



A Human Rights-based Approach to Participation

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ABSTRACT This article proposes a systematic approach to designing and assessing participatory processes, built from principles in the field of human rights. It argues that participatory processes should be organised around human rights principles which provide detailed but flexible guidance on participatory processes. Drawing from well-established human rights principles and the commentary of human rights bodies on participation, the article outlines a framework that can be used to advocate for, establish, implement, and evaluate participatory processes. It addresses four normative questions relating to participation: what decisions require participation, who should participate, how should participation be implemented, and what consequences should it have on subsequent decisions with human rights norms informing each of these questions.

KEYWORDS democratic innovations; human rights; deliberative democracy; participatory democracy

In an era of multiple challenges to democracy from populism, elitism and the impotence of democratically elected governments in the face of international pressures, one response has been to develop democratic innovations to ensure public participation in decision-making. Since universal suffrage has been achieved in many countries across the world, debates on democracy are no longer only about who participates, but also what participation means – how, when and where citizens should participate (Vitale, 2006) and the quality of such participation. In the 1990s some local governments initiated participative budgeting (e.g., Porto Alegre, Brazil) and since then some states have initiated citizens’ assemblies to discuss constitutional issues or issues of general concern (e.g., British Columbia, Ireland, France, Iceland), and a global citizens’ assembly has been held in 2021 on climate change. Other states have

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legislated to ensure participation in the development of policies (e.g., the Community Empowerment (Scotland) Act, 2015) and in some countries there have been developments in constitutional law, such as the requirement of “meaningful engagement” in South Africa (*Occupiers of 51 Olivia Road v. Johannesburg*, 2008, para. 9). While there are some high profile examples of democratic innovations, they are but a small sample of innovations from the local to the transnational that aim to seek direct citizen input into public decisions (Geissel & Newton, 2012; Smith, 2009).

However, governments sometimes engage in marginal and fragmented participation and thus the term itself may be subject to concept slippage, enabling superficial adherence to the concept without any lasting impact on people’s lives (Leal, 2011, p. 70; Rahnema, 1992). Concerns over the lack of efficacy of participatory procedures relate to issues of power, lack of trust between the public and democratic authorities, and ensuring representativeness and inclusion in deliberative and participatory fora (Young, 2000). Gaventa (2002, p. 1) has highlighted deficiencies in participatory processes that can result in “voice without influence,” which can lead to “participatory fatigue” (Parés et al., 2012, p. 259) while Warren (2009, p. 9) has criticised “governance-driven democratization” initiatives where participation is subject to elite discretion (see also Fung, 2015, p. 5). How to ensure more empowered forms of civic participation and “real” stakeholder engagement in decision-making is crucial, and this article provides a framework organised around human rights that can inform the design, implementation and conceptualisation of participatory processes to ensure that those who are potentially affected by decisions have a genuine and effective say in those decisions.

Public participation is frequently linked to human rights. For example, Gould (2004) argues that the spread of democracy relies on a human rights framework and Sen (1999, p. 6) states that “political and civil rights give people the opportunity to draw attention forcefully to general needs and to demand appropriate public action.” Along with emphasising civil and political rights, Habermas (1996, p. 123) also stresses the importance of socio-economic rights for democratic participation. Participation itself contributes to human rights by providing a means for establishing legal rights (Habermas, 1996, p. 127). Studies have also shown that Swiss cantons with higher levels of direct participation in governance achieve more in terms of efficiency of service provision and the fulfilment of welfare goals (Geissel, 2012) and participatory budgeting in Porto Alegre has had an impact on poor living conditions (Smith, 2009). This article builds on the links between participation and rights to propose a systematic approach to designing and assessing a wide range of participatory processes, based on principles in the field of human rights.

The first author (McMurry, 2018) has previously proposed the adoption of a human rights-based approach to participation. This article develops this approach. It argues that participatory processes should be organised around human rights principles which provide detailed but flexible guidance on participatory processes. We do not argue here that participation is a human

right either from a legal or philosophical perspective. For an argument on the extent to which participation is mandated by international law, see McMurry (forthcoming 2023). This article draws from well-established human rights principles and the writings of authoritative human rights bodies on participation to outline a framework that can be used to advocate for, establish, and assess participatory processes.

