



## Sufficiently capable for effective participation in environmental impact assessment?



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### ABSTRACT

Where environmental procedures do not adequately include affected parties in decision-making, particularly those from vulnerable and marginalized sectors of society, environmental justice cannot be realized. Further, the practice of EIA will likely perpetuate the negative and disproportionate distribution of environmentally associated harms on vulnerable persons. Thus, this paper explores the potential merits of the capabilities approach for establishing sufficiency grounds for public participation in environmental impact assessment (EIA). The paper identifies shared principles of justice in decision-making between the practice of EIA and the capabilities approach by highlighting key ethical and theoretical concepts of the latter as a means to fortify this weakness in the participation practice of EIA. Capability probes explore individual stakeholder's opportunity, ability and constraints to participation. The findings of four South African (EIA) case studies are discussed, highlighting the instrumental relationship between participatory actions, potentials and entitlements as they are mediated by empowering or disempowering procedural mechanisms. Cases exhibiting convincing stakeholder empowerment demonstrate the value of sufficient support for participatory achievement. Instances of disempowerment in the cases underscore the dangers of insufficient and inequitable participation. Reflecting on the findings, the work applies the recent notions of capability 'sufficiency' (Nielsen and Axelsen, 2016) to outline what can be delimited, and later contextually specified, for support provisions in EIA building towards more meaningful, and perhaps more just, public participation processes.

### 1. Introduction

It is well established that environmental decision-making requires the integration of social, economic and ecological aspects; not just a narrowly defined economic or biophysical conceptualization (Morrison-Saunders and Early, 2008), which is why EIA is also mandated to apply a participatory approach, the precautionary principle, and consider cumulative and intergenerational aspects (Lamorgese and Geneletti, 2013). EIA literature highlights the role that public participation should play in the decision-making process (Sinclair et al., 2008), together with the need for improved consideration of social aspects (Vanclay, 2002, 2014) in order to live up to these mandates. The rationale for public participation in EIA includes the normative notions of influence in decision making, enhancing democratic capacity, social learning and empowering marginalized individuals (Glucker et al., 2013). These four normative rationales engender expectations that assume a quality of participation that goes beyond a procedural, or checklist approach, to indicate participation which might benefit the decision making and

participant in substantive ways. There are, however, a number of immediately identifiable challenges that stand in the way. Firstly, the practice of EIA faces the general challenge of defining, conducting and evaluating 'meaningful' or 'effective' public participation; secondly, as a corollary of this first challenge, in order for affected stakeholders to participate effectively, the practice needs to identify, recognize and provide reasonable support measures to those clearly disadvantaged and impaired to participate.

In order to address these two challenges and presenting how the capabilities approach contributes to their remediation, the following section will briefly introduce the core concepts of the capabilities approach. In order to frame the compatibility of the capabilities approach with general EIA practice, the article then outlines the shared practice and normative principles of the capabilities approach and of the public participation required by EIA procedures. Although our discussion is limited to EIA due to reflection on empirical work, we see no reason why the capabilities approach would not be useful to the broader suite of impact assessment tools as long as due consideration is made of the

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purpose of the specific role of participation for each instrument.

The article presents four South African EIA case studies that highlight the capability challenges of participation within stakeholder populations that present high degrees of socially differentiation. Case study observations are presented highlighting a selection of capabilities and functionings of stakeholders that are required and activated in EIA public participation. The discussion draws on the case observations to delineate a capabilities framework for EIA public participation based on the notion of capability ‘sufficiency’. Such sufficiency, we argue, is pre-conditional for meeting justice requirements within and through EIA participatory practices and consists of the ability to participate in political activities that affect one’s future environment in a manner that is free from unfair constraint. Our application of the notion of ‘capability sufficiency’ in EIA participatory procedures is therefore presented as a pragmatic conceptual foundation for what ‘meaningful’ participation can build on in EIA public participation. A capabilities approach to EIA participation, we conclude, enables the assessment and deployment of the support provisions that especially disadvantaged stakeholders need in order to participate in environmental decision making, by so doing meeting the requirement of effective inclusion, thus fairness, that EIA procedures often risk to neglect.

## 2. Theoretical framework and literature review

### 2.1. The capabilities approach and its value for EIA: preliminary notions

The capabilities approach is a wide-ranging normative framework for the appraisal of human development, individual well-being and social arrangements. The capabilities approach has been applied to welfare economics, development studies and political philosophy as well as education, disability studies, public health and gender studies (Robeyns, 2006). The capabilities approach has focused on a number of areas which have varying degrees of relevance to participatory environmental decision making, such as inclusive political institutions (Sen, 1999), civic engagement in a functioning democracy (Drydyk, 2005), citizen participation and environmental risk (Foriono, 1990), participatory governance of sustainable transitions (Rauschmayer et al., 2013), gendered participation (McEwan, 2005), rationality and public decision making (Sen, 2002), quality of life (Sen, 1979; Nussbaum and Sen, 1993) and the right to information and local governance (Anand, 2011).

