www.icc-cpi.int/news/policy-paper-interest-justice>

38. See <https://www.icc-cpi.int/news/policy-paper-interest-justice> Page 1

39. See <https://www.icc-cpi.int/news/policy-paper-interest-justice> Page 2

40. See <https://www.icc-cpi.int/news/policy-paper-interest-justice> Page 7

41. See <https://www.icc-cpi.int/news/policy-paper-interest-justice> Page 9

CASE SYNOPSIS -

Climate Crime & BP Senior Executives

The international crime of climate change meets each of the three stages of proof under international criminal law. The first stage is known as the “crime base” i.e. proof of the crime of climate change itself. The second stage is the “threshold test” i.e. proof that climate change constitutes or is committed pursuant to a widespread or systematic attack against a civilian population. And the third stage is the “linkage” of this crime to the accused, which can be through command responsibility under a civilian hierarchy such as a corporate structure, or through individual responsibility as co-perpetration pursuant to a common purpose to which the accused makes a significant contribution which amounts to the crime of climate change.

Regarding the first stage of proof, the “crime base” of climate change is capable of characterization under several of the enumerated acts of crimes against humanity under Article 7 of the Rome Statute, such as forced transfer of populations in the case of people fleeing sea level rise, and persecution for entire racial, national, ethnic, or cultural groups who are suffering due to the destruction of their homes, environment, and culture as a result of climate change. Most significantly, climate change constitutes its own distinct fact pattern establishing the legal elements of the residual category of crimes against humanity, namely, “other inhumane acts” under Article 7(1)(k) of the ICC Rome Statute. This crime of “other inhumane acts” has been relied upon in previous case law to describe distinct fact patterns which meet the legal requirements of proving “other inhumane acts” such as forced marriage or harm to mental health. This does not establish new legal elements, it merely demonstrates common factual grounds which establish the legal elements of “other inhumane acts.” The criminal intent requirement for “other inhumane acts” of climate change is established in the case of senior corporate executives at fossil fuel companies acting with the awareness of the factual circumstances that established the character of the act, in other words, through corporate in-house or external scientific research which fossil fuel companies have amassed since at least the 1950s establishing the severe harmful impacts of climate change.

The second stage of legal proof, the “threshold test” for crimes against humanity under Article 7(2)(a) of the ICC Rome Statute is established through “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population.” This means that the facts of climate change underpinning the enumerated acts under Article 7(1) including “other inhumane acts” can themselves legally constitute the attack, if occurring on a widespread or systematic basis. The caselaw has frequently confirmed that the attack does not need to be military in nature and crimes against humanity can occur during peacetime. This opens up the analysis of climate change as the apex manifestation of “widespread” because it is literally occurring across the whole world. Climate change involves multiple manifestations of “other inhumane acts” and other enumerated acts of crimes against humanity, particularly as whole nations of local communities, indigenous populations, and States in the Pacific and Arctic regions are under assault daily from climate change. The additional legal component of the threshold test under Article 7(2)(a) of the ICC Rome Statute requires proof that this attack is “pursuant to or in furtherance of a State or organisational policy.” The caselaw has made it clear that the “organisational policy” can extend to corporate policy.

Nothing is more systematic than a corporate strategy to advance fossil fuel extraction and entrench global dependency on fossil fuels whilst intentionally designing marketing campaigns of misinformation, doubt, delays, deception and political dominance to entrench their petroleum products economically and socially.

It is this aspect of the systemic corporate policy which also constitutes the central legal elements of the third stage of proof for establishing an international crime, namely, "linkage" to the accused individual.

There are two potential means of characterising the linkage of the crime of climate change to fossil fuel executives and government officials: first under command responsibility, second under individual responsibility.

Caselaw has established that the linkage mode of command responsibility maps onto corporate structures. This is set out under Article 28(b) of the ICC Rome Statute through proof that the corporate executives "knew, or consciously disregarded information, which clearly indicated that the subordinates were committing or about to commit such crimes." This occurs in settings such as when corporate directors know the established climate science but their subordinates are engaged in misinformation campaigns denying climate science, whilst other subordinates in the company structure maximise fossil fuel extraction. Due to the employment structures at carbon major fossil fuel corporations, these activities are undoubtedly within the effective responsibility and control of the senior corporate executives, as

set out in the legal elements of Article 28(b) of the ICC Rome Statute. And the final legal elements for command responsibility are established through the failure of senior corporate executives "to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution."

With respect to individual responsibility, as opposed to examining the corporate structure, the individual executives themselves are assessed according to their individual contributions towards advancing the common purpose of maximising petroleum profits regardless of the infliction of great suffering from climate change. This could be established under Article 25(3)(a) of the ICC Rome Statute in the case where the senior corporate executives make an "essential contribution" to the common plan with an awareness of the risk that the crime of climate change will eventuate; or through Article 25(3)(d) if the senior corporate executive in "any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose" which "involves the commission of a crime within the jurisdiction of the Court" such as the "other inhumane acts" of climate change, forced transfer, persecution, and other enumerated acts constituting climate change.



LEGAL

ASSESSMENT

CRIMES AGAINST HUMANITY

LEGAL

ASSESSES

(1) CRIME BASE – Other Inhumane Acts

The legal foundation of this submission is that the fact pattern of climate change constitutes the legal elements of the residual category of crimes against humanity of “other inhumane acts” under Article 7(1)(k) of the ICC Rome Statute.

The fact pattern of climate change can be described with reference to the 1992 United Nations Framework Convention on Climate Change (the “UNFCCC”).⁴² Climate change is defined under Article 1(2) of the UNFCCC as “a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.” Article 2 of the UNFCCC defines climate change with reference to “dangerous anthropogenic interference with the climate system.” In addition, Article 1(a) of the UNFCCC defines the climate change harm with reference to “significant deleterious effects... on the operation of socio-economic systems or on human health and welfare.” This demonstrates that international law recognises that the legal concept of climate change is directly tied to the legal elements of other inhumane acts i.e. the infliction of great suffering, or seriously injury to body or to mental health or physical health.

42. https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf

Therefore, for the purposes of this current Article 15 submission, the fact pattern constituting the “other inhumane acts” of climate change is defined as follows:

- (i) the infliction of great suffering, or serious injury to body or to mental or physical health, with the awareness of the factual circumstances that established the character of the act;
- (ii) through significant deleterious effects on human health and welfare;
- (iii) from the change of climate attributed directly or indirectly to human activity;
- (iv) that alters the composition of the global atmosphere which is in addition to the natural climate variability observed over comparable time periods.

Central to the crime of climate change is its characteristic as a continuing crime, in the same manner as other forms of “other inhumane acts” have been found to be continuing crimes, such as forced marriage, and the enumerated act of enforced disappearances.⁴³ It is notable that future harms are also included within the legal concept of continuing crimes, in other words, if the harm continues from past, into the present moment, and further into the future. This has also been adopted at the International Court of Justice which has stated that perils “appearing in the long term might be held to be ‘imminent’ as soon as it is established, at the relevant point in time, that the

Central to the crime of climate change is its characteristic as a continuing crime.

realization of that peril, however far off it might be, is not thereby any less certain and inevitable.”⁴⁴ This is indeed the case for climate change science, particularly regarding the consistent confirmation of the predictions of extreme future harm documented in the findings of the earliest scientific studies in the 1950s, including the many reports of the Intergovernmental Panel on Climate Change (“IPCC”) in particular the IPCC Assessment Report 5 in 2014,⁴⁵ the IPCC Special Report on 1.5 degrees in 2018,⁴⁶ IPCC Assessment Report 6 in 2021,⁴⁷ and the 2021 report of the International Energy Agency calling for “no investment in new fossil fuel supply projects”⁴⁸ and recent scientific studies concluding that no additional CO₂-emitting fossil fuel infrastructure should be commissioned, and existing projects should be subject to early decommissioning.⁴⁹

It is important to emphasise that the fact pattern constituting “other inhumane acts” of climate change does not constitute legal elements; instead the legal elements are established through the legal elements of Art 7(1)(k) of the ICC Rome Statute which defines other inhumane acts “of a similar character [to the enumerated acts of crimes against humanity] intentionally causing great suffering, or serious injury to body or to mental or physical health.”⁵⁰ This point has been relied upon in the case law to demonstrate that the fact patterns establishing “other inhumane acts” remain within the bounds of Article 22 of the ICC Rome

43. The Special Court for Sierra Leone found the crimes of enslavement, sexual slavery and child soldiers to be continuous in nature: see *Brima*, Trial Judgment, paras 39, 1820; *Sesay et al.*, Trial Judgment, para. 427, referring to “continuous crimes pleaded in counts 6 to 9” sexual slavery, forced marriages, forced labour constituting enslavement (paras 1380-1494), and forced marriage (para. 1410, fn 2621). *Lubanga*, Decision Confirmation of the Charges, para. 248; *Lubanga* Trial Judgment, para. 618.

44. *Gabcikovo-Nagymaros Case* ICJ Judgement, page 39 <https://www.icj-cij.org/public/files/case-related/92/092-19970925-JUD-01- 00-EN.pdf>

45. <https://www.ipcc.ch/report/ar5/syr/>

46. <https://www.ipcc.ch/sr15/>

47. <https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/>

48. [https://www.iea.org/news/pathway-to-critical-and-formidable-goal-of-net-zero-emissions-by-2050-is-narrow-but-brings-huge- benefits](https://www.iea.org/news/pathway-to-critical-and-formidable-goal-of-net-zero-emissions-by-2050-is-narrow-but-brings-huge-benefits)

49. Tong D, Zhang Q, Zheng Y, Caldeira K, Shearer C, Hong C, et al. Committed emissions from existing energy infrastructure jeopardize 1.5°C climate target. *Nature*. 2019; 572:373–7.

50. <https://pubmed.ncbi.nlm.nih.gov/31261374/>

Statute which sets out the legal principle of *nullum crimen sine lege* which prohibits punishment for newly defined crimes, particularly since “other inhumane acts” also form part of customary international law.⁵¹

The Elements of Crimes of the ICC Rome Statute provide further details on the legal definition of “other inhumane acts.” Elements 1 and Elements 2 refer to “great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act” which is “of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.” Footnote 30 to Element 2 stipulates that “character” refers to the nature and gravity of the act.⁵² Element 3 states the legal element that the “perpetrator was aware of the factual circumstances that established the character of the act.”

Judges have reinforced that “other inhumane acts” is the “residual category” of crimes against humanity. This residual category ensures that crimes against humanity are not “exhaustively enumerated” because “[a]n exhaustive categorization would merely create opportunities for evasion of the letter of the prohibition”⁵³ and as a result, tribunals should refrain from being too restrictive.⁵⁴ Judges have concluded that it is necessary to be “flexible and, at the same time, precise”⁵⁵ whilst ensuring that there is no “loophole left open.”⁵⁶

In keeping with this rationale behind the legal elements of other inhumane acts, the courts have stated that the assessment of whether the underlying fact pattern could constitute the legal characterisation of other inhumane acts is to be determined on a case-by-case basis depending on the facts and circumstances⁵⁷ and constitutes a “question of fact” in each specific case.⁵⁸ However, the case law has made clear that “other inhumane acts” can extend to both acts or omissions, including forced transfer of populations,⁵⁹ “withholding the basic necessities of life intimately intertwined with individual dignity”⁶⁰ and



Photo credit: Rivan Hannggarai

51. *Stakić*, Appeal Judgment, para. 315.

52. <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>

53. *Kupreskic*, Trial Judgment, para. 563 refers to the same approach utilised in Common Article 3 of the Geneva Conventions: “[I]t is always dangerous to try to go into too much detail – especially in this domain... The more specific and complete a list tries to be, the more restrictive it becomes.”

54. *Brima*, Appeal Judgment, para. 185.

55. *Kupreskic*, Trial Judgment, para. 563.

56. *Brima*, Appeal Judgment, para. 183.

57. *Kupreskic*, Trial Judgment, para. 563; *Kayishema*, Trial Judgment, para. 151.

58. *Ongwen*, Decision on the Confirmation of Charges, para. 88.

59. *Stakic*, Appeal Judgment, para. 317.

60. *Kordic and Krnojelac* (humanitarian aid omission); *Simić, Nikolic, and Krnojelac* (withholding basic necessities of life); *Popović* (restrictions on humanitarian aid and “also encompasses any mistreatment of the civilian population” para. 752, 767).

“endangering the health and welfare”⁶¹ (including regarding mental health),⁶² “brutal and deplorable living conditions” and “an insufficient supply of food and water, lack of space, unhygienic detention conditions,⁶³ and an insufficient access to medical care.”⁶⁴ These examples also constitute aspects of the human suffering inherent to the crime of climate change.

The case law also contains thematic assessments of “other inhumane acts” which are indicative of matters that may fall below the legal threshold. For example, judges have held that the harm need not be “permanent and irremediable” but at the same time the impacts would need to go beyond “temporary unhappiness, embarrassment or humiliation.”⁶⁵ The harm would be such “that results in a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life.”⁶⁶ UN courts have also considered factors such as “the nature of the act or omission, the context in which it occurred, the personal circumstances of the victim, as well as the impact of the act upon the victim.”⁶⁷

Finally, regarding the intent element, as stated above, the ICC Elements of Crimes require proof that the “perpetrator was aware of the factual circumstances that established the character of the act.”

The ICC judges have stated that the knowledge requirement is established when the accused “knew this [i.e. great suffering from climate change] would occur, or was aware that there was a substantial likelihood that the crimes would occur.”⁶⁸ The ICC Elements of Crimes also provide that the “existence of intent and knowledge can be inferred from relevant facts and circumstances.”⁶⁹

Further requirements regarding intent are set out under Article 30 of the Rome Statute, which ICC judges have established are met when the accused is “aware that it [i.e. great suffering from climate change] will occur in the ordinary course of events” as a result of their acts.⁷⁰ ICC judges have clarified that this involves a two-step assessment: first, the awareness by the suspect of the substantial likelihood that his or her actions or omissions would result in the realisation of the objective elements of the crime; and second, the decision by the suspect to carry out his or her actions or omissions despite such awareness.⁷¹ There is no requirement that the accused wanted or hoped to cause the consequences.⁷² These legal elements would be established through proving the on-going contributions of senior corporate executives to the common purpose to maximise petroleum profits, whilst being aware of the resulting climate change harm and suffering, such as through access to scientific reports establishing the nexus between fossil fuels and climate change.

61. *Nikolic*, Initial Indictment, para. 24.1: “of detainees by providing inadequate food, endangering the health and welfare of detainees by providing living conditions failing to meet minimal basic standards.”
62. *Kayishema and Ruzindana*, Trial Judgment, para. 153: “no doubt that a third party could suffer serious mental harm by witnessing acts committed against others, particularly against family or friends.” See also *Kajelijeli*, Trial Judgment, paras 934-936.
63. *Krnojelac*, Appeal Judgment, para. 163.
64. *Simić*, Trial Judgement, para. 74, 97.
65. *Krstić*, Trial Judgment, para. 513; *Akayesu* Trial Judgment, para. 502.
66. *Krstić*, Trial Judgment, para. 513.
67. Prosecutor v Nuon Chea and Khieu Samphan (Case 002/01 Judgment) 002/19-09-2007/ECCC/TC (7 August 2014) para. 438.
68. *Lubanga* Trial Judgement, para. 40.
69. *Lubanga*, Document Containing the Charges, paras 350-354: “Knowledge on the part of the accused depends on the facts of a particular case; as a result, the manner in which this legal element may be proved may vary from case to case.” See also *Blaškić*, Appeal Judgment, para. 126. See also *Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic, and the Kingdom of Cambodia*, Final decision of the Prosecutor concerning the ‘Article 53(1) Report’ dated 6 November 2014, as revised and refiled in accordance with the Pre-Trial Chamber’s request of 15 November 2018 and the Appeals Chamber’s judgment of 2 September 2019, 2 December 2019, para. 20.
70. *Sesay*, Appeal Judgment, paras. 947, 952 discussing reasonable knowledge that the act or omission would likely inflict great suffering or serious injury to body, or to mental or physical health.
71. *Lubanga*, Confirmation of Charges, para. 353.
72. *Lubanga*, Trial Judgment, paras 1273-9 and 1351



(2) THRESHOLD TEST –

Widespread or Systemic Attack Against a Civilian Population

Under the ICC Rome Statute, Article 7(1) defines the legal elements of the “threshold test” for crimes against humanity as the “widespread or systematic attack directed against any civilian population, with knowledge of the attack.” Article 7(2)(a) of the ICC Rome Statute further specifies that an “[a]ttack directed against any civilian population’ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 [i.e. the enumerated acts, including other inhumane acts] against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack.”⁷³ Each legal element of this threshold test will be assessed in turn.

First, the attack may be legally established through proving the accumulation of multiple instances of the enumerated acts under crimes against humanity. The judges have clarified that “the commission of the acts referred to in Article 7(1) of the Statute constitute the ‘attack’ itself and, beside the commission of the acts, no additional requirement for the existence of an ‘attack’ should be proven.”⁷⁴ If instances of “other inhumane acts” of climate change were to be evidenced at a global scale, then this effectively constitutes the existence of an attack, since the global scale of climate change amounts to multiple instances of “other inhumane acts” of climate change, such as great suffering from sea level rise, ice and permafrost melt, physical and mental health impacts of temperature rise and wildfires etc.

73. Rome Statute, Article 7(2)(a). Elements, Article 7, Introduction, para. 3.

74. *Bemba*, Confirmation of Charges, para. 75.

This is particularly the case because the legal definition of “attack” extends to situations which are non-military in nature⁷⁵ and “non-violent in nature”⁷⁶ which is why crimes against humanity can occur during peace time.⁷⁷ The attack could be a “campaign or operation carried out against the civilian population”⁷⁸ without the use of force or military action.⁷⁹

Proof of the attack can be established through a pattern of conduct involving acts of multiple commission of acts⁸⁰ through both State and non-State actors⁸¹ including corporate executives and corporate officials.⁸² There is a clear tendency in the case law to construe this definition of attack broadly to include “any mistreatment of the civilian population.”⁸³

The judges have specified that this could be through “imposing a system” such as the situation of apartheid “or exerting pressure on the population to act in a particular manner, may come under the purview of an attack, if orchestrated on a massive scale or in a systematic manner.”⁸⁴ The massive scale of climate change and orchestrated nature of the entrenchment of fossil fuel dependencies causing climate change has resulted in overwhelming pressure on the global populations to act in a manner consistent with social and economic dependency on petroleum products, thus furthering the senior corporate executives’ common purpose of maximising petroleum profits. The case law also requires proof that the enumerated acts, including “other inhumane acts,” are part of the attack i.e. it is necessary to prove a nexus between the two.⁸⁵ When civilians are impacted through the course of conduct “the purpose of that attack is immaterial”⁸⁶ in other words, the profit maximization purpose of fossil fuel corporations does not absolve senior corporate executives from accountability.

Regarding the legal element that the attack is against a “civilian population” case law has emphasised that this concept is seeking to address harm towards a collective group that constitutes “the primary target and not the incidental victim of the attacks”⁸⁷ and not “a limited and randomly selected number of individuals.”⁸⁸ In other words, “[t]he emphasis is not on the individual victim but rather on the collective, the individual being victimised not because of his *[sic]* individual attributes but rather because of his *[sic]* membership of a targeted civilian population.”⁸⁹ Neither the ICC Rome Statute nor the Elements of Crimes define “civilian” although the case law has held that “according to the well-established principle of international humanitarian law, ‘[t]he civilian population... comprises all persons who are civilians as

75. *Bemba*, Confirmation of Charges, para. 75.

76. *Kunarac*, Appeal Judgment, para. 85; *Simic*, Trial Judgment, para. 37; *Akayesu*, Trial Judgment, para. 581.

77. *Kunarac* Appeal Judgment, para. 91. See also *Mrksic*, Appeal Judgment, para. 25: “the civilian population must be the primary object of the attack” and not simply the collateral effect of a legitimate attack on a military object.

78. *Situation in Kenya*, Article 15 Decision, para. 80.

79. *Tadic*, Trial Judgment, para. 141; *Kunarac*, Appeal Judgment, para 86; *Akayesu*, Trial Judgment, para. 581; *Musema*, Trial Judgement, para 205.

80. *Tadic* Decision on the Form of the Indictment, para. 11: that an attack must “not be one particular act but, instead, a course of conduct.” See also: *Akayesu*, Trial Judgment, para. 580; *Kunarac*, Trial Judgment, para. 89; *Naletilic*, Trial Judgment, para. 233; *Kayishema*, Trial Judgment paras. 122, 135.

81. *Situation in Kenya*, Article 15 Decision, para. 90 adopting a flexible capacity approach to determining what type of entity can constitute an “organization” under the Rome Statute.

82. *Situation in Kenya*, Article 15 Decision, paras. 116-28. See also *Tadic* Trial Judgment para. 656: “[policy] need not be the policy of a State.”

83. *Kunarac*, Appeal Judgment, para. 86.

84. *Akayesu*, Trial Judgement, para. 581.

85. *Kunarac*, Appeal Judgment, para. 122; *Kunarac*, Trial Judgment, para. 417.

86. *Fofana*, Appeal Judgment, para. 300.

87. *Katanga*, Judgment, para. 1104.

88. *Kunarac*, Appeal Judgment, para 190.

89. *Tadić*, Trial Judgment, paras. 635, 644.

opposed to members of armed forces and other legitimate combatants".⁹⁰ The fact that military personnel may also be impacted by the attack does not detract from the predominantly civilian nature of a given population.⁹¹ These legal elements are clearly established in the case of climate change, since the global population impacted by climate change is overwhelmingly civilian in nature.⁹²

The definition of the legal element regarding the "widespread" nature of the attack is a straight forward legal element in the context of global climate change. It concerns "a large number of civilians"⁹³ and "excludes random or isolated attacks" and "con-notes the large-scale nature of the attacks and the number of targeted persons."⁹⁴ The aspects of widespread or systematic are disjunctive, and ICC judges have held that "the terms 'widespread' and 'systematic' are presented in the alternative. Thus, since the Chamber found that the attack was widespread, the Chamber need not consider whether the attack was also systematic."⁹⁵

Finally, the legal element regarding the "systematic" nature of the attack is conceptually linked to the requirement under Article 7(2)(a) of the ICC Rome Statute which states that it requires proof that the attack was pursuant to a "State or organizational policy." Case law has specified that the terms "State" and "organizational" are disjunctive, a view supported by the authentic texts of the Rome Statute in Arabic, English, French, Russian, and Spanish, and that "the formal nature of a group and the level of its organization should not be the defining criterion."⁹⁶ However, it is intuitively clear that a corporate entity such as a fossil fuel company would reach the necessary level of organisation for the legal definition of an "organisational policy." Case law has made clear that non-States (such as corporations) can be assessed under this legal element insofar as "a distinction should be drawn on whether a group has the capability to perform acts which infringe on basic human values"⁹⁷ which can be established "by any organization with the capability to commit a widespread or systematic attack against a civilian population."⁹⁸ The ICC has already found that this applies to situations where businessmen act in concert with politicians which in turn established organisational policy.⁹⁹

Regarding the definition of the attack pursuant to a "policy" and how this relates to the threshold test of "systematic" attack, the case law of the ICC confirms that there is a close evidential relationship between assessing "systematic" which ties into "policy" wherein a policy may support the inference of systematicity and the improbability of random occurrence.¹⁰⁰ This aspect of the threshold test therefore excludes random isolated acts.¹⁰¹ The ICC jurisprudence has affirmed that the policy may be inferred from "a series of events" and has set out examples of factors supporting an inference of organisational policy, such as the establishment of organisational structures, mobilisation of units of people, and the general content of a political program.¹⁰² The case law has previously inferred the existence of a policy from the kind of

90. *Bemba*, Decision on Confirmation of Charges, para. 78. See also *Katanga*, Decision on Confirmation of Charges, para. 399.

