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Will the Real Eco-Terrorists Please Stand Up?

Zoe Gallagher*

ABSTRACT

Although definitions of “terrorism” vary around the world, one visceral feeling is constant: terrorists are morally corrupt individuals who commit heinous acts of violence, and they deserve to be punished accordingly. However, the reality is far more nuanced. Currently, United States law defines a terrorist as any person who commits an act of violence to advance a political or social agenda. Under this law, some radical environmental activists have been unfairly designated as eco-terrorists, even though their actions have not caused widespread destruction or death. In contrast, oil and gas company executives have largely escaped any criminal or civil liability, despite the fact that their actions have devastated entire regions and killed thousands. In Part I, this note examines the actions of convicted eco-terrorists and the existing eco-terrorism framework that led to their convictions. Part II details the actions of oil and gas companies and their far-reaching impacts on both the regions in which they operate and on the global community. Part III outlines the current legal framework for holding oil and gas companies accountable for their actions and demonstrates its limitations. And finally, Part IV proposes a new legal framework to shine a light on the questionable practices of oil and gas companies and outlines how these corporations could be convicted under eco-terrorism laws.

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INTRODUCTION

Seventy radical environmentalists have faced federal prosecution for their acts of protest.¹ Eighteen of these individuals were charged under anti-terrorism laws while another twenty received terrorism sentencing enhancements despite the absence of charges under anti-terrorism laws.² This sent the protesters to maximum security prisons around the country, facilities which are usually reserved for extremely violent criminals.³ Although crimes labeled as “eco-terrorism” have been largely non-fatal, radical environmentalists have nonetheless been imprisoned with convicted murderers, members of the Ku Klux Klan, and top Taliban officials, including the mastermind of the 1998 U.S. embassy bombings in Nairobi, Kenya that killed over 250 people.⁴ This puzzling outcome is, in large part, due to the broad definition of “terrorism” in the United States. The Federal Bureau of Investigation (FBI) broadly defines “terrorism” as “the unlawful use of force or violence against persons or property to intimidate or coerce a government, civilian population, or any segment thereof, in furtherance of political or social objectives.”⁵ Similarly, eco-terrorism is defined as “the use or threatened use of violence of a criminal nature against innocent victims or property by an environmentally-oriented sub-national group for environmental-political reasons.”⁶ While the actions of many alleged “eco-terrorists” fit within this definition, the impact of their crimes pales in comparison to the actions of international oil corporations, whose actions have been linked to climate change—which causes five million deaths each year.⁷

To illustrate the illogical treatment of radical environmentalists in our justice system, one need look no further than the case of Daniel McGowan, an environmental activist formerly affiliated with the Earth Liberation Front (ELF). When McGowan was caught setting fires to uninhabited buildings in Oregon and Washington, he pled guilty to arson.⁸ He was subsequently sentenced to seven years in prison with a “terrorism enhancement,” which required that he serve out his sentence in a maximum security facility.⁹ While there, his rights and liberties were severely curtailed; for

1. Alleen Brown, *The Green Scare: How a Movement That Never Killed Anyone Became the FBI's No. 1 Domestic Terrorism Threat*, INTERCEPT (Mar. 25, 2019, 05:32 AM), <https://perma.cc/3ESA-3376>.

2. *Id.*

3. See *Yemeni National Charged with 14 Counts in Nairobi Bombing*, CNN (Aug. 27, 1998, 4:52 PM), <https://perma.cc/EP8F-42MX>.

4. Brown, *supra* note 1.

5. Lawrence Buell, *What Is Called Ecoterrorism*, 16 GRAMMA: J. OF THEORY AND CRITICISM 153, 158 n. 6.

6. *Id.* at 157–58.

7. Laura Millan Lombrana, *Climate Change Linked to 5 Million Deaths a Year, New Study Shows*, BLOOMBERG (July 7, 2021, 10:30 PM), <https://perma.cc/GL9P-6HXC>.

8. *Eco-Terrorism in the West: A Who's Who of the Convicted, the Arrested, the Missing*, OREGONIAN (Aug. 18, 2018, 11:18 AM), <https://perma.cc/X5V6-QFCM>.

9. *Id.*

instance, he was permitted only one fifteen-minute phone call each week.¹⁰ In contrast, thirteen years earlier, Shell—a multinational energy company—was accused of pumping oil into the Niger Delta from one of its facilities.¹¹ When a group of activists protested at the facility, Shell requested the assistance of a paramilitary police unit to remove them.¹² The police attacked the protestors with guns and grenades, killing 80 people, and then went on to burn 595 houses.¹³ In 2009, Shell was only asked to pay \$15.5 million in restitution—a minuscule amount when compared with Shell’s revenue of \$278.19 billion in that year alone.¹⁴

Small-scale, extreme environmentalists have consistently been prosecuted as terrorists for non-fatal crimes. However, companies like Shell—whose activities have been linked to a doubling of the infant mortality rate in the Niger Delta—have never been criminally prosecuted for their actions.¹⁵ Because a recent Intergovernmental Panel on Climate Change (IPCC) report indicates that climate change may soon outpace human capacity to adapt, it is prudent to reconsider this paradoxical framework and change how we treat companies that cause such widespread harm.¹⁶ This note compares the crimes committed by eco-terrorists with actions of oil and gas companies, analyzes the existing tools we can use to hold oil and gas companies accountable, and proposes a new legal framework for climate accountability, including labeling oil and gas companies as eco-terrorists.

I. ACTIONS OF ECO-TERRORISTS AND THE EXISTING ECO-TERRORIST FRAMEWORK

A. AMERICAN ECO-TERRORISM FROM 1990 TO 2020

The phrase “eco-terrorism” first appeared in a 1983 article written by Ron Arnold, a property rights advocate who proposed opening seventy million acres of federal wilderness to commercial development and motor traffic, which would have allowed mining in national parks, increased logging

10. *Id.*

11. *Was Shell Complicit in Murder?* AMNESTY INT’L (Nov. 28, 2017), <https://perma.cc/7ZR2-XBUU>.

12. *Id.*

13. *Id.*

14. *Shell Settles Human Rights Suit for \$15.5 Million*, NAT’L BROAD. CO. NEWS (June 8, 2009, 2:26 PM), <https://perma.cc/CML3-AUW3>; *Annual Report: Royal Dutch Shell PLC Annual Report and Form 20-F for the Year Ended December 31, 2009*, p. 10 SHELL, <https://perma.cc/27DF-ZVQR> (last visited Apr. 27, 2022).

