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Environmental Justice and Race Equality in the European Union



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Christoph Schwarte
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Foreword

In the European Year for Equal Opportunities this report provides a timely discussion on environmental injustice and discrimination in Europe. As with all of Capacity Global's (Capacity) work the report is based on the belief that all people have a right to a healthy environment and that this right, particularly for vulnerable groups, is a pivotal part of social justice.

Capacity has been working on issues of environmental justice in Europe in all our areas of work, most specifically our research, advocacy and community programmes. Capacity's work seeks to make a difference for the better. That means carrying out research that doesn't just end up on a shelf. For example, the Green Group in the European Parliament commissioned Capacity to examine how environmental concerns of young socially and economically excluded people could be integrated into the employment policies of the European Union (EU). The findings contained in our report *Integrating Social Inclusion and Environment - Exploring the potential for joined-up thinking*¹ helped the Greens to raise an additional two million euro under the Greater London budget for vocational training in the environment field. Capacity has sought to continue reviewing EU activities and highlight issues that are too often neglected by the highly specialised but often very sector-specific approaches of the European Commission and its experts.

The aim of this report is to advocate for further research and strategic thinking on environmental justice and discrimination, legislation, policy and initiatives within Europe. Leadership on environmental justice, and its connection to discrimination in Europe, is crucial for any state or region that is serious about tackling its natural and built environmental challenges.

Environmental policy or legislation that doesn't have environmental justice at its heart will fail in the long term. The report's recommendations offer a next step action plan for tackling environmental injustice and discrimination in Europe. Anyone working on environmental, poverty, rights or social justice issues should read this report.

We have a moral imperative to tackle environmental injustices in order to build the public and political support required to ensure that basic human rights and the environment are protected.

Maria Adebawale

Founder Director

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Summary (English)

Within the European Union (EU) environmental protection and the fight against racial and ethnic discrimination are rarely considered within an integrated framework. Is there potential for joined-up thinking so that anti-discrimination legislation can be used to improve the quality of the environments in which people in Europe live?

While the procedural requirements for environmental justice are to a large extent established under European law, distributive aspects of environmental justice do not yet feature on the agenda of the EU and member states. To date, the UK is one of the few European countries where there are relevant research and policy discussions on the equal distribution of environmental 'goods and bads'.

Although the available data and knowledge is limited there are strong indications that some groups in European societies are disproportionately exposed to environmental risks. The Racial Equality Directive bans direct and indirect discrimination on grounds of racial or ethnic origin. The European Community's equality and anti-discrimination legislation may therefore present an opportunity to legally tackle environmental injustices.

Based on these findings we recommend that:

- the European Commission launches a major research initiative on environmental justice
- the UK government provides leadership on environmental justice in Europe
- environmental non-government organisations (NGOs) become more aware of diversity and anti-discrimination NGOs become more aware of environmental justice issues
- the Race Equality Directive is used to legally challenge decisions and activities which create negative environmental impacts and neglect the interests of Black, Asian and Minority Ethnic groups.

Summary (German)

Die Bekämpfung rassistischer und ethnischer Diskriminierung und der Umweltschutz werden auf Ebene der Europäischen Union (EU) nur selten in einem integrierten Rahmen behandelt. Gibt es ein Potential für themenübergreifendes Denken, so daß die Antidiskriminierungsgesetzgebung der EU für die Verbesserung der Umwelt, in der die Menschen in Europa leben, genutzt werden kann?

Während die Verfahrensorderungen an Umweltgerechtigkeit unter europäischen Recht zu hohem Masse hergestellt wurden, sind Aspekte von Verteilungsgerechtigkeit bisher kein Thema für die Tagesordnung der EU und ihrer Mitgliedstaaten. Eines der wenigen europäischen Länder, in dem sich bis heute ein bedeutsamer Diskurs in Forschung und Politik über die gerechte Verteilung von Umweltbelastungen und Umweltgütern entwickelt hat, ist das Vereinigte Königreich.

Obwohl die vorhandenen Daten und Untersuchungen in diesem Bereich begrenzt sind, gibt es sehr starke Indizien, daß einige Gruppen der europäischen Gesellschaft Umweltgefahren überproportional ausgesetzt sind. Die Richtlinie zur Anwendung des Gleichbehandlungsgrundsatz ohne Unterschied der Rasse oder der ethnischen Herkunft verbietet direkte oder indirekte Diskriminierung. Die Gesetzgebung der Europäischen Gemeinschaft im Bereich von Gleichstellung und Antidiskriminierung könnte daher die Möglichkeit eröffnen, bestehende Ungerechtigkeiten rechtlich anzugreifen.

Auf dieser Grundlage empfehlen wir, daß

- die Europäische Kommission eine bedeutsamen Forschungsinitiative im Bereich der Umweltgerechtigkeit anstößt
- die Regierung des Vereinigten Königreichs in Europa eine Führungsrolle in Fragen der Umweltgerechtigkeit übernimmt
- Umwelt-Nichtregierungsorganisation sich stärker mit gesellschaftlicher Vielfalt auseinandersetzen und Antidiskriminierungsinitiativen mit Umweltgerechtigkeit
- die Richtlinie zur Gleichbehandlung ohne Unterschied der Rasse genutzt wird, um Entscheidungen und Tätigkeiten, die sich negativ auf die Umwelt auswirken und die Interessen ethnischer Minderheiten vernachlässigen, anzugreifen.

