

# **CRIMES AGAINST FUTURE GENERATIONS**

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Thank you Director General, Mr Laurens, for your kind words of introduction.

It is a pleasure and a privilege to be here today at the Council of Europe Fifth Summer University for Democracy to address you, our future political, economic, social and cultural leaders.

Before addressing the subject of my speech, I would like to tell you a little about myself, which may explain to you why I have committed my life to defending human rights, social and economic justice and the protection of the environment. I was born in Nicaragua, and spent my childhood and adolescence under the brutal and repressive dictatorship of the Somoza regime. I learned first-hand the meaning of oppression, and social and economic injustice. I left Nicaragua with a scholarship to study political science in Paris. I have advocated for the most vulnerable members of our society, children, women, tribal and indigenous people, and prisoners on death row – I believe that I have a duty to speak for those who have no voice, no means to combat the injustice inflicted upon them and no mechanisms at their disposal to enforce their rights. This sacred duty is at the heart of my work.

In 2007 I established the Bianca Jagger Human Rights Foundation (BJHRF).

My foundation is dedicated to defending human rights and civil liberties, achieving peace, social justice and the eradication of poverty, protecting the rights of indigenous and tribal people, forest conservation and combating the threat of catastrophic climate change. I believe that climate change is not just an environmental threat, but a critical human rights issue which impacts every aspect of our lives: peace, security, poverty, hunger, health, mass migration and economics. Tackling climate change is the overriding moral imperative of our time.

For the last thirty years, I have campaigned for human rights and environmental protection throughout the world, denouncing the disparity and injustice that exists between the Global North and the Global South.

During that time I have witnessed multinational corporations engage in the irrational exploitation of natural resources, “in the name of progress and development”. Much of this exploitation has been occurring in the developing world, where some companies have been able to lure governments with promises of prosperity and employment, into giving them free reign over their natural resources. However, there is also collusion between companies and states in the developed world. The incestuous relationship between multinational corporations and governments has further undermined the commitment of states to protecting their citizens and the environment.

In addition to endangering the livelihoods of communities worldwide, devastating the environment, wiping out precious biodiversity, fauna and flora and causing catastrophic climate change, the actions of these corporations have another important and often overlooked consequence: they are causing irreversible damage to the world in which future generations must live. However, the

activities of these multinational corporations continue to fall outside the scope of the international criminal justice system.

The Bianca Jagger Human Rights Foundation brings the interests of future generations to the centre of policy making and is working to develop a legal and policy framework that guarantees human security, ecological integrity, and social equity in the interest of future generations.

In his advice to the International Court of Justice Nuclear Weapons, Judge Weeramantry found, “*At any level of discourse, it would be safe to pronounce that no one generation is entitled, for whatever purpose, to inflict such damage on succeeding generations. [...] This Court, as the principal judicial organ of the United Nations, empowered to state and apply international law [...] must, in its jurisprudence, pay due recognition to the rights of future generations. [...] The rights of future generations have passed the stage when they were merely an embryonic right struggling for recognition. They have woven themselves into international law through major treaties, through juristic opinion and through general principles of law recognized by civilized nations.*” [i]

My Foundation is campaigning for the International Criminal Court to extend its jurisdiction to cover Crimes against Future Generations that are not already proscribed by the ICC’s Rome Statute as Crimes Against Humanity, War Crimes, or Crimes of Genocide.

“Crimes against future generations of life” are acts or conduct committed with the knowledge of their severe consequences on the health, safety, or means of survival of future generations of humans, and their threat to the survival of entire species or ecosystems.

Crimes against future generations would penalise acts and conduct that have severe consequences on the long-term health, safety and means of survival of identifiable groups or collectivities. The creation of this crime builds on current international law by extending the scope of application of existing international crimes or by establishing criminal liability for existing prohibitions in international human rights law and international environmental law. Crimes against future generations would ensure that serious violations of economic, social and cultural rights attract individual criminal responsibility under international law. Creating a new crime of crime against future generations would impose upon states a duty to investigate, arrest and prosecute perpetrators.