Applying the legally established norms of international human rights law to participation has a number of strengths. Human rights have been universally accepted in the world's states since the collapse of apartheid, and have strong acceptance within civil society notwithstanding many arguments about their application (Donnelly, 1984), meaning that they have strong universal legitimacy. Through legal application in the international arena for more than 50 years, human rights have developed considerable detail and although the content and application of the norms themselves are often contested, they can provide coherent and, in some cases, comprehensive criteria for the development and evaluation of programmes (Mowbray, 2012; Saul et al., 2014; Schabas, 2019). Their linkage to a well-established context of legally enforced norms means that they are strongly anchored and resistant to concept slippage. Human rights principles are therefore ideally suited to guide the design of participatory programmes, to provide indicators for evaluating such programmes, and to suggest concrete demands for the reform and improvement of such programmes.

Nevertheless, human rights provide some flexibility in how they are applied. The margin of appreciation principle (Arai-Takahashi, 2001) allows authorities to decide for themselves how best to realise rights. The proposed approach gives guidance on many factors relating to participation, but does allow considerable discretion as to how these can be institutionalised. The human rights principle of proportionality (Arai-Takahashi, 2001) means that the realisation of rights must be balanced against the rights of others, and other relevant considerations, in contrast with Dworkin's (2013) understanding of rights as trumps. For the principle of proportionality to work, considerations must be categorised as being either more or less important. The approach outlined here therefore identifies priorities within the points being made.

An Outline of the Human Rights-based Approach to Participation

The human rights-based approach to participation in this article is built on (1) requirements and recommendations identified by established legal bodies for participation, and (2) human rights principles developed by established legal bodies in other contexts that can be applied to participation. The principles come from bodies with authority to interpret international treaties, particularly the International Covenant on Economic, Social and Cultural Rights (ICESCR), and from some sources of domestic law. The ICESCR, which elaborates on many of the rights contained in the Universal Declaration of

Human Rights, has been ratified by 171 states representing the vast majority of the world’s population (see <http://ohchr.org>).

The approach adapts the obligations within human rights law to identify responsibilities for decision-makers regarding participation. These decision-makers include national and local government bodies, private service providers who adopt the responsibility to provide rights either for profit or voluntarily, and others whose actions have an impact on rights such as extraction industries and employers. Following Saxena (2011, p. 31) who identifies several essential components of participation, including the potential for citizens to initiate action, who participates, the outcomes of participation, and when to participate, this article identifies principles that can be used to determine (a) what decisions will trigger a requirement for participation, (b) the identification of human rights stakeholders, (c) how participation should be implemented, and (d) what consequences it should have on the decisions ultimately made. In order to address the problem of capacity, and the balancing of different needs, interests and perspectives, the approach identifies priorities with regard to (a) and (b), and identifies different degrees of responsibility for the decision-maker in (c) and (d), which will depend on the priorities identified.

Identified according to priority	Identifying factors	
	(a) Trigger for participation	(b) Human rights stakeholders
Identified according to the degree of responsibility	Decision-makers’ Responsibilities	
	(c) In implementing participation	(d) In following up on participation

Table 1. Framework for the human rights-based approach to participation.

Four Normative Questions in the Human Rights-based Approach to Participation

What decisions trigger a requirement for participation?

The UN Committee on Economic, Social and Cultural Rights (CESCR) asserts that participation is required in relation to “the formulation, implementation and review of the relevant policies” (CESCR, 1989, para. 5). These policies can relate to decisions that have an impact on work, to just and favourable conditions of work, to form trade unions, to social security, to protection of the family, to an adequate standard of living including food, clothing, housing and

water, to the highest attainable standard of health, to education and free primary education in particular, to take part in cultural life, and to benefit from scientific progress and other issues such as the use of resources (ICESCR, 1966), legal systems, regulation of media and libel, etc. (International Covenant on Civil and Political Rights, 1966). However, human rights are more directly impacted by some decisions than others, for example, environmental policies may have a tenuous link with human rights where they do not have an impact on health or other human rights. There will continue to be strong moral and political grounds to demand participation on these decisions, and other principles of the human rights based approach may be pertinent for these decisions, but the approach does not provide guidance on how to identify and prioritise the stakeholders in them.

