

Environmental justice in Scotland - just words?

A view from outside

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Preface

I teach social policy at the Hamburg University of Applied Sciences, and have worked on environmental justice since 1998. During a two-month sabbatical at Friends of the Earth Scotland in 2005, I researched this report on the environmental justice policy of the Scottish Executive. I met with eight experts, of different background and differing opinions, from various institutions - NGOs, government, academia, and communities; studied various materials; referred to my experience with environmental policy in Germany and elsewhere; and aimed to derive an objective view.

This approach has, of course, serious limitations: I know very little of Scottish history, politics, law, environment and everyday life, and am not a native speaker of Scots or English. Even though, an outside view may offer a valuable new look.

1. Introduction

Environmental justice is concerned with the social, ethnic, spatial and temporal distribution of environmental impacts. The main questions are, whether poor or discriminated individuals and social groups are exposed to more environmental impacts, and if so - why? With what social, political, economic, psychological and health consequences? What opportunities do these groups have to prevent the impacts or compensate for them?

This interface of environmental, health and social policy has been discussed in the USA for 30 years, and in the UK for at least 10 - much longer, when older work on the "geography of poverty and deprivation" is taken into account.

The term environmental justice (EJ) stems from the US discussion of social, ethnic and - with housing segregation - geographical inequities of environmental impacts. It was based on widely known cases of environmental pollution (Love Canal, Woburn, Warren County, "Cancer Alley", West Dallas, Libby, Times Beach, McFarland, etc.; Bullard 1994, Camacho 1998, Faber 1998, Schneider 1999, Szasz 1994), which appeared to fall disproportionately on the poor and the coloured - "black, brown, red, poor and poisoned".

In the last decades, transport has enormously increased, improved, and become cheaper. As a result, extraction, manufacture, consumption, and disposal have become more and more separated in space. Many activities are now often geographically mobile, and can be relocated and concentrated, e.g. in deprived neighbourhoods, industrial regions, national "sacrifice zones" and underdeveloped countries. In these places, a kind of "ecological pauperization" - comparable to its social counterpart in the 19th and early 20th century - may occur, and cause social segregation, or even migration (creating "environmental refugees"; Biermann 2001).

In a globalized economy, environmental pollution - despite its universal character - is not equal, or similar, for all regions and social groups. Instead, in this respect

social inequities (from local to global scale) seem to increase, with the poorest being the most affected. Environmental pollution is thus socially discriminatory.

When the US civil rights, anti-poverty, and union movement became aware of this dimension of discrimination, they supported grassroots groups to tackle the problem, and tried to initiate specific legislation, regulation and programs. This resulted in various activities and programs (Bullard 2000); e.g.:

- Former US president Clinton issued an executive order in 1994 (# 12898) to federal agencies to promote EJ.
- In the 1990s, there were several proposals for an Environmental Justice Act.
- New York City included EJ as an objective in its City Charter of 1992, in form of a "fair share" provision.
- In New Jersey, planning of plants with severe environmental impacts requires advance consideration of socio-demographic structure and present environmental pollution of the affected population.
- Texas created a "Task Force on Environmental Equity and Justice".
- The federal Environmental Protection Agency (EPA) set up various commissions, programs and protocols that deal with EJ.
- The "Superfund" program of the Agency for Toxic Substances and Disease Registry (ATSDR), and the "Brownfield Initiative" of the Department of Housing and Urban Development (HUD) take EJ into consideration.

Under the Bush Jr. administration these activities continue, despite set-backs.

2. Definitions and elements of Environmental Justice

There are an increasing number of definitions of environmental justice or injustice:

"... environmental injustice is experienced as a result of practices or policies which, intentionally or unintentionally, disparately impact on the living conditions of people in low-income groups." (Dunion 2003, p. 12)

"Environmental injustice arises, where particular groups are disproportionately exposed to a problem, and in particular where such a group is exposed more than those who gain from the activities that cause the problem; and where particular groups lack access to the financial or social capital to avoid or prevent an environmental problem." (McLaren 2004)

"... The first is that deprived communities, which may be more vulnerable to the pressures of poor environmental conditions, should not bear a disproportionate burden of negative environmental impacts. The second is that all communities should have access to the information and to the means to participate in decisions which affect the quality of their local environment." (Scottish Executive 2004)

"... two elements:

1. the 'distributive justice' concern that no social group, especially if already deprived in other socio-economic respects, should suffer a disproportionate burden of negative environmental impacts;
2. the 'procedural justice' concern that all communities should have access to the information and mechanisms to allow them to participate fully in decisions affecting their environment." (SNIFFER 2005, p. 16)

At least four aspects of EJ can be identified:

- initial justice ("level playing field"): for communities and social groups to experience equal chances and risks of being targeted for large-scale environmental change, e.g. siting of a landfill
- distributive justice ("fair share"): a fair or proportionate distribution of benefits and dis-benefits after environmental change, e.g. quality of life and property value after construction of a landfill
- procedural justice ("fair treatment"): fair and equal treatment of different stakeholders in regard to the environmental change, e.g. of affected individuals, developers, and authorities in planning procedures or law suits about construction of a landfill
- precautionary justice: prevention or reduction of environmental change, e.g. by reduction of waste, which renders the landfill unnecessary.

In the EJ debate, socio-spatial differences of pollution are not only recognised as environmental inequality, but also considered potentially as discrimination. To counter this, preventive and compensatory provisions need to be developed. Unequal distributions of environmental impacts on social groups, in space and time may have different distributional "logics" (Maschewsky 2001), some of which drive concentration of impacts, and some of which resist concentration:

Kind of logic	Distribution of environmental pollution
political	concentration in areas with politically weak population, because resistance is weak
economic	concentration in deprived areas, because of lower costs (sites, infrastructure, restoration, liability, etc.)
technical	regional concentration, because infrastructure is cheaper, synergies are possible
environmental	no regional concentration, because risk of irreversible environmental damage is higher
medical	no concentration in low-income groups, because they are already exposed to more health risks, which increases probability of irreversible health damage
social	no concentration in politically weak population, because this impedes convergence of social conditions of life, which is imperative for a welfare state

Unequal socio-spatial distribution of environmental pollution may be the result of decisions taken actively in advance, but can also develop in a more evolutionary manner - when, after new environmental impacts affect an area, high-income

groups move away: 'the rich live, where they want, the poor, where they have to'. Such a mechanism is reinforced by further social and economic processes (Harvey 1996):

- socio-demographic changes in communities (social downshift, segregation, gentrification, depopulation)
- socio-economic changes (de-industrialization, shrinking cities and regions)
- loss of jobs in inner-city areas, except city centres
- urban sprawl (suburbanization), development of sub-centres.

A vast number of US studies - e.g., American Lung Association 2001, ATSDR 1988, 1990, Brown 1994, Budnick et al 1984, CDC 1991, CEE 1991, Cutler et al 1988, Geschwind et al 1992, Goldberg et al 1990, Kilburn/Warshaw 1995, Neuberger et al 1990, Paigen et al 1985, State of New York Department of Health 1998 - has demonstrated, probably beyond reasonable doubt, that lack of EJ may cause inequities in health, which are a focal topic for public health (Fehr 2001).