During my three decades as a human rights and environmental advocate, I have denounced the reckless behaviour of numerous oil, gas and mining companies. I have often referred to their actions as “crimes” and called for their accountability. At this Summer University session dedicated to the “crisis of leadership,” I would like to illustrate for you the concept of Crimes against Future Generations, using the examples of the recent BP oil spill in the US, Texaco’s reckless oil exploration in Ecuador, and Shell and ExxonMobil’s devastating exploitation of the Niger Delta, as case studies of what could constitute crimes against future generations.

## **ENERGY COMPANIES’ APPALLING RECORD OF ENVIRONMENTAL DAMAGE AND HUMAN RIGHTS ABUSES**

### **1. BP OIL SPILL**

On 20 April 2010, BP’s Deepwater Horizon semi-submersible mobile offshore drilling rig, located in the Macondo Prospect, in the Gulf of Mexico exploded after a fire broke out onboard. The rig sank two days later, killing 11 platform workers, injuring 17 others and causing an oil spill, which has become, in the words of President Obama, “the greatest environmental disaster of its kind in history.”[ii]

It is uncanny that the ill fated well was named after Macondo, the fictional cursed town created by the Nobel-prize winning writer Gabriel Garcia Marquez. In the novel "One Hundred Years of Solitude" Macondo is portrayed as doomed, a place destined for disaster. The Macondo well has certainly lived up to its name, leaving a tragic legacy that will impact the Gulf region for decades.

The US administration currently estimates the oil spill to release between 35,000 to 60,000 barrels of oil a day which represents the equivalent of one Exxon Valdez every four days. [iii] This new estimate "dwarfs the original estimate by US authorities – based on information provided by BP– that the spill was just 1,000 barrels of oil per day." [iv] BP has shown an appalling lack of transparency and has withheld crucial data which would have enabled scientists to measure the extent of the leak at an early stage.

As the oil from the well site spreads, it is having a devastating effect on the 8332 plant and animal species that live in the area immediately surrounding the spill. According to marine biologist and conservationist Thomas Shirley, "Entire generations of shrimp, crab, oysters, and other commercially important marine life may be wiped out and take years to recover." He predicts that the long-term effects will be dire, "Most of the oil will be gone. Most of the Gulf will recover well, and in a span of just a few years, but the effects of this oil spill will persist for decades." [v]

Recent data released by the US Geological Survey and independent scientists have revealed another threat lingering in the Gulf of Mexico waters: invisible methane gas. Studies have revealed methane levels around the spill to be a 100 000 times greater than normal levels. The US Geological Survey estimates that 2,900 cubic feet of methane gas is being released into the gulf waters with every barrel of oil. [vi] John Kessler, a Texas A&M University oceanographer recorded "astonishingly high" methane levels in surface and deep water within a five-mile radius of the ruptured well. His team also recorded 30% depletion of oxygen in some locations [vii]. Methane is a colourless, odourless and highly flammable substance which depletes the natural oxygen levels in water. The high concentration in the area surrounding the well site is suffocating the marine life [viii]. It has created "dead zones" and forced fish, shrimp, crabs, sharks and other marine life to change their distribution in an attempt to get to better water. Samantha Joye, a scientist at the University of Georgia said that although there has not been any "zero-oxygen" water reported yet, "there is certainly enough gas in the water to draw oxygen down to zero...It could wreak havoc with those communities that require oxygen, wiping out plankton and other organisms at the bottom of the food chain." [ix]. Scientists fear that the methane gas spill holds far more of a long term threat for local maritime life than the oil spill.

The oil spill is not only destroying marine life but also the lives of those who depend on it. It has had damaging effects on the local communities of the Gulf of Mexico who rely on fishing and tourism. The spill is affecting the very social fabric of communities which have already been deeply traumatised by hurricane Katrina [x]. Those communities are likely to be affected for years to come.