15. See Kate Hodal, ‘*Absolutely Shocking*’: *Niger Delta Oil Spills Linked with Infant Deaths*, GUARDIAN (Nov. 6, 2017, 2:00 AM), <https://perma.cc/4QE2-WQAF>.

16. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS. CONTRIBUTION OF WORKING GRP. I TO THE SIXTH ASSESSMENT REP. OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE p. TS-11–12. (V. Masson-Delmotte et al. eds., 2021).

and oil production in Alaska, and expanded logging in old growth forests.¹⁷ He coined the phrase to further his self-proclaimed goal of “destroy[ing] environmentalists by taking their money and their members.”¹⁸ Five years later, Senator James McClure used the phrase to describe Earth First! advocates who, according to McClure, “get their kicks by hurting people and destroying property.”¹⁹ Soon thereafter, Congress passed a law that criminalized the use of a “hazardous or injurious device” on federal land with the intent to obstruct the harvesting of timber.²⁰ Violation of this statute carries a maximum sentence of twenty years in prison.²¹

Over subsequent decades, the extreme vitriol toward radical environmentalists only grew. For instance, in June of 1998, the House of Representative’s Judiciary Subcommittee on Crime held a hearing titled “Acts of Ecoterrorism by Radical Environmental Organizations.”²² In that hearing, Congressman Frank Riggs of California relayed his experience with Earth First! protestors who, attempting to deter harmful logging of old growth forest in the Congressman’s district, entered his office with a large tree stump, dumped sawdust around, and staged a sit-in with their arms locked to each other around the tree stump.²³ Although Riggs admitted that no one was injured by the protestors, he nonetheless referred to the event as an “[assault] by a group of environmental terrorists...in what was really an attack or a raid on my office.”²⁴ Rigg’s depiction of this non-violent protest exemplifies the rhetoric of fear and repulsion that existed around the fringe environmentalist movement throughout the late 1990s.

Then, on September 11, 2001, the United States—and the world—experienced a massive terrorist attack. In the largest attack on American soil since Pearl Harbor, terrorists hijacked planes that struck New York City, the Pentagon, and a small town in Pennsylvania. Nearly 3,000 civilians died.²⁵ In the wake of the attack, fear of terrorism was understandably rampant. Before 9/11, there were only 912 members in the FBI’s Joint Terrorism Task Forces.²⁶ But by 2005, the program had over 5,000 members and its budget had increased by over \$150 million.²⁷ The widespread public

17. Rebecca K. Smith, “Ecoterrorism”?: *A Critical Analysis of the Vilification of Environmental Activists as Terrorists*, 38 LEWIS & CLARK ENV’T. L.J. 537, 545–546 (Spring, 2008).

18. *Id.* at 545.

19. 134 CONG. REC. 30, 811 (1988) (statement of Sen. James McClure).

20. Smith, *supra* note 17 at 547.

21. *Id.*

22. *Id.* at 548.

23. *Id.*

24. *Id.* at 549.

25. Devon Haynie, *The Long-Reaching Human Toll of Sept. 11, by the Numbers*, U.S. NEWS & WORLD REP. (Sept. 10, 2021, 6:07 PM), <https://perma.cc/TE5M-LUNX>.

26. Conrad Wilson, *The Many Lives of Joseph Dibebe*, OR. PUB. BROAD. (Mar. 12, 2021), <https://perma.cc/N9UZ-5HY9>.

27. *Id.*

fear—and the increased funding for fighting terrorism—created for the “Green Scare”: a mass mobilization of federal resources geared towards wiping out so-called “eco-terrorists.”²⁸ Although these eco-terrorists used only non-violent methods of protest (such as peaceful marches and property damage), a U.S. government official described eco-terrorists as “hardened criminals” and stated ominously that it was “only a matter of time before their parade of terror results in loss of human life.”²⁹ Consequently, targeting the “eco-terrorism” movement became the FBI’s top priority.³⁰

B. OPERATION BACKFIRE

In response to a series of crimes committed between 1995 and 2001 in the Pacific Northwest, the FBI began investigating the ELF as part of what became known as Operation Backfire. The ELF, also known as “The Family,” was investigated and ultimately linked to more than 40 criminal acts ranging from vandalism to arson, which caused a total of approximately \$45 million in damages.³¹ “The Family” was indicted in 2005 by then-FBI Director Robert Mueller. At a press conference announcing the indictment, Mueller stated that “terrorism is terrorism, no matter what the motive” and that the FBI would vigorously pursue “extremist movements whose criminal acts threaten the American economy and American lives.”³² The indictment has thus far led to the conviction of six men and five women, all of whom received sentences ranging from three to thirteen years.³³ Yet, the life stories of members of the ELF highlight the virtuous nature with which they committed their crimes, a nature which starkly differs to the brutality of corporate greed displayed by corporations like Shell, for example.

Joseph Mahmoud Dibee, a prominent member of “The Family,” fled Syria at the age of eight with his parents to escape the political violence of the Lebanese Civil War.³⁴ When he moved to the Seattle area, he found safety and a love for nature.³⁵ He became interested in environmental causes when he realized that a forest he loved exploring as a child had been destroyed during a logging operation.³⁶ This realization—along with some

28. Brown, *supra* note 1.

29. *Eco-Terrorism and Lawlessness on the Nat'l Forests, Oversight Hearing Before the Subcomm. on Forest Health of the H.R. Comm. On Res.*, 187 Cong. 2 (2002) (statement of Rep. Scott McInnis of Colo.).

30. Brown, *supra* note 1.

31. Press Release, U.S. Dep't of Just., Off. of Pub. Aff., Or. Domestic Terrorism Suspect in Custody After 12 Years on the Run (Aug. 10, 2018, 6:17 AM), <https://perma.cc/99S8-GYVT>.