The CESCR have identified negative obligations to respect rights, and positive obligations to protect and to fulfil rights. The negative obligation to respect rights requires the state “to refrain from interfering directly or indirectly with the enjoyment” of rights (CESCR, 2000, para. 33). This requires the state, for example, not to evict persons from their homes without providing adequate alternative housing (CESCR, 1997, para. 16). Legal bodies have found that in the event of such evictions there is a requirement for “genuine consultation” (CESCR, 1997, para. 13; *Occupiers of 51 Olivia Road v. Johannesburg*, 2008) by those affected in order to determine the alternative to be offered. In the context of other rights, the Committee has established that any retrogressive measures can only be carried out with the participation of those affected (CESCR, 2007, para. 42). In some cases, for example a proposed development that involves evictions, or an amendment to regulations on employment protection, the threat to rights will be very clear. In others, for example decisions on planning, the negative impact may be less clear. As the removal of access to one’s rights forms a potential violation of human rights, a decision that poses a clear threat to human rights will be prioritised with regard to participation.

The positive obligation to protect requires the state to “ensure that enterprises or individuals do not deprive individuals of their access” to rights (CESCR, 1999, para.15). The obligation to protect rights from a specific threat is only applied where the decision-maker knows “of the existence of a real and immediate risk” to rights (*Osman v. United Kingdom*, 1998, para. 116). Under a human rights-based approach to participation, the decision-maker should engage in participation with regard to measures that it can take to mitigate external threats to the enjoyment of rights.

The obligation to fulfil requires the state “to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization” of rights (CESCR, 2000, para. 33). Where socio-economic rights are not fully realised, this does not immediately signify a violation of rights, but does imply a responsibility to further their realisation. Under the ICESCR the state has considerable discretion to choose the most appropriate means to realise rights. Many decisions may be addressed towards the

realisation of human rights but the state must have a core strategy with regard to achieving each right mentioned in the Covenants, and the CESCR has frequently stated that this strategy must be developed through participation (e.g., CESCR, 2006, para. 42; 2007, paras. 69 & 72; CESCR, 2009a, para. 36; CESCR, 2009b, paras. 29, 49(e) & 55(e)). The CESCR has in some cases held that such participation is part of the core obligation of states (CESCR, 2000, para. 43(f); CESCR, 2003, para. 37(f); CESCR, 2006, para.31(c); CESCR, 2016, para. 49(b)), and therefore participation is prioritised with regard to such policies. Reviews of human rights policies should take place periodically (CESCR, 2000, para. 43(f); CESCR, 2003, para.37(f); CESCR, 2006, para.34) and require participation. The development of other policies may have an impact on rights, and can thus give rise to a responsibility for participation but with a lower priority.

Under a human rights-based approach, therefore, a responsibility to engage in participation can arise in relation to any decision that may have a negative impact on rights, that is designed to protect rights from third parties, or that is designed to fulfil rights progressively. In particular, priority must be given to participation where there is a clear potential for a negative impact on the enjoyment of rights, and with regard to the development, implementation, monitoring and review of core human rights strategies. The next section identifies the stakeholders who may be entitled to participate, either directly or through representation, and how these stakeholders may be prioritised.

Who are the human rights stakeholders?

Democratic theorists are very concerned about who may participate. For Habermas (1996) it is important that the process of deliberation be open with no restriction. However, other theorists have argued that such an approach can lead to the *de facto* control of participatory programmes by dominant groups and argue that inclusion of the marginalised is very important (Fraser, 1992; Young, 2000). Identifying the *demos* for participation has presented considerable problems in that the number of people involved is often too large for effective coordination (Held, 1996, p. 267). The human rights-based approach identifies *human rights stakeholders* who have some case for participating, and gives priority to certain individuals and communities who have a stronger case. Where large numbers of stakeholders have been identified, participation can be legitimately restricted through less intensive means of participation as explored below. The participation of prioritised human rights stakeholders cannot be restricted to a greater degree than less prioritised groups and may require specific inclusive measures to be taken.

Human rights stakeholders will potentially include all those whose rights may be affected, either positively or negatively, by the decision being made (CESCR, 2009b, para. 54(a)). These may include those whose existing enjoyment of rights is under threat by a decision, or those who hope to progress

towards full enjoyment of their rights. As well as those whose rights are explicitly at stake, stakeholders can include civil society in general, and this is particularly appropriate where a policy or programme is being developed that will potentially apply to the rights of everybody within the community (CESCR, 2000, paras. 11 & 17).

In relation to a decision that may reduce the enjoyment of rights, the CESCR is of the opinion that *those affected* should be enabled to give their prior consent to any measure to compensate (CESCR, 2009b, para. 55(e)). The CESCR have applied the principle of “free, prior and informed consent” beyond its original context of indigenous peoples to other situations where communities are negatively affected by development (CESCR, 2012, para. 8(d)). Those whose existing enjoyment of rights is under threat therefore have the highest priority when it comes to participation.