Environmental pollution can impede health in many ways - from asthma to toxic neuropathy, hearing loss to infertility, chloracne to leukaemia (e.g., Carson 1962, Colborn et al 1996, Landrigan 1992, Meyer et al 1997, WHO/Nordic Council of Ministers 1985, Wichmann et al 1994). Pollution influences physical and mental health, well-being, ability and motivation to work, quality of life, and social competence. On a community level, pollution may be a cause of social and residential segregation; deter investments, thus reducing employment; and impede positive social relations, which normally function like a kind of "community-level immune system" neutralizing some of the negative effects of a deprived neighbourhood.

EJ policies usually have the following range of objectives:

- prevention or reduction of new environmental pollution
- clean-up of pollution according to an "originator-principle" (Altmann 1992, SRU 1996) - the polluter undertakes or funds the clean-up activities
- a "fair" or "proportionate" - not necessarily equal - distribution of unavoidable pollution between different social groups and communities ("fair" and "proportionate" are here used interchangeably for distributions/shares that consider cumulative impacts, mitigating effects, benefits/dis-benefits of the polluting activity, vulnerability, etc.)
- "prior informed consent": those individuals or communities that will be affected by planned installations or activities, decide for themselves what they are willing to bear (this can also be described as ecological democracy)
- "fair treatment" of different social/ethnic groups, areas/regions and groups of "stakeholders" in the decision-making process, with regard to time-schedule, access to (understandable) information, expertise, resources, lack of fraud, pressure, bribery, etc.

3. Lessons from the Environmental Justice debate in the USA

Environmental injustice in the US typically has the following characteristics:

- individuals exposed to severe environmental impacts are also discriminated against in economic, social or political terms
- exposure to high environmental impacts correlates with physical and mental health problems
- the siting of new polluting plants or installations increases existing inequities
- environmental clean-up and restoration (of contamination and pollution) varies with the social or ethnic status of the local population, typically being slower and of poorer quality (or non-existent), where deprived groups are concerned.

Such unequal distributions of environmental impacts between social or ethnic groups, and across space and time may be caused - not only in the USA - by various processes (Maschewsky 2001):

- beforehand, as a result of siting decisions of developers, planning authorities or politicians according to "least resistance" of affected individuals and communities ("discrimination effect")
- beforehand, as a result of cost-benefit comparisons of various possible sites ("market effect")
- afterwards, consequent on decline of housing and life quality in affected regions and communities, with differential migration: more out-migration of "normal population", more in-migration of marginalized individuals ("selection effect").

In the USA, EJ has moved beyond empirical assessments and theoretical analyses, and has become a focus of structural (not individual) prevention. In this context, mechanisms for consensual decision about, and socially acceptable distribution of environmental impacts in regard to social groups and communities are being tested (Ashford/Rest 1999, Bryant 1995, Bullard 2000, Clifford 1998). According to a popular US textbook on EJ law, policy and regulation (Rechtschaffen/Gauna 2002), EJ may concern the following elements of environmental policy: standard setting, planning, program design, risk assessment, information disclosure, facility permitting, enforcement, litigation, and clean-up.

Political implementation of EJ demands criteria for:

- distributive justice: to allow an assessment, whether social groups or regions experience a "proportionate" or "fair share" of environmental impacts (Bullard 2000)
- procedural justice: to guarantee that people affected by environmental change and deterioration are adequately informed, participate in decision-making and are treated fairly in the decision making and legal processes.

There is potentially some tension between distributive and procedural justice. Example: if a community already has a disproportionately high ("unfair") share of environmental burden, it is reasonable not to target it for new environmental

impacts, and exclude it from a list of potential sites. In this case, to achieve fair shares may demand unequal treatment. - Similarly, it may be agreeable, to convert a private urban golf course ("green space") to yuppie flats; it is not, if a public park in a deprived neighbourhood is given up for this purpose.

Criteria for distributive and procedural justice should be relevant for planning processes (e.g. socio-demographic, environmental and health characteristics of population at targeted site) and decision-making processes (e.g. information, participation, appeal/veto rights, compensation titles of affected population).

Outside the USA, policies and practices for dealing with environmental injustice or inequity vary. In "third world" countries, environmental problems are typically seen as a result of economic and political discrimination or exploitation, without ethnic discrimination as a necessary prerequisite ("Environmentalism of the poor"; Martinez-Alier 2003). A similar analysis - albeit with a strong historical dimension - has led to the use of the term "ecological debt" to refer to an accumulated "debt", owed by rich nations to poorer ones, as a result of centuries of unfair use of the world's environmental resources and capacity (McLaren 2001, Rocholl 2001).

Accordingly, EJ has frequently been the focus of conferences outside the USA - e.g. in Australia (1997), Mexico (2000), South Africa (2001), Kenya (2002), Cuba (2003), also at the UN environmental conference 2002 in Johannesburg. Discussion in these fora was often placed in the context of globalization, sustainability, agenda 21, and related problems. In India, EJ has been mainly discussed in the context of human rights (Poustie 2005), as in some instances in the US (Bullard 2000).

In Europe, interest in EJ grows. For example, in 2003 there were EJ conferences - or workshops in conferences - at least in Denmark, Finland, Germany, Norway, Spain and the UK. Except from the UK, these countries are often in an early phase of work on EJ; therefore the discussions were in most cases quite general, not specializing on, e.g., empirical data-base or causal explanations, economic or health effects, distributive or procedural issues.

4. Environmental Justice problems in Scotland

Are there specific problems in Scotland which would legitimize an EJ policy and merit appropriate funding? This question should not be answered merely theoretically, or simply by reference to anecdotal evidence (e.g. landfills, no golf courses on opencast sites; golf courses, no landfills near castles) and case studies (e.g. Blantyre, Coatbridge, Douglas, Falkirk, Farr, Grangemouth, Greengairs, M-74 motorway, Penicuik, Scoraig, Westfield; see Dunion 2003, FoES 2003, Schlüter 2003).

Despite recent advances in the evidence base, which broadly confirm the picture of problems painted by the anecdotal evidence, EJ still needs a more complete empirical data base of its own, and - to build that - sufficient research funding. However, with too little research - as at present, lack of evidence of EJ problems is not equivalent to a lack of EJ problems themselves. With too little research,

government will have to "act under uncertainty", which should mean responding in a precautionary fashion to the evidence that does exist.

Empirical EJ research - other than case studies - relates input variables (housing location, deprivation of individuals/social groups/communities, etc.) on one hand to output variables (health, environmental impacts, dis-investment, etc.) on the other hand. It has to cope with methodological problems (Bailey et al 2003, Maschewsky 2004, SDRC 2003, SNIFFER 2005), e.g.: availability, precision, completeness, reliability and validity of data; different spatial scales (local authority, ward, postcode sector, census output area, data zone); data linkage; point vs. dispersed sources; emission vs. exposure data; ecological fallacies; under-/over-reporting; cumulative impacts; criteria and assessment of inequality and injustice.