32. Wilson, *supra* note 26.

33. OREGONIAN, *supra* note 8.

34. Wilson, *supra* note 26.

35. *Id.*

36. *Id.*

disturbing findings from an investigation by the Associated Press—galvanized Dibee to action.³⁷ Over the next several years, Dibee participated in numerous extreme acts of protest. Among them: burning down a facility that adopted wild horses from the federal government, slaughtered them, and sold their meat, and torching a ski lodge in Vail, Colorado which threatened the habitat of the endangered lynx.³⁸

Once indicted for these crimes, Dibee fled the county and evaded capture for 12 years, until August of 2018.³⁹ Upon the announcement of his capture, FBI Assistant Director McGarrity stated that his mission was—and always would be—to “bring to justice those who threaten [U.S.] national security or seek to harm the American people.”⁴⁰ Dibee was charged with several arson-related charges in three states (Oregon, Washington, and California).⁴¹ After his capture, Dibee spent two years in pre-trial custody at the Multnomah County Jail (where another inmate punched him in the face, breaking his jaw) and contracted COVID-19.⁴² He was finally released on house arrest to his family’s home in Seattle where he awaited federal trial until he pled guilty in March 2022.⁴³ The details of his plea deal have yet to be publicized.⁴⁴ However, Dibee’s charges could carry up to 20 years in prison and he could also be jointly responsible for millions of dollars in restitution.⁴⁵ Assistant U.S. Attorney Quinn Harrington stated that the deal would “resolve” all of Dibee’s federal charges in all three states, including dismissal of the charges against Dibee in Washington.⁴⁶

Dibee is not the only member of “The Family” whose actions force us to reconsider our understanding of what a “terrorist” is. Daniel McGowan, a New York City native and the star of Marshall Curry’s documentary, “If A Tree Falls,” is now a paralegal at the American Civil Liberties Union (ACLU) Criminal Law Reform Project.⁴⁷ When he was arrested in 2005, McGowan was threatened with a 335-year sentence, perhaps because he refused to cooperate with the government by becoming an informant.⁴⁸ In 2006, McGowan was charged with seventeen acts of domestic

37. *Id.*

38. *Id.*

39. U.S. Dep’t of Just., *supra* note 31.

40. *Id.*

41. *Id.*

42. Wilson, *supra* note 26.

43. Conrad Wilson, *Joseph Dibee Agrees to Plead Guilty to Decades-Old Charges of Env’t Extremism*, OR. PUB. BROAD. (Mar. 29, 2022, 3:58 PM), <https://perma.cc/F5TM-JYFG>.

44. *Id.*

45. Wilson, *supra* note 26.

46. Wilson, *supra* note 44.

47. John Anderson, *Activist or Terrorist, Rendered in Red, White and Green*, N.Y. TIMES (June 8, 2011), <https://perma.cc/N3AB-TMSS>; Bio of Daniel McGowan, ACLU <https://perma.cc/NQJ8-367P>.

48. Jessica Lee, *Enemy of the State: The Story of Daniel McGowan*, INDEPENDENT (Sept. 15, 2007), <https://perma.cc/V9QN-8AAS>.

terrorism for participating in the \$12 million arson of the Vail Ski Resort in Vail, Colorado, in 1998 and the sabotage of a high-tension power line near Bend, Oregon, in 1999.⁴⁹ After months of legal maneuvering, McGowan accepted a plea deal which required a prison sentence of only seven years.⁵⁰ However, because one of the arsons for which McGowan was convicted was at a location that created genetically modified trees, prosecutors argued that McGowan had attempted “to influence the policy of a government by intimidation or coercion,” which triggered the “terrorism enhancement.”⁵¹

In later years, McGowan pondered whether it is safe or responsible for the United States government to label political activists such as himself “terrorists” even though their actions never physically injured or killed anyone.⁵² Speaking about his involvement with the ELF, McGowan stated that he viewed their actions as a justifiable means to an important end, noting that “the actions were not grotesque or not about destroying things” but merely designed to call attention to the pressing issue of climate change.⁵³ While that could fit within the FBI’s broad definition of “terrorism,” (i.e., the ELF tried to bring about a social change but used illegal methods to do so), McGowan’s lawyers argued—and I agree—that the label of “terrorist” should be reserved for “the most dangerous types of offenses that threaten the fabric of our society,” not those who ensure that their acts do not harm animals or humans.⁵⁴

II. ACTIONS OF OIL AND GAS COMPANIES

Oil companies such as Shell and Exxon have long been criticized for their role in climate-related death and violence, on both local and global scales.⁵⁵ In the past three decades alone, the fossil fuel industry has dumped more than 18 billion gallons of toxic wastewater into rivers, opened nearly 2.5 million acres of indigenous homeland to land speculation, colonization

49. *Eco-Terror Indictments: ‘Operation Backfire’ Nets 11*, FED. BUREAU OF INVESTIGATIONS (Jan. 20, 2006), <https://perma.cc/KF69-V3TX>.

50. Lee, *supra* note 48.

51. *Id.*

52. See Daniel McGowan, “Little Guantanamo”: *Exposing the CMU*, PRISON LEGAL NEWS (June 15, 2009), <https://perma.cc/2K6R-5SQL>.

53. Lee, *supra* note 48.

54. Camilla Mortensen, *Former ELF Eco-Saboteur Speaks at the UO*, EUGENE WKLY. (Apr. 6, 2017), <https://perma.cc/GZ9D-8MWY>.

55. Shell has been the subject of scrutiny (and therefore media and academic attention) because of their well-documented and public acts of violence. Exxon, on the other hand, is largely scrutinized for knowing about and actively concealing the long-term environmental damage that their operations would produce. See, e.g., Oliver Millman, *Criticism Intensifies After Big Oil Admits ‘Gaslighting’ Public Over Green Aims*, GUARDIAN (Sept. 17, 2022, 6:00 AM), <https://perma.cc/B86E-YKTV>.

and deforestation, and caused approximately 45,000 premature deaths.⁵⁶ There is an indisputable causal relationship between these companies and climate change and new studies indicate that 10% of annual global deaths can be linked to climate change.⁵⁷

Oil companies consistently exploit the communities in which they operate to devastating effect. One striking example of this is Shell's business operations in the Niger Delta. Shell first began to prospect for oil in Nigeria in 1958.⁵⁸ Twenty years later, the first shipment of Shell oil left Nigeria, beginning a nearly seventy-year regime of ecological damage, political strife, and warfare. As oil companies turned record profits, Nigerians lived on an average of \$1/day, while their communities and natural resources were plundered.⁵⁹ Today, the Niger Delta is one of the most polluted regions in the world, with more oil spilled in the region every year than what was spilled in the massive 2010 Deep Water Horizon spill in the Gulf of Mexico.⁶⁰ Shell itself reported that there have been at least 1,010 oil spills since 2011.⁶¹ And in 2012 alone, an estimated 16,000 babies died before they turned one month old because of oil pollution in the Niger Delta.⁶² Unsurprisingly, this combination of brutality and poverty has resulted in immense loss and widespread political unrest.