Those who are most vulnerable or marginalised must, according to the Committee, be prioritised in any policy (CESCR, 1989, para. 3). These include those who are furthest from enjoying the right in question and who cannot achieve them without assistance (*R. Bernard v. Enfield LBC*, 2002), such as the homeless or the long-term unemployed. These vulnerable persons should have priority in any participatory programme. Non-discrimination is also a general principle of human rights law that requires that persons should not be treated differently on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (ICESCR, 1966, art. 2.2). Indirect discrimination refers to apparently neutral factors in organisation that prevent the full involvement of certain groups (CESCR, 2009a, para. 10(a-b)). Mitigating discrimination requires special consideration of those who can be distinguished according to these characteristics and can require specific measures to be taken on their behalf (CESCR, 2009a, para. 8).

Human rights norms require not just that persons can access their rights but that they can do so in an effective manner (*Airey v. Ireland*, 1979, para. 24). Under the principle of non-discrimination, the decision-maker has a responsibility not only to ensure the participation of those suffering discrimination, but to secure their effective participation, fulfilling Young's (2000) principle of inclusion. For this reason, it may be necessary to provide separate processes of participation to these persons, or to provide them with support in the form of advocacy, legal representation or technical assistance. For example, in a social situation in which women do not often have the opportunity to represent the community, decision-makers should specifically involve affected women, if necessary in a separate proceeding. More detail on the requirements of non-discrimination under human rights law can be found in the jurisprudence of the various bodies (e.g., Mowbray, 2012, pp. 815-839; Saul et al., pp. 173-213; Schabas, 2019, pp. 738-794).

The representation of groups should adhere to the principle of freedom of association (ICCPR, 1966, art. 22). This requires the decision-maker to respect how communities choose to represent themselves when making their case.

They can choose to be represented through an advocacy organisation or through a professional such as a lawyer, they may accept structures that are provided by the decision-maker, or they may have their own forms of representation. The detailed content of freedom of association developed over decades of adjudication in international courts (e.g., Mowbray, 2012, pp.731-785), can guide its application on specific issues that may arise.

It may also be appropriate to invite others to participate who are not human rights stakeholders, such as experts, advocacy organisations, or private service providers such as employers or landlords (CESCR, 2006, para. 31). If we understand one of the purposes of participation to be the gathering of information that is important for the fulfilment of rights, such persons and groups can be vital to determine, for example, the resources that are available for fulfilling rights. However, a human rights-based approach will prioritise the participation of those whose rights are specifically at stake, followed by the whole community, followed by others.

Under a human rights-based approach to participation, therefore, human rights stakeholders include all those whose rights are specifically affected by a potential decision or the community at large where a general policy is being developed or reviewed. In addition, it may be appropriate to include others who may provide resources or information that will be useful in fulfilling rights. The approach, however, also prioritises individuals on various bases: (a) that their existing enjoyment of rights is under threat, (b) their vulnerability (i.e., their remoteness from realising their rights), and (c) non-discrimination, prioritising groups marginalised on the basis of gender, ethnicity, and other listed characteristics.

How should participation be implemented?

As described earlier, the implementation of participatory programmes has been the subject of many theoretical proposals and empirical studies. Many suggestions have been made to overcome the problem of scale such as citizens' assemblies. Many forms of participation have been advocated by participatory theorists including holding referendums, accepting submissions, organising conferences, sponsoring participatory research, engaging in direct meetings, accepting community representatives onto boards, or supporting communities in running their own services. In contrast, human rights bodies have not identified in any detail how participation is to be implemented. Human rights principles allow considerable discretion in choosing the means to pursue any policy (CESCR, 2003, para. 53), but some human rights principles can be applied to guide the development of participatory programmes and to reinforce existing processes.