Summary (French)

Dans l'Union européenne, la protection environnementale et la lutte contre la discrimination raciale et ethnique sont rarement considérées dans un cadre intégré. Y a-t-il un potentiel pour un assemblage d'idées qui ferait que la législation antidiscrimination puisse être utilisée pour améliorer la qualité de l'environnement dans lequel vivent les gens en Europe ?

Pendant que les exigences de la procédure pour la justice environnementale sont largement établies sous la loi européenne, les aspects distributifs de cette même justice ne sont pas encore à l'agenda de l'Union européenne et de ses états membres. À date, l'Angleterre est un des rares pays européens où se font la recherche et des discussions pertinentes à propos des politiques sur la distribution égales du « bon et du mauvais » environnemental.

Même si les données et connaissances sont limitées, plusieurs signes nous indiquent que certains groupes sont exposés démesurément à des risques environnementaux. Les directives relatives à l'égalité raciale interdisent la discrimination directe et indirecte. Donc, la législation pour l'égalité et l'antidiscrimination de la communauté européenne offre une opportunité de gérer ces injustices.

Nous appuyant sur ces conclusions, nous recommandons que :

- La commission européenne lance un projet de recherche de grande envergure sur la justice environnementale ;
- Le gouvernement Anglais démontre du leadership en matière de justice environnementale en Europe ;
- Les organisations non-gouvernementales (ONG) en environnement et en antidiscrimination soient mieux informées à propos de la diversité des problèmes concernant la justice environnementale ;
- Les directives relatives à l'égalité raciale soient mises à profit en vue de mettre légalement au défi les décisions et activités qui créent des impacts environnementaux négatives et négligent les intérêts des noirs, asiatiques et minorités ethniques.

Summary (Polish)

W ramach Unii Europejskiej kwestie dotyczące ochrony środowiska i dyskryminacji rasowej lub etnicznej rzadko rozpatrywane są pod kątem integracji. Czy istnieje potencjał aby poprzez wspólne myślenie wykorzystać legislację o antydyskryminacji w celu poprawy stanu środowiska w jakim żyją ludzie w Europie?

Podczas gdy wymagania dotyczące postępowania na rzecz sprawiedliwości ekologicznej były, w dużym stopniu, ustanowione przez prawo europejskie, aspekty dostępu tej sprawiedliwości są do tej pory pomijane przez państwa członkowskie. Obecnie Wielka Brytania jest jednym z niewielu państw, w których prowadzi się odpowiednie badania i dyskutuje się kwestie problematyki badań i prawa dotyczącego dostępu do sprawiedliwości w ramach ochrony środowiska zarówno od strony pozytywnej, jak i negatywnej.

Mimo że istniejąca wiedza i dane na ten temat są ograniczone, istnieją silne przesłanki, że pewne europejskie grupy społeczne są nierównomiernie narażone na zagrożenia ekologiczne. Dyrektywa o równości rasowej (Racial Equality Directive) zabrania jakiegokolwiek, pośredniej lub bezpośredniej dyskryminacji. Prawodawstwo wspólnotowe w dziedzinie równości i antydyskryminacji stanowi więc może podstawy aby prawnie przeciwstawić się ekologicznej niesprawiedliwości.

Bazując na tych założeniach zalecamy aby:

- Komisja Europejska podjęła inicjatywę badań nad niesprawiedliwością ekologiczną
- rząd Wielkiej Brytanii zapewnił kierownictwo w kwestiach sprawiedliwości ekologicznej
- pozarządowe organizacje ekologiczne i antydyskryminacyjne powinny lepiej zaznajomić się z kwestiami odmienności i sprawiedliwości ekologicznej
- dyrektywa o równości rasowej powinna być prawną podstawą aby przeciwstawiać się decyzjom i akcjom o wymiarze ekologicznym, oraz takim, które zaniedbują interesy grup czarnoskórych, Azjatów oraz mniejszości etnicznych.

2. Introduction

Within the European Union (EU) environmental protection and the fight against racial and ethnic discrimination are rarely considered within an integrated framework. This report is an attempt to outline the potential for joined-up thinking to make better links between these two themes. It explores existing gaps in environmental justice research and policy of the EU and its member states, in particular as it relates to recent European anti-discrimination legislation.

This study aims to provide a snapshot analysis using predominately desk-top research. It is informed by additional information from environmental activists in Europe, mainly from organisations in the Northern Alliance for Sustainability (ANPED), The Access Initiative (TAI) and the Partnership for Principle 10 of the Rio Declaration (PP10). A draft of this report was circulated widely for comments.

Section 3 introduces the European Community (EC) legislation on race and ethnic discrimination.

Section 4 provides a thematic overview on environmental justice as a subject area.