BP has been accused of violating safety regulations in order to reduce costs prior to the spill. On 14 June, Henry A. Waxman Chairman of the Subcommittee on Oversight and Investigations Enclosure wrote to BP Chief Executive Tony Hayward. The letter accused BP of "violating industry guidelines [and]... repeatedly choosing risky procedures in order to reduce costs and save time." [xi]

In a statement on 27 May 2010, President Obama described the US government's relationship with BP and other oil companies: "the oil industry's cosy and sometimes corrupt relationship with government regulators meant little or no regulation at all."

Multinational corporations, especially oil companies, sponsor election campaigns to the tune of millions of dollars. Bush's Secretary of State, Condoleezza Rice, was Director of Chevron from 1991 to 2001. Chevron named one of its 129 000 ton tankers after Rice, but renamed it Altair

Voyager in 2001, after Rice joined the Bush administration. Furthermore, Dick Cheney, vice president during Bush's presidency was the former CEO of Halliburton Company, the world's 2<sup>nd</sup> largest oilfield services corporation, which profited enormously from Bush's "war on terror." Halliburton has emerged as a key player in the BP catastrophe, as the company was hired by BP to handle the cementing process on the Deepwater Horizon rig. [xii]

BP was named by Mother Jones Magazine as one of the "ten worst corporations" in both 2001 and 2005 based on its environmental and human rights records. [xiii] According to research conducted by the Public Interest Research Group, between January 1997 and March 1998, BP was responsible for 104 oil spills. [xiv]

The definition of a Crime Against Future Generations asks that "*Conduct which places the very survival of life at risk should be prohibited and prosecuted as an international crime.*" The BP oil spill has clearly placed at risk the survival of both human and marine life, and the trail of suffering and environmental destruction left by the BP oil spill fulfils the criteria for a Crime Against Future Generations. Furthermore, the information released by the US Congress, shows that BP was fully aware of the problems associated with the fateful Macondo well, and were deliberately negligent in their fulfilment of safety procedures. The recent information released by scientists regarding the consequences of rising methane levels is cause for even great concern. As Suzanne Goldenberg, environment correspondent for the Guardian, wrote on 30 June, these findings, "have deepened concerns that the enormity of the environmental disaster in the Gulf has yet to be fully understood." [xv] If Crimes Against Future Generations were recognised, BP could be charged and be liable for prosecution by international criminal law.

Whilst BP has been in the media spotlight in the last few months, other multinational oil and gas companies have been committing environmental and human rights abuses for years, with impunity and little media attention.

To use just a few examples, Texaco (now Chevron) is responsible for the worst oil related disaster in the history of Latin America, and ExxonMobil and Shell continue to cause devastating oil spills and pollution in the Niger Delta.

## **2. TEXACO IN ECUADOR**

Between 1971 and 1992, Texaco embarked upon reckless oil exploration, pumping 1.5 billion barrels of oil from Ecuador [xvi]. Texaco carved over 350 oil wells in a rainforest area roughly three times the size of Manhattan and dumped approximately 18.5 billion gallons of oil contaminated water into unlined pits, one and a half times the amount spilled by the oil tanker Exxon Valdez. When Texaco left Ecuador in 1992, it left behind some 1,000 unlined open toxic waste pits some just a few feet from the homes of residents. Leeching of highly toxic wastewater by-products of oil extraction from these pits contaminated the entire groundwater and ecosystem in one of the world's most valuable rainforests. As there is no running water in the region 30,000 people, including thousands of children, have no alternative but to drink, bathe, and cook with poisoned water from streams, rivers, lagoons and swamps that have been contaminated by Texaco.

Texaco saved an estimated \$3 per barrel of oil produced by handling its toxic waste in Ecuador in ways that were unthinkable and illegal in the US. The cost to the human population is immeasurable. In 2008 a team of engineers, doctors and biologists submitted the court-ordered Cabrera report, to the Nueva Loja Superior Court concluding that Texaco's pollution had caused 2,091 cases of cancer among residents and led to 1,401 deaths from 1985 to 1998. [xvii]

Ecosystems have been destroyed, crops have been damaged, farm animals killed, and diseases have proliferated. This is the toxic legacy left by Texaco for future generations.