91. *Mbarushimana*, Decision on Confirmation of Charges, para. 148.

92. <https://ourworldindata.org/grapher/armed-forces-personnel-percent>

93. *Katanga*, Confirmation of Charges, para. 395. See also *Blagojevic*, Trial Judgment, para 545; *Tadic*, Trial Judgment, para. 648.

94. *Katanga*, Confirmation of Charges, para. 394.

95. *Katanga*, Confirmation of Charges, para. 412. *Katanga*, Trial Judgment, para. 1098.

96. *Situation in Kenya*, Article 15 Decision, para. 90.

97. *Situation in Kenya*, Article 15 Decision, para. 90. See also *Katanga*, Trial Judgement para. 1120-1: "That the attack must further be characterised as widespread or systematic does not, however, mean that the organisation that promotes or encourages it must be structured so as to assume the characteristics of a State... the 'general practice accepted as law'... adverts to crimes against humanity committed by States and organisations that are not specifically defined as requiring quasi-State characteristics."

98. *Bemba*, Confirmation Decision, para. 81.

99. *Situation in Kenya*, Article 15 Decision, paras. 116-28. See also *Tadic* Trial Judgment para. 656: "[policy] need not be the policy of a State."

100. *Harun* Decision on the Prosecution's Application under Article 58 (7) of the Statute, para. 62; *Katanga* Confirmation of Charges, para. 396; *Situation in Kenya*, Article 15 Decision, para.84.

101. *Ruto and Sang case*, Decision on Defence Applications for Judgments of Acquittal, para. 345

102. *Situation in Kenya*, Article 15 Decision, para. 87 citing *Blaskic*, Trial Judgment, para. 205.

evidence which is also inherent to corporate activities such as marketing, communications strategies, and speeches of corporate executives, namely, “actual events, political platforms or writings, public statements or propaganda programmes, and the creation of political or administrative structures”¹⁰³ and “acting under a common group name, members’ shared political or ideological views, the existence of a hierarchical structure, infrastructure, and division of labour, and holding regular meetings or assemblies to build internal agreement on goals and actions amount merely to evidentiary significance.”¹⁰⁴ All these legal descriptions occur on daily basis within fossil fuel corporations.

Any attack “which is planned, directed or organized... will satisfy this criterion”¹⁰⁵ although the policy “need not be formalised.”¹⁰⁶ ICC judges have clarified the lower limit of this threshold by stating that the attack “must still be thoroughly organised and follow a regular pattern. It must also be conducted in furtherance of a common policy involving public or private resources... The policy need not be explicitly defined by the organizational group. Indeed, an attack which is planned, directed or organised, as opposed to spontaneous or isolated acts of violence-will satisfy this criterion.”¹⁰⁷ Case law from the previous UN tribunals also reference matters such as preparatory meetings where the characteristics of the attack was discussed,¹⁰⁸ situations where pre-emptive warnings were issued,¹⁰⁹ the training of relevant personnel,¹¹⁰ the extent to which the attack was complex and organised in nature,¹¹¹ the co-ordination between the units involved in the attack,¹¹² the range of tools utilised,¹¹³ the devastating and discriminatory consequences of the attack,¹¹⁴ and any indicia of organised and regular patterns of acts suggesting a common policy involving substantial public or private resources.¹¹⁵

Regarding the *mens rea* legal element¹¹⁶ of the widespread and systematic attack, the ICC judges have determined that “the perpetrator must be aware that a widespread attack directed against a civilian population is taking place and that his [sic] action is part of the attack.”¹¹⁷ Although the perpetrator must be shown to “knowingly participate in the attack”¹¹⁸ it is not necessary for the perpetrator to know the details of the attack, nor the precise details of the plan or policy of the organisation, however, there must be an awareness that the relevant wrongs will occur in the ordinary course of events.¹¹⁹ The UN tribunals

103. Werle, & Jessberger, F. (2014). Principles of international criminal law (Third edition.). Oxford University Press, page 389, citing *Blaskic*, Trial Judgment, para. 204. See also *Katanga*, Trial Judgment, para. 1109.

104. Werle, & Jessberger, F. (2014). Principles of international criminal law (Third edition.). Oxford University Press, page 389, citing *Situation in Kenya*, Article 15 Decision, para. 185; *Situation in Côte d'Ivoire*, Article 15 Decision, para. 46; *Blaskic*, Trial Judgment, para. 204.

105. *Bemba*, Confirmation of the Charges Decision, para. 81.

106. *Bemba*, Confirmation of the Charges Decision, para 81. See also *Katanga*, Confirmation of the Charges, para. 398.

107. *Bemba*, Confirmation of the Charges Decision, para 81. *Katanga*, Confirmation of the Charges, 396-7.

108. *Blaskic*, Trial Judgment, para. 389; *Kordic*, Trial Judgment, paras. 610–613, 630; *Martic*, Trial Judgment, para. 303.

109. *Blaskic*, Trial Judgment, paras. 389, 573, 624; *Kordic*, Trial Judgment, para. 645; *Kordic*, Appeal Judgment, para. 511.

110. *Martic*, Trial Judgment, paras. 144–148.

111. *Blaskic*, Trial Judgment, paras. 503, 506; *Mrksic*, Trial Judgment, paras. 43, 472.

112. *Blaskic*, Trial Judgment, paras. 401, 624; *Kordic*, Trial Judgment, para. 637; *Martic*, Trial Judgment, para. 351.

113. *Kordic*, Trial Judgment, para. 635; *Mrksic*, Trial Judgment, para. 470.

114. *Blaskic*, Trial Judgment, paras. 411–412, 512; *Kordic*, Trial Judgment, paras. 635, 643; *Martic*, Trial Judgment, paras. 227, 349, 351; *Mrksic*, Trial Judgment, paras. 55–59, 465–469, 472.

115. *Akayesu*, Trial Judgment, para. 580.

116. Article 30 only if mens rea not provided for, Lubanga on article 30 (i) knows that his or her actions or omissions will bring about the objective elements of the crime, and (ii) undertakes such actions or omissions with the concrete intent to bring about the objective elements of the crime (also known as *dolus directus* of the first degree) The Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Decision on the confirmation of charges, (29 January 2007), para. 351.

117. *Bemba*, Confirmation of the Charges Decision, para. 88.

118. *Gbagbo*, Decision on the Confirmation of Charges, para. 214. *Bemba*, Trial Judgment, para. 167.

119. *Bemba*, Decision on Confirmation of Charges, paras 87-88; *Blaskic*, Appeal Judgment, para. 124-27. See also *Kunarac*, Appeal Judgment, para.102. The perpetrator must at least engage in the underlying crime accepting a perceived risk that his acts are part of the attack.

120. *Kunarac*, Appeals Judgment, para. 102, *Blaskic* Appeal Judgment para. 214.

interpreted this to include an element of recklessness insofar as the perpetrator “took the risk that his [sic] acts were part of the attack”¹²⁰ and the perpetrator could “understand the overall context of his [sic] act.”¹²¹ This is determined through an objective assessment and can be inferred from the circumstances¹²² including “the general historical and political environment in which the acts occurred.”¹²³

However, the motive of the perpetrator is not relevant for determining wrongdoing.¹²⁴ It is therefore irrelevant that senior fossil fuel corporate executives were motivated by profit margins, because the law establishes that they are responsible through the fact of their knowledge of the overall context of climate change science confirming the dangers inherent in their business model of maximizing petroleum products and the global scale of great suffering ensuing from resulting climate change.



Photo credit: Diego Izquierdo

121. *Kayishema*, Trial Judgment para. 143.

122. *Tadic*, Trial Judgment, para. 657.

123. *Katanga*, Confirmation of Charges, para. 402: “the general historical and political environment in which the acts occurred.” See also, *Blaškić* Appeal Judgment para. 126.

(3)LINKAGE –

Command Responsibility & Co-perpetration

There are two modalities of the third and final component of proving an international crime: “command responsibility” under Article 28 of the ICC Rome Statute, or “individual responsibility” under Article 25 of the ICC Rome Statute. Regarding individual responsibility under Article 25, there are also two modalities most relevant to the crime of climate change, namely, co-perpetration under Article 25(3)(a) and “in any other way contributes” to a common purpose under Article 25(3)(d).

Command responsibility of civilian leaders, such as corporate executives presiding over a command structure embedded within a fossil fuel corporation, is set out under Article 28(b) of the ICC Rome Statute, which states:

With respect to superior and subordinate relationships not described in paragraph (a) [i.e. military commanders], a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

- (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
- (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

- (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.¹²⁵

Central to proving command responsibility is the “superior and subordinate relationship” through showing corporate structures and that the superiors within the corporate structure had knowledge or consciously disregarded information regarding clear indications of climate change resulting from the actions of their subordinates. The ICC judges have stated that this mode of liability sets out a potentially lower threshold compared to individual liability under Article 25(3)(a) since the judges have held that Article 28 would only be applicable if there were “no substantial grounds to believe that the suspect was [...] criminally responsible as a ‘co-perpetrator’ within the meaning of article 25(3)(a) of the Statute”.¹²⁶

Individual responsibility is set out under Article 25 of the ICC Rome Statute and encompasses a range of modes wherein an accused may be liable based on their direct commission or based on accessory liability such as through aiding and abetting. Of particular note are the two forms of “common purpose” liability where multiple perpetrators act in concert. The first form is “co-perpetration” under Article 25(3)(a) and the second form is the residual provisions under Article 25(3)(d). The co-perpetration concept under Article 25(3)(a) is distinct insofar as it assigns principle liability for the crime as a form of commission (as opposed to accessory liability)¹²⁷ whereas under Article 25(3)(d) the responsibility is through the contribution of the perpetrator (as opposed to direct commission) and is therefore a form of accessory liability.¹²⁸ However all these modalities are distinct from conspiracy which is a purely inchoate crime based on the agreement itself and is not included under the ICC Rome Statute.¹²⁹

The notion of co-perpetration under Article 25(3)(a) of the ICC Rome Statute was set out in the first case at the ICC wherein the judges established the legal elements for the notion of co-perpetration based on joint control over the crime: (i) existence of a common plan or agreement between two or more persons and (ii) coordinated essential contributions by each co-perpetrator.¹³⁰

The scope of “two or more persons” has been described factually in numerous ways such as the situation regarding Côte d’Ivoire alleging that the former President committed crimes “jointly with members of his inner circle” and “a limited number of close associates” from the country’s political and military elite.¹³¹ In other situations the ICC judges have accepted a broader description of a group of persons such as “members of the UPC/FPLC [militia].”¹³² For the purposes of this current Article 15 submission, the group is described as the senior corporate executives and their affiliates.

125. Werle, & Jessberger, F. (2014). *Principles of international criminal law* (Third edition.). p. 271-272.

126. *Bemba*, Decision on Confirmation of Charges, para. 342.

127. *Bemba*, Trial Judgment, paras. 62, 71; *Lubanga*, Appeal Judgment, paras. 462, 469; *Katanga*, Trial Judgment, paras. 1383–1385. Lubanga Decision on the Confirmation of Charges, para. 326: The concept of co-perpetration is originally rooted in the idea that when the sum of coordinated individual contributions of a plurality of persons results in the realisation of all the objective elements of a crime, any person making a contribution can be held vicariously responsible for the contributions of all the others and, as a result, can be considered as a principal to the whole crime. See also *Al Mahdi*, Decision on the Confirmation of Charges, para. 24.

128. De Hemptinne, J., Roth, R., Van Sliedregt, E., Gal, T., Roseen, D., & Van Poecke, T. (2019). *Modes of Liability in International Criminal Law* (M. Cupido, M. Ventura, & L. Yanev, Eds.). Cambridge: Cambridge University Press. doi:10.1017/978110867895

129. De Hemptinne, J., Roth, R., Van Sliedregt, E., Gal, T., Roseen, D., & Van Poecke, T. (2019). *Modes of Liability in International Criminal Law* (M. Cupido, M. Ventura, & L. Yanev, Eds.). Cambridge: Cambridge University Press. doi:10.1017/9781108678957, page 92.

130. *Lubanga*, Appeal Judgment, para 445. See also *Ongwen*, Decision on the Confirmation of Charges, para 38; Blé Goudé, Decision on the Confirmation of Charges, para 134; *Al Mahdi*, Decision on the Confirmation of Charges, para 24; *Bemba*, Trial Judgment, para 65.

131. *Gbagbo*, Decision on the Confirmation of Charges, paras. 86 and 230.

132. *Ntaganda*, Decision on the Confirmation of Charges, para 105.

Regarding the common plan, the judges clarified that it "need not be explicit and that its existence can be inferred from the subsequent concerted action of the co-perpetrators."¹³³ However, the plan must involve "an element of criminality"¹³⁴ which the judges explained to mean:

- i) that the co-perpetrators have agreed (a) to start the implementation of the common plan to achieve a non-criminal goal, and (b) to only commit the crime if certain conditions are met; or
- ii) that the co-perpetrators (a) are aware of the risk¹³⁵ that implementing the common plan (which is specifically directed at the achievement of a non-criminal goal) will result in the commission of the crime, and (b) accept such an outcome.¹³⁶

The common plan has been described factually in various ways including "was part of a common plan... to assume military and political control over Ituri"¹³⁷ and "to build an effective army to ensure the UPC/FPLC's domination of Ituri". Notably the common plan itself does not need to be criminal but it is necessary to prove the subsequent element of criminality flowing from the common purpose e.g. "[t]his plan resulted in the conscription, enlistment and use of children... a consequence which occurred in the ordinary course of events. This conclusion satisfies the common-plan requirement under Article 25(3)(a)."¹³⁸ For the purposes of this current Article 15 submission, the common purpose involved the maximisation of petroleum profits, regardless of the infliction of suffering through climate change as an other inhumane act under crimes against humanity.

Regarding the legal element on the "essential contribution",¹³⁹ this amounts to a "but for" test or *sine qua non* of the eventual crime. This contribution can occur at planning or preparatory stages and does not have to be a direct physical contribution to the eventual crime, if this level of contribution still amounted to control over the crime.¹⁴⁰ For the purposes of the current Article 15 submission, the contributions involved falsely creating doubt in climate change science, fostering dependency on petroleum products, advocating for delay in addressing climate change, deception over the scope of fossil fuels and climate change, and dominance of political processes through lobbying.

133. *Lubanga*, Decision on the Confirmation of Charges, para 345. *Lubanga*, Trial Judgment, para 988; *Katanga*, Decision on the Confirmation of Charges, para. 523; *Banda*, Decision on the Confirmation of Charges, para 129; *Abu Garda*, Decision on the Confirmation of Charges, para 180; *Ruto*, Decision on the Confirmation of Charges, para 301; *Bemba*, Trial Judgment, para. 66.

134. *Lubanga*, Decision on the Confirmation of Charges, para. 344, i.e. an objective risk that crimes will be committed pursuant to the common purpose. See also *Banda*, Decision on the Confirmation of Charges, para. 129; *Muthaura*, Decision on the Confirmation of Charges, para. 399; *Ruto*, Decision on the Confirmation of Charges, para. 301; *Lubanga*, Trial Judgment, paras. 984–985; *Bemba*, Trial Judgment, para. 67; *Lubanga*, Appeal Judgment, para. 446.

135. *Lubanga*, Trial Judgment, para. 986 i.e. that crimes will be committed in the ordinary course of events. *Lubanga* Appeal Judgment, paras. 447, 449, 451. This is higher than mere likelihood or possibility, see *Katanga*, Trial Judgment, paras. 775–6, para. 777: "[T]he person knows that his or her actions will necessary bring about the consequence in question, barring an unforeseen or unexpected intervention or event to prevent its occurrence. In other words, it is nigh on impossible for him or her to envisage that the consequence will not occur."

136. *Lubanga*, Decision on the Confirmation of Charges, para 344. *Lubanga* Trial Judgment, para. 983 merely entailed a risk that the charged crime might be committed in the execution of the said plan.

137. *Ntaganda*, Decision on the Confirmation of Charges, para. 105.

138. *Ntaganda*, Trial Judgement para 1136

139. *Katanga*, Decision on the Confirmation of Charges, paras. 524–525; *Bemba* Decision on the Confirmation of Charges, para 350; *Banda*, Decision on the Confirmation of Charges, para. 136; *Abu Garda*, Decision on the Confirmation of Charges, para. 153; *Ruto*, Decision on the Confirmation of Charges, para. 292; *Muthaura*, Decision on the Confirmation of Charges, para. 297; *Ntaganda*, Decision on the Confirmation of Charges, para. 104; *Ongwen*, Decision on the Confirmation of Charges, para. 38; *Al Mahdi*, Decision on the Confirmation of Charges, para. 24; *Lubanga* Trial Judgment, para. 999; *Al Mahdi*, Trial Judgment, paras. 19, 53; *Bemba*, Trial Judgment, paras. 62, 68–69; *Lubanga*, Appeal Judgment, para 469.

140. *Lubanga*, Appeal Judgment, para. 469.



Photo credit: Andri Tambunan

For the *mens rea* element, the judges have established that at the very least the accused should possess *dolus eventualis*, across three legal elements:

- the accused possesses the requisite *mens rea* for the crime in question [i.e. the crime base intent for other inhumane act of climate change];
- the accused and the other co-perpetrators are mutually aware and mutually accept that implementing the common plan may result in the commission of the crime; and
- the accused is aware of the circumstances that enable him to jointly control the crime.¹⁴¹

The final component of potential individual liability is under Article 25(3)(d) of the Rome Statute. It serves as a residual category¹⁴² to hold persons criminally responsible who contributed to the crime in "any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

- Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court [i.e. the other inhumane act of climate change]; or
- Be made in the knowledge of the intention of the group to commit the crime [i.e. the other inhumane act of climate change].

141. Lubanga, Decision on the Confirmation of Charges, para. 352: co-perpetrators are mutually aware and mutually accept the risk that executing their common plan will, in the ordinary course of events, result in the commission of the charged crime. See also Gbagbo, Decision on the Confirmation of Charges, para. 238.

142. Katanga, Trial Judgment, paras. 1597, 1618.

It is not necessary that the accused shared the group's intention to commit the crime,¹⁴³ only that they intended their contribution with an awareness of contributing to the actions of the group's common purpose.¹⁴⁴ Only the crimes that the group intended to commit (i.e. that fall within the common purpose), including the crimes committed in the ordinary course of the events, can be attributed to the group.¹⁴⁵ The ICC judges have clarified that the contribution of the accused to "the commission of a crime by a group acting with a common purpose must at least be significant."¹⁴⁶ The jurisprudence has summarised that the legal elements under Article 25(3)(d) are that:

- (i) a crime within the jurisdiction of the Court has been committed;
- (ii) the commission or attempted commission of such a crime was carried out by a group of persons acting with a common purpose;
- (iii) the accused has delivered a significant/essential contribution to the commission of the crime;
- (iv) that his contribution was intentional;
- (v) that the contribution of the accused was made in knowledge of the intention of the group to commit a crime.¹⁴⁷

The words "common purpose" imply that the scope of the common purpose is identified, although it is not necessary that each single group member is identified, nor that the common purpose was elaborated upon or formulated beforehand.¹⁴⁸ It is also not required that the group pursued a common purpose which is specifically directed at the commission of the crime, "[n]or must the group pursue a purely criminal purpose or must its ultimate purpose be criminal. Hence, a group with a political and strategic goal which also entails criminality or the execution of a crime may constitute a group acting with a common purpose."¹⁴⁹

However the participants in the common purpose must share the same intention i.e. "have intended to cause the consequence which constitutes the crime or be aware that the crime would occur in the ordinary course of the events."¹⁵⁰

The main distinction between the legal elements under Article 25(3)(a) and (d) is that under Article 25(3)(d) there is no need to meet the co-perpetration test under Article 25(3)(a) that the accused could have potentially frustrated the crime if they withdrew their own essential contribution. In comparison, contribution under Article 25(3)(d) merely has "a bearing on the commission of the crime" in that it is more than inconsequential and influences the commission of the crime.¹⁵¹ Also under Article 25(3)(d), the accused need not be a member of the group with the common purpose and could be an outsider providing any form of contribution to the common purpose.¹⁵² In addition, the accused does not need to share the group intention to commit the ultimate crime but merely have knowledge of the intention of the group.¹⁵³

143. *Katanga*, Trial Judgment, para. 1638. Subparagraphs (i) and (ii) address the activity, purpose or criminal intention of the group, whereas the "intentionality" of article 25(3)(d) ICC pertains to the "conduct which constitutes the contribution." This follows Article 30(2)(a) which requires that "the accused must intend to engage in the conduct" i.e. "his or her actions must have been deliberate and made with awareness."

144. *Katanga*, Trial Judgment, para. 1639

145. *Katanga*, Trial Judgment, para. 1630

146. *Mbarushimana*, Decision on the Confirmation of Charges, para. 283.

147. *Katanga*, Trial Judgment, para. 1620.

148. *Katanga*, Trial Judgment, para. 1626.

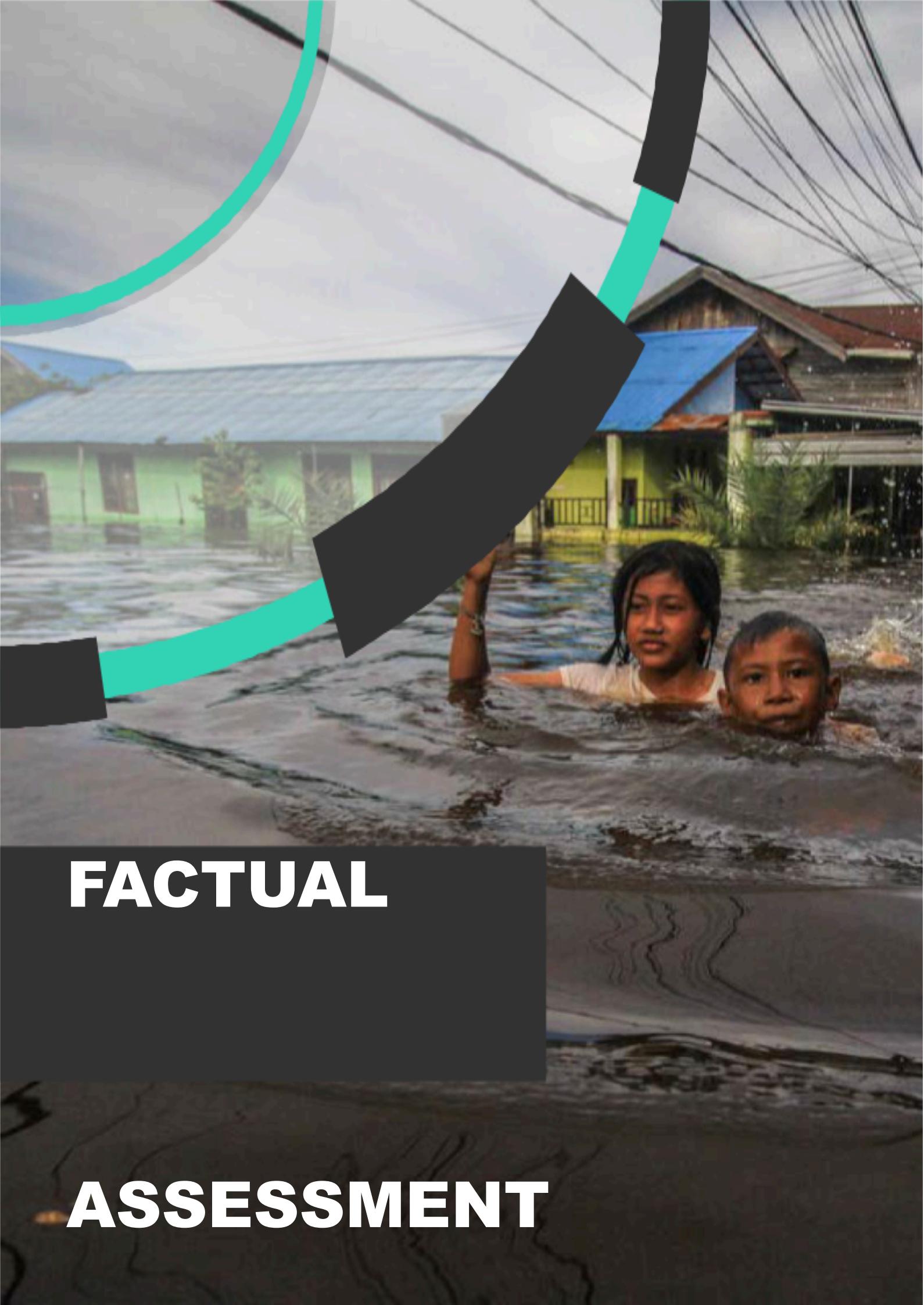
149. *Katanga*, Trial Judgment, para. 1627.