Section 5 discusses the link between environmental justice and discrimination in Europe.

Section 6 outlines the report's recommendations.

3. The Racial Equality Directive

On 29 June 2000 the Council of Ministers of the European Union adopted Directive 2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Racial Equality Directive).² The purpose of the directive was to establish minimum standards in all EU member states for combating racial or ethnic discrimination and guaranteeing equal treatment by the public and private sector in many areas of 'daily life'.

The 'old' EU member states had to translate the provisions of the directive into national law by 19 July 2003 and submit a first report on its application by 19 July 2005. The new member states had to transpose the Racial Equality Directive into national law before the date of their accession to the EU (1 May 2004 and 1 January 2007 respectively). In 2005 the European Court of Justice (ECJ) ruled that Germany, Austria, Finland and Luxembourg had breached European community law by failing to transpose the directive. In some countries significant parts of the necessary legislation are still missing. However, most member states have now transposed the directive. Whether the prohibition of discrimination is enforced and the extent to which the national laws meet the requirements of the directive remain open questions. They will probably be answered piecemeal, in the years to come, by the European courts.

3.1 Background

With the entry into force of the Amsterdam Treaty in 1999 the EU received new powers (under Article 13) in the fight against racism and discrimination. In its current form Article 13 provides that the Council of Ministers, acting unanimously on a proposal from the European Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. At the end of 1999 the European Commission came forward with a package of proposals for action. This led to the adoption of the Racial Equality Directive and Council Directive 2000/78/EC on establishing a general

framework for equal treatment in employment and occupation (the Employment Equality Directive).

Between 2001 and 2006 the Racial Equality and Employment Equality Directives were complemented by the Community Action Programme to Combat Discrimination. The programme's objectives were to improve the understanding of issues relating to discrimination, build the capacity of target actors to tackle it and promote values and practices underlying the fight against discrimination. For the period 2007-13 the EU's anti-discrimination activities have been integrated into a wider Programme for Employment and Social Solidarity (PROGRESS).

PROGRESS combines four former action programmes. Section 4 covers anti-discrimination and diversity and aims to support the effective implementation of the principle of non-discrimination and to promote it in all EU policies³. It emphasises the need for additional research in the field of discrimination, awareness raising among all stakeholders, capacity building and networking.

2007 has also been declared the European Year of Equal Opportunities for All by the EU. Activities during the year are organised around four themes:

- **Rights** - raising awareness on the right to equality and non-discrimination and on the problem of multiple discrimination
- **Representation** - stimulating debate on ways to increase the participation of groups in society which are victims of discrimination and a balanced participation of men and women
- **Recognition** - facilitating and celebrating diversity and equality
- **Respect** - promoting a more cohesive society⁴.

Many of these activities will link in with the European Year of Intercultural Dialogue in 2008. This initiative will mainly concentrate on areas where intercultural dialogue is more likely to contribute to 'better living' among people living in the EU. Implementation will focus on culture, education, youth, sport and citizenship⁵.

In addition to the Amsterdam Treaty, the Charter of Fundamental Rights, proclaimed in December 2000, reaffirms the EU's commitment to the principle of non-discrimination. Article 21 of the charter bans discrimination on the six grounds listed in Article 13 of the European Community Treaty (sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation) as well as seven additional, non-definitive, grounds. These are social origin, genetic features, language, political or other opinion, membership of a national minority, property or birth. Although the charter is not a binding instrument, it already constitutes an important reference document for the European Court of Justice in its interpretation of EC law⁶.

3.2 Scope

The Racial Equality Directive bans direct and indirect discrimination, as well as harassment and instructions to discriminate, on grounds of racial or ethnic origin. It applies to all people within the private and public sector in relation to employment, training, education, social security, health-care and access to goods and services including housing. The directive defines direct discrimination as the less favourable treatment of one person over another in a comparable situation on grounds of racial or ethnic origin. With regard to indirect discrimination the Racial Equality Directive (Article 2, Paragraph 2b) declares that:

Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Thus any law, policy or practice that works to the advantage of one racial or ethnic group and to the disadvantage of another in the same situation may constitute (indirect) discrimination. However, the difference in treatment is justified if it results from the pursuit of a public interest objective, such as the implementation of human rights, budgetary concerns or health and safety, by adequate means. Whether the means are adequate (appropriate and necessary) depends on the interests involved and the relevant

circumstances. If, for example, the legitimate aim could be achieved by alternative measures which would not lead to (indirect) discrimination the chosen means may be unnecessary.

National courts and authorities have discretion in assessing the circumstances of a case and balancing the interests involved. However, in applying the national law they have to interpret it in the light of the directive's wording, purpose and the results it sought to achieve. They also have to apply the reversed burden of proof created by the directive. While the complainant has to establish the facts of the alleged discrimination, including the comparability of situations, the respondent has to prove that it was justified and thus did not breach the equal treatment principle⁷.

According to the directive, member states have to ensure that judicial and/or administrative procedures are available to challenge discrimination. Civil society organisations are encouraged to engage in such procedures and shall also be involved in a dialogue on the promotion of equality. In addition member states have to designate a body or bodies to support victims of discrimination, carry out independent surveys, and issue reports and recommendations. The directive does not prevent member states from running affirmative action programmes.