The global community became aware of the plight of this region when, in 1995, Ken Saro-Wiwa was executed by the Nigerian government.⁶³ Ken Saro-Wiwa was an acclaimed Nigerian writer and the leader of the Movement for the Survival of the Ogoni People (MOSOP), a group formed to oppose both the appropriation of Ogoni land without adequate compensation and the environmental damage caused by Shell's operations.⁶⁴ In response to the emergence of MOSOP, Shell's subsidiary in Nigeria hired the Nigerian police and military to "suppress" the resistance's activity and ensure development activities could continue "as usual."⁶⁵

56. *Climate Crisis is Aggravating Human Rights Violations Caused by the Fossil Fuel Industry, Alerts 350.org Report*, 350.ORG (Feb. 7, 2020), <https://perma.cc/3FCM-WEBG>.

57. Millman, *supra* note 55; Lombrana, *supra* note 7.

58. Adam Vaughan, *Oil in Nigeria: A History of Spills, Fines, and Fights for Rights*, GUARDIAN (Aug. 4, 2011, 4:22 AM), <https://perma.cc/6D47-H23Y>; Reuters Staff, *Timeline: Shell's Operations in Nigeria*, REUTERS (Sept. 23, 2018), <https://perma.cc/EKZ6-DMB6>.

59. *Id.*

60. John Vidal, *Shell Oil Spills in the Niger Delta: 'Nowhere and No One has Escaped'*, GUARDIAN (Aug. 3, 2011), <https://perma.cc/5XJ4-KYPS>.

61. Paul Carsten, *Amnesty Says Shell, Eni Negligent on Nigeria Oil Spills*, REUTERS (Mar. 15, 2018), <https://perma.cc/YV6Y-H8BU>.

62. Rebecca Ratcliffe, *'This Place Used to be Green': The Brutal Impact of Oil in the Niger Delta*, GUARDIAN (Dec. 6, 2019), <https://perma.cc/BDL3-YFFF>.

63. *Wiwa v. Royal Dutch Petroleum Co.*, 2002 U.S. Dist. LEXIS 3293, at 1 (S.D.N.Y. Feb. 22, 2002).

64. *On Trial: Shell in Nigeria*, AMNESTY INT'L 13 (2020), <https://perma.cc/L96C-9SVH>; *Wiwa*, 2002 U.S. Dist. LEXIS 3293, at 1.

65. *Wiwa*, 2002 U.S. Dist. LEXIS 3293, at 1, 5.

Members of the military entered Ogoni villages and beat, raped, shot, and killed villagers, immediately igniting protests and riots.⁶⁶ As the protests raged on, the military captured members of opposition groups, including Ken Saro-Wiwa and eight other members of MOSOP.⁶⁷ According to a complaint later filed in the New York Southern District Court, Wiwa and his counterparts (now known as the “Ogoni Nine”) were convicted by a tribunal—which had been orchestrated by Shell—that included testimony from witnesses who Shell had bribed to lie on the stand.⁶⁸ After being convicted of murder by the tribunal, all nine men were executed by hanging.⁶⁹ In the years since, former Ogoni members of the Shell police have come forward and said that they had deliberately created conflict between different factions of protesters and had intimidated and harassed MOSOP members during the height of the MOSOP protests in 1993 and 1994.⁷⁰ Thus, under the guise of government action, Shell was directly complicit in the killing of nine men who spoke up against their actions in the Ogoni region of Nigeria.

However, while some of the science and statistics surrounding climate change remain amorphous, causally attenuated, and therefore difficult to link to criminal charges, the killing of nine (if not dozens more) people in Nigeria is an explicit violation of global legal norms. Despite this, neither Shell nor its counterparts have ever been criminally charged—let alone prosecuted—for their actions in that region. That is, at least in part, because of the way Shell operates its facilities. Shell, as its former name (Royal Dutch Shell) indicates, is a Dutch company. Unlike most other major oil companies, which rely primarily on the support of their home government, Shell works closely with the governments where its facilities are located to maintain its oil operations abroad.⁷¹ Because of this unique style of collaboration, Shell is particularly susceptible to charges of complicity in human rights abuses perpetrated by those governments (and likewise, these governments can often be linked to corporate human rights abuses).⁷² In Nigeria, for example, Shell’s Nigerian subsidiary (the Shell Petroleum Development Company) is a minority shareholder in a joint venture with the Nigerian National Petroleum Company.⁷³ The government and Shell are

66. AMNESTY INT’L *supra* note 11.

67. *Id.*

68. Complaint for Summary Execution at 13–14, *Wiwa v. Royal Dutch Petroleum Co.*, 2002 U.S. Dist. LEXIS 3293 (Nov. 8, 1996) (No. 96 CIV. 8386).

69. *Id.* at 13.

70. Bronwen Manby, *The Price of Oil*, HUM. RTS. WATCH, 12 (Jan. 1999), <https://perma.cc/3Z8R-WLP7>.

71. Caroline Kaeb, *Emerging Issues of Hum. Rts. Resp. in the Extractive and Mfg. Indus.: Patterns and Liab. Risks*, 6 NW. U. J. INT’L HUM. RTS. 327, 329 (2008).

72. *Id.*

73. Richard Boele et al., *Shell, Nigeria and the Ogoni. A Study in Unsustainable Development: I. The Story of Shell, Nigeria and the Ogoni People - Environment, Economy, Relationships: Conflict and Prospects for Resolution*, 9 SUSTAINABLE DEV. 74, 83 (2001).

therefore inextricably tied, which further muddies the already complex process of assigning culpability in cases of human rights violations. Shell's own statements in response to public outcry surrounding its oil operations in Nigeria illustrates that conundrum: "major human rights violations do not generally exist in a vacuum, but within a nexus of corruption, poverty, poor public services and infrastructure, governmental instability and other factors which make it difficult for business to operate."⁷⁴ In other words, because Shell's operation was not the *only* cause of the human rights violations, they cannot be held accountable. This frustrating and deeply unjust truth is even more appalling when contrasted with the punishments meted out on radical environmentalists charged with eco-terrorism.

In 2002, Scott McInnis, Chairman of the House Subcommittee on Forests and Forest Health, boasted:

"Just yesterday, a man was sentenced to eighteen years in prison for firebombing seven large homes under construction in the Phoenix area in 1999 and 2000. Earlier this year, two known members of the Animal Liberation Front were sentenced to prison terms after police officers caught them making a bomb in a parking lot after midnight. Last year, a man believed to be associated with ALF was sentenced to twenty-two years in prison for his role in firebombing a Eugene, Oregon car dealership."⁷⁵

Indeed, in 1999, two unrelated crimes occurred: a radical environmentalist set fire to seven uninhabited, partially constructed luxury homes outside of Phoenix to protest the "relentless destruction of open spaces," and security forces the fatally shot dozens of youths who were protesting the presence of oil companies in Nigeria.⁷⁶ Only one of these crimes was labeled terrorism and resulted in criminal prosecution.