There is relatively detailed data on multiple deprivation and health inequalities in Scotland. This can offer some insights, but cannot substitute for specific EJ studies, which describe socio-spatial differences in environmental burden, and analyse their causes and consequences.

4.1 Multiple deprivation

Assessment of geographical patterns of poverty and deprivation - a "social geography of poverty and deprivation" - has a long tradition in Scotland "(Knox/Pinch 2000), and still continues (e.g. Pacione 1995, 2005). "Deprivation" is preferred to "poverty", which is seen as too narrow and politically charged. A major part of the deprivation index is lack of economic resources, i.e. poverty; but deprivation also considers health, access to services, etc. (SNIFFER 2005).

A valuable data source is the Scottish Index of Deprivation (SIOD), or - since 2004 - of Multiple Deprivation (SIMD), which offers an area-based quantitative record of a number of characteristics of the socio-economic structure of the population (Bailey et al 2003). In its new version it provides an overall ranking based on six domains: current income, employment, health, education/training, geographic access to services, housing (Scottish Executive Office of the Chief Statistician 2004).

Analyses of the 2003 SIOD (SDRC 2003) for the 32 local authorities and their over 1200 wards showed that the most deprived wards were strongly concentrated in a strip from Fife and East Lothian in the East, to North and East Ayrshire in the West. Glasgow and Dundee showed very high concentrations of deprivation in urban areas (see below). There were also highly multiply deprived areas in the North of the country, particularly the Western Isles and the Northern parts of the Highlands.

Of the 20 most deprived wards in Scotland, 16 were in Glasgow (1 in Dundee); of the 100 most deprived wards, 41 were in Glasgow (11 in Dundee). In Glasgow, 44 of the 79 wards belonged to the most deprived 10% of wards in Scotland, in Dundee 15 of 29. There was obviously an extremely unequal distribution of multiple deprivation in Scotland, with problems clustered heavily in Glasgow and Dundee. But, as there were no data on environmental quality included, these results do not easily translate into EJ terms.

There are some hints that conflicts between catholic and protestant communities, between wards dominated by SNP vs. Labour, between urban and rural areas may contribute to actual or apparent deprivation. Some communities are reported to feel intentionally neglected or even "discriminated against" by local or central government for reasons of this kind. Unfortunately, such indications are usually ignored by science.

4.2 Health inequities

Health status and - geographical and social - health inequities in Scotland have been frequently researched (e.g. Scottish Executive Health Department 2003), as poor health is known to be a major problem in Scotland, much more so than in the UK. For example, standardized mortality ratios (SMRs) in Scotland are, on the average, 16% higher (116; UK = 100). Also, differences within Scotland are huge. For example, Glasgow City with SMR = 139, male life expectancy 66.7 years (UK = 74.9 years), highest SIMD-score vs. East Renfrewshire with SMR = 97, male life expectancy 76.3 years, lowest SIMD-score (Blamey et al 2002, SDRC 2003).

Both theoretical and empirical analysis indicates that poor communities are affected more by pollution. Although ethnic minorities (e.g. Asian and Black Scots) are - unlike in the US - very few in Scotland, they are probably disproportionately affected. Glasgow in particular has many geographical clusters of poverty, deprivation and social problems, several of which are in areas with some concentration of ethnic minorities.

Reported correlations between health and deprivation indicators are sizable (regularly $r > .70$), e.g. between SMRs, life expectancies on one hand vs. proportion of working-age population claiming key social security benefits on the other hand (Blamey et al 2002). The general result is that there are indeed geographical and social inequities in health, e.g. with regard to life expectancy, heart diseases and birth defects. But the observed geographical patterns are usually not very distinct. This is probably attributable to an often large-scale analysis of what are normally small-scale variations of social status (e.g. "pockets" of poverty in middle-class neighbourhoods). To overcome this problem, more small-area research is necessary (as done by SNIFFER; see below).

Another problem is that - for "hard" health indicators (e.g. mortality) - firm evidence on diagnosis and, even more so, causation is often lacking. Therefore a wider approach is advisable for EJ analysis, including a range of outcome variables, like coping behaviour, mental health, quality of life, social well-being, etc. Sadly, for many such health indicators research is still lacking.

Some health problems may be under-reported in Scotland. For example, while lead in the domestic environment is seen as a major public health risk in the USA (ATSDR 1988, CDC 1991), it is little noticed in Scotland. Although subject to regulatory standards, it certainly still exists (e.g. in drinking water via old lead pipes) and may well affect poor households more frequently. Similarly, health effects of toxic (and domestic) waste, which are a main focus in US environmental health (e.g. ATSDR 1990, Barnett 1998, State of New York Department of Health 1998), are barely researched in Scotland, coupled with official resistance to taking action without epidemiological evidence to support it.

4.3 Environmental inequities

Assessments of both geographical and social patterns of environmental deprivation were first done in England and Wales (e.g. FoE 2001, 2004, McLaren et al 1999, Walker 2003). The existing empirical evidence in regard to the UK was reviewed by SDRN in 2004. Results were generally of this kind: "... poorer urban neighbourhoods are more likely to suffer these environmental ills. It is also clear from the population make-up of these areas that older people, ethnic minority populations, lone parent families and their children are more likely to be exposed." (SDRN 2004, p. ii)

Thus, classical target groups of social policy are more exposed to environmental impacts. This is not surprising, rather trivial to commonsense, but - in the absence of effective precautionary policy making - needs to be demonstrated scientifically to guide policy. Such studies indicated that there may be serious EJ concerns in Scotland. The social, economic and historical parallels between Scotland and other parts of the UK make them suggestive.

The SDRN study also referred to cumulative impacts via spatial concentrations of environmental problems, social and spatial concentrations of vulnerable groups, multiple impacts of the pollution, and spirals of decline on the community-level ("knock-on" effects).

The above-mentioned SIMD (Scottish Index of Multiple Deprivation) has recently been used for an EJ analysis of Scotland (SNIFFER 2005), not with wards as spatial units, but data zones. These are aggregations of 2001 census output areas, designed to become the core geography for small area statistics in Scotland. The criteria for definition of data zones are: approximate equality of population (500-1000 people); compactness of shape; approximate homogeneity of social composition; existence of some community of interest; accordance with other boundaries of local significance; accordance with prominent features in the physical environment (SNIFFER 2005, p. 39). This resulted in 6505 data zones for Scotland (populations from 431 to 2813). Data zones vary considerably in size (from below 100 to over 50.000 hectares; by more than factor 500). This reflects the highly concentrated distribution of the population in Scotland, with over 80% living in less than 2% of the area.

The SNIFFER study found strong correlations between multiple deprivation and proximity to pollution, using the proxy of sites subject to Integrated Pollution Control (IPC) (a legal framework for the most polluting facilities); derelict land and river water quality; and weak or U-shaped correlations with air quality, opencast mines, landfills, green space and woodland. The inequality of distribution was not as marked and consistent as some had expected. But this slightly blurred picture is not really a surprise. The spatial and social distribution of environmental impacts is a complex phenomenon, influenced by many actors and activities - e.g., communities fighting, sometimes successfully, against pollution; authorities regulating developments away from overburdened communities; gentrification and upgrading of run-down neighbourhoods; and middle- and upper-class urban flight into deprived rural areas.