150. *Katanga*, Trial Judgment, para. 1627.

151. *Katanga*, Trial Judgment, paras. 1632–1633.

152. *Katanga*, Trial Judgment, paras. 1631.

153. *Katanga*, Trial Judgment, para. 1638 and 1620.



FACTUAL

ASSESSMENT

CRIMES AGAINST HUMANITY

FACTUAL

ASSES

(1)CRIME BASE –

Infliction great suffering, or serious injury to body or to mental or physical health

There is overwhelming evidence establishing the crime base of climate change as a crime against humanity of “other inhumane acts.” The legal elements of “other inhumane acts” require a demonstration that the crime is “of a similar character” as other enumerated acts under crimes against humanity. For this reason, the proof of climate change harm will be assessed according to factual categories which are of a similar character to the enumerated acts, namely: death; forcible transfer of populations; serious injury to physical or mental health through extreme weather events, storms, and flooding; droughts and fires; health and disease; food insecurity and biodiversity extinction; and persecution through climate change harm for specific identifiable groups on national, ethnic and cultural grounds such as nations in the Pacific regions, low-lying States, and indigenous peoples culturally connected with environments under destruction through climate change impacts.

DEATH

Within the temporal jurisdiction of the ICC, non-optimal temperatures have been linked to an increased annual mortality rates of 9.4% globally between 2000 and 2019 which is estimated at 5 million people,¹⁵⁴ this is more than the population of New Zealand.¹⁵⁵ Researchers conducting this study concluded that “in the long run, climate change is expected to increase the mortality burden.”¹⁵⁶ Future mortalities hold evidential weight given the legal characteristic of climate change as a continuing crime and the international law principle that harm “appearing in the long term might be held to be ‘imminent’ as soon as it is established, at the relevant point in time, that the realization of that period, however far off it might be, is not thereby any less certain and inevitable.”¹⁵⁷ Scientists have calculated the “mortality cost of carbon” and have assessed the excess deaths due to climate change within one scenario at between 2020 and 2100 at over 83 million people.¹⁵⁸ The young people of today will therefore potentially see death tolls equivalent to the entire population of Germany over the course of their lifetime due to climate change.

FORCIBLE TRANSFER OF POPULATIONS AND PERSECUTION

Climate-induced migration and population displacement is driven by climate change impacts such as sea level rise, extreme storms, floods, and droughts.¹⁵⁹ Forcible transfer of entire nations from their homelands is a form of persecution due to the particular targeted impacts on specific national, ethnic, and cultural groups, particularly those with cultural and religious connections to their homelands and the natural environment, such as indigenous peoples and local communities.¹⁶⁰ The disproportionate impacts on such populations, including low-lying and small-island States, has been a central feature of the established and widely known climate science for decades.¹⁶¹ For example, in Pakistan, over 33 million people have been internally displaced following the 2022 flooding of over a third of the entire country¹⁶² whereas the 2022 climate change floods in Malawi resulted in more than 90,000 people displaced.¹⁶³ In 2013 extreme weather event Typhoon Haiyan in the Philippines caused 7353 deaths, 27,000 injuries, and left more than 4 million people displaced.¹⁶⁴ Entire islands are disappearing due to sea level rise in the Solomon Islands

154. [https://www.thelancet.com/journals/lanph/article/PIIS2542-5196\(21\)00081-4/fulltext](https://www.thelancet.com/journals/lanph/article/PIIS2542-5196(21)00081-4/fulltext) The Lancet Planetary Health Volume 5, ISSUE 7, e415-e425, July 01, 2021.

155. <https://www.stats.govt.nz/tools/2018-census-place-summaries/new-zealand>

156. [https://www.thelancet.com/journals/lanph/article/PIIS2542-5196\(21\)00081-4/fulltext](https://www.thelancet.com/journals/lanph/article/PIIS2542-5196(21)00081-4/fulltext) The Lancet Planetary Health Volume 5, ISSUE 7, e415-e425, July 01, 2021, see section entitled “Implications of all the available evidence.”

157. *Gabcikovo-Nagymaros Case* ICJ Judgement, page 39 <https://www.icj-cij.org/public/files/case-related/92/092-19970925-JUD-01>

158. <http://E:N./owdvw.nature.com/articles/s41467-021-24487-w> Nature Communications volume 12, Article number: 4467, 2021

159. See generally for scientific analysis and attribution science regarding climate change and extreme weather events: <https://www.worldweatherattribution.org/>

160. See for example <https://www.un.org/development/desa/indigenouspeoples/climate-change.html>; <https://www.nature.com/articles/s41467-021-26540-0>; <https://www.epa.gov/climate-change/climate-change-and-health-indigenous-populations>

161. H.-O. Pörtner, et. al. (eds.). (2022). IPCC, 2022: Summary for Policymakers. *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 3–33, doi:10.1017/9781009325844.001.

162. <https://insideclimateneWS.org/news/16092022/pakistan-flood-displacement/>; <https://www.worldweatherattribution.org/climate-change-likely-increased-extreme-monsoon-rainfall-flooding-highly-vulnerable-communities-in-pakistan/>

163. <https://www.unicef.org/malawi/cholera-and-floods-response>; <https://www.preventionweb.net/news/climate-change-increased-rainfall-associated-tropical-cyclones-hitting-highly-vulnerable> See also 2019 floods in C.H. Trisos., (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 1285–1455, https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf and health impacts from climate change in Malawi at https://www.climatecentre.org/wp-content/uploads/RCRC_IFRC-Country-assessments-Malawi_Final3.pdf

164. J. Birkmann., et.al. (2022). Poverty, Livelihoods and Sustainable Development. In H.-O. Pörtner, et. al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 1171–1274, doi:10.1017/9781009325844.010; <https://www.climatechangenews.com/2013/11/13/typhoon-haiyan-more-extreme-due-to-climate-change-says-wmo/>; <https://www.climatesignals.org/events/super-typhoon-haiyan-2013>

since 2014.¹⁶⁵ In 2017, the population in the Bahamas experienced long-term displacement after the Hurricane Irma which resulted in the permanent loss of ancestral land, causing serious injury to mental health by threatening identity and culture.¹⁶⁶ Climate change will only continue to exacerbate population displacement in the future, with scientists reporting tens of millions to hundreds of millions of people vulnerable to climate-induced displacement in the next 50 years.¹⁶⁷

EXTREME STORMS AND FLOODING

Climate change is causing increasingly severe extreme weather events including intensified storm events,¹⁶⁸ which lead to great suffering, serious injury, and bodily or mental harm. Increased precipitation from anthropogenic climate change has increased the intensity and frequency of hurricanes.¹⁶⁹ For example, 15%-38% of the increased rainfall during hurricane Harvey was found to be directly attributable to the anthropogenic increase of 1 degrees Celsius in the Gulf of Mexico.¹⁷⁰ According to climate scientists, if global warming continues to trend to 2-3 degrees Celsius, hurricane rainfall would increase by 26.5% and wind speeds by 25 knots.¹⁷¹ Extreme weather events cause death,¹⁷² disease,¹⁷³ and destruction of homes,¹⁷⁴ and loss of livelihood comprising 80 million full time jobs by 2030.¹⁷⁵

DROUGHTS AND FIRES

Major drought events and fires due to climate change cause great suffering, serious injury, and bodily or mental harm. Severe suffering from droughts is increasing due to climate change, and climate change has been found to have increased the likelihood and severity of droughts, such as the droughts in the U.S. Southwest¹⁷⁶ and the 2015-2017 droughts in Cape Town which were three times more likely due to climate change.¹⁷⁷ Indigenous peoples in the Amazon rainforest have been particularly impacted by climate change

165. S. Abert., et. al.(2016). Interactions between sea-level rise and wave exposure on reef island dynamics in the Solomon Islands. *Environmental Research Letters*, 11(5). <https://iopscience.iop.org/article/10.1088/1748-9326/11/5/054011>

166. M. Mycoo, et. al. (2022). Small Islands. In H.-O. Pörtner, et. al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 2043–2121, doi:10.1017/9781009325844.017.

167. H.-O. Pörtner., et.al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 37–118, doi:10.1017/9781009325844.002.

168. N. Christidis, & P. A. Stott. (2022). Human Influence on Seasonal Precipitation in Europe, *Journal of Climate*, 35(15), 5215-5231. Retrieved from <https://journals.ametsoc.org/view/journals/clim/35/15/JCLI-D-21-0637.1.xml>

169. . A. Hicke., et.al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press, Cambridge. pp. 1929–2042, doi:10.1017/9781009325844.016; G, Jan van Oldenborgh., et.a. (2017). Attribution of extreme rainfall from hurricane Harvey, August 2017. *Environmental Research Letters*, 12. <http://www.karinvanderwiel.nl/Files/2017.ERL.VanOldenborgh.etal.pdf>

170. M.D. Risser, & M.F. Wehner. (2017). Attributable human-induced changes in the likelihood and magnitude of the observed extreme precipitation during Hurricane Harvey. *Geophysical Research Letters*, 44(24). <https://doi.org/10.1002/2017GL075888>

171. J. Birkmann., et.al. (2022). Poverty, Livelihoods and Sustainable Development. In H.O. Pörtner et.al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 1171–1274, doi:10.1017/9781009325844.010.

172. <https://yaleclimateconnections.org/2022/10/deaths-from-ian-pass-100-91-looms/>

173. Waddell, S. L., Jayaweera, D. T., Mirsaeidi, M., Beier, J. C., & Kumar, N. (2021). Perspectives on the Health Effects of Hurricanes: A Review and Challenges. *International journal of environmental research and public health*, 18(5), 2756. <https://doi.org/10.3390/jierph18052756>

174. <https://www.washingtonpost.com/politics/2022/02/17/weather-disasters-affected-1-10-homes-country-last-year-report-finds/>

175. https://www.ilo.org/wcmsp5/groups/public/---dqreports/---dcomm/---publ/documents/publication/wcms_711919.pdf

176. J. Mankin., et.al. (2021). NOAA Drought Task Force Report on the 2020–2021 Southwestern U.S. Drought. *NOAA Drought Task Force, MAPP, and NIDIS*. <https://www.drought.gov/sites/default/files/2021-09/NOAA-Drought-Task-Force-IV-Southwest-Drought-Report-9-23-21.pdf>; <https://journals.ametsoc.org/view/journals/bams/103/3/BAMS-D-21-0321.1.xml>

177. <https://www.worldweatherattribution.org/the-role-of-climate-change-in-the-2015-2017-drought-in-the-western-cape-of-south-africa/>; C.H, Trisos., et.al. (2022). Africa. In H.O. Pörtner, et. al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 1285–1455, doi:10.1017/9781009325844.011.

leading to droughts in 1998, 2005, 2010 and 2015/2016¹⁷⁸ and wildfires.¹⁷⁹ The 2018 fires in California resulted in 149 billion US dollars in losses¹⁸⁰ and in 2019 over 3000 homes were destroyed in the Australian fires which led to negative physical and mental health impacts¹⁸¹ which were 30% more likely due to climate change compared to the climate of 1900 according to attribution science.¹⁸²

HEALTH AND DISEASE

Climate change causes direct physical and mental health harm. Extreme heat from climate change impacts human mortality and morbidity in all regions of the world such as the premature death tolls and hospitalisations during the heat waves in Europe (2003), Russia (2010), India (2015) and Japan (2018).¹⁸³ Extreme temperatures also worsen pre-existing conditions such as hypertension, cardiovascular, respiratory, cerebrovascular, kidney and diabetes-related conditions.¹⁸⁴ Higher temperatures increase vector-borne diseases, which include mosquito, rodent and tick-borne diseases.¹⁸⁵ In particular, climate change and population mobility has been clearly associated with an observed increase in dengue globally.¹⁸⁶ An increase in flooding events has also led to an increase in waterborne diseases, compromised drinking water and disturbed public health services.¹⁸⁷ Extreme weather events, such as floods and wildfires, are also followed by increased rates of mental illness in the populations affected.¹⁸⁸ Women, children, the elderly, Indigenous Peoples, low-income households and marginalised groups are especially vulnerable to these climate change-induced health and wellbeing detriments.¹⁸⁹

INSECURITY & BIODIVERSITY EXTINCTION

Humans suffer when the environment is destroyed. Without food security and ecological stability sustained through biodiversity, humans experience great physical and mental suffering through famine, food insecurity, nutrition depletion, and cultural destruction.¹⁹⁰ Agricultural productivity has decreased

178. <https://www.nature.com/articles/s41558-022-01287-8>; <https://www.pnas.org/doi/10.1073/pnas.2120777119>; E, Castellanos., et.al. (2022). Central and South America. In H.O, Pörtner., et.al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 1689–1816, doi:10.1017/9781009325844.014.

179. H.-O. Pörtner, et.al.(eds.). (2022). IPCC, 2022: Summary for Policymakers. In H.-O. Pörtner, et.al.(eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 3–33, doi:10.1017/9781009325844.001.

180. J. A. Hicke., et.al.(eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 1929–2042, doi:10.1017/9781009325844.016.

181. J, Lawrence., et.al.. (2022). Australasia. In H.O, Pörtner, et.al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 1581–1688, doi:10.1017/9781009325844.013.

182. <https://www.worldweatherattribution.org/bushfires-in-australia-2019-2020/>

183. G, Cissé., et.al. (2022). Health, Wellbeing, and the Changing Structure of Communities. In H.O, Pörtner., et.al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 1041–1170, doi:10.1017/9781009325844.009.

184. <https://www.who.int/news-room/fact-sheets/detail/climate-change-heat-and-health>; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2900329/>; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7649889/>

185. <https://www.nature.com/articles/s41590-020-0648-y>; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6378404/>

186. <https://www.sciencedirect.com/science/article/pii/S0013935116303127>; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4342968/>; <https://www.frontiersin.org/articles/10.3389/fpubh.2022.884645/full>

187. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6119235/>

188. <https://www.frontiersin.org/articles/10.3389/fpsyg.2020.00074/full>

189. G, Cissé., et.al. (2022). Health, Wellbeing, and the Changing Structure of Communities. In H.O, Pörtner., et.al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 1041–1170, doi:10.1017/9781009325844.009.

190. R, Bezner Kerr., et.al. (2022). Food, Fibre, and Other Ecosystem Products. In H.O, Pörtner, et.al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. NY, USA, pp. 713–906, doi:10.1017/9781009325844.007.

significantly over the past 50 years and higher CO₂ levels are depleting nutrients in crops, such as protein, iron and zinc.¹⁹¹ Such negative impacts have been particularly evident in already food-insecure nations, for example the 2015-2016 droughts caused acute food insecurity in eastern and southern Africa and the Dry Corridor of Central America¹⁹² and by 2050 it is estimated that 80% of the global population at risk of hunger will be in Africa and Asia.¹⁹³ The risk of further climate change induced irreversible biodiversity loss and the ensuing human suffering is scientifically assessed as very high risk for forest ecosystems, kelp and seagrass ecosystems, arctic sea-ice and terrestrial ecosystems, and warm-water coral reefs.¹⁹⁴ For example, scientific assessments have concluded that it is highly likely that climate change will cause currently threatened species in Australia to become extinct during 2030-2060.¹⁹⁵ In the Brazilian Cerrado, climate change has caused the extinction of 657 plant species.¹⁹⁶ Overall, anthropogenic climate change has negatively impacted global biodiversity at an unprecedented scale.¹⁹⁷



Photo credit: Boni Patou

191. R. Bezn Kerr., et.al. (2022). Food, Fibre, and Other Ecosystem Products. In H.O, Pörtner., et.al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. NY, USA, pp. 713–906, doi:10.1017/9781009325844.007.

192. H.-O. Pörtner., et.al. (2022). Technical Summary. In H.O, Pörtner., et.al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 37–118, doi:10.1017/9781009325844.002.

193. R. Bezn Kerr., et.al. (2022). Food, Fibre, and Other Ecosystem Products. In H.O, Pörtner., et.al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 713–906, doi:10.1017/9781009325844.007.

194. H.-O. Pörtner., et.al. (eds.). (2022). IPCC, 2022: Summary for Policymakers. In H.-O. Pörtner, et.al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 3–33, doi:10.1017/9781009325844.001.

195. J. Lawrence., et.al. (2022). Australasia. In H.O, Pörtner., et.al., (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 1581–1688, doi:10.1017/9781009325844.013.

196. E. Castellanos., et.al. (2022). Central and South America. In H.O, Pörtner., et.al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 1689–1816, doi:10.1017/9781009325844.014.

197. H.-O. Pörtner., et.al. (2022). Technical Summary. In H.O, Pörtner., et.al. (eds.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. pp. 37–118, doi:10.1017/9781009325844.002. See also https://www.flpr.awsassets.panda.org/downloads/lpr_2022_full_report.pdf pages 16-23.

(2) THRESHOLD TEST –

Widespread or systematic attack against a civilian population pursuant to a State or organizational policy

Under the ICC Rome Statute, the threshold test for crimes against humanity can be established with reference to “multiple commission” of the enumerated acts, including “other inhumane acts” of climate change.

Given the global nature of the facts set out under the crime base analysis, there are multiple instances of the enumerated acts of climate change, which thereby establishes the threshold test, namely, multiple instances of death, forced transfer of populations, persecution, and great suffering or serious injury to body or mental or physical health. ICC judges have clarified that “the commission of the acts referred to in Article 7(1) of the Statute constitute the ‘attack’ itself and, beside the commission of the acts, no additional requirement for the existence of an ‘attack’ should be proven.”¹⁹⁸ Given the global scale of the enumerated acts of climate change, the existence of the crime base evidence also constitutes the evidentiary basis for the threshold test.

Furthermore, the global scale of climate change suffering establishes the widespread nature of the attack.¹⁹⁹ Case law has clarified that the notion of “attack” extends to contexts which are non-military²⁰⁰ and “non-violent in nature”²⁰¹ if the events unfold pursuant to a “campaign or operation.”²⁰² The concerted campaign pursuant to an

198. *Bemba*, Confirmation of Charges, para. 75.

199. See global climate change impacts graphics https://www.ipcc.ch/sr15/graphics/#cid_457; <https://www.climate.gov/maps-data>; <https://earthobservatory.nasa.gov/global-maps>; <https://coastal.climatecentral.org/>

200. *Bemba*, Confirmation of Charges, para. 75.

201. *Kunarac*, Appeal Judgment, para. 85; *Simic*, Trial Judgment, para. 37; *Akayesu*, Trial Judgment, para. 581.



Photo credit: Dominik Ketz

organisational policy is evidenced through the coordinated contributions to the common purpose from senior corporate executives, as set out below in the analysis addressing the mode of liability. Although the threshold test is disjunctive, wherein widespread or systematic will suffice, the systematic aspects of the attack are also evidenced through the coordinated contributions to the common purpose, set out below.

The concerted widespread and systematic attack against the global civilian population continues unabated. Over 195 new “carbon bombs” are currently unleashing 646 billion tonnes of CO₂ emissions, swallowing the world’s entire carbon budget,²⁰³ with full knowledge of a 2015 scientific report requiring that half of known oil reserves and a third of gas had to stay in the ground to remain below 2 degrees Celsius,²⁰⁴ and a 2021 report from the International Energy Agency which concluded that there be no new investment in fossil fuel supply if the world was to reach net zero by 2050.²⁰⁵

202. *Situation in Kenya*, Article 15 Decision, para. 80.

203. <https://www.theguardian.com/environment/ng-interactive/2022/may/11/fossil-fuel-carbon-bombs-climate-breakdown-oil-gas> See also <https://www.sciencedirect.com/science/article/pii/S0301421522001756?via%3Dihub>

204. <https://www.nature.com/articles/nature14016>

205. [https://www.iea.org/news/pathway-to-critical-and-formidable-goal-of-netzero-emissions-by-2050-is-narrow-but-brings-huge-benefits](https://www.iea.org/news/pathway-to-critical-and-formidable-goal-of-net-zero-emissions-by-2050-is-narrow-but-brings-huge-benefits) Bemba, Confirmation of Charges, para. 75.

(3)LINKAGE

Senior corporate executives of British Petroleum, BP p.l.c (“BP”) constitute members of the common purpose to maximise petroleum profits regardless of the infliction of great suffering globally through climate change. They have made continuing contributions to the common purpose by implementing strategies creating doubt, dependency, delay, deception and dominance.

Senior corporate executives manufactured doubt in climate change science; entrenched dependency on their products regardless of climate change science indicating the extent of global suffering; fostered delay in responding to climate change; implemented deception regarding the true solutions to climate change; and ensured their global dominance through lobbying and other means. These intentional contributions to the common purpose continue to be made with full knowledge of the great suffering, serious injury, and physical and mental harm from fossil fuel-induced climate change.

BP is a publically traded UK company.²⁰⁶ The UK is a Member State of the ICC.²⁰⁷

BP currently comprises over 100 affiliated corporate entities,²⁰⁸ employs over

206. <https://www.bp.com/en/global/corporate/investors/annual-report.html> The original corporate entity known as Anglo-Persian Oil Company (APOC) was founded in 1909 with 97% shares held by Burmah Oil Company (which was established in 1886 in Scotland to work the Burmese oilfields, after Britain had annexed Burma to its Indian colony). APOC changed its name to the Anglo-Iranian Oil Company in 1935 and then to British Petroleum in 1954. In 1982 the Company changed its name to The British Petroleum Co p.l.c. On 31 December 1998, the Company merged with the US oil company, Amoco Corporation, on a 60/40 basis and was renamed BP Amoco p.l.c. Two further takeovers occurred in 2000 - Atlantic Richfield Company (ARCO) and Burmah Castrol p.l.c. On 1 May 2001 the Company was renamed BP p.l.c. <https://archiveshub.jisc.ac.uk/search/archives/62b43e09-e64b-348a-9378-3d5be82f03db>

207. <https://asp.icc-cpi.int/states-parties/western-european-and-other-states/united-kingdom>

208. <https://opencorporates.com/companies/gb/00102498>

65,000 people²⁰⁹ in 70 countries,²¹⁰ and is one of the world's highest revenue producers.²¹¹ Many of BP's operations²¹² and senior executives²¹³ are located within, or hold nationality from Member States of the ICC. BP is named as one of the few single entities on earth wherein decisions by senior corporate executives are directly responsible for the largest share of greenhouse gas emissions causing climate change.²¹⁴ As a result, BP is increasingly the subject of litigation seeking climate justice.²¹⁵ Throughout the following section, quotations from or overseen by BP corporate executives **will be indicated in this text colour**.



Photo credit: Tim Aubry

209. <https://www.globaldata.com/company-profile/bp-plc/>

210. https://www.bp.com/en_us/united-states/home/where-we-operate.html

211. <https://www.bloomberg.com/quote/BP:LNE>

212. <https://asp.icc-cpi.int/states-parties> & https://www.bp.com/en_us/united-states/home/where-we-operate.html

213. See for example Hobbs, G. (2019). British Imperialism and Oil: A History of British Petroleum, 1901- 2016. PhD thesis. SOAS, University of London. <http://eprints.soas.ac.uk/32458>. Page 112.