Participation can be initiated either by decision-makers or by human rights stakeholders. In the latter case, contribution by stakeholders, whether made through petition, protest action, or other means, must be recognised as a form

of participation (McMurry, 2020). This contribution may need clarification through further participation and can have an impact on the subsequent responsibilities of decision-makers as described in the next section. Decision-makers also have a responsibility to initiate participatory programmes with regard to decisions that are prioritised according to the principles developed above, such as when a human rights policy is being adopted, or rights are under threat (CESCR, 2003, paras. 37(f) & 56(a); CESCR, 2006, para. 31(c); CESCR, 2007, para. 78(a)). Under a human rights-based approach, the design of participatory programmes should take into consideration a number of factors: the priority of participation within the decision, the identified human rights stakeholders and those who have priority, and the information that is required from the participation for the fulfilment of rights. Some forms of participation are more thorough than others and some encourage more deliberation while others lead to a definite conclusion. Some are more appropriate for wide consultations while others are more appropriate when a small number of human rights stakeholders can be identified.

Human rights allow restrictions to be made, particularly where resources must be expended, and thus allow participation to be less than complete, but restrictions should abide by the principle of proportionality. A lack of resources available can limit the scale of participation, but according to human rights principles, cannot prevent the application of certain principles such as non-discrimination (CESCR, 1990, para. 1). Whole communities cannot participate *en masse* but can participate through representation, through mini-publics or through less thorough forms of participation, such as inviting submissions. The participation of smaller *demoi* may be legitimately restricted through similar measures where a lack of resources prevents full participation. The restriction of participation will require stronger justification where it involves prioritised decisions and stakeholders. In particular, those prioritised should not be put at a disadvantage with regard to other participants. The principle of proportionality inevitably involves a degree of judgement, and this is therefore an area where independent oversight would be very helpful, but there is considerable guidance in the application of the principle in human rights law (Arai-Takahashi, 2001). For example, a person's right to participate should not be completely denied, and should not be restricted where the restriction is not necessary, for example where it would not save scarce resources.

The responsibility to engage in participation can be seen as part of a wider responsibility to gather information and monitor the realisation of rights, and this information can also guide the form of participation required. The dynamics of different socio-economic rights have been spelt out in detail in the CESCR's General Comments and these indicate the information that is required. The Committee understands rights not as rigid, but as having a number of flexible features. For example, water must be "sufficient, safe, acceptable, physically accessible and affordable" (CESCR, 2000, para. 2), and these features have both objective and subjective elements. The objective elements include the quantity and scientifically determined quality of the

water, while the subjective elements relate to the acceptability of water services to the target population. With regard to the latter, decisions should be “formulated and implemented in such a way as to be acceptable to the individuals and communities involved,” and that this requires consultation or participation (CESCR, 2009b, para. 16(c)). Indeed, participation can be *important* for establishing the objective elements, and is *intrinsic* to determining the subjective elements (CESCR, 2009b, para. 16(c)). As well as features of the rights themselves, it is also important to determine the resources and strategies available. Other information that can be identified through participation includes a community’s priorities with regard to the realisation of rights, and any interim measures that may affect rights in the short term (CESCR, 2000, para. 54). Information on available resources and strategies available may be obtained from various participants, but information on subjective features of rights and on prioritisation may only be obtained from human rights stakeholders.

Human rights can provide guidance in the actual functioning of the participatory process, whatever its form. As Habermas (1996, p. 368) has emphasised, freedom of speech, assembly, and association must be protected and these rights have all been developed in some detail and can be applied to participatory processes (McMurry, 2019). All parties to a participatory process should approach the process in a spirit of good faith, a basic legal principle, and should aim to achieve agreement (*Occupiers of 51 Olivia Road v. Johannesburg*, 2008, para. 20). This will assist in the fostering of positive and trusting relationships between decision-makers and participants as crucial to the success of the process (Parker et al., 2008). Human rights bodies emphasise the importance of transparency (CESCR, 1999, para. 23). The decision-maker should ensure that accurate, up-to-date information on the decision to be made and on the participatory process is available in an accessible form throughout the process and that prioritised groups are specifically informed. Any restrictions will need to be publicised and justified to those whose participation is restricted. There is also a responsibility to prevent persons from imposing obstacles to participants, engaging in corrupt practices, presenting misleading information, or otherwise interfering in the process (Human Rights Committee, 2014, para. 21).

Human rights norms imply considerable discretion in choosing how participation can be achieved. However, decision-makers should respond to those who communicate their needs, and should establish specific programmes to enable wider participation with regard to prioritised decisions. The process should be designed to ensure thorough engagement with the participants, and to encourage agreement. Prioritised groups must be specifically protected in any participatory process. Participation may be restricted through less thorough forms of participation, but must be justified according to the doctrine of proportionality. It is important that this justification is made in an open transparent manner before the restriction is imposed. A large number of other

human rights principles such as freedom of expression, freedom of assembly, and transparency should be observed throughout the process.