A possible interpretation of the SNIFFER results is that geographical clusters of social and environmental deprivation are primarily market, not discrimination effects. The industries of central Scotland have lost their former relevance, so it is - for example - cheaper to put landfills here into abandoned quarries and opencast mines than elsewhere. To prove or disprove this will be hard, but would not alter the experience of injustice.

4.4 Environmental attitudes

Even where EJ concerns are demonstrated, they do not necessarily lead to immediate public concern, or politicisation. Indeed, studies in Teesside in Northern England - research from the University of Newcastle; Bush et al 2001, 2003, Phillimore & Moffatt 1999 - showed that in deprived and highly polluted areas or communities, health and environmental concerns are often downplayed by people, in relation to more immediate concerns of daily life, such as unemployment, poverty and housing.

More broadly, in a recent Scottish environmental attitude survey (Scottish Executive Social Research Unit 2005), respondents' environmental concerns were mainly very concrete: dog mess, litter, fly-tipping, lack of parks, landfills, windfarms, etc. Only in severe cases was the exposure also seen as a social justice issue, as "unfair" or "unreasonable".

4.5 Environmental information

The relative lack of public concern may reflect the poor quality of information on environmental impacts. Extensive English research on environmental information (e.g. Burton 1989, Rowan-Robinson et al 1996) showed that, although the public is not homogeneous, it generally wants interpreted information.

This is unlike that provided by the Scottish environmental information system, which offers complicated digital GIS data, but failed to provide information on breaches of emission levels, possible health effects, enforcement actions taken by SEPA (Scottish Environment Protection Agency). Obviously, interpretation of data is more important than presentation. Not only lack of information, but also lack of interpretation risks exacerbating environmental injustice.

4.6 Political instruments for Environmental Justice implementation

To implement EJ in Scotland (and elsewhere) requires activities from many sides - e.g. central and local government via planning, transport, housing, environment, health, etc. agencies and departments; business, via federations and individual firms; social, environment and health NGOs - using political, legal and financial instruments.

For the USA, a recent textbook (Rechtschaffen & Gauna 2002) gives an overview of some actors and legal instruments that might work for EJ. For Scotland, an analysis has been undertaken of SEPA as a potential EJ actor (Poustie 2005). Poustie argues that guidance and statements of UK and Scottish sustainable development policy would need to become "material considerations" that SEPA

had to take into account in its licensing and enforcement activities. In addition, arguably EJ is already a material consideration as a result of the First Minister's environment speech (see below) and the Partnership Agreement (see below), despite the lack of a clear and sufficient policy document (Poustie 2005, p. 44).

Poustie also argues that

- SEPA may lawfully address distributive EJ concerns in relation to new or existing installations by imposing or tightening emission limit values in the licensing process (p. 73)
- SEPA has anti-pollution prevention and clean-up powers, which could be used to address EJ issues (p. 80)
- SEPA is not legally precluded from making its pollution registers electronically available and presenting a wider range of information (p. 92)
- there are needs and opportunities to improve consultation, participation and accountability (p. 96).

Comparable EJ-related analyses of other relevant agencies, systems and legal frameworks - e.g. planning department, waste management, PPC (Pollution Prevention and Control) - have yet to be undertaken.

5. Environmental Justice debate in Scotland

With the extremely unequal distribution of wealth and power in Scotland, social justice has been a central policy issue here for over a century (Knox 1999, Smout 1997), much more so than in England, where the focus is presently rather on social exclusion. Environmentalism came late to Scotland, as a middle-class issue, and from outside (despite John Muir). It was about birds and flowers, lochs and glens, species, conservation and natural landscapes, not about man and urban blight, smoke-stacks and landfills, polluted air and water, rotten houses, deprivation and industrial landscapes.

Middle-class environmentalism successfully created conservation areas, thus allowing landscape beauty to become a significant factor of productivity in Scotland (through tourism). But the Labour Party, trade-unions and social organizations working with the poor regarded environmentalism as rather elitist. This changed, when the EJ movement in the US became known in the UK, and a "new environmentalism", with more social sensitivity - "environmentalism of the poor" (Martinez-Allier 2003) - took over.

FoES (Friends of the Earth Scotland) started conceptual work on sustainability in 1992, using the Dutch notion of "environmental space" (FoES 1996), and took up the international discussions about "ecological debt" (McLaren 2001). In 1999 FoES launched a campaign to promote EJ. FoE (Friends of the Earth England, Wales and Northern Ireland) undertook several studies on environmental inequity (FoE 2001, McLaren et al 1999), influenced by both the US-discussion on environmental racism and the debate in Scotland.

Additionally, the activities of FoES comprised:

- initiation of a higher education certificate course on EJ (O'Leary & Scandrett 2005, Scandrett & O'Leary 2004), together with Queen

Margaret University College in Edinburgh, to train "EJ agents" for community work

- development of community guidelines for EJ work (FoES 2003)
- a book on EJ-related conflicts in Scotland (Dunion 2003)
- analysis of Good Neighbour Agreements (GNA) as possible EJ instruments (FoES 2004)
- activities to promote introduction of a Third Party Right of Appeal (TPRA) for communities in the Scottish planning system
- proposals or commentaries to various policy proposals, including the Freedom of Information (Scotland) Act (FoI), Strategic Environmental Assessments (SEAs), Pollution Release and Transfer Registers (PRTRs), Good Neighbour Agreements (GNAs)
- projects to help communities (especially disadvantaged ones) to access expertise, advocacy and advice relating to polluting facilities (Accessing Relevant Knowledge, ARK) and to planning processes (Citizens' Environmental Defence Advocacy, CEDA).

This work helped convince some politicians, that environmental and social concerns are linked, and social justice arguments can be applied to environmental impacts. The Scottish Labour Party, with a high profile in social policy, was looking for a supplementary environmental profile. EJ seemed to fit - a mixture of working-class, deprived people, poverty, social policy, and environment, with - maybe - a potential for new jobs. The environment speech of the First Minister on 18/2/2002 stated a clear commitment to EJ (McConnell 2002):

6. "... this gap between the haves and the have-nots is not just an economic issue. For quality of life, closing the gap demands environmental justice too.
13. We know that this damage to our environment hits the poorest hardest. Traffic fumes, pollution, and poor quality housing all affect the most vulnerable in our society: the old, the very young and those who have least.
17. It has traditionally been the view amongst many - including some in my own party - that campaigning for the environment was a marginal issue. That the environment was a concern for the middle classes. That it was about green fields, hills and glens, birds and flowers in woods and on the seashore ...
18. ... reality is that the people, who have the most urgent environmental concerns in Scotland are those, who daily cope with the consequences of a poor quality of life, and live in a rotten environment - close to industrial pollution, plagued by vehicle emissions, streets filled by litter ... These are circumstances, which would not be acceptable to better-off communities in our society ...
20. The people who suffer most from a poor environment are those least able to fight back ...
21. In the late 20th century the big political challenge - and the greatest success I believe - for democrats on the left of centre was to develop

combined objectives of economic prosperity and social justice. I believe the biggest challenge for the early 21st century is to combine economic progress with social and environmental justice.