The Texaco disaster culminated in the largest environmental lawsuit in Latin America to date; it was brought by 30,000 plaintiffs from the Ecuadorean Amazon. They filed a billion dollar class action against Texaco in New York. Texaco moved to dismiss the US lawsuit on international comity and *forum non conveniens* grounds. In 2002 the court granted Texaco's motion, and the case moved to Ecuador on the condition that the company stop using an expiration of the statute of limitations as a defence and that any judgment be enforceable in the U.S. [xviii]. Among the plaintiffs are five indigenous tribes, the Cofán, Siona, Secoya, Kichwa and Huaorani. The Cabrera report estimated that Chevron should pay US\$27.3 billion in damages and remediation costs if it loses the suit.

The case, which has been dubbed the "Amazon Chernobyl," is in its final stages in Ecuador's courts. Chevron has devoted its vast resources to endless motions and legal tactics to obstruct and delay the proceedings, in an attempt to exhaust the resources of the communities trying to hold the company accountable.

### **3. ENVIRONMENTAL DAMAGE AND HUMAN RIGHTS ABUSE IN THE NIGER DELTA**

In the oil-rich Niger Delta, oil has been exploited for more than half a century by subsidiaries of all the major oil companies, including Shell, Chevron, Total, ExxonMobil, Eni, as well as Nigerian companies. Although 40% of all the crude oil imported by the US is produced in the Delta, the local communities have no legal rights to the oil and gas reserves on their land, and they have seen none of the profit. Instead, reckless oil exploitation has led to human rights abuses, death, disease, poverty and environmental destruction.

The Nigerian government is directly involved with oil exploitation and over the years has shown no political will to regulate the oil sector effectively. The rampant collusion between the Nigerian government and the major oil companies was most brutally demonstrated when, in 1995, the Nigerian military government hanged author and environmental defender, Ken Saro Wiwa, and 8 other Ogoni Nigerians who were part of a human rights movement for economic and environmental justice, and who spoke out against exploitation by Shell and the government. [xix] In June 2009, a day before appearing in a New York court on charges of human rights abuses and conspiring with the Nigerian military government to capture and hang the 9 men, Shell paid the families of the victims a settlement sum of US\$15 million. Shell continued to deny any liability for the deaths, and alleged the settlement was part of a "reconciliation process."

In the Niger Delta, oil spills (on land and offshore) and toxic waste dumping are commonplace, as is the environmentally hazardous practice of gas flaring. Local communities are forced to drink, bathe in, cook and wash with polluted water and eat food contaminated by the pollution.

Amnesty International reports, "This pollution, which has affected the area for decades, has damaged the soil, water and air quality. Hundreds of thousands of people are affected, particularly the poorest and those who rely on traditional livelihoods such as fishing and agriculture. The human rights implications are serious, under-reported and have received little attention from the government of Nigeria or the oil companies." [xx]

According to a May 2010 report by John Vidal, environment editor of the Guardian, "more oil is spilled from the Delta's network of terminals, pipes, pumping stations and oil platforms every year

than has been lost in the Gulf of Mexico.”[xxi] On 1 May 2010, a ruptured ExxonMobil pipeline spilled more than a million gallons into the Niger Delta. Local people demonstrated against the company but say they were attacked by security guards. In stark contrast to the recent Gulf of Mexico spill, spills in the Delta attract little global attention.

## **RENEWABLE ENERGY REVOLUTION**

Whilst it is essential to ensure that those responsible for activities causing environmental and human rights abuses are held accountable, it is also crucial to address the very source of those activities: our addiction to oil.