What consequences should participation have?

While participatory processes can be initiated by decision-makers, community involvement can sometimes be seen as an irritant by decision-makers. Meaningful participation can enhance well-being but tokenistic consultation “can be manipulative and disengaging for the individual, leading to lower levels of well-being through feelings of disengagement and marginalisation” (Woolrych & Sixsmith, 2013, pp. 217-218). If participants are to be genuinely empowered and participation meaningfully implemented, it is necessary that participants have real influence on decisions (Adamson & Bromiley, 2013). It is thus essential that decision-makers’ responsibilities take account of the contributions of participants.

One potential output of participation is a formal agreement, which is encouraged within a human rights-based approach and should preferably be made with the agreement of as many human rights stakeholders as possible, written up clearly, formally agreed, subject to objection from other participants, and monitored subsequently with parties made accountable (*Occupiers of 51 Olivia Road v. Johannesburg*, 2008, paras. 27-30). There is no limit to the aspects that may be covered in such agreements, which are entirely up to the parties, but they can cover many aspects relating to service delivery, time-scales, temporary expedients, and the conduct of the participants (*Occupiers of 51 Olivia Road v. Johannesburg*, 2008, paras. 24-26). An example of such a formal agreement in respect to conditions of work is a collective agreement where workers, whose rights are at stake, make a binding agreement with employers as to the future regulation of their rights. Voluntary agreements can be made during participation, or there can be a prior arrangement to abide by the outcome of a particular process such as a referendum. However, such an agreement cannot undermine existing substantive rights, either of the participants or of others and if it does, then it should be regarded as void, just as collective agreements that violate minimum standards should be disregarded (Opini3n Consultiva OC-27/21, 2021, para. 5).

Nevertheless, while all parties should enter the process in good faith, and therefore seek to arrive at an agreement, this can be very difficult to achieve because of many different factors, and there is a danger that agreements made may be inappropriate for the needs of vulnerable minorities. In addition, an agreement may be possible with some participants but others may refuse to become party to them. The example of a collective agreement is pertinent here: employers are under pressure to make collective agreements because of the threat of potential industrial action. The influence of such a threat does not depend on the importance of the rights at stake, but on the irreplaceability and

economic importance of the workers' labour. Such a threat is not available to many categories of vulnerable human rights stakeholders. While a voluntary agreement may be the ideal outcome of participation, participants will need reassurance that their input will have some influence even in the absence of such an agreement, or where they do not consent to the agreement made. Under a human rights-based approach to participation, the information that is gathered through participation affects the future responsibilities of decision-makers whether or not an agreement has been reached.

Under the ICESCR, the state does not have an obligation to immediately fulfil all socio-economic rights, but is obliged under article 2.1 to progressively realise them using the maximum available resources. The information gathered through participation can be critical to outlining the detail of this responsibility. Decisions made should aim ultimately to achieve the rights according to the features identified by participants (CESCR, 2000, paras. 12, 37(ii) & 43(f)). This implies that, for example, a community which has made a reasonable assertion that the adequacy of their housing is dependent on the availability of land for traditional subsistence farming should not be permanently housed anywhere where they do not have access to such land. As mentioned before, this does not imply that they have an immediate right to be provided with housing that they would consider adequate, but that their legitimate aspirations should be considered the end goal which should be progressively realised. Any decisions should make use of resources identified and should follow the priorities of the human rights stakeholders unless there is a strong reason not to. The recording of this information and these priorities is vital to monitoring whether subsequent action is in keeping with the human rights-based approach.

In order to be transparent, all deviations from the priorities or requirements of participants should be publicised along with the justification for these. This reinforces the efforts of those working on participation to "close the feedback loop" to ensure effective communication between stakeholders in participation (Gigler et al., 2014, p. 3). Special care should be taken when there is a strong responsibility, such as where the enjoyment of a right is being removed, where there is discrimination in the enjoyment of rights, or where communities are particularly vulnerable. Any deviation should be understood as a restriction on rights, and must be justified according to the principle of proportionality. Some participants may have different needs and perspectives from others. Where possible, all perspectives should be accommodated, particularly of the marginalised and vulnerable, but where this is impossible, the rights at stake need to be balanced against each other and those whose aspirations are not met should have this restriction justified to them according to the principle of proportionality, bearing in mind the priority that needs to be accorded the perspectives in question.