III. CURRENT FRAMEWORK FOR HOLDING OIL AND GAS CORPORATIONS LEGALLY ACCOUNTABLE

Although frustrating, the differing treatment of eco-terrorists and oil companies makes some legal sense because, while oil companies have wrought terror on communities both domestically and abroad, they are not "terrorists" as defined by the FBI. One possible explanation for this is obvious: because oil and gas companies have never been labeled as

74. Kaeb, *supra* note 71.

75. *Eco-Terrorism and Lawlessness on the National Forests: Oversight Hearing Before the Subcomm. on Forests and Forest Health of the H.R. Comm. On Res.*, 187th Cong. 3 (2002) (statement of Rep. Scott McInnis, Chairman, Subcomm. on Forests and Forest Health).

76. James Sterngold, *An Arrest in Series of Fires in Phoenix Adds a Plot Twist*, N.Y. TIMES (June 23, 2001), <https://perma.cc/38F4-QWKP>; Manby, *supra* note 70.

“terrorists,” there is no established precedent to support that designation. But, when scrutinized more closely, it seems untenable that a corporation that has committed unspeakable atrocities—such as murdering the Ogoni Nine, causing thousands of infant deaths, and contributing to the myriad ongoing public health crises created by global warming—could not be held criminally liable. The American notions of justice and accountability, such as those espoused by Robert Mueller when he announced the arrests resulting from Operation Backfire, can—and should—be applied to all those who cause the greatest harm.⁷⁷ However, there have been some attempts to hold oil and gas companies civilly liable for the environmental destruction they have caused. These attempts, while rare and far less aggressive than the tools used to apprehend members of “The Family,” can be sorted into two groups: first, civil liability using traditional legal theories, (namely fraud and torts claims) and second, civil liability using emerging legal theories.⁷⁸

A. CIVIL LIABILITY USING TRADITIONAL LEGAL THEORIES

The fight for holding oil and gas companies civilly liable using traditional legal theories can be exemplified using two lines of cases. First, several cases brought by the states of Massachusetts and New York against Exxon Mobil Corporation epitomize the difficulties inherent in holding oil giants accountable for fraud. And second, a case litigating the treatment of the Ogoni Nine demonstrates how the Alien Tort Claim Act has successfully been used to demand justice.

i. The Exxon Trilogy

In late 2015 and early 2016, the New York Attorney General (NYAG) and Massachusetts Attorney General (MAG) served Exxon with subpoenas and civil investigative demands for records relating to its historical

77. Charlie Savage, *Justice Dept. Accuses 11 of US Eco-Terrorism*, BOSTON GLOBE (Jan. 21, 2006), <https://perma.cc/B496-3RHV>.

78. Just as there have been attempts to hold oil and gas companies civilly liable domestically, so too have there been internationally. Many of these cases show promise, for example, in 2012 a group of 11,000 Ogoni Nigerians sued Shell at the London High Court, seeking tens of millions of dollars in compensation for the 2008 oil spills in the region. Reuters Staff, *supra* note 58. In 2015, Shell accepted liability for the spills, agreed to pay \$83 million to Bodo villagers, and pledged to clean up Bodo lands and waterways. *Id.* In 2008, four widows of the Ogoni Nine filed suit against Shell, and in 2013, a Dutch court ruled that Shell could be held partially liable for the pollution in the Niger Delta. *Id.* Even more promising, in May of 2021, a Dutch District Court ordered Shell to cut its emissions by 45% by 2030 compared to 2019 levels, representing the first time a company has been legally obliged to align its policies with the Paris climate accords. *Shell: Netherlands Court Orders Oil Giant to Cut Emissions*, BBC (May 26, 2021), <https://perma.cc/BGJ8-7FU3>. Because this paper focuses on prosecution of eco-terrorists and oil and gas companies domestically, however, those cases are not discussed in depth.

knowledge of climate change.⁷⁹ A few years later, NYAG and MAG separately took Exxon to court in two cases, *New York State v. Exxon Mobil Corp.*, and *Commonwealth v. Exxon Mobil Corp.*, respectively.

The action in *Commonwealth v. Exxon Mobil Corp.* alleged that Exxon systematically and intentionally misled its investors and consumers about climate change.⁸⁰ The state requested injunctive relief, \$15,000, and an award of costs and attorney's fees.⁸¹ After years of forum changes, Exxon filed a motion to dismiss for lack of personal jurisdiction and for failure to state a claim upon which relief can be granted.⁸² The Suffolk County Superior Court found that Exxon's business dealings within the state of Massachusetts were sufficient to apply the State's long-arm statute (there are over three hundred retail service stations under the Exxon and Mobil brands in Massachusetts) and so the court denied Exxon's motion to dismiss for lack of personal jurisdiction.⁸³ The Court also found that the Commonwealth's allegations of investor deception, deceptive advertising, and greenwashing were viable and therefore denied the motion to dismiss for failure to state a claim upon which relief can be granted.⁸⁴ However, the Court chose not to resolve Exxon's contention that the complaint sought to compel speech in violation of the First Amendment.⁸⁵ Exxon appealed to the Supreme Judicial Court in Massachusetts, which affirmed the dismissal of Exxon's special motion in May of 2022.⁸⁶

Similarly, in *New York State v. Exxon Mobil Corp.*, the NYAG filed an action alleging that Exxon had "defraud[ed] investors by hiding the true cost of climate change regulation."⁸⁷ Specifically, the complaint alleged that Exxon perpetrated a "longstanding fraudulent scheme...to deceive investors and the investment community...concerning the company's management of the risks posed to its business by climate change."⁸⁸ The complaint asserted several causes of action, including securities fraud, persistent and repeated fraud, actual fraud, and equitable fraud.⁸⁹ The state sought injunctive relief and damages (in the form of both disgorgement of funds obtained through illegal activity and restitution to investors), as well

79. *Exxon Mobil Corp. v. Schneiderman*, 316 F. Supp. 3d 679, 687–688 (S.D.N.Y. 2018).

80. *Commonwealth v. Exxon Mobil Corp.*, No. 1984CV03333-BLS1, 2021 Mass. Super. LEXIS 371, at *1 (June 22, 2021).

81. *Id.* at 2.

82. *Id.*

83. *Id.* at 15.

84. *Id.* at 14–15, 33, 36.

85. *Id.* at 36.

86. *Commonwealth v. Exxon Mobil Corp.*, 187 N.E.3d 393, 394 (2022).