In his speech President Obama called the current crisis in the Gulf a “painful and powerful reminder,” that “the time to embrace a clean energy future is now.” [xxii]

While Obama’s decision to embrace a “clean energy future” is a positive step, we must be clear that our energy future can only be clean without recourse to nuclear power and carbon capture and storage (CCS). Coal power stations fitted with CCS technology and nuclear power are *not* renewable energies and are not sustainable energy sources. Nuclear technology is not low-emission and it cannot address the issues of climate change. Greenhouse gases are emitted at every stage of the nuclear fuel chain, from the mining, to uranium enrichment, through transportation and the construction of nuclear plants. In addition we should not forget that uranium is a finite fuel supply and its mining presents serious health risks. Environmental and human rights abuses of the kind committed by oil companies as mentioned above, have also been committed in the quest for uranium. In particular, nuclear giant Areva has been severely criticised for the damage to the environment and local populations caused by its activities in Niger [xxiii].

Promoting renewable energy must now become a global and universal priority. We had an Industrial Revolution and a Technology Revolution; today we must embark on a New Copernican Revolution. We must shift from a fossil fuel economy to a renewable economy. This revolution should be driven by energy and climate security concerns. Our reliance on oil has created energy dependency and fuelled conflicts. It has created catastrophic climate change.

Climate change is changing rainfall patterns, making places hotter, storms worse, raising sea levels. As climate change kicks in, the tropical and subtropical countries of Africa, South Asia, and Latin America will heat up more and more, with temperatures becoming increasingly intolerable. Droughts will affect large parts of Africa, Asia and Latin America. Melting glaciers will flood river valleys and then, when they have disappeared, unprecedented droughts will occur.

During the Copenhagen summit, Maldives President Mohamed Nasheed said, it may already be too late to help low-lying island states: "If all the developed nations stop their emissions today, and if we take business as usual, we will still drown."

In order to make a renewable energy economy work it is imperative to think about the potential economic and political benefits – rather than the costs – of the transition. Nothing is macro-economically more necessary, more practical or cheaper than the conversion of our energy systems from conventional to renewable energy. Renewable energy is often misrepresented as too expensive; however this argument does not take into account the externalities of conventional energy production – its human and environmental costs and its contribution to climate change. Any cost-benefit analysis on energy production must take a broader perspective and consider all the associated costs.

Mark Lewis, Managing Director of Commodities Research, Deutsche Bank emphasises the urgent need to subsidize alternative energies: “the era of cheap, readily available fossil-fuel energy is ending. Reserves of oil and gas are diminishing, and fossil-fuel use is causing potentially catastrophic climate change. Within decades, these two looming problems will raise the cost of using fossil fuels enough to make renewable alternatives economically superior. But waiting for market forces to bring about the shift to renewable energy will make this transition difficult and painful, in part because of the volatility of fossil-fuel prices. A far better policy is to begin subsidizing alternative fuels now using the energy surplus from conventional fossil fuels, especially crude oil, while this is still high enough.”[xxiv]

Governments, such as the UK and the US, have been slow to embrace a renewable energy economy. On 27 May 2010 the Secretary of State for Energy, Chris Huhne, called it a "scandal" that in 2009 the UK still generated only 6.6% of its electricity from renewables." In the US, renewable energy constituted 10.5 % of domestically produced electricity in 2009. [xxv] In contrast in Germany, the share of electricity from renewable energy stood at 16.1 % in 2009, and in Sweden, 43 % of the *total* energy supply comes from renewable sources [xxvi]. The delays in investment and adoption of renewable energies are environmentally and economically inexcusable.

We cannot achieve a renewable energy revolution without the democratisation and decentralisation of energy production, distribution and consumption. There must be a shift from a centralised system in which a few companies monopolise energy production and distribution, to a democratic system where energy can be produced and distributed locally, by small scale enterprises. This will make energy accessible and affordable to the majority.

As President Obama pointed out in his address to the nation on 15 June, we must look beyond “the crisis of the moment.”[xxvii] The disasters with BP in the US, Texaco in Ecuador and Shell and ExxonMobil in Nigeria to name but a few, clearly demonstrate that our insatiable oil addiction must be curbed. Our fossil fuel economy is not only unsustainable, but it is threatening our survival and the survival of future generations. Now is the moment to decide if we are willing to die for fossil fuel, or if we have the courage and commitment to wean ourselves off oil and to shift from conventional energy to renewable energy.