4. Environmental justice

Environmental justice is best described as equal access to a clean environment and equal protection from possible environmental harm irrespective of race, income, class or any other differentiating feature of socio-economic status⁸. Principles of environmental justice include the fair sharing of environmental 'goods and bads' (distributive justice) and meaningful participation in decision-making processes (procedural justice). Questions of environmental equality have received significant attention in the USA since research showed that hazardous installations such as waste dumps were often located in areas with a high percentage of 'people of colour'.

4.1 Environmental justice in the US

For more than 20 years researchers have been investigating the social and racial distribution of various forms of environmental risk, and whether planning policy and practice affecting the environment are equitable and fair (see Further Reading). These studies generally demonstrate that Black and Hispanic minorities and low-income households are disproportionately exposed to environmental hazards.

As a result a vocal environmental justice movement has emerged in the US which advocates a human rights approach to sustainable development and environmental protection. However, most legal actions brought against civil authorities on the grounds of unjust planning decisions have been unsuccessful. This has been attributed in part to the poor empirical foundations of environmental justice analyses, which allegedly preclude authoritative statements on inequitable relationships between social/ethnic groups, environmental problems and associated health burdens. On many occasions lawsuits have failed because the plaintiffs could not prove the discriminatory intent.

In 1994 the US government, under the then President Bill Clinton, issued Executive Order 12898 which requires federal agencies to address environmental justice as part of their overall mission, and to identify and address disproportionately high adverse human health or environmental

impacts of policies, programmes and activities on minority and low-income populations. The US Environmental Protection Agency now addresses environmental justice in planning and decision making and has created an Office of Environmental Justice (originally the Office of Environmental Equity). There are also various local initiatives. In 2004, for example, the city of Los Angeles established an Environment Justice Enforcement and Compliance Team (EJECT) to support more effective environmental compliance in the city's most disadvantaged communities. Its strategy is a mixture of inspections, criminal prosecution, civil litigation and constant community input.

Despite these efforts, little has changed over the years. Recent government research in the US shows that:

- Black Americans are 79% more likely than whites to live in neighbourhoods where industrial pollution is suspected of posing the greatest health danger
- residents in these neighbourhoods also tend to be poorer, less educated and more often unemployed than those elsewhere in the country⁹.

In the city of New Orleans, three quarters of the 354,000 people who lived in the areas worst damaged by Hurricane Katrina were African-American. The storm also inflicted disproportionate damage on poor neighbourhoods with high unemployment¹⁰. A new report, *Toxic Waste and Race at Twenty, 1987-2007*, finds that there has been minimal progress in environmental justice since the initial landmark report *Toxic Waste and Race* was published in 1987 (see Further Reading). The new study found that the proportion of people of colour in neighbourhoods within three kilometres of an area that hosts a hazardous waste facility is almost twice that of people of colour living in non-host neighbourhoods. Such neighbourhoods typically are economically depressed, with poverty rates 1.5 times that of non-host communities.

4.2 Environmental justice in the UK

The UK and the rest of Europe do not have an environmental justice movement that compares with the one in the US. However, since the late 1990s the environmental justice debate has gained momentum in the UK. Various studies and reports now indicate that deprived communities tend to suffer from the highest levels of air pollution and traffic noise (see Further Reading). UK research also addresses access to a broad range of environmental resources such as food, clean air, water and green space, and evaluates service infrastructure, traffic safety and neighbourhood cleanliness under the environmental justice umbrella.

The Sustainable Development Research Network's 2004 Rapid Research and Evidence Review on environment and social justice, funded by the government, concluded that there is mounting evidence that:

- environmental injustice is a real and substantive problem within the UK
- problems of environmental injustice afflict many of the most deprived communities and socially excluded groups
- both poor local environmental quality and differential access to environmental goods and services have a detrimental effect on the quality of life experienced by members of those communities and groups
- in some cases deprived and excluded communities are both disproportionately exposed to an environmental risk and disproportionately vulnerable to its effects.

Research carried out on environmental quality and social deprivation in England and Wales for the Environment Agency in 2003 shows that:

- deprived communities suffer the worst air quality
- polluting factories are disproportionately located in deprived areas in England
- tidal floodplain populations in England are strongly biased towards deprived communities¹¹.

Increasingly, the link between poor environmental conditions and poverty has been recognised by the government, and it has integrated environmental equality considerations into recent policies (see Further Reading).

The destruction caused by Hurricane Katrina has been used repeatedly to illustrate the risks from flooding which parts of society are particularly exposed to¹².

In contrast to the US, the discourse in the UK has focused more on the socio-economic status of affected groups and communities than on their race and ethnicity. It has therefore been argued that it is difficult to establish a racial bias in the locating of hazardous facilities due to the urban concentration of ethnic communities in the UK. At the same time there are indications that Black, Asian, Minority and Ethnic groups (BAMEs) in Britain are routinely short-changed by a systematic indifference to their environmental and planning needs¹³. Due to the lack of comprehensive research the overall picture remains unclear.