87. Jonathan Stempel, *Exxon Must Face Massachusetts Lawsuit Alleging Climate Change Deceit*, REUTERS (June 23, 2021), <https://perma.cc/C4FR-4BLC>.

88. Complaint at 1, *People v. Exxon Mobil Corp.*, No. 452044/2018, (N.Y. Sup. Ct. Dec. 24, 2018).

89. *Id.* at 86–88.

as a review of Exxon's alleged failure to apply a consistent proxy cost and the economic and financial consequences of that failure.⁹⁰

In December of 2019, a New York state judge dismissed the securities fraud and persistent fraud claims with prejudice, but let the remaining claims proceed to trial. At trial, the NYAG argued that Exxon's disclosures misled the public concerning the cost of its greenhouse gas (GHG) emissions.⁹¹ The court found, however, that the public disclosures made by Exxon during the years at issue were not misleading. Thus, after a twelve-day trial, the court found that NYAG "failed to establish by a preponderance of the evidence that Exxon made any material misstatements or omissions that misled any reasonable investor about its practices for accounting for climate risk."⁹²

Finally, in response to the investigations initiated by New York and Massachusetts, Exxon sued the Attorneys General of those states, alleging violations of their First Amendment rights.⁹³ Exxon contended, in *Exxon Mobil Corp. v. Schneiderman*, that the investigations were conducted to "retaliate against Exxon for its views on climate change and thus violate Exxon's constitutional rights."⁹⁴ The Attorneys General filed a motion to dismiss, which was promptly granted by United States District Judge Valerie Caproni, who called Exxon's requested relief "extraordinary" because it asked a federal courts to "stop state officials from conducting duly-authorized investigations into potential fraud."⁹⁵

Pending the outcome of *Commonwealth v. Exxon Mobil Corp.* at the Massachusetts Appellate Court, these three cases have resulted in no meaningful progress in terms of accountability for oil and gas companies.

ii. Wiwa et al v. Royal Dutch Petroleum et al.

The Alien Tort Claim Act (ATCA) was enacted in 1789 and gave federal courts jurisdiction over claims filed by non-U.S. citizens for torts committed in violation of the laws of nations.⁹⁶ It was first used to litigate human rights claims in the landmark 1979 case *Filártiga v. Peña-Irala*, but the Supreme Court has since limited the types of claims that can be brought under the statute.⁹⁷ However, some successful claims have been brought against oil companies using the ATCA. For instance, on November 8, 1996, about one year after the hanging of Ken Saro-Wiwa and the eight other men

90. *Id.* at 89.

91. *People v. Exxon Mobil Corp.*, No. 452044/2018, slip op. at 20 (N.Y. Sup. Ct. Dec. 10, 2019).

92. *Id.* at 82.

93. *Exxon Mobil Corp. v. Schneiderman*, 316 F. Supp. 3d 679, 685 (S.D.N.Y. 2018).

94. *Id.* at 686.

95. *Id.*

96. 28 U.S.C. §1350; *Universal Jurisdiction: L. and Practice in the U. S.*, TRIAL INT'L 51 (May 2022), <https://perma.cc/2UDA-X83W>.

97. TRIAL INT'L, *supra* note 96, at 51.

that made up the Ogoni Nine, Saro-Wiwa's estate sued in a New York State court with the assistance of several non-profits.⁹⁸ The action alleged violations of international, federal, and state law and were brought against not just Shell itself, but also Brian Anderson, the former managing director of the Nigerian subsidiary of Shell.⁹⁹ Specifically, the plaintiffs asserted claims for the following tortious acts: (1) summary execution, (2) crimes against humanity, (3) torture, (4) cruel, inhuman, or degrading treatment, (5) arbitrary arrest and detention, (6) violation of the rights to life, liberty and security of person and peaceful assembly and association, (7) wrongful death, (8) assault and battery, (9) intentional infliction of emotional distress, (10) negligence of emotional distress, and (11) negligence.¹⁰⁰ The plaintiffs' claims against Anderson differed in several ways, the most pertinent of which is that the plaintiffs alleged that Anderson's conduct violated not only the ATCA but also the Torture Victim Protection Act of 1991 (TVPA).¹⁰¹ Bringing these claims under both the ATCA and the TVPA was integral: the plaintiffs premised jurisdiction over their international law claims on the ATCA and general federal question jurisdiction, so the cases would not have been allowed to proceed without a basis in United States law.¹⁰²

After thirteen years of protracted litigation (and on the eve of trial), the parties in *Wiwa* agreed to settle their dispute.¹⁰³ In exchange, the plaintiffs were awarded \$15.5 million, which was distributed among the families of the Ogoni Nine.¹⁰⁴ While this settlement is miniscule compared to Shell's annual revenue, this case is still important for two reasons. First, it was a rare victory for victims of Shell's actions in the Niger Delta. And second, it provided a blueprint for how individuals and non-profits can hold oil giants accountable for their actions, albeit only civilly. Because *Wiwa* was ultimately settled, the potential for civil liability under the ATCA and the TVPA remains unknown. However, based on other recent court decisions, four requirements must be met to bring a claim under the ATCA:

- (1) The defendant must be within the reach of U.S. courts (either present in the U.S. or have sufficient contacts to the U.S.);
- (2) The human rights abuse alleged must violate a specifically defined, universally accepted, and obligatory norm of international law, such as torture, extrajudicial killing, crimes against

98. *Wiwa, et al. v. Royal Dutch Petroleum Co., et al.*, No. 96 Civ. 8386, 2002 WL 319887 (S.D.N.Y. Feb. 28, 2002).

99. *Id.*

100. *Id.* at 2.

101. *Id.*

102. *Id.*

103. Ingrid Wuerth, *Wiwa v. Shell: The \$15.5 Million Settlement*, AM. SOC'Y OF INT'L L. (Sept. 9, 2009), <https://perma.cc/NT3Y-KAJ6>.

104. Press Release, Settlement Reached in Human Rights Cases Against Royal Dutch/Shell, Ctr. for Const. Rts. (June 8, 2009), <https://perma.cc/242J-AKJW>.

humanity, war crimes, genocide, or slavery; (3) The claims must have a sufficient nexus to the U.S.; and (4) The perpetrator must be either directly or indirectly liable.¹⁰⁵

In short, while establishing corporate liability for environmental damage may still be theoretical, there are several existing legal pathways worth exploring.

