A healthy environment is not only key to the achievement of human rights such as the most fundamental of all, the right to life, but also increasingly recognised as a human right in itself. This healthy environment, in fact the Earth’s entire ecosystem, is threatened by the increasing depletion of resources, biodiversity loss and climate change. Dangerous industrial activity is responsible for a large proportion of this – but the corporations and individuals causing widespread damage and destruction often remain unpunished. The large-scale damage or destruction of ecosystems is called ecocide, from the Greek “oikos” for home and the Latin “caedere” for kill.’

Prisca Merz argues it is now time to act on...
Our current legal framework does not possess the necessary tools to stop ecocide. New tools are needed to safeguard not only our and in particular future generations’ rights, but also the rights of nature itself. For over 40 years, different formulations of an international environmental crime have been discussed to halt this destruction through criminal liability of decision-makers. Now the time has come to implement it.

**Forty years of discussions have proven the viability of the concept**

Ecocide in the broadest sense describes the destruction of the natural environment. The term became known after World War Two and in particular the Vietnam War which demonstrated the horrors of intentional environmental destruction to a large audience around the world, leading to widespread public protest. A draft Ecocide Convention was published in 1973, calling for ecocide to be recognised as an intentional war and peace crime.

This public movement was picked up by the International Law Commission and heads of States when they discussed the draft of the Rome Statute establishing the International Criminal Court. Until 1995, the wilful causation or ordering of widespread, long-term and severe damage to the natural environment was included in the draft Rome Statute as a separate crime but then withdrawn at the 11th hour. Thus, the only remaining provision is the war crime of ‘widespread, long-term and severe damage to the natural environment’, resulting in the absurdity that today ecocide is a crime during war time but not during peace.

Academia continued to discuss different definitions and concepts for the international environmental crime. In 2010, British barrister Polly Higgins requested the International Law Commission amend the Rome Statute to include ‘ecocide’ as an additional crime against peace. She defines ecocide as the ‘extensive damage to, destruction of or loss of ecosystem(s) of a given territory […] to such an extent that peaceful enjoyment by the inhabitants of that territory has been or will be severely diminished’.

Higgins and others underline the need for ecocide to follow the principle of superior responsibility. This means that those responsible for and ordering ecocide, for example the CEO of a large petroleum company having caused a massive oil spill, should be liable to prosecution rather than the employee who might have been working on the platform where the ecocide happened.

The second principle is liability without intent. Even if ecocide was not the goal but rather the side-effect of the activity, those responsible and those helping them must still be liable for the damage they cause. The focus shifts from assessing risks and probabilities towards assessing potential consequences, implementing the precautionary principle: if an activity has the potential to cause widespread damage and destruction it must not be implemented.

**Only if millions of people across the world demand it will our leaders act**

Only governments have the power to request amendments of the Rome Statute. We, however, have a much stronger power: the power of our joint voices.

It is a well-known fact that government will not act on controversial issues involving vested industry interests unless the public strongly...
We have to return to the real meaning of justice and law

Recently, I heard Judge Weeramantry, former vice president of the International Court of Justice, speak. He posed the question that how it could be that our current legal system had lost its connection to justice? Today, law is often preoccupied with the enforcement of contracts rather than asking the more fundamental question of what a just solution for a particular problem would be. We have to come back to the fundamental questions: what is justice and how can we ensure justice for future generations?

We have created a world in which investors can sue governments for protecting their people from dangerous industrial activity, where pension funds meant to ensure a good life for our age invest in fossil fuels rather than preserving the very basis of life we depend on, and where short-term profit considerations overrule any kind of concern for sustainability and the long-term health of people, land and ecosystems.

It’s happening everywhere

Making ecocide a crime sits at the heart of an emerging body of law called Earth law, seeking to transform the law to recognise the inherent rights of all of the Earth’s inhabitants and ecosystems to exist, thrive and evolve.

Two outstanding examples on the international level are the World Charter for Nature, adopted by over 100 UN member states in 1982, and the 2007 Declaration on the Rights of Indigenous Peoples. Following on from the 1989 legally binding International Labour Organisation (ILO) Convention 169, it establishes the rights of indigenous peoples and individuals, among others to the conservation and protection of the environment and productive capacity of their lands or territories and resources.