This situation is mirrored by the work of environmental NGOs which generally pay little attention to racial equality issues. The findings of Capacity's 2006 report, *BAMEs Tackling Environmental and Social Justice*, illustrate that BAMEs often perceive the environment sector as institutionally racist and predominately white and middle class in its recruitment and strategic policies. At the same time organisations that focus on combating racism and other forms of discrimination tend to pay little attention to environmental matters.

It could be argued that a lack of leadership in and partnership between environmental and anti-discrimination organisations has meant that, unlike the US, anti-discrimination policy or legislation has not been used as a tool to tackle environmental injustice. Potentially crucial instruments - such as the Race Relations Amendment Act which requires all public authorities (for example, local authorities) to implement race equality impact assessments. As the Commission for Race Equality states 'the main purpose of a race equality impact assessment is to pre-empt the possibility that your proposed policy could affect some racial groups unfavourably'. However, the assessments have not to date been used to effectively monitor or challenge the negative impacts of environmental policy on protected groups (see Further Reading).

4.3 Environmental justice in Europe

Environmental justice discussions within Europe have been driven essentially by the development of the 1998 Aarhus Convention on access to information, public participation in decision making and access to justice. The convention provides for the right of everyone to receive environmental information that is held by public authorities, to participate from an early stage in environmental decision making and to challenge, in a court of law, public decisions that have been made without respecting these rights or environmental law. Public authorities are obliged to disseminate environmental information proactively and to make arrangements that enable citizens and environmental organisations to influence programmes, plans or projects relating to the environment.

The EU has taken substantial steps to ensure that member states and its own institutions meet the requirements of the Aarhus Convention. With the exception of Ireland, all member states and the EU are parties to the convention. Two directives concerning access to environmental information and public participation in environmental decision making had to be implemented into national law and a directive on access to justice in environmental matters is in the legislative process: Directive 2003/4/EC on public access to information and Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes in relation to the environment. Provisions on public participation in environmental decision making can also be found in a number of other environmental directives.

In addition, regulations applying the provisions of the Aarhus Convention to all EC institutions and bodies entered into force on 28 September 2006. Under the Aarhus Regulation all institutions, bodies, offices or agencies established by, or on the basis of, the EC Treaty have until 28 June 2007 to adapt their internal procedures and practices.

The procedural dimension of environmental justice ('fair deal') is therefore firmly established under EC law. However, with the exception of the UK, there is little evidence to inform a debate on the distributive aspects of

environmental justice in the EU or in its member states. This is despite the fact that there are big differences in the state of the environment between EU member states.

Snapshot of differences in European living conditions and environments

In 2002 the emission of acidifying substances into the air was more than 3kg per capita in Cyprus and Ireland, and approximately 1kg in Germany and Austria. During that time emissions of greenhouse gases per capita amounted to 4.5 tonnes in Latvia and 24 tonnes in Luxembourg. In 2003 an average individual generated 735kg of municipal waste in Ireland but only 260kg in Poland¹⁴.

In one 1999 survey, 46.6% of households interviewed in Greece complained about noise and 46.8% about the lack of green space compared with 15.5% and 9.6% respectively in Denmark. In 2000, 16.7% of households in Italy felt that there was pollution caused by traffic or industry in their local area compared with only 4.9% in Austria¹⁵.

The European Environment Agency regards noise as the environmental factor that affects the largest number of Europeans and air pollution as being responsible for the largest burden of environment-related diseases. Its 2005 report **Environment and Health** further suggests that the environment-related share of the burden of disease is higher in lower-income countries and that climate change particularly affects vulnerable groups. However, there is no systematic attempt within the EU to link social status, race or ethnicity to environmental risk exposure.

This is also the case for the overwhelming majority of member states. There are very few examples of research on the exposure of disadvantaged groups to environmental risks. Basic initial studies have been undertaken in, for example, Germany and the Netherlands (see Further Reading). Their results indicate that accumulations of environmental goods are more often present in high-income areas while poorer socio-economic groups tend to live in lower quality environments. Generally

these studies acknowledge their own limitations and emphasise the need for further analysis and more comprehensive research.

Nonetheless, there is extensive anecdotal evidence that supports the connection between poor environments and low income. It is immigrant communities who often live in heavily polluted areas alongside motorways, power lines and rail tracks, or under flight paths. They have to endure the unhealthiest working conditions and live in neighbourhoods that are exposed to industrial pollution. This applies equally to Turkish 'guest workers' in Germany, Moroccan farm workers in Spain or a family from Ghana living in substandard housing in Italy. The civil unrest which shocked France in autumn 2005 has been widely interpreted as young people's protest against their living conditions in a rundown built environment.

Central and eastern Europe still faces a complex set of environmental challenges such as hazardous waste sites in residential areas, low energy efficiency, urban air pollution, and deteriorating water and sewage systems. 'Manipulated industrialisation' and the collapse of the Communist regimes left behind environmental hotspots. At the same time there are significant ethnic minorities in these regions (for example, in the Baltic states or former Yugoslavia) as a result of the political changes in the last century. Central and eastern Europe is a potentially excellent model area for environmental justice studies¹⁶.