B. CIVIL LIABILITY USING EMERGING LEGAL THEORIES

There are promising signs that new legal theories may help hold oil companies accountable. For instance, in the first case of its kind, the city of Baltimore recently sued major oil and gas companies (including British Petroleum, Exxon, and Shell), arguing that the fossil fuel “giants” should pay for the costs of climate change because they had knowledge that their products would cause “potentially catastrophic” global warming.¹⁰⁶ Like many other cities, Baltimore has seen intense increases in flood damage, heat waves, and other deadly consequences of global climate change.¹⁰⁷ Additionally, because the city’s stormwater and sewage systems are over one hundred years old, they are ill-equipped to handle increased pressure due to climate change.¹⁰⁸ Consequently, raw sewage frequently backs up into people’s homes or flows into waterways when the city is hit with heavy rain.¹⁰⁹ The suit thus alleged that the defendants had “substantially contributed” to global warming—and, by extension, to the severe damage Baltimore is experiencing—“while simultaneously deceiving consumers and the public about the dangers associated with those products.”¹¹⁰

The case quickly became an issue of jurisdiction, and when it reached the Supreme Court in 2021, that Court considered only one question: whether a federal court could hear the case at all.¹¹¹ In other words, the Supreme Court side-stepped the merits of Baltimore’s claim, and decided instead that a federal appeals court should decide where the Baltimore lawsuit is heard.¹¹² On April 7, 2022, the Fourth Circuit Court of Appeals

105. TRIAL INT’L, *supra* note 96, at 52.

106. Rebecca Hersher, *Supreme Court Considers Baltimore Suit Against Oil Companies Over Climate Change*, NPR (Jan. 19, 2021, 11:12 AM), <https://perma.cc/4QR8-DXYR>.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Mayor of Balt. v. BP P.L.C.*, 2019 U.S. Dist. LEXIS 97438 (D. Md. June 10, 2019).

111. *BP P.L.C. v. Mayor of Balt.*, 141 S. Cit. 1532, 1536 (2021).

112. Hersher, *supra* note 92.

decided that the claims at issue in this case did not belong in federal court, and must instead be resolved in Maryland's state courts.¹¹³

Despite this outcome, this decision has nonetheless been heralded as a victory for environmental advocates by people like Karen Sokol, a law professor at Loyola University who has written extensively on climate liability cases.¹¹⁴ Prior to the Fourth Circuit Court's ruling, Sokol predicted that a decision in favor of Baltimore would "pave the way for cases against oil and gas companies to proceed in state courts across the country," and her prediction came true.¹¹⁵ Similar cases have been filed in cities such as Oakland, California, New York City, New York, Charleston, South Carolina, and Honolulu, Hawaii; and several states—Minnesota, Delaware, and Rhode Island—have also filed suits.¹¹⁶ Indeed, the Supreme Court has since denied fossil fuel companies' petitions for writ of certiorari seeking review of the Ninth Circuit's decision that San Francisco and Oakland's public nuisance cases should be heard in state court.¹¹⁷ As these cases proceed through state courts, the threat of significant civil penalties on oil and gas companies lingers. Should the threat actualize, these companies may be incentivized to reform their behavior. Admittedly, however, even these civil penalties would not carry any jail time or criminal liability, so the consequences that oil and gas companies may face would necessarily be limited.

IV. PROPOSED FRAMEWORK FOR HOLDING OIL AND GAS CORPORATIONS LEGALLY ACCOUNTABLE

For the most part, the civil cases described above have not resulted in meaningful deterrence for oil and gas corporations and their executives. Despite clear links between climate change and deadly weather events, pollution, and infant mortality, oil giants generally face little punishment except meager fines and public disapproval. Attempts to hold oil companies responsible for their human rights violations present similar challenges and limitations. While civil litigation provides declaratory relief to plaintiffs, it has generally failed to deter further harm.¹¹⁸ Moreover, charges brought based on human rights violations are retroactive by definition; human rights must first be violated for victims to bring suit. Thus, suing oil companies

113. *Mayor of Balt. v. BP P.L.C.*, 2022 U.S. App. LEXIS 9409 (4th Cir. Apr. 7, 2022).

114. Hersher, *supra* note 92.

115. *Id.*

116. Rebecca Hersher, *Lawsuit Alleging Oil Companies Misled Public About Climate Change Moves Forward*, NPR (Jan. 25, 2022, 4:55 PM), <https://perma.cc/HN7A-62RV>.

117. *Chevron Corp. v. City of Oakland*, 960 F.3d 570 (9th Cir. 2020), *cert. denied*, 2021 U.S. LEXIS 3100 (U.S. Jun. 14, 2021) (No. 20-1089).

118. ANNALISA SAVARESI & MARISA McVEY, HUMAN RIGHTS ABUSES BY FOSSIL FUEL COMPANIES, 350.ORG p.5 (Feb. 7, 2020).

for their human rights violations is no substitute for innovative legal strategies or effective legislation that directly addresses environmental harm.

A. CONTINUED USE OF CIVIL LIABILITY AND PROPOSAL FOR USE OF CRIMINAL CHARGES

While many of the cases discussed above resulted in unsatisfactory results for those championing environmental protection, they nonetheless provide a useful blueprint for how to bring civil charges against oil and gas companies in the future. Specifically, the claims brought forth by an ever-increasing number of cities and states may result in significant penalties as they make their way through state court systems. The fact that these cases will now be heard in state courts is noteworthy because, although the Supreme Court has repeatedly held that companies cannot be sued for its emissions under federal laws, state courts are not bound by these decisions and could therefore be used strategically to hold oil companies accountable.¹¹⁹

Criminal charges, however, remain an underutilized tool in this area of law, but could provide an even larger opportunity for accountability. For instance, there was a successful criminal prosecution of British Petroleum (BP) following the Deepwater Horizon disaster that killed eleven people and spilled up to 19,000 barrels of oil into the Gulf Coast every day for a period of almost three months.¹²⁰ In *United States v. BP Exploration & Prod., Inc.*, BP was charged with fourteen criminal counts for its illegal conduct, and the two senior supervisors onboard the Deepwater Horizon were each charged with eleven felony counts of seaman's manslaughter, 11 felony counts of involuntary manslaughter, and one violation of the Clean Water Act.¹²¹ If convicted, each supervisor could have faced a maximum of five to ten years in prison.¹²² Instead, BP pled guilty and agreed to pay \$4 billion for their crimes, the largest criminal penalty in U.S. history.¹²³ U.S. District Judge Sarah S. Vance of the Eastern District of Louisiana, who imposed the sentence, specified that BP should "feel the full brunt of the penalties."¹²⁴

Should that logic apply to every death caused by big oil, then dozens more criminal prosecutions could be brought each year. Moreover, U.S.