## **ACCOUNTABILITY**

Obama has said, "BP is responsible for this leak. BP will be paying the bill." [xxviii] If only corporations could just “pay the bill,” and instantly restore the lives of those who perished, the invaluable natural habitats, ecosystems and marine life that their activity has destroyed. But the “bill” is incalculable. We cannot buy human life, or our planet back.

It is a shame that it had to take a catastrophe of enormous proportions to happen in the US, to bring the world’s attention to the irrational exploitation and dangerous policies of oil and gas companies worldwide.

Ben Ikari, a member of the Ogoni tribe from the Niger Delta states: "If this Gulf accident had happened in Nigeria, neither the government nor the company would have paid much attention. This kind of spill happens all the time in the delta. The oil companies just ignore it. The lawmakers do not care and people must live with pollution daily. The situation is now worse than it was 30 years ago. Nothing is changing. When I see the efforts that are being made in the US I feel a great sense of sadness at the double standards. What they do in the US or in Europe is very different." [xxix]

It is crucial that we set global standards of accountability, and put an end to the ubiquitous double standards that pervade the international system. It is time to end the culture of impunity that has plagued the developing world for so long, and for governments throughout the world to hold corporations to account, and protect their citizens, and their natural resources.

In its report on the Niger Delta, Amnesty International warns, “A lack of accountability and the inability of those affected to access justice or receive adequate reparations and remedies, has perpetuated the context of human rights violations and encouraged them to occur again and again. So long as impunity for abuses of the environment and human rights remains entrenched, so too will the poverty and conflict that has scarred the Niger Delta.”[xxx]

Leadership is crucially needed for an effective international judicial mechanism to be put in place so that we can hold these companies, their CEOs and their management to account in a court of law, not only for the crimes they are committing today, but for the irreversible damage they are causing to the world in which future generations must live. Recognition of these acts as ‘crimes’ will give future generations a voice and, more importantly, actionable rights which they currently lack.

In the words of the World Commission on Environment and Development in 1987: “*Future generations are disadvantaged with respect to the present generation because they can inherit an impoverished quality of life. [...] Future generations are disadvantaged because they are mute, have no representatives among the present generations. Consequently, their interests are often neglected in present socio-economic and political planning. They cannot plead or bargain for reciprocal treatment since they have no voice...*”[xxxi]

As citizens of the world we are responsible for the future of our planet. We are accountable to future generations. As citizens of developed countries, our responsibility is even greater. We have been and still are the main beneficiaries of the economic developments which have led to climate change and we should act now to prevent further irreversible damage. We need strong leadership to ensure that those who are responsible for environmental damage throughout the world are brought to justice. We need courageous environmental policies that will move beyond petroleum and embrace a renewable energy revolution. We require concrete action. Our future and the fate of future generations depend on how decisively, courageously and responsibly we act now.

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i International Court of Justice. *The Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, ICJ Report 1996, p. 226. In the Opinion the ICJ “recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn”; Judge Weeramantry *Dissenting Opinion*, p.233.

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iv [www.guardian.co.uk/environment/2010/jun/12/bp-oil-spill-gulf-mexico](http://www.guardian.co.uk/environment/2010/jun/12/bp-oil-spill-gulf-mexico)

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- xvii Cabrera Report, 2008
- xviii Gerrard, MB. *The Law of Environmental Justice: Theories and Procedures to Address*, p. 772
- xix <http://www.essentialaction.org/shell/issues.html>
- xx Amnesty International – “Nigeria: Petroleum, pollution and poverty in the Niger Delta” – June 2009, p.9.  
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- xxii [http://www.huffingtonpost.com/2010/06/15/obamas-gulf-spill-speech\\_n\\_613554.html](http://www.huffingtonpost.com/2010/06/15/obamas-gulf-spill-speech_n_613554.html)
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- xxix <http://www.guardian.co.uk/world/2010/may/30/oil-spills-nigeria-niger-delta-shell>
- xxx Amnesty International report, op. cit. p.79.
- xxxi World Commission on Environment and Development, *Our Common Future* (Oxford: OUP, 1987) at 13.