Roma in the EU

The Coalition for Environmental Justice, a network of NGOs in central and eastern Europe, has compiled a case study on settlements of Romani people which, following enlargement, constitute arguably the largest ethnic minority group within the EU¹⁷. It includes the following examples:

- In Greece, four Roma settlements in the Athens suburb of Aspropyrgos live in close proximity to hazardous waste sites and without basic infrastructure such as sewage removal and potable water provision. One settlement was moved onto a former landfill, now covered, which continues to leak liquid refuse.
- In Hamburg, Germany, a settlement is located on a former toxic waste dump. The site was considered uninhabitable in the mid-1970s

and there have been allegations that groundwater may have brought toxic waste to the surface, contaminating the land and air in the settlement.

- The settlement in Berettyoujfalu, Hungary, is located next to the town dump on one side and an illegal dump on the other.
- The predominantly Roma settlement of Lower Hrusov, Ostrava in the Czech Republic is located above a former mine that continually generates methane gas. The settlement is in constant danger of exploding.
- The Roma settlement of Patoracka, Rudnany in Slovakia is located on the grounds of a former mercury mine.

Although there appears to be widespread environmental inequalities in the EU and in member states, the fair distribution of environmental 'goods and bads' is no more than a marginal issue. This extends not only to government policies and academic research but also to the activities of NGOs.

For this report we have gathered information through our networks of environmental NGOs in Europe and talked to a variety of groups and individuals. Similarly to the UK, environmental protection and anti-discrimination efforts are hardly ever linked or even perceived as related. While many environmental NGOs we spoke to work on procedural environmental equality issues, such as access to the legal system, there is a distinct lack of awareness about the distributive aspects of environmental justice.

5. Can the Racial Equality Directive be used to promote environmental justice?

There is no evidence to suggest that the Racial Equality Directive was drawn up to address environmental protection concerns or even the unequal distribution of environmental 'goods and bads'. Primarily, it was designed to protect against discrimination in employment and in the provision of services. Environmental justice concerns did not play a role in the consultations that preceded the directive and have not featured in the reports submitted by member states on its implementation.

It has been argued that the Racial Equality Directive is incapable of redressing collective racial or ethnic disadvantage as it does not provide for the enforcement of positive social, economic and cultural obligations. The existence of separate anti-discrimination directives that are based on a British model of the 1970s and which apply to varying subject areas can make national legislation confusing and fragmented. This approach has therefore been described as inadequate to deal with more complex and covert forms of modern discrimination¹⁸.

Community cohesion and discrimination

While using anti-discrimination law in the EU could work for minority groups protected under those laws, at present it would not protect groups who are discriminated against, indirectly or directly, for reasons other than race, for example, class or income.

As environmental injustices are more likely to impact on low-income communities, sometimes regardless of race, anti-discrimination laws based on protecting minority rights can only be a part of the solution. In addition to using anti-discrimination laws there needs to be a more holistic approach to the equal protection of groups who are discriminated against, indirectly or directly, such as working class or low income groups. This is particularly important if tackling environmental injustice is to be used as a tool to support community cohesion in a multi-cultural Europe.

The Racial Equality Directive draws inspiration from earlier EC legislation

on the equality between women and men. The provisions on gender equality in the EC treaty, although of a limited scope, evolved progressively into a number of instruments that safeguarded the principles of equal access to employment, vocational training and promotion, and to working and living conditions. Many of the definitions and legal concepts used in the Racial Equality Directive have been inspired by the earlier gender equality legislation and the case law of the European Court of Justice. Over several years the court of justice has expanded the application of the relevant directives, in particular on equal pay and equal treatment (within an employment context), and thus made them into forceful tools in the struggle for equality in the member states.

In this section we therefore explore the potential of the Racial Equality Directive for advancing the principle of environmental justice. Among others its remit covers social advantages and the access to and supply of goods and services that are available to the public, including housing (see Section 3.2).

Indirect discrimination occurs if people of a racial or ethnic origin are at a disadvantage, without justification, compared with others. This depends on the factual situation; unlike lawsuits under the US 1964 Civil Rights Act, an intention to discriminate is not required. To establish a case of indirect discrimination it is necessary to compare different groups, and statistics can play a key role as evidence.

An example of indirect discrimination

In *Hussein v Saints Complete House Furniture*, a Liverpool furniture store refused to consider applicants from a particular postal area in Liverpool which had a high rate of unemployment. The store justified this on the basis that unemployed friends from that area might hang around the store. Labour Force Surveys indicated that 50% of the population of this postal area were black, as compared to 2% for the Liverpool region. An employment tribunal ruled that this statistical evidence was sufficient to demonstrate that the employer was indirectly discriminating on the grounds of race¹⁹.