214. <https://www.theguardian.com/environment/2019/oct/09/revealed-20-firms-third-carbon-emissions>: "Twenty fossil fuel companies are responsible for 35% of all energy-related carbon dioxide (CO₂) and methane emissions worldwide since 1965. The leading investor-owned emitter is Chevron, followed closely by Exxon, BP, and Shell. The products of these four energy giants account for more than 10% of global carbon emissions since 1965." See also <https://link.springer.com/article/10.1007/s10584-015-1472-5> (showing that BP's products have been responsible for nearly 2.5% of global greenhouse gas emissions, the fourth largest contribution of any corporation); <https://www.oxfordmartin.ox.ac.uk/blog/bps-climate-goals-do-they-go-far-enough/> ("Through its oil and gas production, BP remains one of the biggest contributors to climate change: while the direct emissions from its operations stand at 55 million tonnes of CO₂ equivalent (MtCO₂e, a metric which accounts for the differing relative contributions of carbon dioxide and other greenhouse gases to warming) annually, embedded in its oil and gas products is a further 360 MtCO₂e: a total of 415 MtCO₂e. By means of comparison, the UK's greenhouse gas emissions in 2018 stood at 451 MtCO₂e."); Asuka, J., Li, M., Trencher, G. (2022) The clean energy claims of BP, Chevron, ExxonMobil and Shell: A mismatch between discourse, actions and investments <https://doi.org/10.1371/journal.pone.0263596>.

215. See filings in climate cases against BP: <https://www.climatefiles.com/bp/climate-lawsuit-index-recent-complaints-with-footnotes-and-references-linked-to-source-documents/> & <http://climatecasechart.com/>

COMMON PURPOSE: MAXIMISE PETROLEUM PROFITS REGARDLESS OF CLIMATE CHANGE SUFFERING

The common purpose of BP senior corporate executives is to maximise petroleum profits regardless of the harmful global impacts from climate change. The grave suffering from petroleum-induced climate change has been known by BP senior corporate executives since at least the 1950s and continues to be overridden in pursuit of their common purpose.

From its earliest operations, BP has been organized along a hierarchical corporate chain of command structure where senior corporate executives maintain effective control over subordinate employees, thereby exercising control over the decisions advancing their common purpose of maximizing petroleum profits regardless of the suffering from climate change.²¹⁶ From BP's inception, and increasingly since the 1970s, BP Directors have been closely following energy markets and the state of fossil fuels globally²¹⁷ and have overseen public material relating to environmental management and climate change.²¹⁸

The members of the common purpose include those individuals which BP has indicated hold the highest level of responsibility for climate change policy, namely:

"The highest level of responsibility rests with the BP p.l.c. Board, whose role is to promote the long- term sustainable success of the company, generating value for its shareholders whilst having regard to its other stakeholders, the impact of its operations on the communities within which it operates, and the environment. The company's success is dependent upon effective and entrepreneurial leadership by the board, establishing its purpose, strategy and values and doing so within a framework of prudent and effective controls which enable risks to be assessed and managed. The board has defined its responsibilities and an additional range of matters on which decision-making is reserved to itself – both of which are set out in its terms of reference, available on bp.com/governance. Strategy is a core part of the board's role. Working alongside the CEO and BP leadership team, the board shapes and ultimately sets BP's purpose, strategy and values. The board reviews and assesses the strategy at board meetings as we work towards delivering our targets and aims. The board and its associated committees, including the safety and sustainability, audit, people and governance and remuneration committees, where appropriate, have oversight of climate-related matters, which include climate risks and opportunities."²¹⁹

Members of the common purpose also include BP senior executives within the Group Carbon Steering Committee, chaired by the Vice President of carbon management, which reportedly meets more frequently than quarterly for the purposes of "assessing and managing climate-related risks and opportunities."²²⁰ Additional members of the common purpose include the Group Sustainability Committee chaired by the Executive Vice President of Strategy and Sustainability which was established at the executive level to address climate change, meeting quarterly, supported by the Senior Vice President of Sustainability.²²¹

216. Our industry, petroleum: a handbook dealing with the organisation and functions of an integrated international oil company, with particular reference to the British Petroleum Company Limited (1970). [\[LINK\]](#)

217. World Energy Prospects: British Petroleum Company (1973). [\[LINK\]](#)

218. Effective environmental management in a multi-national, multi-discipline company BP (1987). [\[LINK\]](#) World Energy Prospects: British Petroleum Company (1973). [\[LINK\]](#) A climate of progress BP (1988) [\[LINK\]](#) Energy efficiency in action: saving energy, increasing profits, helping the earth. Energy Efficiency Service (1992). [\[LINK\]](#)

219. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 4. See also the 2010 CDP response: https://www.cdp.net/en/formatted_responses/pages?locale=en&organization_name=BP&organization_number=2083&program=Investor&project_year=2010&redirect=https%3A%2Fwww.cdp.net%2FSites%2F2010%2F83%2F2083%2FInvestor+CDP+2010%2FPages%2FDisclosure.View.aspx referring to BP Annual Report (20-F) page 14.

220. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> pages 5 – 6.

221. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 7.

The members of the common purpose maintain close oversight over the common purpose of maximizing profits from petroleum products regardless of climate change suffering. Climate issues are scheduled at all senior executive meetings and integrated into strategy reviews, risk management policies, and capital expenditure (“capex”) reviews.²²² According to BP, all capex investments over \$250 million are evaluated against the UNFCCC Paris Agreement goals by the “**executive-level resource commitment meeting which is chaired by the chief executive officer.**”²²³ In furtherance of their common purpose, in 2020 senior BP executives conducted capex reviews which approved new gas exploration wells in the Gulf of Mexico and Azerbaijan which were “**evaluated to be consistent with the Paris goals**”²²⁴ despite the assertions by the International Energy Agency that there should be an immediate cessation of any further investment in fossil fuel supply.²²⁵

BP’s annual reports are replete with assertions setting out the common purpose of profit maximization from fossil fuels. The 2021 BP annual report affirms the common purpose of “**creating value for our shareholders**”²²⁶ whilst relegating climate change into profit assessments regarding “**any material opportunities arising from changes in the physical environment as a result of climate change.**”²²⁷ This sentiment was echoed in the 2020 BP Annual report that the central focus of the common purpose is “**growing long-term shareholder value, that is our job**”²²⁸ with the emphasis on expanding petroleum extraction through commitments to “**discover additional resources and replenish our development options**”²²⁹ regardless of the International Energy Agency assertions that there must be “no investment in new fossil fuel supply.”²³⁰ Similar statements from BP senior executives are in every annual report since the commencement of the ICC jurisdiction,²³¹ even to the extent of asserting that environmental protections

222. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 9 referring to risk factors on pages 67-70 of BP 2020 Annual Report and Form 20-F. Climate change and the transition to a lower carbon economy has been identified as a principal risk, see page 68 of BP 2020 Annual Report and Form 20-F. Pages 11 and 22 referring to physical climate-related risks such as extreme weather, with examples of the North Sea, Gulf of Mexico, and offshore facilities which monitor meteorological and oceanographic conditions, citing page 52 of the bp Annual Report and Form 20-F 2020.

223. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> pages 1, 35

224. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 35.

225. <https://www.iea.org/news/pathway-to-critical-and-formidable-goal-of-net-zero-emissions-by-2050-is-narrow-but-brings-huge-benefits>

226. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2021.pdf> page 12. See also pages 7, 117.

227. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2021.pdf> page 5 and Form 20-F 2021.

228. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2020.pdf> page 7. “While this is a journey that will require patience, our goal is that bp over time will become a more valuable company for its shareholders” page 4 and Form 20-F 2020.

229. 2017 <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2017.pdf> page 4.

230. <https://www.iea.org/news/pathway-to-critical-and-formidable-goal-of-net-zero-emissions-by-2050-is-narrow-but-brings-huge-benefits>

231. 2019 <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2019.pdf> pages 4, 17, 67; 2018 <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2018.pdf> pages 8, 28, 20, 180; 2017 <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2017.pdf> pages 4, 6, 7, 9; 2016 <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2016.pdf> pages 17, 62; <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2015.pdf> pages 9, 12, 13, 30; 2014 <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2014.pdf> pages i, 6, 21; 2013 <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2013.pdf> pages 6, 7, 9, 29; 2012 <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2012.pdf> pages 4, 10, 11, 20; 2011 <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2011.pdf> pages 8, 16; 2010 <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2010.pdf> pages 7, 11, 19; 2009 <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-accounts-2009.pdf> pages 7, 14, 19, 84; 2008 <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-accounts-2008.pdf>

are subordinate to the common purpose²³² such as the 2019 BP annual report which stated that “[t]he board regularly reviews and monitors BP’s safety, reliability and environmental performance, with the aim of continually making BP safer for our entire workforce and minimizing our environmental impact. It also focuses on maintaining financial discipline and delivering strong earnings, cash flow and returns to shareholders.”²³³

The primacy of the common purpose of maximising petroleum profits regardless of climate suffering is evidenced in public statements from senior corporate executives. Nick Butler, the former BP Head of Strategy and subsequent advisor to the UK Prime Minister, asserted that the common purpose should maintain primacy over any alternative objectives such as corporate social responsibility response to climate change, stating that “[t]he business of business is business.”²³⁴ Former BP Chief Executive John Browne has affirmed this common purpose, namely, that BP operations “start from the view that the purpose of business is to satisfy human needs and, in doing so, to generate profits for investors. For BP, that means providing energy to fuel human progress and economic growth. It also means satisfying the need for a sustainable environment.”²³⁵ He pointed this out more explicitly when he clarified his stance on climate change was for BP “to reinvent the energy business; to go beyond petroleum. Not by abandoning oil and gas—but by improving the ways in which it is used and produced so that our business is aligned with the long term needs of the world.”²³⁶ Indeed, he later clarified that that the objective of the common purpose is to continuously expand fossil fuel production despite the climate change impacts, due to BP position as “a growing business, and we want to create value for our shareholders by increasing our share of the world energy market over the next decade... So the focus for the medium-term future must be on the use of oil and gas... We aim to continue to grow our production of oil and gas by more than 5% per annum until 2005, and to keep growing beyond that... we are moving to the point where we could be producing twice our current output.”²³⁷

BP senior executives have been so committed to advancing their common purpose to maximize petroleum profits that climate change is relegated to “an existential threat” to their shareholder profits²³⁸ as opposed to an existential threat to the human species.

In furtherance of this common objective, the renewable energy program introduced by former BP Chief Executive John Browne was pushed into a hasty “retreat after a shareholders’ savaging.”²³⁹ Tom Burke, a former BP employee, states that “[t]hey’ve worked [climate change] out. The only people who have done

accounts-2008.pdf pages 15, 157; <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-accounts-2007.pdf> pages 150, 151; 2006 https://www.annualreports.com/HostedData/AnnualReportArchive/b/LSE_BP_2006.pdf page 76; 2005 <https://ddd.uab.cat/pub/infanu/43618/iaBPa2005ieng2.pdf> page 158; 2004 <http://111.68.102.42:8080/xmlui/bitstream/handle/123456789/9493/Annual%20Report%202004.pdf?sequence=1&isAllowed=y> pages 5, 30, 117; 2003 <https://www.annualreports.com/HostedData/AnnualReports/InteractiveHTML/bp2003/bp2003.pdf> pages 4, 7, 102; 2002 <http://hdl.handle.net/123456789/9491> page 10.

232. See for example 2004 <http://111.68.102.42:8080/xmlui/bitstream/handle/123456789/9493/Annual%20Report%202004.pdf?sequence=1&isAllowed=y> page 30 under environmental and social performance: “Our fundamental purpose, as defined by BP’s board, is to maximize shareholder value on a long-term basis by providing constantly improving goods and services in a strongly competitive way.”

233. See for example 2019 <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2019.pdf> page 67.

234. “Corporate Social Responsibility - A speech given to the China Development Forum, Diaoyutai, Beijing by Nick J Butler on March 2004” BP Archive Warwick University ArchRef 44755m24 (B. Franta, personal communication, July 13, 2022).

235. See for example BP Annual Report 2006, page 4.

236. Wheeler, A. (2003) Designing Brand Identity: A Complete Guide to Creating, Building and Maintaining Strong Brands. John Wiley & Sons. Page 177.

237. “Beyond Petroleum – Business and Environment in the 21st Century; speech given at Stanford 11 March 2002 by Lord Browne” BP Archive Warwick University ArcRef 127544, barcode 107995, page 5 (B. Franta, personal communication, July 13, 2022).

238. <https://www.theguardian.com/environment/2015/may/20/revealed-bps-close-ties-with-the-uk-government>

239. <https://www.theguardian.com/environment/2015/may/20/revealed-bps-close-ties-with-the-uk-government>

as much thinking as them on this are the military... [BP is] certain that government won't act on their obligation to keep the rise in global temperatures below 2 degrees Celsius and in fact will be allies to keep the revenues flowing." Tony Hayward, BP's former Chief Executive appointed after John Browne, immediately shut down John Browne's renewable division, ensuring that BP was "Back to Petroleum."²⁴⁰ The BP senior executives have protected their common purpose through opposing efforts by the investment group "Follow This" to file climate change resolutions even though 20.6% of investors have voted in favour in similar resolutions²⁴¹ and over 99% of shareholders voted in favour of a special resolution proposed by investor group Climate Action 100+.²⁴²

The ultimate objective of the common purpose of BP senior executives is ensuring that their petroleum products "will remain part of the energy mix for decades"²⁴³ despite the vast human suffering from climate change driven by fossil fuel emissions from BP's petroleum products. Indeed, BP's Energy Outlook scenarios include those not consistent with Paris by maintaining "business-as-usual" as a result of the "continuation of recent trends without major change in the pace or direction of policy tightening."²⁴⁴ BP profits today continue to derive almost entirely from oil and gas operations²⁴⁵ despite BP's acceptance of the climate science and scientific attribution of human suffering to BP's common purpose to maximize petroleum profits.²⁴⁶ In 2021, the International Energy Agency called for "no investment in new fossil fuel supply projects... [and by] 2035, there are no sales of new internal combustion engine passenger cars"²⁴⁷ but BP continues to advance its common purpose by announcing \$14 to \$16 billion in fossil fuel expansions in 2022.²⁴⁸ BP Chief Financial Officer Murray Auchincloss announced an increase in spending on U.S. shale oil and gas to \$1.5 billion in 2022 and BP Chief Executive Bernard Looney stated that BP "is a cash machine at these sort of (oil and gas) prices and the business is running very well."²⁴⁹

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BP senior executives had knowledge of the forefront of scientific research into climate change impacts, including the severe human suffering flowing from their common purpose of maximizing fossil fuel profits. BP senior executives were also at the forefront of the petroleum industry's public communications co-opting climate change for marketing purposes, even by publically accepting the science establishing fossil fuels as the predominate cause of climate change. Therefore BP senior executives have had full knowledge of the climate crisis and the human suffering ensuing from their common purpose since at least the 1950s.

240. <https://www.theguardian.com/environment/2015/may/20/revealed-bps-close-ties-with-the-uk-government>

241. <https://www.follow-this.org/past-resolutions/>; <https://www.reuters.com/world/uk/bp-chief-says-uk-windfall-tax-would-not-affect-investment-plans-2022-05-12/>

242. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 29: "see pages 341-342 of our 2020 Annual Report and Form 20-F) The CA100+ resolution requires bp to disclose, amongst other things, how we evaluate the consistency of new material capex investments with (i) the Paris goals and (ii) a range of other outcomes relevant to bp's strategy. bp's evaluation of consistency of such investments with the Paris goals was undertaken by the resource commitment meeting (RCM) for new material capex investments sanctioned in 2020, see page 31 of our 2020 Annual Report and Form 20-F."

243. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 30.

244. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 30 and 31: "Our strategy is designed to be resilient across the bp Energy Outlook 2020 scenarios, including those that are Paris consistent."

245. E.g. only 2% of BP capex utilised on renewables: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0263596>

246. See analysis below on knowledge, including two BP documentaries released in 1990 on the science of fossil fuels causing climate change.

247. <https://www.iea.org/news/pathway-to-critical-and-formidable-goal-of-net-zero-emissions-by-2050-is-narrow-but-brings-huge-benefits>

248. <https://www.bp.com/en/global/corporate/news-and-insights/press-releases/bp-accelerates-and-expands-in-bioenergy-agreeing-to-buy-leading-us-biogas-company-archaea-energy.html>; https://www.ran.org/wp-content/uploads/2022/03/BOCC_2022_vSPREAD-1.pdf; <https://www.iea.org/news/support-for-fossil-fuels-almost-doubled-in-2021-slowing-progress-toward-international-climate-goals-according-to-new-analysis-from-oecd-and-iea>; <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/energy-outlook/bp-energy-outlook-2022.pdf>

249. <https://www.reuters.com/business/energy/bps-third-quarter-profit-beats-forecasts-lifted-by-energy-prices-2021-11-02/>

This satisfies the *mens rea* elements of proving an international crime. BP senior corporate executives were aware of the factual circumstances that established the character of the human suffering from climate change, thereby establishing the *mens rea* for “other inhumane acts” of climate change under crimes against humanity. This also demonstrates the *mens rea* for the threshold test of crimes against humanity, namely, knowledge of the widespread or systematic nature of the attack on the civilian population through the cumulative impacts of climate change as an “other inhumane act.” BP senior executive’s endorsement of climate change science also demonstrates that BP corporate executives have been mutually aware

and mutually accept that implementing their common purpose may result in the human suffering from climate change which constitutes the commission of the crime of “other inhumane acts” of climate change as a crime against humanity. Therefore, BP senior executives have aimed to further the common purpose which involves the commission of a crime within the jurisdiction of the ICC. By accepting the climate science through overseeing public statements and documentaries on fossil fuel-induced climate change, BP corporate executives were aware of the risk that implementing the common plan will result in the commission of the crime of “other inhumane acts” of climate change, and accepted such an outcome.

This establishes the *mens rea* for the modes of responsibility of civilian command responsibility, co- perpetration, and contribution to the crime through any other means.

BP senior executives oversaw investment in research into the properties of greenhouse gases as early as the 1950s²⁵⁰ and contributed to internal industry-led scientific research into climate change which was intentionally hidden from the public through its membership and financial contributions to the American Petroleum Institute (“API”).²⁵¹ In 1954 API funded a research proposal which reported that fossil fuels had already caused carbon dioxide levels to rise roughly five percent since 1854 which the scientific journal Nature notes has since proved to be accurate.²⁵² In 1958 a report by Charles Jones, Executive Secretary of API’s Smoke and Fumes Committee, titled “A Review of the Air Pollution Research Program of the Smoke and Fumes Committee of the American Petroleum Institute” was intended to provide “factual” and “reliable” research to aid in creating government regulations to control air pollution.²⁵³ In 1959 the API hosted an energy symposium where Edward Teller presented scientific research on the “greenhouse effect” from fossil fuel emissions,²⁵⁴ stating: “I think that this chemical contamination is more serious than most people tend to believe.”²⁵⁵ Throughout the 1960s and 1970s, API continued further scientific research confirming the nexus between petroleum products and climate change²⁵⁶ culminating in the

250. “Letter to Pat Docksey, Esq. BP Trading Limited. April 22, 1958. From W. C. Connet (or Connel) Related to Sir David E. C. Steel” BP Archive Warwick University ArcRef: 59310 Barcode (B. Franta, personal communication, July 13, 2022); Union of Concerned Scientists (2015) The Climate Deception Dossiers <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf> page 3.

For example: Tester, H.E. (1959) Thermodynamic properties of methane , B.P. Research Centre [LINK] Shivas, E.R. (1966) The Construction of a Computer Program to Assist Emission Spectroscopic Analysis.British Petroleum Company Ltd [LINK]

251. <https://www.api.org/membership/members#B>; <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/our-participation-in-trade-associations-climate-2021-progress-update.pdf> See full list of API documents <https://www.climatefiles.com/collection-index/>

252. Franta, B. (2018). Early oil industry knowledge of CO 2 and global warming. *Nature Climate Change*, 1 <https://www.nature.com/articles/s41558-018-0349-9>

253. <https://www.climatefiles.com/trade-group/american-petroleum-institute/1958-air-pollution-research-program-smoke-fumes/>

254. <https://www.europarl.europa.eu/cmsdata/162144/Presentation%20Geoffrey%20Supran.pdf>; <https://theconversation.com/what-big-oil-knew-about-climate-change-in-its-own-words-170642>; <https://archive.org/details/energymansymposi0000unse/page/n3/mode/2up>

255. <https://www.theguardian.com/environment/ng-interactive/2019/oct/09/half-century-dither-denial-climate-crisis-timeline>

256. <https://www.theguardian.com/environment/ng-interactive/2019/oct/09/half-century-dither-denial-climate-crisis-timeline> Franta, B. (2018). Early oil industry knowledge of CO 2 and global warming. *Nature Climate Change*, 1 <https://www.nature.com/articles/s41558-018-0349-9> Union of Concerned Scientists (2015) The Climate Deception Dossiers, page 3: <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>. <https://babel.hathitrust.org/cgi/pt?id=coo.31924004997908&view=1up&seq=5> 1965 oceanographer Roger Revelle report for the President’s Science Advisory Committee that increasing amounts of carbon dioxide could be trapped in the atmosphere and function “much like the glass in a greenhouse, to raise the temperature of the lower air.” See API reports in 1968, 1969, 1972 referenced in: <https://www.europarl.europa.eu/cmsdata/162144/Presentation%20Geoffrey%20Supran.pdf> <https://www.theguardian.com/environment/ng-interactive/2019/oct/09/half-century-dither-denial-climate-crisis-timeline>

1965 when API warned the petroleum industry that "time is running out."²⁵⁷ This sentiment was echoed by statements of the President of the United States several times that same year.²⁵⁸ In the 1965 API annual meeting, the API president, Frank Ikard made a speech inviting the API members to study the "sweeping" recommendations of the report entitled "Restoring the Quality of Our Environment"²⁵⁹ and asserted:

"One of the most important predictions of the report is that carbon dioxide is being added to the Earth's atmosphere by the burning of coal, oil, and natural gas at such a rate that by the year 2000 the heat balance will be so modified as possibly to cause marked changes in climate beyond local or even national efforts... The report further states, and I quote: 'the pollution from internal combustion engines is so serious, and is growing so fast, that an alternative nonpolluting means of powering automobiles, buses, and trucks is likely to become a national necessity.'"²⁶⁰

By 1969 Charles Keeling reported measurements of carbon dioxide, concluding that "I believe that no atmospheric scientist doubts that a sufficiently large change in atmospheric CO₂ would change the climate."²⁶¹ Throughout the 1970s,²⁶² 1980s,²⁶³ and 1990s²⁶⁴ major oil firms privately confirmed this research

257. <https://www.desmog.com/2018/11/20/american-petroleum-institute-1965-speech-climate-change-oil-gas/>; <https://www.theguardian.com/environment/ng-interactive/2019/oct/09/half-century-dither-denial-climate-crisis-timeline> The Science Advisory Committee of US President Lyndon Johnson found that "pollutants have altered on a global scale the carbon dioxide content of the air" with effects that "could be deleterious from the point of view of human beings."

258. Union of Concerned Scientists (2015) The Climate Deception Dossiers, page 3: <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf> President Lyndon Johnson warned about the potential dangers of a changing climate in a special message to Congress: "Air pollution is no longer confined to isolated places. This generation has altered the composition of the atmosphere on a global scale through radioactive materials and a steady increase in carbon dioxide from the burning of fossil fuels."