119. See generally *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410 (2011).

120. Carrie Johnson, *BP Pleads Guilty, Will Pay \$4 Billion In Criminal Penalties For Gulf Oil Spill*, NAT'L PUB. RADIO (Nov. 15, 2012, 7:45 AM), <https://perma.cc/JD9H-CW2U>; Tom Zeller Jr., *Estimates Suggest Spill is Biggest in U.S. History*, N.Y. TIMES (May 27, 2010), <https://perma.cc/83EL-V3U5>.

121. U.S. Dep't of Just., *BP Exploration and Production Inc. Agrees to Plead Guilty to Felony Manslaughter, Environmental Crimes and Obstruction of Congress Surrounding Deepwater Horizon Incident* (Nov. 15, 2012), <https://perma.cc/9L79-7ZVN>.

122. *Id.*

123. *Id.*

124. Michael Muskal, *BP Pleads Guilty to Manslaughter in 2010 Gulf Oil Spill*, L.A. TIMES (Jan. 29, 2013, 12:00 AM), <https://perma.cc/4XBJ-VEWK>.

local and national governments can, (and should) investigate whether any of the companies or individuals responsible for these deaths meet the definition of eco-terrorist. As stated above, terrorism is the unlawful use of force “in furtherance of political or social objectives.”¹²⁵ Similarly, eco-terrorism is the unlawful use of force by “an environmentally-oriented sub-national group for environmental-political reasons.”¹²⁶ Arguably, oil companies fall under this definition because they have created pollution that has been scientifically linked to increased mortality, and “use violence of a criminal nature against innocent victims.” Additionally, these companies aim to influence environmental politics, as evidenced by the fact that Chevron, Exxon, BP, Shell, and Total collectively spent almost \$200 million a year lobbying to delay, control or block policies to tackle climate change.¹²⁷ As such, oil and gas companies that commit violent acts should be labeled, charged, and prosecuted as eco-terrorists.

B. PASSAGE OF THE CORPORATE EXECUTIVE ACCOUNTABILITY ACT

Furthermore, an alternative means of criminal prosecution has been proposed by prominent Democrats. In November of 2019, standing on stage alongside Democratic candidates for President, Senator Bernie Sanders proposed criminally prosecuting fossil fuel executives who knowingly destroyed the planet.¹²⁸ At the time, pundits referred to this proposal as one of the most “aggressive” approaches to tackling climate change.¹²⁹ But Sanders was not alone in this vision. Then presidential candidate Joe Biden made similar remarks at a town hall in New Hampshire in December of 2019, saying that not only must the U.S. do away with fossil fuels, but it must also “put [fossil fuel executives] in jail.”¹³⁰ Six months prior, Senator Elizabeth Warren introduced the Corporate Executive Accountability Act (CEAA) to Congress. This bill, which in the three years since its introduction has seen no action in Congress, would make it “unlawful for an executive officer of a corporation that generates more than \$1 billion in annual revenue to negligently permit or fail to prevent violations of federal or state law.”¹³¹ Specifically, an executive officer would be criminally liable if the corporation was: “(1) convicted or entered into a deferred or non-

125. Buell, *supra* note 5, at 158 n.6.

126. *Id.* at 157–58.

127. SAVARESI & McVEY, *supra* note 118, at 11.

128. Bernie Sanders (@BernieSanders), TWITTER (Nov. 20, 2019, 7:11 PM), <https://perma.cc/5PTM-DE7Y>.

129. Umair Irfan, *Bernie Sanders Wants to Take Fossil Fuel Companies to Criminal Court*, VOX (Nov. 20, 2019, 11:07PM), <https://perma.cc/4Y89-3M8F>.

130. Katelyn Caralle, ‘*We Should Put Them in Jail!*’ Joe Biden Wants to Prosecute Fossil Fuel Executives for Environmental Damage–But Doesn’t Mention Son Hunter Who Helped Run Ukrainian Natural Gas Giant, DAILYMAIL.COM (Dec. 30, 2019, 9:52 AM), <https://perma.cc/EDA4-NZ2G>.

131. S.R. 1010, 116th Cong. (2019).

prosecution agreement for any crime; (2) found liable or entered into a settlement with a state or federal agency for the violation of any civil law if such a violation affects the health, safety, finances, or personal data of a certain population; or (3) convicted or found liable for a different criminal or civil violation that was committed while the corporation was acting under a judgment, agreement, or settlement.”¹³² It goes without saying that, if the government could hold oil company executives criminally liable for actions that had previously resulted in civil liability, it would revolutionize the legal landscape in this area (although it would not include charges under eco-terrorism laws). Since 2000, there have been roughly three hundred civil lawsuits settled with the EPA under the Clean Air Act alone involving companies such as Chevron, Sinclair Oil, Phillips 66, and Shell.¹³³ Were the CEAA adopted, there could be 300 criminal charges brought against the executive officers of those companies. The bill further establishes penalties for violations, which range from fines to a prison sentence of up to three years.¹³⁴ Although these penalties pale in comparison to those meted out for other crimes, the Act would nonetheless be a step in the direction of corporate accountability for those who threaten the stability of our planet for corporate gain.

CONCLUSION

Individuals who destroy relatively small amounts of property to protest the destruction of natural habitat are frequently—and erroneously—labelled “terrorists.” In contrast, corporations who violently silence individuals who draw attention to their hazardous and often fatal practices are often shielded from liability. However, the legal infrastructure necessary to act exists. Even if they cannot be held accountable as eco-terrorists, oil and gas companies are undoubtedly complicit in human death and therefore can be charged for committing those crimes, just as BP executives were following the Deepwater Horizon crisis. While it has yet to be seen if local, state, or federal governments are willing to prosecute these companies consistent with their supposed enthusiasm for doing so, recent court filings suggest a hopeful trend. However, urgent work remains to be done. The Intergovernmental Panel on Climate Change’s most recent report describes “an atlas of human suffering” that will only worsen if world leaders fail to act.¹³⁵ Whether governments criminally prosecute may be integral to the future of this planet.

132. *Id.*

133. U.S. ENV’T PROT. AGENCY, CIVIL CASES AND SETTLEMENTS BY STATUTE, <https://perma.cc/528P-D98H> (last visited Apr. 27, 2022).

134. S.R. 1010.

135. Kiley Price, *IPCC Report: Climate Change Could Soon Outpace Humanity’s Ability to Adapt*, CONSERVATION INT’L (Feb. 28, 2022), <https://perma.cc/GLC9-CQY8>.