The term ‘capability’, captures a “person’s ability to do valuable acts or reach valuable states of being” (Sen, 1990, 12). It concerns the opportunities or freedoms “to achieve what an individual reflectively considers valuable” (Sen, 1990, 19). Translating this notion to public participation, the act of participating in EIA can be considered both a valued end in itself as well as instrumental, as a means of forming, influencing or achieving ends that are of relevance to a stakeholder’s state of being. In the various declinations of the capabilities approach, a person’s ‘functionings’ are seen as her ‘beings and doings’; for example, her literacy level or her habit to follow a healthy and adequate diet (Robeyns, 2006). It follows that whilst one’s functionings relate with one’s individual features and agency, her ‘capabilities’ are the genuine opportunities and freedoms that she has to realize such ‘functionings’. In this sense, capabilities are not only abilities or means (Sen, 2000), as people and societies differ, for example, in their capacity to convert means such as income and commodities into valuable achievements (Sen, 1999). Rather, a capability is the freedom to choose among lifestyles that are realistically achievable, if so desired. The ‘measure’ of such freedom is thus the actual functioning that a person realizes; that is, her ‘achieved functionings’ (Sen, 1992). Sen (1992) has forcefully argued that evaluations which are sensitive to well-being should not only focus on the particular functionings she actually achieves, but also on those that she can achieve. Such evaluation should therefore include one’s freedom to decide what path to take: differently put, the capabilities approach emphasizes genuine choice. If this freedom is absent,

or withheld from a group of people, the capabilities approach qualifies them as ‘unfreedoms’ which, in turn, can have further negative impacts on other capabilities and freedoms (Sen, 1999). What is realistically achievable for an individual stakeholder through public participation is contested (Jay et al., 2007) and probably more limited than the practice acknowledges. Further, the degree to which EIA itself has influence on final decision making is also considered to be limited (Cashmore, 2004). However, there is, ostensibly, a provision in EIA, that through public participation the potential accommodation of such concerns can be incorporated into the decision making in order to safeguard environmental justice.

Keeping these tenets of the capabilities approach in mind, an “unjust” EIA procedure can be characterized by inequitable opportunity and freedom of affected communities to participate. This could be due to various types of constraints that undermine or even disable their aspired participation ends. Such constraints can be internal to the individual, such as their mobility or time to participate, or a combination of external and structural obstacles relating to fundamental entitlements such as constitutional provisions for *locus standi*, or the ability and opportunity for a woman to freely voice her opinion in a public meeting within a patriarchal society. Likewise, the outcomes of such an EIA procedure could harm the environmental conditions in which people could live in, creating by so doing additional socio-ecological obstacles to their individual freedoms and their fundamental capabilities in general.

Five shared practice principles are selected here to highlight how both the capabilities approach and EIA align with the substantive and instrumental rationales for public participation, which can:

1. Be instrumental for better decision making.
2. Be an end in itself as an outworking of a functioning democracy.
3. Be a tool for accountability in environmental decision making.
4. Validate or challenge general theories of science through local and contextual application.
5. Include other capacitating benefits such as social learning and empowerment.

There are a number of normative public participation principles that are shared between the capabilities approach and EIA and which are encoded in the practices of in both the human development and in the environmental spheres. Lamorgese and Geneletti (2013) provide a systematic review of different approaches in the literature outlining a number of equity perspectives in impact assessment, such as those relating to opportunity, distributional fairness and notions of justice in a flawed world. Likewise, recent advances have considered the distributional intentions and realized outcomes of environmental planning (Basta, 2016). Imperatives for fair participation are well articulated in the normative rationale for EIA public participation, which adopts the notions of influencing the decision, enhancing democratic capacity, social learning and empowering and emancipating marginalized individuals (Glucker et al., 2013). These four normative rationales indicate a prospect that participation could benefit the participant in meaningful ways attaining to Sen’s capability notion that participation can be both instrumental towards an individual’s goals as well as a valued end in itself (Sen, 1999). Recognising the value of participation for stakeholders, Patel (2008) has observed that EIAs must be able to take into account the distributional consequences of environmental impacts. This is particularly important for those groups in society that “tend to systematically lose out in the distribution of environmental goods and bads” (Patel, 2008, 363).

### 2.2. Capability sufficiency as a foundation for meaningful public participation

This article argues for the inclusion of capabilities in conceptualizing the minimally just conditions of meaningful public

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