259. <https://www.climatefiles.com/climate-change-evidence/presidents-report-atmospher-carbon-dioxide/>

260. <https://www.theguardian.com/environment/climate-consensus-97-per-cent/2018/jan/01/on-its-hundredth-birthday-in-1959-edward-teller-warned-the-oil-industry-about-global-warming>; <https://www.climatefiles.com/trade-group/american-petroleum-institute/1965-api-president-meeting-the-challenges-of-1966/>; <https://www.desmog.com/2018/11/20/american-petroleum-institute-1965-speech-climate-change-oil-gas/> API was informed by scientists it had commissioned at the Stanford Research Institute that if fossil fuel production continued to grow "Significant temperature changes are almost certain to occur by the year 2000, and these could bring about climatic changes... there seems to be no doubt that the damage to our environment could be severe" This research predicted rise in CO₂ from 280 to 370 ppm by 2000 which was correct. The scientists recommended the industry develop "systems in which CO₂ emissions would be brought under control." <https://www.tandfonline.com/doi/pdf/10.1080/09644016.2020.1863703>

Benjamin Franta (2021) Early oil industry disinformation on global warming, Environmental Politics, 30:4, 663-668, DOI: 10.1080/09644016.2020.1863703

261. Union of Concerned Scientists (2015) The Climate Deception Dossiers, page 3 <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>

262. Union of Concerned Scientists (2015) The Climate Deception Dossiers page 3 <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>; <https://www.theguardian.com/environment/2021/jun/30/climate-crimes-oil-and-gas-environment> 1972 API Environmental Research A Status Report from Committee for Air and Water Conservation files. eric.ed.gov/fulltext/ED066339.pdf sent to BP. 1978-83 Dr Edward Garvey Exxon climate researcher "global warming is no longer speculative. The issue was not were we going to have a problem, the issue was simply how soon and how fast and how bad was it going to be. Not if." 1978 report warned "window of five to ten years before the need for hard decisions regarding changes in energy strategy might become critical." 1977 Exxon \$1m tanker project researching CO₂ absorbed in the oceans statement from senior scientist James Black to Exxon management committee: "In the first place, there is general scientific agreement that the most likely manner in which mankind is influencing the global climate is through carbon dioxide release from the burning of fossil fuels." 1978 James Black warned Exxon that doubling CO₂ gases in the atmosphere would increase average global temperatures by two or three degrees warning that "present thinking holds that man has a time window of five to 10 years before the need for hard decisions regarding changes in energy strategies might become critical." 1979 Exxon an internal assessment predicted rising sea levels, ice-free Arctic summers, less habitable tropics, desertification and drought in the US Southwest by mid-21st century unless over 80% of recoverable fossil fuels were left in the ground, coal and shale oil were never extensively used, and non-fossil energy systems were to begin replacing fossil fuels significantly by the 1990s.

263. 1981 – 1987 Dr Martin Hoffert physicist and Exxon consultant wrote eight scientific papers published in peer reviewed journals "including a prediction of how much global warming from carbon dioxide buildup would be 40 years later" <https://www.theguardian.com/environment/2021/jul/02/scientists-climate-crisis-big-oil-climate-crimes>

264. Union of Concerned Scientists (2015) The Climate Deception Dossiers pages 5, 26, 44 <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf> 1995 Mobil scientists sent warning on climate dangers to Global Climate Coalition including BP "The scientific basis for the Greenhouse Effect and the potential impact of human emissions of greenhouse gases such as CO₂ on climate is well established and cannot be denied."

which they deliberately hid from the public, and from 1977 representatives of fossil fuel companies including BP attended dozens of United States congressional hearings in which the contribution of carbon emissions to the greenhouse effect and other aspects of climate science were discussed.²⁶⁵ In 1979 API had created a secret industry-wide task force²⁶⁶ to monitor developments in climate science, and John Laurmann of Stanford University gave a briefing on global warming to the group²⁶⁷ displayed a slide summarizing the “likely impacts” of fossil fuel production trends warning that warming of 2.5 degrees Celsius could “bring world economic growth to a halt” and suggested that avoiding the predicted outcomes would require prompt action.²⁶⁸ The efforts of API verifying climate change science culminated in 1995 with an internal memo prepared by Lenny Bernstein, the chair of the science and technology advisory committee within an affiliated API entity, the Global Climate Coalition, entitled “Predicting Future Climate Change: A Primer” distributed to BP which unequivocally stated that “the scientific basis for the Greenhouse Effect and the potential impact of human emissions of greenhouse gases such as CO₂ on climate is well established and cannot be denied” and debunked existing “contrarian” climate science theories.²⁶⁹ This language affirming climate science, however, was removed from the API’s final report in a continued effort to deliberately hide scientific findings regarding fossil fuels causing climate change in furtherance of the common purpose to maximize petroleum profits regardless of the suffering from climate change.

In their 2010 response to the Carbon Disclosure Project (“CDP”), BP senior corporate executives oversaw statements implying that they proactively research climate change by asserting that “**BP regards emission forecasts as proprietary information.**”²⁷⁰ They further stated they were conducting research jointly with Imperial College London to better understand the potential impacts on BP’s operations posed by a changing climate. In their 2021 CDP response, BP senior executives oversaw assertions that scientific methods drive the planning of the organization, by which logic must extend to the climate science, stating that they are “**a science-informed organization**” that continues in-house research through its internal corporate “**science and engineering capabilities.**”²⁷¹

265. Union of Concerned Scientists (2015) The Climate Deception Dossiers page 4 <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>

266. The “CO₂ and Climate Task Force” included representatives from many of the major oil companies to privately monitor and discuss the latest developments in climate science. <https://theconversation.com/what-big-oil-knew-about-climate-change-in-its-own-words-170642>

267. In 1980 the task force invited Stanford scientist Dr John Laurmann to brief them on climate science which warned that if fossil fuels continued to be used, global warming would have “globally catastrophic effects” by 2060. That same year, API called on governments to triple coal production worldwide, insisting there would be no negative consequences <https://theconversation.com/what-big-oil-knew-about-climate-change-in-its-own-words-170642>

BP personnel Eric B Cowell and James McKay were part of the IPIECA Working Group on Global Climate Change, which was formed in the late 1980s and around 1990 distributed materials to IPIECA members worldwide containing strategies to confuse the public about global warming and delay fossil fuel controls. See <https://www.sciencedirect.com/science/article/pii/S0959378021001655>

268. <https://www.tandfonline.com/doi/pdf/10.1080/09644016.2020.1863703> Benjamin Franta (2021) Early oil industry disinformation on global warming, Environmental Politics, 30:4, 663-668, DOI: 10.1080/09644016.2020.1863703; API AQ-9 Task Force Meeting Feb 29 1980 Minutes (Mar 18 1980) insideclimateneWS.org/sites/default/files/documents/AQ-9%20Task%20Force%20Meeting.pdf presentation from Dr John Lauremann “The CO₂ Problem” 1979 API prepared a background paper on climate change for members of the task force, predicting that fossil fuels would cause global warming but that the phenomenon would be masked by natural variability and go undetected until around the year 2000.

269. Union of Concerned Scientists (2015) The Climate Deception Dossiers pages 5, 25, 26, 44 <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>; https://www.ucsusa.org/sites/default/files/attach/2015/07/Climate-Deception-Dossier-7_GCC-Climate-Primer.pdf pages 3 and 13.

270. https://www.cdp.net/en/formatted_responses/pages?locale=en&organization_name=BP&organization_number=2083&program=Investor&project_year=2010&redirect=https%3A%2F%2Fwww.cdp.net%2FSites%2F2010%2F83%2F2083%2FInvestor+CDP+2010%2FPages%2FDisclosureView.aspx

271. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> pages 32, 38, 39-42, 51.

In addition to benefiting from the API's private climate change scientific research, BP publications acknowledge that climate change science has long been accepted publically as linking fossil fuels and climate change. BP public materials often refer to 1988 as the moment when the "**[p]ublic becomes aware of changes in climate and the proposed connection to the burning of fossil fuels**"²⁷² even though BP senior executives knew their common purpose would lead to catastrophic climate change suffering long before 1988. However, 1988 is linked to several key events confirming climate change science:

- 1988 NASA scientist and Director of the Institute for Space Studies, James Hansen, told a congressional hearing about the human role in climate change, and that "the greenhouse effect has been detected, and it is changing our climate now."²⁷³
- 1988 George Bush Senior campaigned for US President, stating that "[t]hose who think we are powerless to do anything about the greenhouse effect forget about the White House effect ... As president, I intend to do something about it."²⁷⁴
- 1988 Richard F. Tucker, then president of Mobil Oil, acknowledged in a speech to the American Institute of Chemical Engineers (which subsequently submitted as testimony to U.S. Congress) that environmental protection and pollution prevention, including action to address the greenhouse effect, might require "a dramatic reduction in our dependence on fossil fuels."²⁷⁵
- 1988 the Intergovernmental Panel on Climate Change (IPCC) appointed an Exxon staff scientist as an expert reviewer for the first IPCC scientific assessment on climate change, published in 1990.²⁷⁶
- 1988 U.S. Congress introduced the National Energy Policy Act of 1988 to reduce greenhouse gases, which was covered in front-page news articles, such that it "is difficult to imagine that executives, lobbyists, and scientists at the major fossil fuel companies were by this time unaware of the robust scientific evidence of the risks associated with the continued burning of their products"²⁷⁷

272. "Climate Change, Can We Make A Difference?" BP Archive Warwick University ArcRef 144375 barcode Z01416816 (2005) (B. Franta, personal communication, July 13, 2022).

273. <https://www.theguardian.com/environment/ng-interactive/2019/oct/09/half-century-dither-denial-climate-crisis-timeline>

274. <https://www.theguardian.com/environment/ng-interactive/2019/oct/09/half-century-dither-denial-climate-crisis-timeline>

275. Union of Concerned Scientists (2015) The Climate Deception Dossiers page 4 <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>

276. Union of Concerned Scientists (2015) The Climate Deception Dossiers page 5 <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>

277. Union of Concerned Scientists (2015) The Climate Deception Dossiers page 4 <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>

BP senior executives publically admitted climate change science by at least 1990 when they oversaw the release of two BP company documentaries directly linking human suffering from climate change to BP's common purpose to maximize fossil fuel profits. The first BP documentary entitled "What Makes the Weather" admitted that the human suffering from climate change is "one of our urgent concerns" with powerful imagery showing the havoc caused by melting ice sheets, sea level rise, storms, and droughts, whilst asserting that:

"Our whole energy intensive way of life and its dependence on carbon based fuels is now a cause for concern. When coal, oil, or gas are burned, they release carbon dioxide and other reactive gases. Since the industrial revolution, their use has increased hundredfold. In the last forty years, the mass burning of the tropical forests has freed even more carbon dioxide into the atmosphere. It has taken time to realize what damage this extra carbon dioxide can do... devastating consequences [from] an overall increase in temperature of even a few degrees."²⁷⁸

The second BP documentary also released in 1990 entitled "We Can't Afford to Gamble"²⁷⁹ sets out that fossil fuels cause global warming and climate change, leading to "devastating consequences... [such as] catastrophic floods" which renders low-lying countries like Bangladesh "defenceless." The film shows former BP Chief Executive Robert Horton saying that "where human life or health is at stake, or where environmental damage may occur, we cannot be seen to have fallen short of our responsibilities." The documentary promises that BP "will tell the community about the nature of our operations, their potential hazards, and emergency preparedness."

Soon thereafter, BP's next CEO John Browne gave his first speech at Stanford in 1997 where he accepted the climate change science, saying it was "unwise and potentially dangerous" to ignore catastrophic climate change, and "[i]f we are all to take responsibility for the future of our planet, then it falls to us to begin to take precautionary action now."²⁸⁰ He referred to the "consensus among the world's leading scientists" regarding climate change, and referred to the work of the IPCC in concluding that there is a "responsibility to act" and that "BP accepts that responsibility."²⁸¹ However, industry experts have noted that there were commercial reasons for this apparent acceptance of climate change science and admission of responsibility for global suffering. In the early 1990s BP was experiencing poor corporate results²⁸² and the former BP Chief Executive John Browne "sees BP's position on climate change as a way to distinguish them from others in their industry."²⁸³

That same year in 1997, BP withdrew from the petroleum industry's lobby group aligned to API's efforts to spread climate change denial and disinformation, namely, the Global Climate Coalition ("GCC"), publicly stating that "the time to consider the policy dimensions of climate change is not when the link between greenhouse gases and climate change is conclusively proven, but when the possibility cannot be discounted and is taken seriously by the society of which we are part. We in BP have reached that point."²⁸⁴

For the same reasons, BP then became the only major integrated petroleum company establishing the

278. <https://www.bpvideolibrary.com/record/463> 18 minute mark: According to BP, the film was even awarded a bronze plaque at the 39th Annual Columbus International Film and Video Festival in 1991, see: <https://www.ftm.eu/articles/bp-video-climate-change- 1990-engels>

279. <https://www.bpvideolibrary.com/record/209>

280. <https://www.climatefiles.com/bp/bp-climate-change-speech-to-stanford/> See also Browne (2011) Beyond Business: An Inspirational Memoir From a Visionary Leader: "No other speech in BP has probably undergone so much scrutiny and so many iterations. I was the chief executive of an oil company and I was about to become an environmental activist."

281. <https://www.climatefiles.com/bp/bp-climate-change-speech-to-stanford/>

282. Rowlands, I.H (2000) Beauty and the Beast? BP's and Exxon's Positions on Global Climate Change. Environment and Planning C: Government and Policy. 2000;18(3):339-354. doi:10.1068/c9752.

283. Lowe E. A., Harris R. J. (1998) Taking climate change seriously: British Petroleum's business strategy. Corporate Environmental Strategy 5(2) 22.31 pages 24, 29.

284. <https://theecologist.org/2018/sep/28/what-happened-whenlord-browne-bp-boss-called-action-climate-change>

Pew Center on Global Climate Change which advocated that “[w]e accept the views of most scientists that enough is known about the science and environmental impacts of climate change for us to take actions to address its consequences.”²⁸⁵ The following year in 1998 BP launched an industry report entitled “Safe Climate, Sound Business” which was a result of assessing the climate science and “analyzing long-term scenarios.”²⁸⁶ BP corporate executives were clearly deeply engaged in climate change science during the 1990s and knew the irreversible escalating trajectories for human suffering due to climate change pursuant to their common purpose of maximizing fossil fuel profits.

In 2002, BP Chief Executive John Browne gave a second speech at Stanford University accepting the work of the UN confirming climate change science, stating: “[t]he continued work of the IPCC - the international group of scientists working on this issue - has confirmed the risks of climate change and the need for precautionary action.”²⁸⁷ He reflected on his first Stanford speech, reaffirming that “[i]n 1997 we accepted that logic. We accepted that the risks were serious and that precautionary action was justified... That was a break with the consensus of the past, but a break was inevitable because companies composed of highly skilled and trained people can't live in denial of mounting evidence gathered by hundreds of the most reputable scientists in the world.”²⁸⁸ A few years later, in 2007, the IPCC issued its Fourth Assessment Report which concluded that there is “very high confidence” that the net effect of human activities since 1750 has been one of warming.²⁸⁹

From 2010, BP senior executives have overseen reporting on climate change through CDP, stating that “[f]or a long time, BP has advocated a proactive approach to climate change and supported action to curb carbon emissions.”²⁹⁰ The early acceptance of climate change also occurred within BP’s reporting on sustainability reports²⁹¹ from 2010²⁹² and since 2012 climate change has been cited on its own terms as an objective to limit greenhouse gases.²⁹³ This acceptance of climate change science and the role of senior BP executive’s common purpose in contributing to human suffering was further established in 2015 when BP’s chief economist referred to petroleum products as a stranded asset, rendered “unburnable carbon”:

“Existing reserves of fossil fuels – i.e. oil, gas and coal – if used in their entirety would generate somewhere in excess of 2.8 trillion tonnes of CO₂, well in excess of the 1 trillion tonnes or so the scientific community consider is consistent with limiting the rise in global mean temperatures to no more than 2 degrees Centigrade. And this takes no account of the new discoveries which are being made all the time or of the vast resources of fossil fuels not yet booked as reserves.”²⁹⁴

285. Rowlands, I.H (2000) Beauty and the Beast? BP’s and Exxon’s Positions on Global Climate Change. Environment and Planning C: Government and Policy. 2000;18(3):339-354. doi:10.1068/c9752 page 344.

286. <https://www.wri.org/research/safe-climate-sound-business>

287. Beyond Petroleum – Business and Environment in the 21st Century; speech given at Stanford 11 March 2002 by Lord Browne” BP Archive Warwick University ArcRef 127544, barcode 107995, page 5 (B. Franta, personal communication, July 13, 2022).

288. Beyond Petroleum – Business and Environment in the 21st Century; speech given at Stanford 11 March 2002 by Lord Browne” BP Archive Warwick University ArcRef 127544, barcode 107995, page 3 (B. Franta, personal communication, July 13, 2022).

289. <https://www.ipcc.ch/assessment-report/ar4/>

290. https://www.cdp.net/en/formatted_responses/pages?locale=en&organization_name=BP&organization_number=2083&program=Investor&project_year=2010&redirect=https%3A%2F%2Fwww.cdp.net%2FSites%2F2010%2F83%2F2083%2FInvestor+CDP+2010%2FPages%2FDisclosureView.aspx

291. Asuka, J., Li, M., Trencher, G. (2022) The clean energy claims of BP, Chevron, ExxonMobil and Shell: A mismatch between discourse, actions and investments <https://doi.org/10.1371/journal.pone.0263596>

292. BP. BP Sustainability Review 2010 https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability_archive/archived-reports-and-translations/2010/bp_sustainability_review_2010.pdf

293. BP Annual Report and Form 20-F 2011. BP 2012 <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2011.pdf>

294. <https://carbontracker.org/resources/terms-list/#unburnable-carbon> quoting <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/news-and-insights/speeches/new-economics-of-oil-spencer-dale.pdf>

By 2013, the prominent role of BP in causing the climate crisis was analyzed within climate change attribution science when Richard Heede revealed that 90 companies are responsible for producing two-thirds of the carbon that has entered the atmosphere since the start of the industrial age in the mid-18th century.²⁹⁵ The next year in 2014, BP senior executives launched the Oil and Gas Climate Initiative²⁹⁶ and in 2016 BP wrote to the BP-funded research center at Princeton University that “[i]n climate science, new modeling capability is enabling forceful, credible statements about extreme events”²⁹⁷ and “attractive fossil fuel would need to be left in the ground.”²⁹⁸ In 2019, the current BP Chief Executive Bernard Looney stated on the International Petroleum Industry Environmental Conservation Association website that “[o]ur stakeholders – shareholders, society and people – want us to play a meaningful role in meeting climate [sic] broader sustainability issues.”²⁹⁹

BP senior executives continue to be well aware of their role in causing the climate crisis. Indeed, the discussion of climate change has increased through BP Annual Reports, and “BP has increased usage of words in the ‘climate change’ category in particular, from 22 to 326 mentions over 2009–2020. The ‘transition’ category also increased markedly in the study period, from 50 to 418, reflecting increased discussion of a low-carbon business model.”³⁰⁰ In recent disclosures to the US House Oversight Committee in 2022, it is clearly evident that BP executives are across the news updates as they share new stories and research on climate change science, even mocking the climate crisis, saying they would drink a “hot toddy” as a toast to climate collapse³⁰¹ and mocking people seeking climate solutions for “wanting money for nothing and chicks for free.”³⁰² These recent disclosures showed the BP director of regulatory advocacy stated that the “Beyond Petroleum” marketing campaign “would have been called Beyond Dirty Fuels if it had only been courageous / honest enough and intended to deliver on the promise of the slogan.”³⁰³ It is evident that for nearly 70 years, BP senior executives have known about the infliction of severe suffering through their common purpose to maximize petroleum profits regardless of climate change harm.

295. <https://link.springer.com/article/10.1007/s10584-013-0986-y>; <https://www.desmog.com/2021/10/29/dirty-dozen-documents-big-oil-secret-climate-knowledge-part-1/>

296. <http://www.bp.com/en/global/corporate/media/press-releases/oil-and-gas-ceos-jointly-declare-action-on-climate-change.html>

297. <https://www.documentcloud.org/documents/22418300-house-oversight-committee-investigation-oil-industry-documents-september-2022-release#document/p5/a2149943> Page 6.

298. <https://www.documentcloud.org/documents/22418300-house-oversight-committee-investigation-oil-industry-documents-september-2022-release#document/p5/a2149943> Page 8.

299. <https://www.ipieca.org/about-us/45-years-of-ipieca/>

300. Asuka, J., Li, M., Trencher, G. (2022) The clean energy claims of BP, Chevron, ExxonMobil and Shell: A mismatch between discourse, actions and investments <https://doi.org/10.1371/journal.pone.0263596>

301. <https://www.documentcloud.org/documents/22418300-house-oversight-committee-investigation-oil-industry-documents-september-2022-release#document/p5/a2149943> page 16.

302. <https://www.documentcloud.org/documents/22418300-house-oversight-committee-investigation-oil-industry-documents-september-2022-release#document/p5/a2149943> page 1.

303. <https://www.documentcloud.org/documents/22418300-house-oversight-committee-investigation-oil-industry-documents-september-2022-release#document/p5/a2149943> page 17.

CONTRIBUTION TO THE COMMON PURPOSE: STEP 1 DOUBT

The senior executives at BP contributed to their common purpose by casting doubt on the science of climate change, even whilst purporting to accept the science. This was done through a deliberate strategy of co-opting public concern regarding climate change, while seeking to falsely minimize the scientific certainty regarding the causes of the climate crisis; entrenching dependency on fossil fuel products; while advocating for delaying responses to climate change; and presenting false solutions to distract the public and politicians from the viable solution to climate change, namely, the ending of fossil fuel production.

Several years before BP senior executives oversaw production of the two video documentaries in 1990 confirming climate change science, a strategic document seeking to manufacture doubt in climate change science was drafted secretly in 1987³⁰⁴ by one of BP's trade associations, namely, the International Petroleum Industry Environmental Conservation Association ("IPIECA" established in 1974 as stakeholder to the UN Environment Program). This led to establishment of a working group "to draw up the state of the science of climate change induced by the possible accentuation of the greenhouse effect, including the main areas of uncertainty" and to advance "no regrets" communications to further the common purpose of maximising fossil fuel profits.³⁰⁵

Similarly, the same year as the two climate change science video documentaries were released in 1990, senior BP executives made speeches undercutting the very same science. Former BP Managing Director Patrick Gillam falsely stated that climate change "is one of the least certain and most complex threats facing our planet both in its timing and effect."³⁰⁶ He went on to pose an array of rhetorical questions which sought to cast doubt on the proven scientific link between fossil fuels emissions and human suffering from the climate crisis:



Photo credit: Bernd Lauter

304. <https://www.sciencedirect.com/science/article/pii/S0959378021001655#s0025>

305. <https://www.sciencedirect.com/science/article/pii/S0959378021001655#s0025>

306. Patrick Gillam, BP Managing Director: "Global warming, facing the issues." Speech given at the international chamber of commerce Bergen conference on may 11 1990 BP Archive Warwick University ArcRef: 109211 Barcode: 89489 (B. Franta, personal communication, July 13, 2022).