The textbook example often used to illustrate indirect discrimination with the access and supply of goods and services is when a car insurance policy is made available to a person from an ethnic minority at terms that are less favourable than the conditions granted to another person in a comparable situation. The comparability of situations is an important criterion - in the case of the car insurance example, this would include age, accident history, driving experience and so on. If the facts indicate a discriminatory treatment the insurance company has to prove that at the time of conclusion of an insurance contract no discrimination took place because the difference in treatment was justified by a legitimate aim and necessary means.

It is possible to imagine a range of similar scenarios with an environmental justice angle (see box below).

How the Racial Equality Directive could be used to tackle environmental injustice: two scenarios

In order to improve health standards the city authorities aim to implement measures such as the replacement of drinking water pipes and renovation of sewage canals. However, these measures will be implemented gradually and not immediately in the part of town most affected by poor water quality. If this part of the town is primarily inhabited by members of an ethnic minority, when compared with the areas that would benefit immediately from the water sanitation measure, then it would be possible to argue that this was a case of indirect discrimination. The city authorities could be required to prove that the gradual improvement was appropriate and necessary.

Another example could be where a local authority (or private company) operates an incinerator in area A which is affected by a higher degree of pollution than area B (a suburb which has its waste processed in the same incinerator). The inhabitants of area A would be at a particular disadvantage compared with the population of area B. If the residents of area A were also predominately (or to a large extent) of a different racial/ethnic origin than those in area B then this may constitute a case of indirect dis-

crimination. The next consideration would then be whether the incinerator's operation was appropriate and necessary to achieve the objective of rubbish removal.

As well as the scenarios cited in the box above, other possible examples could be developed around regeneration projects or modifications to public transport. The prohibition of discrimination also applies in relation to 'social advantages'. Social advantages are usually understood as financial benefits such as funeral expenses or training grants. But a broader meaning might also encompass access to parks, nature reserves or other green space. In our view the directive therefore has the potential to introduce environmental justice considerations into national legislation.

The laws, regulations and administrative procedures adopted by the member states in relation to the directive also have to be interpreted in conformity with the provisions and objectives of the directive (see Section 3.2). If a member state has failed to implement the directive into domestic law then its citizens can still use the directive's provisions against the state or an entity which provides a public service under the control of the state. The threshold criteria usually applied by the European courts is that the provisions must be capable of being directly effective (that is, contain a clear and precise obligation which is not subject to the adoption of any subsequent measures).

Even if the directive is only partially or inadequately transposed into national law it can have substantial implications for policies, plans and projects affecting racial and ethnic minorities. It can create rights which individuals may enforce against states and other persons. The failure to recognise such rights may result in claims for damages.

6. Recommendations

This report makes four recommendations:

- the European Commission should launch a major research initiative on environmental justice
- the UK government should use domestic experiences to push environmental justice onto the policy and research agenda of the EU
- environmental non-government organisations (NGOs) should become more aware of diversity while social justice and anti-discrimination NGOs should integrate environmental justice issues into their work
- the Race Equality Directive should be used in all EU jurisdictions to legally challenge decisions and activities which create negative environmental impacts and neglect the interests of Black, Asian and Minority Ethnic groups.

We discuss these in more detail below.

Recommendation 1: The European Commission should launch a major research initiative on environmental justice

There are clear indications that environmental inequalities exist in the EU and its member states. However, the availability of statistical data and evidence-based knowledge is very limited. This is despite the fact that EU institutions repeatedly identify the collection of reliable and comparable data as a precondition for the development and monitoring of effective policies to target vulnerable groups as a means to promote equality²⁰.

Although there are attempts to tackle environmental inequalities under responsibilities such as health, employment or social inclusion, anti-discrimination and environmental protection constitute two fields of EU policy and law that are undertaken in isolation from each other. In order to address environmental inequalities the EU should begin to link its equality and environment work and initiate research in individual countries and between member states. Ideally this should include accession countries and result in a comprehensive overview of existing hotspots and problem areas in order to develop a long-term EU strategy.

Future studies should map and assess environmental inequalities, analyse possible patterns, investigate coping strategies and define good practices and institutional arrangements to successfully tackle the problems identified. The results of the research would help town planners and policy makers to develop healthier neighbourhoods for everyone. They would also assist community groups and NGOs to lobby for healthier environments. In the medium term, environmental impact assessments could be complemented by meaningful equality indicators.

Recommendation 2: The UK government should use domestic experiences to push environmental justice onto the policy and research agenda of the EU

In contrast to the US, environmental equity plays a minor role in the environmental policy making and research of the EU. Although the UK has a different emphasis to the US, it has a stronger awareness of environmental justice issues than anywhere else in Europe. Existing research initiatives and the introduction of environmental justice into an increasing number of government policies means that the UK is leading on environmental justice within the EU.

The UK Presidency of the Council of the EU (July to December 2005) was a missed opportunity to actively promote environmental justice as a topic that should be addressed within the EU. Issues of diversity have received a greater degree of attention in the UK than anywhere else in Europe. In this respect the UK is a European 'champion' whose achievements make a positive contribution to an integrated Europe that has the concerns and interests of its citizens at its heart.