Several countries are also leading by example. Ecuador included an entire chapter about Earth rights in its 2008 constitution. This right has already been enforced in the first successful rights of nature case in Wheeler v Director of the Procuraduría General Del Estado en Loja, Juicio. Bolivia followed suit in 2010 with its Law of the Rights of Mother Earth. Even a county in the United States, Mora in New Mexico, passed an ordinance establishing a local Bill of Rights to prohibit fracking. Several countries have recognised the rights or holiness of certain natural sites belonging to indigenous communities.

There are an increasing number of court rulings which attribute rights to nature, ecosystems, or animals. New Zealand extended personhood rights to great apes in 1999, followed by Spain in 2008. Dolphins have recently been attributed ‘personhood’ in India. France in 2008 condemned the world’s fourth largest oil group Total SA, in a landmark ruling, to a fine for ‘ecological prejudice’ caused by the sinking of the Erika. This could establish a legal precedent for suing companies or persons over ecological disasters.

Efforts to promote access to justice and recognising standing to issue legal proceedings in the public interest, for example in the Aarhus Convention, are vital steps in our journey towards a world without ecocide.

A law for our children

At an international level, the principle to protect future generations is widely accepted, such as in the Stockholm Declaration and UN Framework Convention on Climate Change. Domestic law from a variety of countries also enshrines this respect for the needs of future generations. The 1993 children’s case of Opposa v Factoran in the Philippines is a historic example of judicial reasoning that sought to prevent irreversible ecological damage, in this case deforestation, in the name of children both now and in future generations.

The pollution of food chains with heavy metals, genetic mutations due to radioactive contamination, and processes of bio-accumulation of chemical substances in living organisms all underline the urgent necessity to implement respect for future generations in law, through the recognition of future generations’ rights to health and life. Recognising the crime of ecocide would allow the inclusion of transgenerational legal provisions in environmental and criminal law, linked to other dynamics concerning the recognition of new institutions for the juridical defence of future generations.

Ecocide affects every single one of us

Ecocide affects every single one of us. This is a law for the indigenous tribe that lost its drinking water due to pollution as much as for the Briton whose house is threatened due to fracking exploration nearby. It is as much for the mother worried about her child’s future as the scientist developing new environmentally friendly techniques that need that little push to get to the market.

Ecocide disproportionally affects the less advantaged groups of society: workers in mines or drilling platforms, indigenous peoples or rural communities, those not able to afford to buy bottled water or protect themselves from air pollution. This law is an all-encompassing approach to bring the legal system back a bit closer to its original goal: enabling people to live a good life where they have legal tools to tackle injustice and unfairness.

It is an inherently just law. Rather than focus on individual workers – who are actually the primary victims of environmental pollution and low health and safety standards – it will be business leaders who are held to account. They are the ones deciding about whether a certain project goes ahead and reaping the profits. It is they who should also be held to account if it goes wrong.

With just one law, one idea – making those responsible criminally accountable for their action – we can turn around the way business is done across the planet. Currently, the main preoccupation of most business leaders is with profit maximisation, but if there was legislation under which they personally, as well as the corporation as entity, could be held accountable for the environmental damage they create, they would think twice before starting the next open pit mine or felling the next tree in the Amazon.

Ending ecocide requires nothing short of a paradigm shift: from perceiving the Earth purely as property or a set of resources to be exploited towards acknowledging the intrinsic value of ecosystems; the pleasure we retrieve from walking in a forest or drinking fresh water from a well. We have a legal duty to protect this ecosystem we have inherited from our ancestors and depend on. We are increasingly aware of the evidence of ecocide, its devastating consequences, and the need to act now. We all contribute step by step to making that paradigm shift happen. Every single person speaking about ecocide, every single signature on the ecocide petition contributes to creating the essential civil society movement needed to push for the radical change we need. The time to make it happen is now.

Prisca Merz is the initiator of the European Citizens’ Initiative – End Ecocide in Europe. She is a member of the steering group of the Initiative and focuses mainly on legal research into ending ecocide.
BP Oil Flood Protest at Jackson Square, New Orleans in May 2010.