"There is total agreement that CO₂ emissions are bound to increase in almost any economic scenario, with consequential increases in the amount of greenhouse gas in the atmosphere. There is a fair level of agreement also that this will lead to some degree of global warming — although to what extent is a matter for debate... The final area of uncertainty — the area of greatest contention and of importance — is the climatic effect of any such global warming, and its consequences for people and countries. This, of course, is really the crucial question... There is far less certainty concerning the climatic effects of increasing quantities of CO₂ in the atmosphere. What happens when the total concentration of greenhouse gases increase? Are the consequences so dangerous that we owe it to our grandchildren to take immediate action? Or is our current level of knowledge such that we are just as likely to store up problems for the future as avert catastrophe?... Industry is well accustomed to facing what is perhaps the perpetual economic dilemma — namely, is it better to expend valuable scarce resources today on a problem which may never arise, at least in the form that we expect? Or is it economically more efficient to deal with the effects of the problems as and when they become apparent — bearing in mind that, by that time, our knowledge of the issues will be greater; and we may even be in a stronger economic condition to bear the costs of the solution? This choice arises particularly with global warming because of the degree of uncertainty which increases the closer you reach the core issue — namely, climatic change. We could find ourselves incurring expense and allocating resources on a scale which is out of all proportion to the eventual costs of adaptation, especially when you consider other existing social needs. Indeed, the changes in lifestyle necessary to prevent future increases in CO₂ emissions could turn out to be every bit as dramatic - possibly more so — as the adaptations which our great grandchildren might be asked to make to deal with climate change.³⁰⁷

Within a year of the former BP Chief Executive John Browne's 1997 Stanford University speech accepting climate science, other senior executives sought to manufacture doubt in the established climate change science, such as the public speech by former BP Deputy Chief Executive, Rodney Chase:

"Of course, the science of climate change is not proven. The science is provisional and perhaps always will be. But there is evidence that the concentration of carbon dioxide in the atmosphere is rising and that the temperature of the earth's surface is increasing... There are large areas of uncertainty — about cause and effect and about consequences. But it would be dangerous to ignore the mounting evidence and concern. However, there is something we can't ignore — the continuing growth in the world's needs for oil and gas."³⁰⁸

Eventually, former BP Chief Executive John Browne backtracked on his 1997 speech and also deployed this tactic of falsely manufacturing doubt in the climate change science in his public speeches by falsely stating:

"Scientific knowledge is always partial and as Karl Popper said, its conclusions are always provisional. No one could say definitely that they knew the precise causes and consequences of climate change. But they knew enough to say that there were long-term risks and that precautionary action was necessary if we were to avoid the greater risk - of the evidence mounting to the point where draconian action was unavoidable."³⁰⁹

307. Patrick Gillam, BP Managing Director: "Global warming, facing the issues." Speech given at the international chamber of commerce Bergen conference on may 11 1990 BP Archive Warwick University ArcRef: 109211 Barcode: 89489 (B. Franta, personal communication, July 13, 2022).

308. Climate change – a role for business; speech given to Royal Institute of National Affairs 27 November 1998 by Rodney Chase, Deputy Chief Executive. BP Archive Warwick University ArcRef 121443 barcode 101620, page 2 (B. Franta, personal communication, July 13, 2022).

309. Beyond Petroleum – Business and Environment in the 21st Century; speech given at Stanford 11 March 2002 by Lord Browne. BP Archive Warwick University ArcRef 127544 barcode 107995, page 1 (B. Franta, personal communication, July 13, 2022).

This strategy of contributing to the common purpose of senior BP executives by advancing doubt in climate change science³¹⁰ was summarised in a 2004 speech by former BP group vice president for strategy and policy development, Nick Butler: “[t]he risk is unproven, and the scientific analysis continues.”³¹¹

The same contribution to the common purpose is also evidenced through BP documents released under the direction and oversight of BP senior executives. In a 2006 explainer of “BP’s point of view” on climate change, the message from BP senior executives was the false message that “we recognize that aspects of the science remain the subject of expert debate and are not fully proven.”³¹² BP senior executives oversaw materials prepared for school curricula which asserted the false claim that “the greenhouse effect is not in itself harmful to man or the environment.”³¹³ BP’s hallmark tactic of both accepting and denying climate change science is typified in “BP education service” material issued under the oversight of BP senior executives in 2007 which stated that “[t]he figures in this leaflet are taken from Climate Change 1995 by the Intergovernmental Panel on Climate Change” whilst also asserting that “[t]he science of climate change is still provisional.”³¹⁴

Part of the tactic in creating doubt in the science of climate change harmful impacts was to attempt to break the scientific attribution of climate change to the decisions of fossil fuel corporate executives. For example, BP senior executives falsely sought to cast doubt on the nexus between petroleum products central to their common purpose and the resulting climate change by presenting a false timeline of global warming and attempting to argue that climate change is inevitable: “[t]he world is warming, as it has for the past few centuries... Human activity, largely through greenhouse gas emissions, appears to be an important causal factor in recent warming — but scientific uncertainties remain. A variety of natural causes have produced temperature changes in the past.”³¹⁵ This effort to break the scientific attribution to fossil fuel products led BP senior executives to create the false concept of the so-called “enhanced greenhouse effect” through false claims that “[t]here is some debate as to the relative contributions of human activity, and the natural activity of the Earth to this Enhanced Greenhouse Effect. Nevertheless, the fact remains that the Earth’s temperature is changing, as is the concentration of CO₂ and other greenhouse gases.”³¹⁶

In other BP documents, the effort to deny the link between petroleum products and climate change led to the transfer of accountability on the part of BP over to the individual consumer. The placement of blame on the individual is precisely how the fossil fuel executives were able to neuter any efforts to examine their own culpability by seeking to transfer accountability onto the ultimate victims of their common purpose:

310. https://www.climatechangecommunication.org/wp-content/uploads/2019/10/America_Misled.pdf Green JF, Hadden J, Hale T, Mahdavi P. Transition, Hedge, or Resist? Understanding Political and Economic Behavior toward Decarbonization in the Oil and Gas Industry. Review of International Political Economy. 2021; McCright, A. M., et. al. (2016). Examining the Effectiveness of Climate Change Frames in the Face of a Climate Change Denial Counter-Frame. Topics in Cognitive Science, 8(1), 76-97; van der Linden, S., et.al. (2017). Inoculating the public against misinformation about climate change. Global Challenges, 1(2), 1600008; Cook, J., et.al. (2017). Neutralizing misinformation through inoculation: Exposing misleading argumentation techniques reduces their influence. PLOS One, 12(5), e0175799; Biddle, J. B., & Leuschner, A. (2015). Climate skepticism and the manufacture of doubt: can dissent in science be epistemically detrimental? European Journal for Philosophy of Science, 5(3), 261-278; Cook, J., et.al. (2018). Deconstructing climate misinformation to identify reasoning errors. Environmental Research Letters, 13(2), 024018.27

311. Corporate Social Responsibility - A speech given to the China Development Forum, Diaoyutai, Beijing by Nick J Butler on March 2004. BP Archive Warwick University ArcRef 4475524 (B. Franta, personal communication, July 13, 2022).

312. “Climate change BP’s point of view” Iain Conn and Dr. David Allen, July 2006, BP Archive Warwick University ArcRef 144797 barcode Z01417919 p. 1. (B. Franta, personal communication, July 13, 2022).

313. Explaining climate change education pamphlet ArcRef 119418 Storage locator 7220 From June 1998

314. BP Educational Service, Classroom and online activities for secondary school pupils, “Climate Change: Teachers Notes” (2007) BP Archive Warwick University ArcRef 236623 Storage locator 12162 (B. Franta, personal communication, July 13, 2022).

315. “Climate change BP’s point of view” Iain Conn and Dr. David Allen, July 2006, BP Archive Warwick University ArcRef 144797 barcode Z01417919 p. 4. (B. Franta, personal communication, July 13, 2022).

316. Climate change, can we make a difference? (2005) BP Archive Warwick University ArcRef 144375 barcode Z01416816. (B. Franta, personal communication, July 13, 2022).

“Questions such as ‘who is responsible’ are misguided and only delay positive action. Everyone in the past century who has driven a car, used electricity, or heated or cooled a home has contributed to CO₂ release via the process of fossil fuel combustion.”³¹⁷

Consistently, BP senior executives oversaw BP communications which purported to tie climate change to population growth and economic growth as opposed to BP’s common purpose, for example,

“[w]ith the world’s population growing rapidly, it is really important to try to avoid such things as rises in sea level and damage to crops through extreme weather conditions.”³¹⁸ These attributes of population growth and economic growth, being perceived as positive, were deployed by BP senior executives to discredit efforts to challenge their common plan. BP education materials on climate change blamed economic growth, increasing energy demands, transportation and farming as the causes of climate change, as opposed to their own common purpose:

“The growth of industry, power generation facilities and transport systems over the past 100 years, has led to an increase in the use of fossil fuels such as coal, oil and gas. When these fuels burn, they release carbon dioxide (CO₂). Farming has become more intensive, leading to the production of more methane (CH₄).”³¹⁹ “Agriculture is responsible for about 20% of human-related greenhouse gas emissions, emitting about 50% of our methane and 70% of our nitrous oxide. Across the world, rice paddies and ruminant animals emit large quantities of methane. Fertiliser use increases nitrous oxide emissions.”³²⁰

This has been confirmed by research studies into BP marketing:

“Human needs and economic growth are the orders of priority in a discourse of teleological progress which casts the environment as secondary. By figuring energy as a human need, BP is able to legitimize its continuing exploration for oil as a means of satisfying this need. In doing so, any critique of our increasing energy consumption is erased. At the same time, any real commitment to addressing the urgent reality of climate change—in which some of the central ideological assumptions of capitalist modernity, such as economic growth, might be questioned—is evaded.”³²¹

BP senior executives oversaw marketing materials which rhetorically posed deceptive questions such as “Evidence and causes: human activity or natural cause? Can we make a difference?”³²² while emphasising population growth, power, transportation, deforestation, framing, buildings and waste as causes of the climate crisis with almost no mention of fossil fuels. The ultimate conclusion with such approaches is that “[a]lthough there seems to be a broad consent that human activity is contributing to climate change, there is no universal agreement on how to prevent it.”³²³

Any mention of the role of fossil fuels is cast in the language of uncertainty and through deflecting attention onto the industries which depend on BP petroleum products e.g. “carbon dioxide from the

317. Tinker, S.W. (2009) Carbon dioxide: sequestration in geological media – state of the science (2009) BP Archive Warwick University ArcRef 239527 Storage locator 23864 published by AAPG (American Association of Petroleum Geologists) AAPG Studies in Geology 59, Preface (B. Franta, personal communication, July 13, 2022).

318. BP Educational Service, Classroom and online activities for secondary school pupils, “Climate Change: Teachers Notes” (2007) BP Archive Warwick University ArcRef 236623 Storage locator 12162 (B. Franta, personal communication, July 13, 2022).

319. Climate change and the enhanced greenhouse effects (2003) BP Archive Warwick University ArcRef 185057, barcode Z01526015 2003 (B. Franta, personal communication, July 13, 2022).

320. Explaining climate change education pamphlet (1998) BP Archive Warwick University ArcRef 119418 Storage locator 7220 (B. Franta, personal communication, July 13, 2022).

321. Doyle, J. (2011) Where has all the oil gone? BP branding and the discursive elimination of climate change risk, in Heffernan, N. & Wragg, D. Culture, Environment and Eco-Politics, Cambridge Scholars Press, pp. 200-225.

322. Climate change, can we make a difference? (2005) BP Archive Warwick University ArcRef 144375 barcode Z01416816. (B. Franta, personal communication, July 13, 2022).

323. Climate change, can we make a difference? (2005) BP Archive Warwick University ArcRef 144375 barcode Z01416816. (B. Franta, personal communication, July 13, 2022).

burning of fossil fuels for things such as power generation and transportation may be partially responsible for these increases.³²⁴ Any mention of fossil fuels in BP materials is promotional, e.g. "Oil, coal and natural gas provide about 90% of the world's energy, supplying heat, light and mobility to billions of people."³²⁵

These public speeches by senior BP executives and documents overseen by BP senior executives exemplifies the powerful manner in which BP senior executives were intentional in their efforts to create doubt and misinformation in furtherance of their common purpose. First the science appears to be accepted, and then the nature of science is itself presented as inherently uncertain, thereby cancelling out any actual acceptance of climate change science, and with that, any implications that the BP executives should end their common purpose to maximise fossil fuel profits. Even as recently as 2021, BP senior executives oversaw climate change disclosures which still sought to embed doubt in the science.³²⁶

The next step in this intentional strategy to further suffering from climate change is the claim by senior BP executives that the solution of ceasing fossil fuel production would itself constitute unacceptable suffering; in other words, fossil fuels are presented as the solution, which thereby entrenches dependency on BP petroleum products. The final steps in the contributions to BP's common purpose by senior BP executives is advocating for delay and to advance false solutions through deceit and dominance. In sum, these steps establish the requisite knowledge and awareness of the factual circumstances which establish that the suffering from fossil fuel products occurs in the ordinary course of events as established by climate change science, with BP senior executives intentionally contributing to the common purpose through a range of tactics, including falsely manufacturing doubt in the climate chance science.

CONTRIBUTION TO THE COMMON PURPOSE: STEP 2 DEPENDENCY

BP executives deliberately and falsely claimed that continued dependence on their petroleum products was a solution to the climate crisis. Shortly after former BP Chief Executive John Browne's first Stanford University speech in 1997, he was quick to clarify that "he was not advocating the immediate, nor even the near-term, running-down of the fossil fuel industry."³²⁷ He made clear that he intended that BP's petroleum products remained a global dependency, despite being scientifically established as a predominate cause of the climate crisis. Within months of his 1997 speech accepting climate change science and BP's responsibility, he pivoted to falsely presenting fossil fuels as the solution, claiming that:

"I disagree with some members of the environmental movement who say we have to abandon the use of oil and gas...I think that view underestimates the potential for creative and positive action."³²⁸

He later presented fossil fuels as the supposed solution to climate change, claiming falsely that so-called "natural" gas³²⁹ would support the continued dependency of the petroleum products according to the common purpose between BP senior corporate executives:

324. Explaining climate change education pamphlet (1998) BP Archive Warwick University ArcRef 119418 Storage locator 7220 (B. Franta, personal communication, July 13, 2022).

325. Explaining climate change education pamphlet (1998) BP Archive Warwick University ArcRef 119418 Storage locator 7220 (B. Franta, personal communication, July 13, 2022).

326. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 21: "impact of climate-change on wave height in the future is uncertain, which affects the future risk profile over the lifetime of an offshore asset."

327. Rowlands, I.H (2000) Beauty and the Beast? BP's and Exxon's Positions on Global Climate Change. Environment and Planning C: Government and Policy. 2000;18(3):339-354. doi:10.1068/c9752 citing speech from John Browne 22 April 1999 "The role of business in addressing environmental challenges" presented at the Earth Day Awards Ceremony in the United Nations Headquarters, New York.

328. "What John Browne actually said at Stanford, climate change, BP view" (Petroleum Review, October 1997) BP Archive Warwick University ArcRef 192477 Storage Locator 23982 (B. Franta, personal communication, July 13, 2022).

329. "Patrick Gillam, BP Managing Director: "Global warming, facing the issues." Speech given at the international chamber of commerce Bergen conference on may 11 1990 BP Archive Warwick University ArcRef: 109211 Barcode: 89489 (B. Franta, personal communication, July 13, 2022). "How Should the Industry Respond to Climate Change Challenge" (10 February 2016) Bob Dudley, Group chief executive speech at IP Week 2016, International Park Plaza, London invited by the Energy Institute. BP Archive Warwick University ArcRef 245996 Storage locator 7806A (B. Franta, personal communication, July 13, 2022).

"To ask people to sacrifice the future would be unrealistic. To deny the basic aspirations of hundreds of millions of people to escape from poverty would be immoral... It was clear too, that the immediate challenge couldn't be solved by a sudden magical transformation of the energy mix through the replacement of oil and natural gas by alternative and renewable forms of energy... We'll also continue the development of key markets for fuels with lower carbon content such as compressed natural gas and liquefied petroleum gas... That means, we need to reinvent the energy business to go beyond petroleum. Not by abandoning oil and gas - but by improving the ways in which it is produced and used so that our business is aligned with the long-term needs of the world."³³⁰

BP senior executives falsely presented their petroleum products as a viable solution to climate change, whilst falsely diminishing

true solutions to climate change such as zero-carbon energy. In BP documents discussing renewable energy, BP senior executives oversaw assertions furthering their common purpose by alleging that "carbon-free electricity is currently only projected to meet around 7% of all power demand by 2030"³³¹ and "[i]t is prudent to take action on climate change in such a way as to not unduly disrupt world economic growth. However, viewed in the context of other challenges it isn't an objective that should be pursued at

any cost."³³² In the 2010 CDP disclosures BP senior executives continued to assert that the world remains dependent on petroleum products by asserting that "there is no one single solution" which nullifies the solution cancelling fossil fuel product, and instead entrenches dependency on fossil fuels by alleging that "the world needs a diverse energy mix that incorporates all available sources – from oil sands to solar."³³³

Such assertions from BP senior executives were so successful that the UK House of Lords representatives even cited BP officials' false claims advancing their common purpose to entrench fossil fuel profits:

"A more serious issue is whether we are ahead of the game. I am prompted to ask that question having looked at the evidence of the noble Lord, Lord Browne of Madingley, who is head of BP. He came up with an interesting and attractive formula which he described as his 50–50–50 formula for the year 2050. As the head of a major oil conglomeration he postulated that having considered all the options, in 2050 it seemed likely that we should be able to get to 50 per cent of our energy carbon dioxide-emissions free. He would include carbon dioxide sequestration within that 50 per cent. But by 2050 he thought that probably the best we could achieve would still involve 50 per cent of the world's energy coming directly from carbon fields and still emitting carbon dioxide."³³⁴

There is no one single solution

330. "Beyond Petroleum – Business and Environment in the 21st Century" speech given at Stanford 11 March 2002 by Lord Browne" BP Archive Warwick University ArcRef 127544, barcode 107995, page 5 (B. Franta, personal communication, July 13, 2022).

331. "Alternative Energy, Generating Change, The First Year" Announcement of BP Alternative Energy. Vivienne Cox, Chief Executive, Gas, Power, & Renewable (Nov 2005) BP Archive Warwick University ArcRef 232556 barcode Z01594691 (B. Franta, personal communication, July 13, 2022).

332. "Climate change BP's point of view" Iain Conn and Dr. David Allen, July 2006, BP Archive Warwick University ArcRef 144797 barcode Z01417919 p. 7. (B. Franta, personal communication, July 13, 2022).

333. https://www.cdp.net/en/formatted_responses/pages?locale=en&organization_name=BP&organization_number=2083&program=Investor&project_year=2010&redirect=https%3A%2F%2Fwww.cdp.net%2Fsites%2F2010%2F83%2F2083%2FInvestor+CDP+2010%2FPages%2FDisclosureView.aspx

334. Climate Change (European Union Committee Report on Climate Change) HL Deb 23 February 2005 vol 669 cc1293-330, 1293 7.52

p.m <https://api.parliament.uk/historic-hansard/lords/2005/feb/23/climate-change-euc-report> "Our committee took the view from the start that climate change was happening and that it was very largely man-made. We took that as given. We accepted that CO₂ emissions were rapidly rising... We simply took it that there was a substantial man-made problem."

This false assertion from the former BP Chief Executive was made within a few years of global commitments mandating net zero by 2050³³⁵ in an effort to entrench dependency on fossil fuels whilst also advocating delay in advancing solutions to climate change which focus on elimination and replacement of petroleum production.

CONTRIBUTION TO THE COMMON PURPOSE: STEP 3 DELAY

BP senior executives sought to encourage as much delay as possible within climate policy and international law reform addressing climate change. Perversely, delay in responding to climate change is presented by senior BP executives as a positive approach. As early as 1990 in the same year as BP released two documentaries expounding the science of climate change and the scientific necessity of reducing fossil fuel consumption, BP senior executives advocated for delayed responses to climate change in order to allow for free-market approaches. In a public speech, the former BP managing director Patrick Gilliam falsely stated that the solution to climate change “is much more likely to be achieved through respect for market mechanisms associated with free economies and through industry-led investment for change than by attempts to negotiate intentionally a misery-sharing programme of rationing and retrenchment.”³³⁶

BP senior executives falsely claimed there “isn’t a single simple solution”³³⁷ even though the most simple solution was clearly determined by the science, namely, ending the production of fossil fuels and replacing them with non-fossil energy sources.³³⁸

In an effort to reinforce the common purpose of senior BP executives following the first Stanford speech by former BP Chief Executive John Browne, BP issued a press release advocating the strategy of delay and calling for the continued use of fossil fuels, stating that:

“We believe that government climate change policies and measures must take into account:

- The long-term nature of the issue; it requires a longer-term time frame for researching, developing and implementing responses.
- Climate change is a global issue; it requires a global response.
- There are considerable risks in doing either too much, or too little, at the wrong moment; whatever is done must be equitable without significant disadvantage to any group of nations or industries.
- A great deal of the world’s energy needs will be met by oil and gas for a considerable time to come.”³³⁹

Soon thereafter, former BP Chief Executive John Browne himself adopted the strategy of delay by walking back the assertions in his first Stanford speech, instead advocating for a “slow journey” of step by step action, not “dramatic, sudden and surely wrong” action.³⁴⁰ This is further typified in a public speech from

335. See Norway Prime Minister’s 2007 commitment to net zero by 2050 <https://www.theguardian.com/environment/2007/apr/21/climatechange.climatechangeenvironment>; UK Climate Change Act 2008; PWC 2008 https://www.pwc.com/gx/en/psrc/pdf/world_in_2050_carbon_emissions_psric.pdf; G8 communique 2008 https://www.mofa.go.jp/policy/economy/summit/2008/doc/_doc080714_en.html; Tokyo Pledge 2008 <https://www.euractiv.com/section/development-policy/news/major-firms-back-2050-climate-change-target/>; policy research 2008 <https://www.tandfonline.com/doi/pdf/10.1080/01441640500360951> and 2009 <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ucollr80&div=29&id=&page=>

336. “Patrick Gillam, BP Managing Director: “Global warming, facing the issues.” Speech given at the international chamber of commerce Bergen conference on may 11 1990 BP Archive Warwick University ArcRef: 109211 Barcode: 89489 (B. Franta, personal communication, July 13, 2022).

337. Climate change – a role for business; speech given to Royal Institute of National Affairs 27 November 1998 by Rodney Chase, Deputy Chief Executive. BP Archive Warwick University ArcRef 121443 barcode 101620, page 5 (B. Franta, personal communication, July 13, 2022).

338. [https://www.iea.org/news/pathway-to-critical-and-formidable-goal-of-netzero-emissions-by-2050-is-narrow-but-brings-huge-benefits](https://www.iea.org/news/pathway-to-critical-and-formidable-goal-of-net-zero-emissions-by-2050-is-narrow-but-brings-huge-benefits)

339. “Where We Stand on Climate Change” (1999) BP Archive Warwick University arcref: 189097 Z01530960 (B. Franta, personal communication, July 13, 2022).

340. “What John Browne actually said at Stanford, climate change, BP view” (Petroleum Review, October 1997) BP Archive Warwick University ArcRef 192477 Storage Locator 23982 (B. Franta, personal communication, July 13, 2022).

former BP Deputy Chief Executive Rodney Chase, advocating for climate solutions through “a long and gradual process” and “a sequence of moves which come over time, as circumstances change and as the benefits of the previous steps become obvious.”³⁴¹

This strategy was advocated directly through oversight from BP executives who discouraged local groups from taking action regarding climate change³⁴² by falsely claiming in 2006 that “[c]limate change is a long-term issue (50 years+). It is time to begin to take urgent actions, but there is no need for panic reactions... It is difficult to envisage that the existence of the human race is threatened by climate change in the foreseeable future, although there could be significant social and political tensions created by its consequences. Fossil fuels currently supply about 80% of all primary energy and will remain fundamental to global energy supply for at least the next 20-30 years.”³⁴³ This strategy of fostering delay in responses to climate change has entrenched global suffering in furtherance of BP senior executive’s common purpose to maximize fossil fuel profits.

CONTRIBUTION TO THE COMMON PURPOSE: STEP 4 DECEPTION

BP senior executives advanced their common purpose through deceit. They oversaw BP communications strategies advocating false solutions to the climate crisis to avert the public and governments of the world away from the only viable pathway to address climate change, namely, the ceasing of fossil fuel production.