Recommendation 3: Environmental NGOs should become more aware of equality and discrimination issues, while social justice and anti-discrimination NGOs should integrate environmental justice issues into their work

In collecting information for this report we encountered a widespread lack of awareness in European environmental NGOs about the distributive aspects of environmental justice. NGOs play an important role in deter-

mining policy agendas and the political discourse. Some of them also hold substantial financial resources and power to influence. By incorporating anti-discrimination efforts into all levels of their works they would help to create a better environment for everyone.

Recommendation 4: The Race Equality Directive should be used in all EU jurisdictions to legally challenge decisions and activities which create negative environmental impacts and neglect the interests of Black, Asian and Minority Ethnic groups

While the procedural requirements for environmental justice to a large extent are established under European law, distributive aspects of environmental justice are not. However, through its legislative activities in the field of equality and anti-discrimination, the EC has opened up an opportunity to achieve a fairer distribution of environmental 'goods and bads'.

The Racial Equality Directive in principle prohibits provisions, criteria or practices which effectively put members of an ethnic community at a particular disadvantage unless this is justified by a legitimate aim and done in an adequate way. This provision was not meant to address environmental inequalities. However, to protect EC citizens the European Court of Justice has repeatedly extended the scope of EC legislation beyond the initial intentions of those who drafted the legislation.

Notes

- 1 Adebowale M, Schwarte C (2003), *Integrating Social Inclusion and Environment*, <http://www.capacity.org.uk/downloads/PDFReportEnv&SocialInclusion.pdf>
- 2 'Racial Equality Directive': Council Directive 2000/43/EC of 29 June 2000, Official Journal (OJ) L180/22, http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l_180/l_18020000719en00220026.pdf
The directive in Art 6 of the preamble states that the use of the term racial origin does not imply the acceptance of any theory that aims to distinguish between separate human races. We fully endorse this statement. There is only one.
- 3 For further information on PROGRESS see http://ec.europa.eu/employment_social/progress/docs_en.html
- 4 For further information see http://ec.europa.eu/employment_social/eyeq/index.cfm; a list of events in the member states is available at http://ec.europa.eu/employment_social/eyeq/index.cfm?cat_id=EV
- 5 For further information see http://ec.europa.eu/culture/eac/dialogue/year2008/year2008_en.html
- 6 The charter was designated to be part of the EU constitution and currently provides a 'source of inspiration' for the European Court of Justice.
- 7 This is set out in Article 8 of the directive.
- 8 See Cutter S (1995) 'Race, class and environmental justice' in *Progress in Human Geography*, 19(1). The US Environmental Protection Agency uses the following definition: Environmental justice is the fair treatment for people of all races, cultures and incomes regarding the development of environmental laws, regulations and policies. A more comprehensive description is provided through the 17 principles adopted at the People of Colour Environmental Leadership Summit on 27 October 1991 available at www.ejrc.cau.edu/princej.html
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- 16 Varga C, Kiss I and Ember I (2002) 'The lack of environmental justice in central and eastern Europe' in *Environmental Health Perspectives*, 110(11)
- 17 See www.cepl.ceu.hu
- 18 See for example Hepple B (2004) 'Race and law in fortress Europe' in *Modern Law Review*, 67(1), pp 1-15 and Hepple B, Coussey M and Choudhury T (2000) *The Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation*, Hart Publishing for the Cambridge Centre for Public Law and Judge Institute of Management Studies
- 19 1979 Industrial Relations Law Report p.337
- 20 See European Commission (2004) *Equality and Non-discrimination in an Enlarged EU* (green paper)

Further reading

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Capacity Global

Capacity Global is the only UK based non-governmental organisation and social enterprise working solely on environmental justice issues.

Capacity Global believes that living in a clean and healthy environment is everyone's right. It works specifically with people and communities in urban areas who suffer from social, environmental and economic deprivation, to ensure their voices get heard. The organisation does this in collaboration with its partners and networks.

Its five main areas of work are:

- Advocacy
- Community projects
- Policy
- Research
- Training

For more information about Capacity Global:

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'Globally, social and environmental injustices are on the increase. Not a day goes by without more evidence coming to light of the deep inequities inherent in our current trickle down paradigm. This timely report acknowledges that procedural justice - or "whose voices get heard?" - has largely been dealt with under the 1998 Aarhus Convention and subsequent European Law. It focuses instead on how the EU might deal with the most intractable form of environmental (in)justice: distributive justice - or "who gets society's environmental goods and bads, when, and in what proportion?". It offers a joined-up approach to policy by asking how the Racial Equality Directive, which was not specifically aimed at solving environmental inequities, could be used to better link the European Union's anti-discrimination and environmental protection policies. This is a laudable aim and one which should be pursued vigorously and strategically across both current and accession members of the Union.'

Associate Professor Julian Agyeman

*Department of Urban and Environmental Policy and Planning
Tufts University
Boston-Medford*

'This report sets out novel ideas for using anti-discrimination law. It transplants it from its long established home in the field of employment and consumer rights and sets it to work as a new tool for tackling environmental inequalities. It should be of interest to members of disadvantaged communities seeking to uphold their rights as well as to anyone campaigning for environmental justice.'

Phil McLeish

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