23. We must challenge the assertion that there is always a conflict between economic progress and environmental protection ...
24. Scotland's industrial base is the core of our social and labour history - but it has left a legacy of contaminated land, run-down towns and social problems of its own.
39. The environmental movement has been waiting for us to publish sustainable development indicators ... I put on record today my commitment to publish these indicators soon ...
41. ... a government with a wide, strong and deep commitment to the environment is not accomplished by putting it in the title of one department ... every part and layer of government can affect the environment ... "

In 2002, EJ seemed to have a high political value for the Labour Party, the Liberal Democrats and the Scottish Executive, because it successfully related social justice (poverty, multiple deprivation) with environmental issues (pollution, health risks). The speech comprised arguments to justify dealing with EJ (6), linking social justice with EJ (13, 18, 20), economy with environment (21, 23, 24), critique of the labour movement's neglect of environmental issues (17), and political announcements of the First Minister (39, 41).

The Partnership Agreement of the new coalition of Labour Party and Liberal Democrats (Joint Statement 2003) on 14/5/2003 stated in regard to EJ:

- "We want a Scotland that delivers sustainable development; that puts environmental concerns at the heart of public policy and secures environmental justice for all of Scotland's communities." (p. 5)
- "Too many lives are damaged by poor housing, a blighted environment and poverty. We want everyone to have a decent home. We will work to ensure that neighbourhoods are kept safe and clean and ensure that our planning laws work to improve the environment for all. We will tackle the social, educational and economic barriers that create inequality ..." (p. 37)
- "We will improve the planning system to strengthen involvement of communities, speed up decisions, reflect local views better, and allow quicker investment decisions." (p. 38)
- "We will require the production of a pollution inventory for every community, accessible through the Internet." (p. 40)
- "We will consult on new rights of appeal in planning cases where the local authority has an interest, where the application is contrary to the local plan, when planning officers have recommended rejection or where an Environmental Impact Assessment is needed." (p. 40)

The first statement (introduction) sets a high - but vague - target; the second is well-meaning, more concrete, but non-committal ("want", "will work to ensure", "will tackle"); the third contradictory, as community involvement - itself less than participation - needs time, while decisions are to be speeded up; the fourth implements an EU directive; and the fifth is non-committal again ("consult").

Since 2002, EJ has become a topic for politicians, scientists, journalists, environmental and social NGOs in Scotland, who understand the overlap between social and environmental problems, between terrible, often multiple social deprivation and environmental disadvantages. This has resulted in a lot of statements and printed material. Despite this, a strategic "masterplan" of the Executive to implement EJ is still missing - or not made public, as is a high-ranking control-body to supervise the implementation (the Cabinet Sub-committee for a Sustainable Scotland is obviously not doing this job; see below).

The general public - though it appreciates social justice - generally did not respond to the EJ concept, except some affected communities, which used a different language ("unfair", "unreasonable"). Some trade-unions are reported to regard EJ rather as a threat, e.g. to jobs for chemical workers and miners, and their communities. Perhaps understandably, the Scottish Executive has yet to publish a progress report on EJ.

6. Environmental Justice policy approaches in Scotland

One may distinguish two main, contrasting EJ approaches in Scotland (and elsewhere) - a "regulatory" and an "embedded" approach.

6.1 Regulatory approach

This is the traditional top-down process, targeting distributive and/or procedural issues, with an impressive record of success in hygiene, occupational and environmental health, regional planning, housing regulation, etc. Nevertheless, this approach is meanwhile regarded as pre-modern, even authoritarian, not tuned in to the smooth mechanisms of a globalized economy and deregulated society.

In this contemporary economic, political and legal environment, the regulatory approach has very limited political space, which makes it hard to manoeuvre, and is confronted with counter-pressures from various sides trying to block any progress. The prospects for success are therefore often very limited - maybe getting one piece of legislation through, to deal with one indicator out of many.

Nevertheless, regulation is an important front-line approach for environmental policy, e.g. by standard setting for emission, operation and clean-up, enforcement of existing regulation, permitting and licensing. Regulation may be exerted on a central or local level.

On the central level, SEPA, the environmental regulation authority in Scotland, is still - despite staff increases, which have been mostly used up by new functions, like the emissions trading schemes (ETS) - under-staffed, under-funded,

sometimes under-motivated, and lacks effective sanctions. Enforcement is weak, despite obvious breaches - which some experts do not blame on SEPA, but on the judicial system, with much too low sanctions. Against an often "laissez-faire" attitude to environmental concerns - outside SEPA, but sometimes also inside - it seems necessary to tighten permit regulations, emission limits and enforcement, allowing tougher restrictions on operations.

While some experts criticise SEPA as arrogant and ignorant in regard to EJ, unwilling to exert its enforcement powers, other experts report a positive resonance to EJ from some SEPA staff, who seem to be quite enthusiastic about EJ, but have little influence. SEPA is not good at communication, and not used to explaining what it is doing in communities. While SEPA still makes too little use of its power, it does - according to some experts - more enforcement than the public usually thinks. The main problem seems to be the judges, with much too low penalties.

Staff at regulating authorities and companies often have the same professional background, share the same values, beliefs and attitudes. Consequently, there is a "revolving door" effect among SEPA's legal staff, with officials sometimes later getting well-paid jobs in the companies they regulated before. This "agency capture" - much researched in England and the US (e.g. Greenberg 1993, Seis 1998) - can create a special conflict of interest, with detrimental effects on objectivity and rationality.

Unlike SEPA, local authorities have neither enforcement rights, nor resources and monitoring capacity. Some civil servants at the local level (planning officers) are reported to be very motivated and supportive of EJ concerns, but face heavy pressure from local councillors, who are "lobbied hard" by developers. Allegations of planning corruption exist, but evidence is scarce, transparency poor and awareness of the problem low.

The perspectives of politicians and regulators differ fundamentally from those of affected individuals and communities. The first think rather in terms of law, the latter in terms of fairness:

Environmental justice - authority vs community views (Dunion 2003, p30)

Authority

legal
commercial
no real risk
case-by-case approach
impartial scrutiny
has to go somewhere
expert opinion

Community

unfair
profiteering
more risk than comparable communities
cumulative impact
cosy relationships
does not have to go here
lived experience

It is difficult for the two parties to find a common language. Usually the technocratic lingo of regulators and lawyers dominates in the end, and leaves the other side speechless, though angry.

6.2 "Embedded" approach

To follow neoliberal demands for deregulation, privatization and commercialization of existing economic, social and environmental regulation - which is expected to "unleash" market forces, hitherto "choked" by regulation - many states have reduced their steering capacity (Rosenbrock & Maschewsky 1998). Combined with a lack of control and enforcement in environmental regulation, this gives up traditional defence lines in environmental policy, in order to let market mechanisms do a smoother, more democratic, efficient and sustainable job - or so the promise runs.