BP executives protected their common purpose to maximize fossil fuel profits by advertising false solutions such as yet-to-be invented technology (“[i]nnovation to reduce the CO₂ emissions from the use of fossil fuels will be a major contributor to stabilization”)³⁴⁴ whilst discrediting existing technology which displaced the petroleum products at the centre of their common purpose (“[w]hile solar and wind are expected to continue growing rapidly, their energy sources will always be intermittent... That’s why the world will continue to rely on fossil fuels as its main source of energy for decades to come.”)³⁴⁵ BP entrenched this deceptive discrediting of renewable energy in 2015 through co-establishing the industry group the Oil and Gas Climate Initiative (OGCI) which dismissed renewable energy, stating that “it’s important to be realistic about renewables. They will be increasingly important in the energy mix, but they are only part of any solution to limiting greenhouse gases in the near term.”³⁴⁶

To protect their common purpose, BP senior executives have misrepresented their emissions, since BP does not measure emissions from burning the petroleum products, the fuels they sell, and instead only measure emissions from their operations in extracting and refining fossil fuels.³⁴⁷ BP senior executives also do not disclose information to determine the extent of their expansion of fossil fuel reserves, filing obtuse statements that “International Financial Reporting Standards (IFRS) do not provide specific guidance on

341. Climate change – a role for business; speech given to Royal Institute of National Affairs 27 November 1998 by Rodney Chase, Deputy Chief Executive. BP Archive Warwick University ArcRef 121443 barcode 101620, page 11 (B. Franta, personal communication, July 13, 2022).

342. <https://www.conservationleadershipprogramme.org/media/2014/09/ConservationProjectManual.pdf> “The project has decided not to tackle climate change (because this is not possible for a small conservation group).” Bibby, C. J. and Alder, C. (eds) (2003) The Conservation Project Manual, BP Conservation Programme, Cambridge, UK, page 79.

343. “Climate change BP’s point of view” Iain Conn and Dr. David Allen, July 2006, BP Archive Warwick University ArcRef 144797 barcode Z01417919 Pages 6- 7. (B. Franta, personal communication, July 13, 2022).

344. “Climate change BP’s point of view” Iain Conn and Dr. David Allen, July 2006, BP Archive Warwick University ArcRef 144797 barcode Z01417919 Page 3 (B. Franta, personal communication, July 13, 2022).

345. “Alternative Energy Powered by BP” BP Archive Warwick University ArcRef 185126 barcode Z01526154 (B. Franta, personal communication, July 13, 2022).

346. “How Should the Industry Respond to Climate Change Challenge” (10 February 2016) Bob Dudley, Group chief executive speech at IP Week 2016, International Park Plaza, London invited by the Energy Institute. BP Archive Warwick University ArcRef 245996 Storage locator 7806A (B. Franta, personal communication, July 13, 2022).

347. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 68.

reserves disclosures. BP estimates proved reserves in accordance with SEC Rule 4-10 (a) of Regulation S-X and relevant Compliance and Disclosure Interpretations (C&DI) and Staff Accounting Bulletins as issued by the SEC staff.”³⁴⁸

The advancement of deception is particularly pernicious within the context of BP senior executives’ oversight of efforts to intentionally capture the youth in advocating false solutions to the climate crisis. BP’s educational program and materials intended for school curricula are replete with this intentional strategy of advancing misinformation. For example, a 2007 BP student booklet on climate change appears to accept climate change by noting that the general public has been increasingly concerned about climate change since key events in 1988 which included public discussion of the link between climate and the burning of fossil fuels.³⁴⁹ The school pamphlet admits that “[i]n the most extreme predictions, the average temperature will rise by about 5.8 degrees Celsius by the end of the century but even a rise of just above 2 degrees Celsius could have some severe consequences.”³⁵⁰ However this information was presented with deceptive graphs which made the effect on global temperatures of carbon dioxide appear to be minimal.³⁵¹ Instead, the main cause of climate change is presented as population growth³⁵² and students are presented with false solutions such as “if you use a dishwasher, make sure it’s full before you switch it on” or “when making a hot drink only boil as much water you need” and “start a recycling scheme”³⁵³ or start composting and reduce aggressive driving.³⁵⁴ Earlier, in 2003, other education materials advocated deceptive climate change responses related to waste management “reduce, reuse, recycle” and the use of “less carbon intensive fossil fuels (e.g. natural gas instead of coal)”³⁵⁵ and in 2005 students were told to “use refillable pens and pencils” “reuse scrap paper for notes, old envelopes again with labels over addresses.”³⁵⁶ In 2008/2009 BP senior executives oversaw the publication of information cards under the BP schools link programme where the climate change was linked to sea level rise but the role of BP and fossil fuel production was deliberately omitted.³⁵⁷

348. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 94. DeGolyer & MacNaughton (D&M), estimated reserves of Rosneft However estimated total net reserves and resource base is 17,982 million BOE of proved reserves (not crude oil, condensate, or natural gas or liquids)

- <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 95, see Annual Report and Form 20-F 2020 pages 47, 231-252 and 312-317.

349. “Student Booklet on Climate Change” (2007) BP Archive Warwick University arcref 245175 barcode Z01608210 (B. Franta, personal communication, July 13, 2022). page 2. <http://bpes.bp.com/media/3582/StudentsBookletsolar%20amends.pdf>

350. “Student Booklet on Climate Change” (2007) BP Archive Warwick University arcref 245175 barcode Z01608210 (B. Franta, personal communication, July 13, 2022). page 3. <http://bpes.bp.com/media/3582/StudentsBookletsolar%20amends.pdf>

351. “Student Booklet on Climate Change” (2007) BP Archive Warwick University arcref 245175 barcode Z01608210 (B. Franta, personal communication, July 13, 2022). page 3. <http://bpes.bp.com/media/3582/StudentsBookletsolar%20amends.pdf>

352. “Student Booklet on Climate Change” (2007) BP Archive Warwick University arcref 245175 barcode Z01608210 (B. Franta, personal communication, July 13, 2022). page 3. <http://bpes.bp.com/media/3582/StudentsBookletsolar%20amends.pdf>

353. “Student Booklet on Climate Change” (2007) BP Archive Warwick University Arcref 245175 barcode Z01608210 Page 7. (B. Franta, personal communication, July 13, 2022). <http://bpes.bp.com/media/3582/StudentsBookletsolar%20amends.pdf>

354. (2007) BP Archive Warwick University ArcRef 198721 (B. Franta, personal communication, July 13, 2022).

355. “Climate Change and the Enhanced Greenhouse Effects” (2003) BP Archive Warwick University Arcref 185057, barcode Z01526015 (B. Franta, personal communication, July 13, 2022).

356. “Climate Change, Can we Make a Difference?” (2005) BP Archive Warwick University ArcRef 144375 barcode Z01416816 (B. Franta, personal communication, July 13, 2022).

357. “BP Schools link: Core Activities – Carbon Crisis and Carbon Footprint” (2008/2009) BP Archive Warwick University Arcref 236491 barcode Z01600077 (B. Franta, personal communication, July 13, 2022).

Essentially these deceptive false solutions shifted the focus onto the civilian population to shoulder the burden of addressing the harm from the common purpose such that BP senior executives intentionally “shift[ed] the responsibility for climate change onto consumers (BP’s promotion of reducing individual carbon footprints is one example)”.³⁵⁸ In fact, BP senior executives oversaw the coining of the term “carbon footprint” and advanced its deceptive transference of responsibility from BP senior executive to the individual consumer through aggressive advertising and marketing.³⁵⁹

The strongest acts of deception in achieving the common purpose were implemented through BP’s greenwashing campaigns.³⁶⁰ Research studies have revealed that the greenwashing marketing campaigns overseen by BP senior executives “are dominated by pledges rather than concrete actions. Moreover, the financial analysis reveals a continuing business model dependence on fossil fuels along with insignificant and opaque spending on clean energy. We thus conclude that the transition to clean energy business models is not occurring, since the magnitude of investments and actions does not match discourse. Until actions and investment behaviour are brought into alignment with discourse, accusations of greenwashing appear well-founded.”³⁶¹

Whilst claiming to accept climate change science and purporting to move “Beyond Petroleum” for the sake of the planet, BP senior executives have overseen operations directly furthering the common purpose to advance fossil fuel profits through underreporting carbon emissions³⁶² and buying carbon credit below market value.³⁶³ Whilst touting carbon capture and storage technology as a climate solution, BP executives oversaw the misrepresentation of cost estimates (presenting over-broad figures of \$6–190/tonne whereas most case study cost estimates around 60–90 dollars/tonne).³⁶⁴ From 2000, BP senior executives disbursed over \$200 million for the greenwashing “Beyond Petroleum” rebranding campaign, whereas the former BP Chief Executive John Browne admitted that it “**was not meant to be taken literally. It was more of a way of thinking.**”³⁶⁵ The 2022 InfluenceMap report found that BP senior executives oversaw 61%

358. Asuka, J., Li, M., Trencher, G. (2022) The clean energy claims of BP, Chevron, ExxonMobil and Shell: A mismatch between discourse, actions and investments <https://doi.org/10.1371/journal.pone.0263596>

359. <https://www.theguardian.com/commentisfree/2021/aug/23/big-oil-coined-carbon-footprints-to-blame-us-for-their-greed-keep-them-on-the-hook>

360. <https://globalinvestigationsreview.com/guide/the-practitioners-guide-global-investigations/2022/article/environmental-social-and-governance-investigations> “Greenwashing is the “misselling or misstatement of the sustainability credentials of a company or its financial products or performance” FCA Dear Chair letter, ‘Authorised ESG & Sustainable Investment Funds: improving quality and clarity’ (19 July 2021), <https://www.fca.org.uk/publication/correspondence/dear-chair-letter-authorised-esg-sustainable-investment-funds.pdf>; SEC press release, ‘SEC Announces Enforcement Task Force Focused on Climate and ESG Issues’ (4 March 2021), <https://www.sec.gov/news/press-release/2021-42>

361. Asuka, J., Li, M., Trencher, G. (2022) The clean energy claims of BP, Chevron, ExxonMobil and Shell: A mismatch between discourse, actions and investments <https://doi.org/10.1371/journal.pone.0263596>. See also Scanlan SJ. (2017) Framing fracking: scale- shifting and greenwashing risk in the oil and gas industry. *Local Environment*. 22:1311–37; Sheehan, K. (2018) This Ain’t Your Daddy’s Greenwashing: An Assessment of the American Petroleum Institute’s Power Past Impossible Campaign: The Paris Agreement and Climate Justice. *Intellectual Property and Clean Energy*. pp. 301–21; Brulle RJ, et.al. (2020) Corporate promotion and climate change: an analysis of key variables affecting advertising spending by major oil corporations, 1986–2015. *Climatic Change*. 159:87–101; Gatti L, et.al. (2021) Green lies and their effect on intention to invest. *Journal of Business Research*. 127:228–40; Jong MDT de, et.al. (2020) Different Shades of Greenwashing: Consumers’ Reactions to Environmental Lies, Half-Lies, and Organizations Taking Credit for Following Legal Obligations. *Journal of Business and Technical Communication*. 34:38–76.

362. <https://www.proactiveinvestors.co.uk/companies/news/986207/bp-bhp-exxon-under-reporting-co2-emissions-986207.html>

363. <https://www.bloomberg.com/features/2022-carbon-offset-credits-mexico-forest-bp/>

364. CO₂ capture project ArcRef 144577 Storage locator 16764 project results report partnership of gov (European Union, US DOE, Norwegian Research Council KLIMATEK Programme) and industry (BP, ChevronTexaco, EnCana, ENI, Norsk Hydro ASA, Shell, Statoil, Suncor Energy Inc.) <https://www.co2captureproject.org/viewresult.php?downid=53> From December, 2004 Page 3

365. Cox MJ (2008) Sustainable Communication: A Study of Green Advertising and Audience Reception within the growing arena of Corporate Social Responsibility. *Case Study: British Petroleum* *Earth & Environment* 3: 32–51 <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.537.2485&rep=rep1&type=pdf> page 34, 48: “BP has been the first oil company to integrate sustainability into not only its advertising campaign but also its entire corporation brand image. This will without doubt distinguish it from other oil companies.”

of marketing statements making green claims,³⁶⁶ whilst BP senior executives only “reported spending on clean energy exceeding 1% of total CAPEX for eight years” between 2009-2020.³⁶⁷ Meanwhile, past efforts to address emissions reductions were shorted, with BP abandoning an emissions reduction target after only a few years in favour of carbon trading, demonstrating the actual reductions were not compatible with BP senior executives’ contributions to the common purpose of maximizing fossil fuel profits.³⁶⁸

BP senior executives have ignored the human suffering from climate change

associated with their common purpose to maximize fossil fuel profits and instead have identified climate risks

as those threatening BP profits. For example, in the public disclosures to CDP in 2010, the main risk identified around climate change relates to the potential carbon pricing and the growth of alternative energy:

“Compliance with changes in laws, regulations and obligations relating to climate change could result in substantial capital expenditure, taxes,



Policy aimed at responding to climate change, among other energy policy goals, may have indirect effects on supply, demand, price and competitive intensity... These indirect impacts could result in increased demand for competing energy alternatives or products with lower- carbon intensity and affect the sales of many of our products.

reduced profitability from changes in operating costs, and revenue generation and strategic growth opportunities being impacted. Our commitment to the transition to a lower-carbon economy may create expectations for our activities, and the level of participation in alternative energies carries reputational, economic and technology risks... Each of these identified risks can increase our production costs for certain products, increase demand for competing energy alternatives or products with lower-carbon intensity

and affect the sales of many of our products... Policy aimed at responding to climate change, among other energy policy goals, may have indirect effects on supply, demand, price and competitive intensity... These indirect impacts could result in increased demand for competing energy alternatives or products with lower-carbon intensity and affect the sales of many of our products...”³⁶⁹

366. <https://influencemap.org/report/Big-Oil-s-Agenda-on-Climate-Change-2022-19585>

367. <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0263596>

368. https://www.cdp.net/en/formatted_responses/pages?locale=en&organization_name=BP&organization_number=2083&program=Investor&project_year=2010&redirect=https%3A%2Fwww.cdp.net%2FSites%2F2010%2F83%2F2083%2FInvestor+CDP+2010%2FPages%2FDisclosureView.aspx BP’s Environmental Performance Reporting Guidelines included emissions. Set in 2002 to ensure that any increases would remain below benefits from their new low-carbon products by 2012 against a 2001 baseline, but abandoned by 2008. Meanwhile their energy efficiency focus was reducing flaring and venting, which amounts to simply minimizing product wastage.

369. https://www.cdp.net/en/formatted_responses/pages?locale=en&organization_name=BP&organization_number=2083&program=Investor&project_year=2010&redirect=https%3A%2Fwww.cdp.net%2FSites%2F2010%2F83%2F2083%2FInvestor+CDP+2010%2FPages%2FDisclosureView.aspx

The same depiction of the common purpose was set out in the 2021 CDP disclosure wherein most climate solutions are identified as risks for BP, including the entire low carbon economy and “**the pace of the transition itself could have adverse impacts on our business including on our access to and realization of competitive opportunities in any of our strategic focus areas, a decline in demand for, or constraints on our ability to sell certain products, constraints on production and supply and access to new reserves, adverse litigation and regulatory or litigation outcomes, increased costs from compliance and increased provisions for environmental and legal liabilities.**”³⁷⁰ Climate policies which impact dependencies on petroleum are also highlighted as risks, including:

“support for the transition to a lower carbon economy, and customer preferences or regulatory incentives that alter fuel or power choices, could impact demand for oil and gas. Depending on the nature and speed of any such changes and our response, these changes could increase costs, reduce our profitability, reduce demand for certain products, limit our access to new opportunities, require us to write down certain assets or curtail or cease certain operations, and affect investor sentiment, our access to capital markets, our competitiveness and financial performance. For example, one such potential risk is that the carrying value of the downstream property, plant and equipment (PP&E) refining assets may no longer be recoverable, due to changes in supply and demand which arise as a consequence of COVID-19, climate change and the energy transition, for example the adoption of electric vehicles.”³⁷¹

The foundation for greenwashing is made clear in the CDP disclosures where BP senior executives acknowledge their primary motivation is to achieve the common purpose whilst needing to address consumers concerns about climate change. They include risk factors “related to social attitudes and customer and investor preferences and sentiment. For example, investor preferences and sentiment are influenced by environmental, social and corporate governance (ESG) considerations including climate change and the transition to a lower carbon economy. Changes in those preferences and sentiment could affect our access to capital markets and our attractiveness to potential investors.”³⁷² The “risk 1” is identified as carbon pricing, which is intended to address emissions, because “**it could present a risk to businesses whose GHG emissions would be subject to such a scheme, and this risk could be substantive, particularly if there are significant regional differences in carbon prices creating imbalances between operators in different jurisdictions.**”³⁷³ The “risk 2” is identified as customer behavior change away from fossil fuels, which is addressed through emphasizing the “**convenience and mobility**”³⁷⁴ of fossil fuels. A 2016 memo to BP from the BP-funded center at Princeton University echoed these risks, advising of the risk to BP’s common purpose through “[e]ffective climate policies... that discourage fossil fuel consumption... [c]limate-motivated research can create disruptive new energy technology.”³⁷⁵

370. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 11, pages 64-66 of the bp Annual Report and Form 20-F 2020.

371. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 13. Page 14: Climate change-related litigation brought against bp, as described in Note 33 to the financial statements in the bp Annual Report and Form 20-F 2020, may lead to an outflow of funds requiring provision. bp believes that it has valid defences, and it intends to defend such actions vigorously. 4 and 14 to the financial statements in the bp Annual Report and Form 20-F 2020 for further information including sensitivity analysis on the assumptions used to test goodwill for impairment.

372. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 15.

373. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 17.

374. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 19.

375. <https://www.documentcloud.org/documents/22418300-house-oversight-committee-investigation-oil-industry-documents-september-2022-release#document/p5/a2149943> page 5.

Branding experts analyzing the greenwashing efforts of BP senior executives have concluded that "BP has appropriated a collective social concern for the environment in the construction of its brand image, in order to mitigate its own contribution, as a global oil company, to climate change."³⁷⁶ BP senior executives contributed to the common purpose of maximizing fossil fuel profits regardless of the suffering from climate change through marketing campaigns which "served to mask the dominant activities of the company" which remain focused on emissions production.³⁷⁷ This performed a critical function in terms of brand management of "differentiation" whereby "BP's acceptance of climate change marked it out as different from competitors within the oil sector".³⁷⁸

"BP is able to acknowledge the current reality of climate change, whilst simultaneously erasing its own contribution to that change. By acknowledging the risks and realities of climate change through advertising and branding, BP is thus able discursively to eliminate the current risks of fossil fuel reliance by presenting itself as the solution, rather than a contributor, to climate change. By doing so, BP mitigates its own involvement in climate change through brand management...³⁷⁹ The explicit recognition of climate change would appear to mark BP out as doing something about the issue. Yet an examination of the climate- change mitigation activities promoted in the advertisements and in the annual reports reveals that very little is actually being done. As already stated, the promotion of gas as a means of tackling climate change draws attention away from BP's minimal commitment to renewable energy sources crucial to combating climate change in the long term. Although a global environmental issue, BP localises its climate change messages according to national context. For the UK audience, the financial aspirations of individual workers are invoked through recourse to reflexive identity. For the US audience, a sense of national identity is expressed through reference to consumption and the home. For a German public, an existing national concern for the environment means that participation in a global community is promoted. Despite the differences across the national campaigns, all the advertisements target the public as consumers. The only real action offered by BP to the public to help combat climate change is through the purchase of BP Ultimate fuel, and a benign trust that BP is working to mitigate climate change further."³⁸⁰

This was achieved through advertising campaigns with linguistic techniques to distinguish BP from other oil companies and place BP alongside public opinion with the use of personal pronouns, time-based markers, and rhetorical questions ("Could oil companies do more to improve our environment?"). Advertisements stating that "over the last 30 years, we have brought solar power to 160 countries" masked the reality that renewables was only 1.6% of the company's capital investment in 2005, and the greenwashing emphasis on "cleaner natural gas" masked the truth that the emissions with gas were still known to be dangerous and there is "no mention of a move towards a no-carbon, or carbon-neutral future through zero emissions."³⁸¹ Meanwhile, contemporaneous advertisements positioned BP senior leadership as experts in finding the remaining fossil fuels, affirming that **"[f]ossil fuels won't disappear tomorrow, though they will get harder to find. By developing innovative technology like BP's Advanced Seismic Imaging, we've been able to make**

376. Doyle, J. (2011) Where has all the oil gone? BP branding and the discursive elimination of climate change risk, in Heffernan, N. & Wragg, D. Culture, Environment and Eco-Politics, Cambridge Scholars Press, pp. 200-225.

377. Doyle, J. (2011) Where has all the oil gone? BP branding and the discursive elimination of climate change risk, in Heffernan, N. & Wragg, D. Culture, Environment and Eco-Politics, Cambridge Scholars Press, pp. 200-225.

378. Doyle, J. (2011) Where has all the oil gone? BP branding and the discursive elimination of climate change risk, in Heffernan, N. & Wragg, D. Culture, Environment and Eco-Politics, Cambridge Scholars Press, pp. 200-225.

379. Doyle, J. (2011) Where has all the oil gone? BP branding and the discursive elimination of climate change risk, in Heffernan, N. & Wragg, D. Culture, Environment and Eco-Politics, Cambridge Scholars Press, pp. 200-225.

380. Doyle, J. (2011) Where has all the oil gone? BP branding and the discursive elimination of climate change risk, in Heffernan, N. & Wragg, D. Culture, Environment and Eco-Politics, Cambridge Scholars Press, pp. 200-225.

381. Doyle, J. (2011) Where has all the oil gone? BP branding and the discursive elimination of climate change risk, in Heffernan, N. & Wragg, D. Culture, Environment and Eco-Politics, Cambridge Scholars Press, pp. 200-225.

discoveries that were unthinkable only a decade ago.³⁸² Senior BP executives oversaw adept strategies driving different messages to appease different stakeholders in order to advance their common purpose, even when the messaging was directly contradictory.

By 2021 the BP Chief Executive presented the company as an “integrated energy company” and pledged a transition to net-zero emissions.³⁸³ However, research has revealed that the actual capex investment in clean energy is limited at around 1% of total capex, with a drop from \$1.6 billion in 2011 to \$750 million in 2020:

“Piecing together CAPEX and electricity generation amounts, we find no evidence to suggest any major has entered the renewables market at a scale that would indicate a shift away from fossil fuels. For all majors, however, we caution that most strategy scores have come from ‘low-hanging fruit’ in the form of pledges and disclosure. These include simple statements of support for climate science or carbon pricing and disclosure of GHG emissions data. Thus, shifting core businesses away from fossil fuels to clean energy still requires that each major formulates concrete strategies to translate pledges into actions. Moreover, we found that some actions contradict pledges. This especially concerns intentions to curb the production of fossil fuels as well as reduce exploration and new developments. This worrying trend of acting contrary to pledges and public statements has also been highlighted by other sources. This includes reports that all four majors continue to lobby governments to hamper or weaken carbon pricing policies, to secure favourable fiscal support, and to weaken environmental regulation. Also in the goal of obstructing the progress of decarbonization, they continue to redirect the responsibility for reducing GHG emissions to consumers while diffusing misleading advertisements that fossil fuels (especially gas) are green and exaggerating the scale of clean energy investments...³⁸⁴ However, for all majors and in most years, the volume of concrete actions to achieve these is considerably less than pledges. This is notably the case for BP, whose scores from pledges exceed the other three majors by far... BP, which generated the most scores in this analysis, pledged in its 2019 annual report to reduce fossil fuel investment by increasing its non-oil and gas businesses. However it increased its acreage for new exploration access by 58,000 km² in that same year. Further contradicting this intention, several new operating fossil fuel extraction projects started in 2020...no major has consistently decreased total hydrocarbon production over the study period. If anything, the reverse is true. Shell, BP, and Chevron have increased production volumes... In sum, fluctuations notwithstanding, relative spending trends indicate that upstream exploration and production of oil and gas remain the pillar business for all majors.”³⁸⁵

BP senior executives have even been forced to end false advertising campaigns, such as the recent complaint filed with the OECD in 2019 regarding the “Keep Advancing” and “Possibilities Everywhere” campaign. The complaint pointed out that the advertising “misled people into thinking that BP is a renewables company, when 96% of the company’s spend is on oil and gas.”³⁸⁶ In its 2021 climate disclosures materials, BP corporate executives noted that “[w]e have stopped corporate reputation advertising campaigns, and this is enabling us to redirect resources to promote well designed climate policies.”³⁸⁷

382. Doyle, J. (2011) Where has all the oil gone? BP branding and the discursive elimination of climate change risk, in Heffernan, N. & Wragg, D. Culture, Environment and Eco-Politics, Cambridge Scholars Press, pp. 200-225. BP even suggested that oil demand may already have peaked BP: Annual report and form 20f 2019 <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2019.pdf>.