This approach consists of non-hierarchical communication, negotiation and mediation, combining EJ with other issues (e.g. sustainable development), making compromises, offering win-win solutions to all stakeholders. One necessity for this approach is seen in the geographic and economic marginal position of Scotland, which argues against strong regulation of business interests, with hopefully a trade-off between deregulation and new, or preserved, jobs.

However, there are many problems with this new style of "regulation", although in theory it should be able to deal successfully with the causes of environmental injustice. The process is difficult, time-consuming, frustrating, prone to lose sight of the target, prone to blackmail by business, hard to evaluate, and with few visible and presentable successes. Therefore it needs a central actor with drive, determination and some - not too much - patience.

In such a model, the EJ agenda is not implemented by a single ministry or department via specific laws, regulations, orders and agencies, but by various departments via cost-neutral minimal changes in existing policies - e.g. improved accommodation, energy-conserving insulation of housing, and via inter-agency negotiations. Mainly, EJ is (re-) integrated into policies on sustainable development (SD, a non-controversial issue), economic and transport planning, etc. as a specific perspective. This change of perspective is very long-term and difficult. In the process, EJ is often confused with SD.

7. Environmental Justice implementation in Scotland – an overview

The Scottish Executive has apparently sought to follow the "embedded" approach to EJ. After 2002 it has done little - at least to the public eye - to promote EJ. It is not a top priority, and the coalition seems to be rather mixed about it. The Liberal Democrats were angered, because environment is their department, and Mr. McConnell "stole their show". To change things from bad to worse, the First Minister also took the chair in the Sustainable Development (SD) Sub-committee. As a result, it was suggested, it took Environment Minister Finnie half a year to talk about EJ in public.

There is a clear lack of a distinctive EJ strategy and policy for Scotland, tackling both issues of distributive ("fair share") and procedural justice ("fair treatment"). The government is reactive, not proactive in this area. "Social justice" has

definitely more momentum than EJ. In addition, both the international and temporal dimensions of EJ seem to be neglected (despite a National Planning Framework until 2020). It would appear that the Scottish Executive does not want to bind itself to obligatory and enforceable EJ mechanisms, in respect of planning, standard setting, enforcement of standards, facility permitting, exposure assessment, risk assessment and clean-up.

Altogether, substantial progress towards EJ seems to be small, if not negligible. Central government shows a mixture of appraisal and denial of EJ. However, support is not limited to Labour, instead there are a few supporters in several parties (Lib Dems, SNP, Greens). At the moment, EJ is more symbolic (Hansjürgens & Lübke-Wolf 2000) than real policy - for some experts, "government didn't deliver".

A Scottish Sustainable Development Strategy, with corresponding indicators, has been announced by the Executive for the end of 2005. The indicators are to go beyond gross economic indicators (e.g. GDP), and include e.g. quality of life indicators. Renewable energy policy and recycling policy are also relevant for both EJ and SD, if they remove or help prevent environmental impacts on disadvantaged groups. Despite some improvements in these areas, there has been no reduction of absolute impact on the environment - only further increases have been avoided.

In the UK Government SD Strategy (with parts for England, Northern Ireland, Scotland and Wales) EJ is not a discrete issue, but only mentioned in the context of sustainable communities. SD with its components of economy, environment and society is definitely more politically accepted, but many criticise that it has been overused beyond recognition. SD shares with EJ a focus on the increasing geographical distribution of extraction, manufacture and disposal. According to both EJ and SD things should generally be dealt with where they are produced - proximity and minimization principles, though this is more applicable on a larger scale, e.g. national level. EJ principles are thus implicit in SD, but because SD is abused, it is necessary to highlight issues through EJ to genuinely deliver SD.

The UK and Scottish governments seem to accept a primacy of economy over policy, even though the neoliberal economy - with its aversion to regulation and belief in self-optimizing market mechanisms - is neither sustainable nor cost-effective in the long run. This economic model is also biased towards a centralized, even trans-national, economy and endangers subsistence on a smaller - e.g. local - scale. Individuals are much less mobile than capital and goods, and mobility varies between social groups, so this kind of modernization exacerbates injustice and destroys valuable material infrastructure and social capital, which the partnership agreement promised to protect.

The classical Victorian modernization established a very unequal distribution of power and wealth in Scotland (Smout 1997), which has only marginally been mitigated in the last century. An unequal distribution of power and wealth - including social competence, legal advice, political connections - may cause environmental inequities today through discrimination or market mechanisms, but is a non-issue in the Executive's agenda. While poverty and multiple deprivation are deplored - albeit with a tendency to 'blame the victim', quality of life, dignity, a decent environment, etc. are not developed political targets (though there is some discussion on the margins of real political debate). The

working assumption seems to be that economic growth is not a potential social problem - but a solution to social problems, by creating new revenues, which may then be partly redistributed, to soften the impact of growing social inequities. In a world of limited environmental resources and encroaching climate change, this assumption is not valid.

As in other countries, the political elite seems far removed from everyday life in deprived communities, despite all EJ rhetoric. The perspectives of place vs. space (Harvey 1996) differ markedly: while a landfill or incinerator in the backyard is disliked by most, at a 'safe' distance - maybe 5 miles for a landfill or incinerator, 50 miles for a nuclear plant - it seems acceptable, or even necessary to nearly all. As landfills, incinerators and nuclear plants are regularly very far away from the residences of the capital's political, administrative, business and media elites, the latter all share the opinion that - for economy, wealth and well-being to grow - "the dirt has to go somewhere". Thus, their efforts towards EJ realization - e.g. to develop distributional justice criteria for environmental impact, defining "fair" or "proportionate shares", taking benefits and disbenefits, cumulative impacts, vulnerable populations, "knock-on" effects, etc. into account - are small at best.

Some problems with EJ implementation are not based in the political sphere, but in the administration (here the interviewed experts differed markedly). These problems do not affect EJ alone, but also enforcement of environmental regulation in general. They may take the following forms:

- over-loaded, but under-staffed and under-funded central and local agencies, with too little power to enforce regulation
- gaps in environmental regulation
- problems with "cowboy developers" and "outlaw authorities"
- pressure from the political side, e.g. from local councillors on local planning officers (sometimes with suspicion of "planning corruption", "brown envelope jobs", "backhanders")
- a counter-productive jurisdiction with unduly low final penalties against environmental offenders, much lower than in England and Wales (public prosecutors are mostly criminal lawyers, who do not know and care about the environment)
- incompetent or unwilling agencies, which cling to "business as usual", have "hidden agendas" (Schnapp 2000) without EJ, and feel sure that EJ will go with the First Minister.

As already mentioned, the Executive appears to lack an EJ "masterplan" or at least detailed strategy, which it could implement. Instead, it "integrates" EJ into SD, which is easier to communicate. On a high level, EJ is dealt with in the Cabinet Sub-committee for a Sustainable Scotland - with three external members, one each for NGOs, business and communities - as one topic among many. Some members of the sub-committee seem to be glad about the perceived vagueness of EJ.

If the Executive is - in parts, temporarily, cautiously, under certain circumstances - serious about implementing EJ, it urgently needs some "cognitive restructuring", or rather a strong and lasting impulse, preferably from outside, e.g. the EU.

Some NGOs (especially FoES), affected communities and their "EJ-agents", a few government and local authority officials, and a few scientists try to make the

Executive deliver on its EJ announcements. External pressure comes from the EU (e.g. Aarhus convention), especially in respect to procedural rights for information, participation, etc. Further external support for EJ might be expected from the "Poverty Alliance", some eco-congregations and - very cautiously - from the Church of Scotland (it criticised opencast mining in 1998).

Public support for EJ is missing, rather as a result of ignorance than critique. The trade-unions are mainly concerned about jobs, not environment, health and quality of life, though the unemployment-rate is rather low. Public health professionals complain about environmental health in general - in their opinion Scots do not die from toxics or hard work, but rather hard eating, drinking and smoking. Strong counter-pressure comes also from business, with the usual arguments (over-regulation stifling initiative and innovation, endangering the potential to compete internationally, etc.).

8. Environmental Justice implementation in detail

As already mentioned, implementation of EJ in Scotland is rather "embedded" than regulatory. Discussion and (limited) action has mainly focused on the following issues:

8.1 Distributive justice/fair share

The geographical and social distribution of environmental impacts in Scotland is often unequal (see SNIFFER 2005). For example, despite recent efforts to "reuse, reduce, recycle", waste management is still poor in comparison to other European countries. Huge and increasing amounts of waste are buried in landfills, not where the waste is generated, but where it is regarded as politically and economically feasible, e.g. in old opencast sites and quarries in the "central belt" between Glasgow and Edinburgh. Under this waste management system, Greengairs in North Lanarkshire takes waste from Glasgow to Inverness, thus having the largest landfill in the UK.

There are direct analogies between Greengairs and the ill-famed Warren County landfill in North Carolina, where in 1982 the US-Environmental Protection Agency wanted a poor, predominantly black community to take large amounts of PCB-contaminated soil, which - among other incidents - started the EJ movement in the USA (Bullard 1994, Faber 1998). Greengairs, too, is a poor community and was supposed to take PCB-contaminated soil from England, where in 1998 tightened standards for hazardous waste did not allow landfill-disposal, while SEPA had not changed site licenses accordingly (Dunion 2003). Although that incident led - after campaigning - to changes in Scottish waste licenses, Greengairs still faces proposals for additional landfill capacity, and management practices at active landfills are often still a problem.

According to SIOD analyses, the central belt and the Glasgow conurbation are generally more affected by multiple deprivation (SDRCD 2003, p. 50); according to IPPC registers, the same area is more affected by pollution (SNIFFER 2005, p. 60). To some interviewed experts, parts of this area seem to be written off as a kind of "sacrifice zone". A consideration of communities' "fair shares" of waste

and other pollution is apparently missing in the existing siting and licensing system.

The framework for the land use planning system has both a central and a local level. The Executive's National Planning Framework to 2020 could have been used to promote EJ. It exists, but has not yet been implemented and EJ was not a significant issue in its development. Local planning officers are sometimes no real match for developers; and even where they are, they may come under pressure from local councillors, who are "lobbied hard" by applicants.

EJ-relevant problems in land-use planning include, among many others, opencast mining, flood prevention, vulnerable communities and quality of life issues. In opencast mining, e.g. definite distance from housing, buffer-zones between settlements and mines, barriers around industrial sites are presently the main instruments, with high demands on dialogue and negotiating. This is done via planning policy guidance, which is a material consideration in the decisions made by planning authorities. The executive has begun to write EJ concerns and language into planning guidance, but so far probably not strongly or consistently enough to make much difference.

SEPA has no lead role in land-use siting decisions for industrial and waste facilities, but is a statutory consultee in both development planning and development control. This could be used to support EJ, both on the strategic development plan level via Strategic Environmental Assessments (SEA) of development plans, and on the specific application level via Environmental Impact Assessments (EIA) of the project (Poustie 2005).

Scottish planning law has no specific provisions for justice. But SEAs, recently introduced due to an EU directive, may help promote EJ. SEA requirements on strategic planning - and Executive programmes such as the waste strategy - offer scope for improvement, with early consideration of EJ and engagement of communities, thus hopefully reducing problems at the end of decision-making and number of disputes. SEAs may thus be positive, but require early and good consultations, and empowerment on a strategic level. For SEAs to work, it is essential that alternatives, including the "do-nothing" option are presented and fully considered. Other legislation may also be useful for EJ: environmental courts; specific planning legislation, etc. The already mentioned study by Poustie (2005) suggests a number of ways in which EJ may be integrated into the planning system.

On the specific application level, an EIA of the project may be required under EU law, which is transposed into the Scottish system through planning guidance. This may also consider cumulative impacts. But there is a huge variability in implementation and enforcement of EIA provisions. Resistance comes mostly from companies, developers, and local communities. Local development plans have a high status, and set some criteria for approval or rejection of a planning application, though ministers can step in under specific conditions and overrule community decisions. Decisions made at the local authority level may reflect community concerns - or they may not, because of the influence of developers, and the imbalance in appeal rights (see below).

8.2 Procedural justice/fair treatment/participation

The Rio declaration of 1992 demanded participatory rights for individuals, including access to environmental information and participation in decision making. As the Rio Declaration is a "soft law instrument" (Poustie 2005, p. 30), for procedural justice the "Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters" from 1998 is more helpful, e.g. in regard to information rights.

The Scottish Executive's stated target is to make the planning process less formal and intimidating, less like a court process, more like mediation. More balance in information, competence, resources and rights between the parties is needed to implement the Aarhus convention. Some overarching participation problems are:

- internet access - poor households often do not have it; therefore it must be provided otherwise, e.g. via libraries
- user-system interface - not everybody is used to computers; so the programme design must be user-friendly
- comprehensibility of information - plain toxicological, epidemiological, etc. data may only be understood by scientists; for lay-persons the data need to be interpreted
- regulatory responsibility - not everybody is aware of its structure, procedures and limits; so these may need to be explained, as well as the actions taken or not taken.

The following procedural justice issues are currently most relevant.

Freedom of Information

The FoI (Freedom of Information (Scotland) Act) has been implemented by the Scottish Executive in 2005, following an EU directive. One target - among others - is to advance public awareness of environmental information, and make use easier, by promoting computer and IT skills, e.g. via libraries.

The Aarhus Convention's insistence on information rights has resulted in the introduction of the FoI. This has also improved the procedures applied to environmental information, technically available since 1992 under an EU directive with many loopholes. The FoI brings some change, though legal rights for general information existed for decades. But they were heavily curtailed, not enforceable, and thus not actionable rights. Under the new regime, with rights of appeal and sanctions and an Information Commissioner, the rights have become actionable.