383. Asuka, J., Li, M., Trencher, G. (2022) The clean energy claims of BP, Chevron, ExxonMobil and Shell: A mismatch between discourse, actions and investments <https://doi.org/10.1371/journal.pone.0263596>

384. Asuka, J., Li, M., Trencher, G. (2022) The clean energy claims of BP, Chevron, ExxonMobil and Shell: A mismatch between discourse, actions and investments <https://doi.org/10.1371/journal.pone.0263596>

385. Asuka, J., Li, M., Trencher, G. (2022) The clean energy claims of BP, Chevron, ExxonMobil and Shell: A mismatch between discourse, actions and investments <https://doi.org/10.1371/journal.pone.0263596>

386. <https://www.oecdwatch.org/complaint/clientearth-vs-bp/>

387. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 139-140.

CONTRIBUTION TO THE COMMON PURPOSE: STEP 5 DOMINANCE

BP senior executives deployed every means at their disposal to ensure the dominance of their common purpose by influencing political processes through lobbying³⁸⁸ and maintaining a revolving door of executives taking roles at the highest levels of the UK government.³⁸⁹ It is through the capturing of the apparatus of the State that BP senior executives are able to entrench their common purpose into global political and economic structures.

Senior BP executives oversee public statements which plainly assert that “[o]ur activities may include direct lobbying on specific policy proposals by BP employees.”³⁹⁰ Although BP does not publically disclose a full list of all research organizations that they fund,³⁹¹ they are publically recorded as a member of a long list of trade associations.³⁹² The blueprint for lobbying against climate policy was set in 1998 when API (of which BP was a key member holding executive leadership roles) issued the Global Climate Science Communications Plan outlining the fossil fuel industry’s strategy to use scientists as spokespersons for the industry’s views.³⁹³ The objective in this plan was to advance the common purpose until “average citizens understand (recognize) [and when] recognition of uncertainties becomes part of the ‘conventional wisdom’ through the use of an array of front groups.”³⁹⁴ This plan included intentionally sending such false materials into schools to “begin to erect a barrier against further efforts to impose Kyoto-like measures in the future.”³⁹⁵ In furtherance of this plan, scientists were paid to ensure false doubt would dominate political processes³⁹⁶ such as Wei-Hock (“Willie”) Soon,³⁹⁷ who received more than \$1.2 million in funding

388. <https://climateinvestigations.org/trade-association-pr-spending/american-petroleum-institute/>; <https://www.desmog.com/american-petroleum-institute/>; <https://www.desmog.com/climate-disinformation-database/>; Brulle, R. J., (2018). The climate lobby: a sectoral analysis of lobbying spending on climate change in the USA, 2000 to 2016. *Clim. Change* 149 (3-4), 289–303; Congress of United States (2021) Analysis of the Fossil Fuel Industry’s Legislative Lobbying and Capital Expenditures Related to Climate Change—Staff Memo <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Analysis%20of%20the%20Fossil%20Fuel%20Industries%20Legislative%20Lobbying%20and%20Capital%20Expenditures%20Related%20to%20Climate%20Change%20-%20Staff%20Memo%20%2810.28.21%29.pdf>; Influence Map (2019) Big Oil’s Real Agenda on Climate Change: How the oil majors have spent \$1bn since Paris on narrative capture and lobbying on climate <https://influencemap.org/report/How-Big-Oil-Continues-to-Oppose-the-Paris-Agreement-38212275958aa21196dae3b76220bdc>.

389. Hobbs, G. (2019). British Imperialism and Oil: A History of British Petroleum, 1901-2016. PhD thesis. SOAS, University of London. <http://eprints.soas.ac.uk/32458>. Pages 114 - 115.

390. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> pages 139-140; pages on 122-127 lobbying.

391. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 139. See <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/our-participation-in-trade-associations-climate-2021-progress-update.pdf> listing the “66 most significant memberships as determined by fees paid.”

392. <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-cdp-climate-change-questionnaire-2021.pdf> page 128.

393. Union of Concerned Scientists (2015) The Climate Deception Dossiers pages 7, 10, 38: <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>; <https://www.theguardian.com/environment/climate-consensus-97-per-cent/2018/jan/01/on-its-hundredth-birthday-in-1959-edward-teller-warned-the-oil-industry-about-global-warming>

394. Union of Concerned Scientists (2015) The Climate Deception Dossiers page 11: <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>

395. Joe Walker, Email to Global Climate Scince Team, attaching the Draft Global Science Communicatiobs Plan (3 April 1999) [assets.documentcloud.org/documents/784572/api-global-climate-science-communications-plan.pdf](https://documentcloud.org/documents/784572/api-global-climate-science-communications-plan.pdf)

396. https://www.climatechangecommunication.org/wp-content/uploads/2019/10/America_Misled.pdf Geiger, N., & Swim, J. (2016) Climate of silence: Pluralistic ignorance as a barrier to climate change discussion. *Journal of Environmental Psychology*, 47, 79-90; Brysse, K., et. al. (2013) Climate change prediction: Erring on the side of least drama? *Global Environmental Change*, 23(1), 327-337; Lewandowsky, S., et.al. (2015) Climate change denial and its effect on the scientific community. *Global Environmental Change*, 33, 1-13; Lewandowsky et al. (2019). An evidence-resistant minority can affect public opinion and scientific belief formation. *Cognition*, 188, 124-139; Farrell, J., McConnell, K., & Brulle, R. (2019). Evidence-based strategies to combat scientific misinformation. *Nature Climate Change*, 1; Elsasser, S. W., & Dunlap, R. E. (2013). Leading voices in the denier choir: Conservative columnists’ dismissal of global warming and denigration of climate science. *American Behavioral Scientist*, 57(6), 754-776; Dunlap, R. E., & McCright, A. M. (2011). Organized climate change denial. *The Oxford Handbook of Climate Change and Society*, 144-160; Boussalis, C., & Coan, T. G. (2016). Text-mining the signals of climate change doubt. *Global Environmental Change*, 36, 89-100; Lewandowsky, S., Cook, J., & Lloyd, E. (2016). The ‘Alice in Wonderland’ mechanics of the rejection of (climate) science: simulating coherence by conspiracism. *Synthese*, 195(1), 175-19.

397. <https://climateinvestigations.org/?s=willie+soon>

from fossil fuel interests including API to advance climate change denialism, which directly led to political influence through US politicians such as Senator Inhofe relying on Soon's work on his U.S. Senate website in a section on the "facts and science of climate change."³⁹⁸

Even after BP left the GCC (which was disbanded in 2001 shortly after BP's departure), BP remained a member of equally aggressive climate-denial lobbyists such as the American Legislative Exchange Council (ALEC) and by 1999 ALEC had already blocked laws to reduce greenhouse gases in 16 US states.³⁹⁹ BP executives oversaw the decision to also eventually leave ALEC in 2015 citing disagreement over ALEC's position on climate change denialism, despite having been a member of ALEC overseeing such efforts for decades.⁴⁰⁰

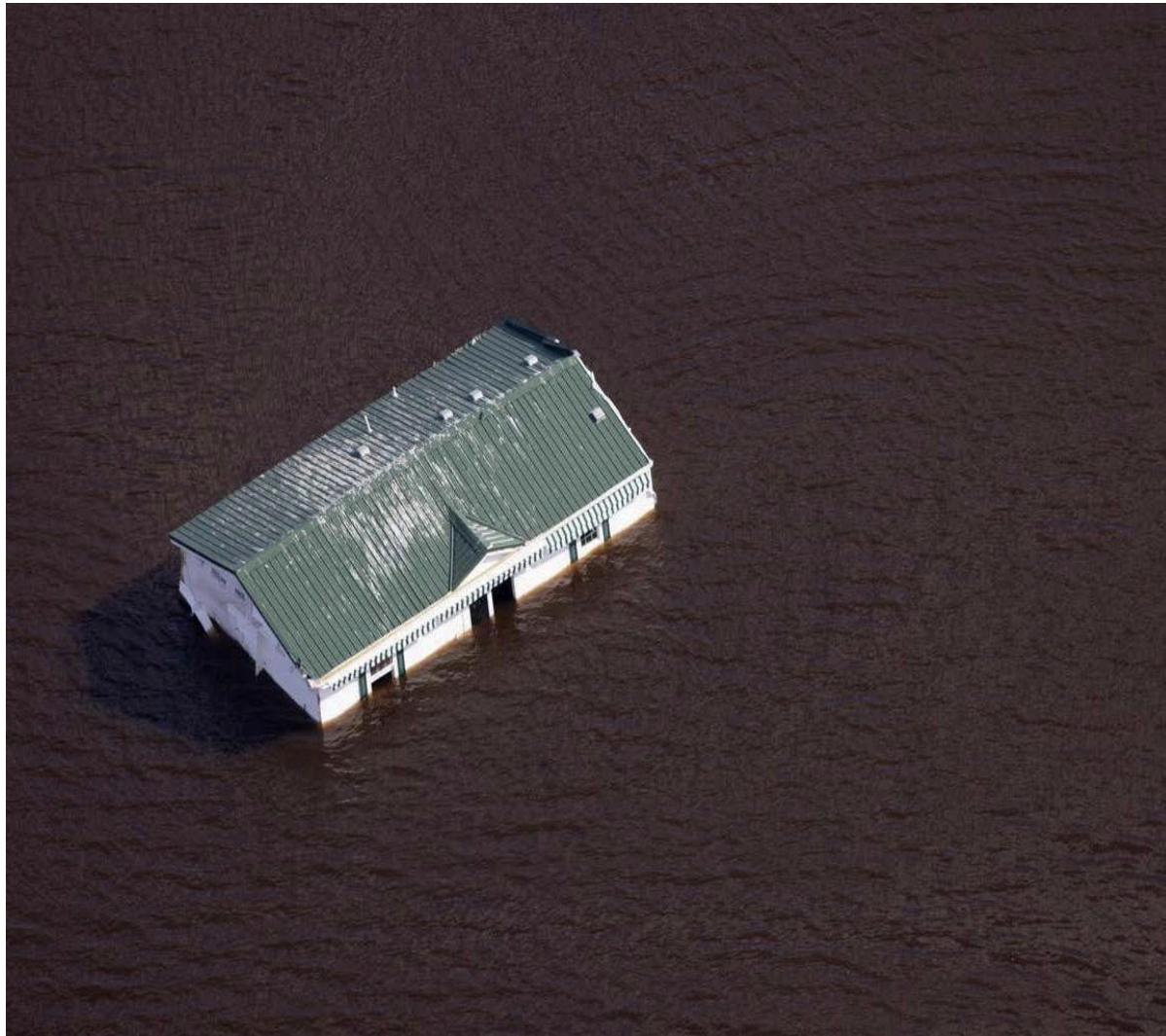


Photo credit: Julie Dermansky

398. Union of Concerned Scientists (2015) The Climate Deception Dossiers page 6: <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>

399. <https://www.ftm.eu/articles/bp-video-climate-change-1990-engels>

400. https://climateinvestigations.org/bp_leaves_alec_shades_of_global_climate_coalition_defections/; <https://www.theguardian.com/sustainable-business/2015/mar/23/alec-bp-british-petroleum-companies-conservative-lobbyist>

After leaving both GCC and ALEC, BP executives continued to fund successful lobbying of the US government to roll back regulations addressing methane leakage. For example, between January 2009 and September 2014, BP supported the US lobby group Western States Petroleum Association (WSPA)⁴⁰¹ with overall spending of more than \$26.9 million to block California climate initiatives, including funding approximately 16 fake grass-roots groups, known as astroturf coalitions, such as Fed Up at the Pump, the California Drivers Alliance, Californians Against Higher Taxes, and Oregonians for Sound Fuel Policy.⁴⁰² In 2017 BP lobbied the Trump administration to open up the Alaskan Arctic for drilling with trade groups co-funded by BP such as the Alaska Oil & Gas Association (AOGA) and the Resource Development Council for Alaska (RDC). In 2018, BP broke records as the top donor with over US\$13 million in lobbying funds paid to oppose a Washington State ballot initiative which would have imposed a \$15-a-ton fee on carbon emissions.⁴⁰³ In 2020, BP's US Political Action Committee (PAC) lobbyists contributed to multiple federal candidates who were against climate solutions.⁴⁰⁴ And in 2022, BP America lobbied against the California Low Carbon Fuel Standard aimed at phasing-out credit generation for petroleum products.⁴⁰⁵

Within the UK, the political influence of BP senior executives is entrenched through over 100 years of close collaboration based on the UK government's role as the majority shareholder in the corporation. From its very inception, BP was supported by the UK government in the establishment of the global carbon economy and the government's dependence on BP petroleum products.⁴⁰⁶ BP was a mechanism of British exploitation of former UK colonies which are now suffering extreme impacts from climate change. The close interplay between the British State and BP's corporate executives sheds light as to how an energy resource with such a high start-up cost was able to become established so quickly as a global necessity. Building vast expensive infrastructure networks in areas of the world far removed from corporate headquarters could only have been possible with access to State funding and the taxpayers' dollar. This intermingling was widely known from the time BP was first established. Indeed, the most comprehensive historical narrative of BP notes that "[t]he Company was so closely involved in government relations and international affairs that its chairmen were required to deal with issues which were far outside the realms of activity normally associated with business."⁴⁰⁷

401. Union of Concerned Scientists (2015) The Climate Deception Dossiers pages 13, 14, 39: <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>

402. Union of Concerned Scientists (2015) The Climate Deception Dossiers pages 13, 14, 39: <https://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>

403. <https://unearthed.greenpeace.org/2019/03/12/bp-lobbied-trump-climate-methane-obama/> Senator Sheldon Whitehouse "BP claims to support a price on carbon emissions, but spent millions to defeat a price on carbon in Washington State... In yet another example of corporate doublespeak, BP claims to support limiting wasteful methane leakage and flaring, yet lobbied against a common sense rule to do just that. I wish I could say I was surprised, but I'm not." BP spent almost \$13 million opposing moves to establish a carbon tax in Washington State, despite publicly stating its support for carbon taxation.

404. <https://www.ftm.eu/articles/bp-video-climate-change-1990-engels>

405. <https://influence-map.org/report/Big-Oil-s-Agenda-on-Climate-Change-2022-19585> page 34.

406. More recently, BP has had a "government and public affairs department" since at least 1980s: BP and the community. British Petroleum Company. Government and Public Affairs Department. Government and Public Affairs Department, BP International, [1989] [\[LINK\]](#)

407. Bamburg J.H & Ferrier, R. W. (1982). The History of the British Petroleum Company. Cambridge University Press. Page 520.

In return, the UK government was not simply focused on financial return, indeed, “the interest of the Government in the Company’s affairs went much further than that. From its formation in 1909 the Company had, in effect, been marked out as a special case, largely because it was dealing with a strategic commodity which was of great importance to the defence of the realm. It was primarily for that reason that the British Government had acquired its majority shareholding in 1914... its position as a majority shareholder inevitably tended to politicise the Company, which, whether it was true or not, was widely seen as an arm of the British Government.”⁴⁰⁸

Perhaps the most clear example of this State-corporate control was during the Iran crisis culminating in the 1950s when Iran’s nationalisation of petroleum led to BP losing 40% of its total crude oil supply which had originally been secured through collusion with the British government colonial occupation.⁴⁰⁹ It is the extent of this initial State-corporate collusion which is at the foundation of the climate crisis.

The UK government began the process of privatization BP in 1979 by selling off its controlling stake from 51% to 46%.⁴¹⁰ However the State-corporate power politics continued even as the UK government reduced its shareholding, such as when the UK Trade and Industry Secretary responded to “strong representations from BP” to fend off a Kuwaiti government buy-up of a third of the shares on offer.⁴¹¹ This continued influence is also evident through the high proportion of BP directors who were also government officials. For example, in 1995 six of the 16 BP directors were simultaneously occupying UK government roles, including three BP directors were also members of the UK Advisory Committee on Business and the Environment; the Council for Science and Technology; and the Restrictive Practices Court.⁴¹² Similarly, in 2015 “Downing Street told BP and city investors that it would not remain neutral if BP became the target of a foreign takeover” and officials in government were reported as saying that “[t]he presumption that the British government should have an intimate relationship with big British multinationals especially BP and Shell was in the air you breathed.”⁴¹³

With the election of UK Prime Minister Tony Blair in 1997 the influence of the BP within the UK government became known across mainstream culture, and “the closeness of BP to Tony Blair’s Labour administration was such that the company was dubbed ‘Blair Petroleum’”.⁴¹⁴ The most striking link was David Simon’s move from BP chairman to UK Minister of State in the Treasury and Department of Trade and Industry. In 2001 Anji Hunter moved from her role as Blair’s “gatekeeper” (director of government relations) to become BP’s director of communications.⁴¹⁵ The former BP Vice-President Nick Butler was personal friends with Peter Mandelson (the Secretary of State for Trade and Industry, and later the European Commissioner for Trade) and Jonathan Powell (the chief of staff to Tony Blair). High level influences such as Jill Rutter and John Kingman exchanged jobs between Treasury and BP, and Charlie Leadbeater, a policy advisor to the Prime Minister, also consulted for John Browne, former BP chief executive who was later appointed to the UK House of Lords. He personally met with Tony Blair regularly and sought to build “personal ties and regular exchanges of ideas between BP and the government... Senior executives are encouraged to take time out to sit on government task forces... Browne has encouraged BP managers to make use of secondment

408. Bamburg J.H & Ferrier, R. W. (1982). *The History of the British Petroleum Company*. Cambridge University Press. Page 519.

409. <https://www.nytimes.com/1979/03/20/archives/bp-finds-success-without-iranian-oil-bps-bitter-experience-foothold.html>

410. <https://www.nytimes.com/1977/06/15/archives/british-government-block-of-67-million-bp-shares-priced-at-over-1.html> <https://www.latimes.com/archives/la-xpm-1987-08-21-fi-2366-story.html>

411. Hobbs, G. (2019). *British Imperialism and Oil: A History of British Petroleum, 1901- 2016*. PhD thesis. SOAS, University of London. <http://eprints.soas.ac.uk/32458>. Page 96.

412. Hobbs, G. (2019). *British Imperialism and Oil: A History of British Petroleum, 1901- 2016*. PhD thesis. SOAS, University of London. <http://eprints.soas.ac.uk/32458>. Page 110-111.

413. <https://www.theguardian.com/environment/2015/may/20/revealed-bps-close-ties-with-the-uk-government>

414. <https://www.theguardian.com/environment/2015/may/20/revealed-bps-close-ties-with-the-uk-government>

415. Hobbs, G. (2019). *British Imperialism and Oil: A History of British Petroleum, 1901- 2016*. PhD thesis. SOAS, University of London. <http://eprints.soas.ac.uk/32458>. Page 111.

programmes to ministries, mostly the Department of Trade and Industry, but also the Foreign Office and Treasury... the geopolitical complexity of the oil industry makes it important for BP to get political support wherever it can. 'We've always got to be in a position to turn to the government in power,' he says.⁴¹⁶ He was later "brought in to the Cabinet Office by the Conservatives in 2010 to help appoint business leaders to new boards of each government department" leading to former BP senior executive John Manzoni's appointment as chief executive of the UK Civil Service.⁴¹⁷

Following the 2002 invasion of Iraq, BP senior executives appointed to its board the former head of MI6, Sir John Sawers⁴¹⁸ and the UK Foreign Office circulated a draft report titled "Iraqi Oil and British Interests" setting out a clear prioritization for supporting endeavors led by companies such as BP.⁴¹⁹ Similarly regarding Libya, BP's former CEO John Browne even met Gaddafi "to agree some broad principles" for BP's re-entry into Libya with his advisor Mark Allen who previously worked at MI6 working on the Libya negotiations in 2003.⁴²⁰ BP continues to receive support from the Foreign and Commonwealth Office such as building privileged access through the annual "BP high level dinner" with top directors from the government's diplomatic service, regional directors, and heads of the economic, and strategic units aiming to "strengthen the strategic relationship between BP and the FCO on global economic and energy issues."⁴²¹ The extent of the co-dependency between senior BP corporate executives and UK government officials over 120 years ensures the citizens of the world didn't stand a chance in resisting the common purpose to maximize petroleum profits regardless of the suffering from climate change.

416. Hobbs, G. (2019). British Imperialism and Oil: A History of British Petroleum, 1901- 2016. PhD thesis. SOAS, University of London. <http://eprints.soas.ac.uk/32458>. Page 113.

417. <https://www.theguardian.com/environment/2015/may/20/revealed-bps-close-ties-with-the-uk-government>

418. <https://www.theguardian.com/environment/2015/may/20/revealed-bps-close-ties-with-the-uk-government>

419. Hobbs, G. (2019). British Imperialism and Oil: A History of British Petroleum, 1901- 2016. PhD thesis. SOAS, University of London. <http://eprints.soas.ac.uk/32458>. Page 121 referencing the May 2003 report

"Iraq is extremely important to the UK's objectives on energy security."

420. Hobbs, G. (2019). British Imperialism and Oil: A History of British Petroleum, 1901- 2016. PhD thesis. SOAS, University of London. <http://eprints.soas.ac.uk/32458>. Page 123-124.

421. <https://www.theguardian.com/environment/2015/may/20/revealed-bps-close-ties-with-the-uk-government>

BASED ON THE ABOVE INFORMATION:

The membership of Students for Climate Solutions from Aotearoa New Zealand and the UK Youth Climate Coalition formerly request the ICC Office of the Prosecutor to open an investigation under Article 15 of the ICC Rome Statute into senior BP corporate executives regarding the crime of climate change as an “other in- humane act” of crimes against humanity.

These individuals hold command responsibility over their subordinates within the BP corporate structures which continue to implement actions which they know, knew, or should have known would involve the commission of the continuing crime of climate change as an “other inhumane act” of crimes against humanity. These senior BP executives continue to do nothing to prevent or punish these crimes.

In addition or in the alternative, BP senior executives are members of the common purpose to maximize petroleum profits regardless of the infliction of great suffering globally through escalating climate change. These senior executives continue to make significant contributions to the common purpose with full knowledge of the harmful impacts of the crime of climate change, through overseeing strategies falsely creating doubt in climate change science; entrenches dependency on their fossil fuel products regardless of climate change science indicating the extent of global suffering; fostering delay in responding to climate change; implementing deception regarding the true solutions to climate change; and seeking to maintain their global dominance through lobbying and other means. These intentional contributions to the common purpose continue to be made with full knowledge of the great suffering, serious injury, and physical and mental harm from fossil fuel-induced climate change.

The membership of Students for Climate Solutions from Aotearoa New Zealand and the UK Youth Climate Coalition formerly indicate their intention to seek climate justice reparations from BP senior corporate executives pursuant to this request to open investigations into climate change before the International Criminal Court. They respectfully request that potential reparations payments be made to the mechanisms addressing loss and damage from climate change pursuant to Article 8 of the Paris Agreement under the United Nations Framework Convention on Climate Change's Paris Agreement.

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