But there are still problems. Information released - whether reactively under the new Act, or proactively, such as the Scottish Pollutant Release Inventory (SPRI) - is not necessarily comprehensible. The US information system on toxic releases (Toxics Release Inventory, TRI) seems to be better, with interpreted data, including enforcement action, etc. The SPRI lists self-reported emission of about 120 pollutants by point sources, allows search by postal code, and has been put into the internet by SEPA. It still has severe problems:

- self-policing of industry and little control by SEPA/other authorities, with a risk of under- or non-reporting of pollution

- still too few listed pollutants
- no interpretation of the data
- no information on breaches of licensing/permission agreements, breaches of emission levels and enforcement actions of SEPA, etc.

Some departments of SEPA are very keen on these improvements, but are limited by organization priorities, resources, new functions (e.g. the emissions trading system (ETS)). Besides, providing interpreted data is labour and resource-intensive.

Fair treatment

Fair treatment is essentially implied in the Aarhus Convention. But the commitment to implement it appears to be weak, bound to give in to counter-pressure. For example, there was a good consultation about the prospective M74 motorway extension in Glasgow. Despite rejection of the project by the public inquiry, the Transport Minister decided to proceed with the project, making clear that the Executive's commitment to Aarhus is just symbolic, with binding power only on issues that are not opposed by business. Such experiences are, of course, highly demotivating to the public and give little credibility to the Executive's declarations.

Planning appeals

A Third Party Right of Appeal (TPRA) would give communities and community groups the right to appeal to approvals of planning applications of developers by local authorities (councils). The developer has a right to appeal against rejection of his/her application, thus the TPRA would create "equality of arms" between developers and communities or community groups, as has been implemented in countries like New Zealand and Ireland.

Despite this obvious fairness issue involved, the Executive's stated commitment to (social and environmental) justice, and backing of a TPRA by 86% of respondents to an Executive consultation, the Executive rejected the proposal in a new White Paper on planning (in 6/2005). This rejection is due to the usual counter-pressure by business ("over-regulation", "excessive bureaucracy", etc.), and was legitimized using arguments referring to justice - TPRA would support NIMBYs ("not in my backyard"-initiatives in wealthy neighbourhoods), and would favour urban population over rural, etc.

Good neighbour agreements

Good Neighbour Agreements (GNA) are voluntary agreements between a developer or company and a community, which is mutually beneficial and improves a relationship, which may have been so far characterized by conflicts. Without TPRA (see above), communities and community groups are at the mercy of developers, authorities, local councillors and judges, with very little political space and no instruments to protect their interests.

Usually, a GNA entails acceptance or approval of a LULU (locally unwanted land use) by a community against some promises of small-scale benefits (e.g. jobs for local residents, financial support for local infrastructure) by the developer or company. Compensation for loss of property value is not normally included.

There are some provisions for compensation in the planning system, but only in a material form (e.g. additional parking space, bus stops), and often not really helpful. Another form of compensation is e.g. a landfill tax, which is not paid to the community, but nationally, and not used to mitigate local impacts, but to help promote recycling and thus reduce the need for landfill. The aggregates levy on the other hand is spent on local amenity improvements near existing and old minerals working, but not on reducing use of aggregates or recycling.

The limitations on "planning gain" are put in place to prevent bribery; i.e. they should be directly related to planning obstacles to the development going ahead. The Executive has begun to explore GNAs as a planning tool as part of the planning White Paper.

To be effective, GNAs need a framework with legal underpinning, incentives, controls and sanctions for both parties. The planning system is one possible way in which GNAs could be made practical and effective. But without control and enforceable sanctions, there is little risk for developers or companies, which break their promises. Presently only very few, voluntary GNAs with limited value exist.

9. Summary and conclusions

1. A definite implementation of environmental justice (EJ) in Scotland seems to be lacking, despite a clear commitment by First Minister Jack McConnell in his environment speech on 18/2/2002. At that time, EJ had a high political value for the Scottish Executive, the Labour Party and the Liberal Democrats, because it successfully related social justice issues (poverty, multiple deprivation, etc.) with environmental issues (pollution, health risks, etc.). Now even former proponents seem to be uneasy with the term.
2. The Partnership Agreement of the new coalition of Labour Party and Liberal Democrats on 14/5/2003 is especially vague about EJ, and in parts contradictory (e.g. proposing both accelerated planning and more community involvement). The majority of central and local authorities seem to be poorly or un-committed to EJ, either from ignorance, overburden, or "hidden agendas" not entailing EJ. Despite this, some staff in these agencies are enthusiastic about EJ, but too few, and without enough power to build any kind of "critical mass".
3. EJ is a topic only for politicians, scientists, journalists, environmental and social NGOs. The general public does not readily respond to the concept, except some affected communities (though they use different terminology). Some trade-unions seem to regard EJ rather as a threat.
4. The Scottish Executive, central and local authorities seem not to have a clear strategy - let alone "masterplan" - for EJ. They make insufficient use of existing regulation, do little to develop regulation further (except where

demanded by EU directives), but rather follow an "embedded" political approach, "smuggling" EJ into existing programs - like non-controversial sustainable development - with little or no changes in targets, priorities and funding-schemes.

5. With this policy approach, progress towards EJ is only small and slow, and can hardly be recognized. Some NGOs (especially FoES), affected communities and their "EJ-agents", a few government and local authority officials, a few scientists press the Executive to deliver on EJ. Some external pressure comes from the EU (e.g. Aarhus convention), especially in respect to procedural rights for information, participation, etc.
6. The EU-required information regulation has been implemented by the Scottish Executive in 2005 as FoI (Freedom of Information (Scotland) Act), with complementary environmental regulations, and clear rights of appeal and sanctions. But in planning, actionable participation rights for affected communities, like TPRA (Third Party Right of Appeal), have been rejected.
7. The Partnership Agreement clearly states, and the Executive's policy indicates, a predominance of economy over policy and environment. This blocks new or enforced regulations in favour of increased distributive justice of environmental impacts, which might need to put some restrictions on market processes.
8. The Scottish Executive seems not to want to bind itself by obligatory and enforceable EJ mechanisms, in respect of planning, standard setting, control/enforcement of standards, facility permitting, exposure/risk assessment and clean-up.
9. At the moment, the Executive's approach to EJ appears to be basically threefold - firstly, wear EJ out in laborious negotiations between different departments within government, and between government, local authorities and developers; secondly, down-size and dissolve EJ in the larger context of sustainable development; thirdly, avoid presenting a progress report on EJ.
10. If the Executive is still - in parts, temporarily, cautiously, under certain circumstances - serious about implementing EJ, it might take some of the following next steps to regain the initiative on EJ; e.g.
 - produce a progress report on EJ (with detailed benchmarks in regard to time-schedule, legal implementation, set-up of protocols and routines, etc.)
 - decide clearly on the political distribution logic it will apply to different kinds of environmental impacts (e.g., concentration vs. "spreading-out", prevention vs. compensation) and make it public
 - design legal, planning and financial instruments to enforce and fix these distributional schemes
 - develop criteria for distributive justice, including single/cumulative, actual/probable, present/delayed impacts, vulnerability, compensation, benefits/disbenefits, "knock-on" effects, etc.
 - design a detailed "masterplan" for the future implementation of EJ and make it public.

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