One consistent challenge in fulfilling human rights and in ensuring the effectiveness of participation (CESCR, 2000, para. 30) is the lack of resources for fulfilling the wishes of participants. Socio-economic rights should be realised using the "maximum... available resources" (ICESCR, 1966, art. 2.1)

but there is considerable difficulty in identifying these. This allows decision-makers to use an alleged financial restriction to justify the failure to implement decisions. The human rights-based approach cannot solve this difficulty entirely, but resources can at times be identified through a process of participation (Gaventa, 1998, p. 159). The prioritisation of decisions and stakeholders can also constrain the subsequent actions of decision-makers. There is promise that progress being made in human rights budgetary analysis (Nolan et al., 2013) and participatory budgeting (Shah, 2007) will be able to inform the allocation of budgets in more detail in the future.

The decision-makers therefore are encouraged to make transparent and binding agreements with participants. In the absence of such agreements, they have a responsibility to use the information gathered from the process to inform their future strategy with regard to rights. This can include objective information but also subjective information such as priorities and goals for the participants. While the decision-maker is not required to immediately deliver these, their strategy must adopt these as their aim, and make use of identified resources. Any deviation from these requirements should be justified, and this justification should be communicated to the relevant participants.

Conclusion

Participatory approaches to democracy have been prominent for several decades, and they have been officially endorsed by international and national bodies, including by human rights authorities. This article proposes a human rights-based approach to designing participatory programmes which can apply to state policy and also to initiatives of NGOs and private bodies. It provides a coherent basis for advocating the establishment of participatory programmes rooted in universal principles and for developing benchmarks for evaluation of such programmes. The approach can be further developed and adapted to apply to other contexts and in response to developments in jurisprudence, participatory theory, and empirical data that indicates what works in practice. The framework for participation that emerges from this approach is summarised in the table below (Table 2). It indicates priorities in identifying triggers for participation, the stakeholders to be included, and responsibilities with regard to conducting and following up from participation. These responsibilities are listed according to degree of responsibility that arise from the identified priorities.

Identifying factors		
	Trigger for Participation	Human rights stakeholders
High ↑ Priority ↓ Low	<ul style="list-style-type: none"> • Decisions and developments potentially disrupting enjoyment of rights • Core human rights policies • Protection of persons from immediate threat to their rights by others • Decisions and policies more distantly linked to the enjoyment of human rights 	<ul style="list-style-type: none"> • Those whose existing enjoyment of rights is at risk • The vulnerable • Those experiencing discrimination • Those whose rights are specifically at stake in a decision • The community as a whole in relation to a core human rights policy • Other stakeholders (i.e., those with access to resources and expertise)
Decision-makers' Responsibilities		
	In implementing participation	In following up on participation
For decisions and stakeholders of higher priority ↑ Responsibilities ↓ For all decisions and stakeholders regardless of priority	<ul style="list-style-type: none"> • Thorough participation • Less thorough participation for general policies • Restrictions permitted according to the principles of proportionality • Allow freedom of association and freedom of speech and abide by non-discrimination • Accept submissions initiated by human rights stakeholders 	<ul style="list-style-type: none"> • Prioritisation of realisation of rights according to wishes of prioritised stakeholders • Use of resources identified through participation • Adopt the aspirations of participants as the ultimate goal of policy • Binding agreements between parties are always encouraged • Transparency of decisions, providing justification for any restrictions

Table 2. Elaborated framework for the human rights-based approach to participation.

For the sake of simplicity and clarity, this article assumes that participatory processes are taking place within a national, or even local context. It does not address questions of global democracy or universal human rights accountability. These questions are addressed elsewhere both by democratic theorists and by human rights scholars, and their insights may enable the extension of the approach advocated here to address questions of transnational democracy and accountability (Held, 1996, pp. 353-360; Skogly & Gibney, 2002).

The approach provides a flexible and adaptable framework rather than a fixed blueprint. It can be applied to a multitude of different participatory processes including referendums, consultations, and deliberative fora. It can be applied to the development of state policy but also to the decisions of private service providers, both businesses and NGOs, and to economic activities that may benefit or cause harm to local people. Further insights can enhance the approach through exploring other factors necessary for successful participation (such as the development of the skillset of those managing and participating in participatory processes). The approach systematically identifies principles that can inform which decisions require participation, who should participate and how they should be prioritised, how participation should be implemented, and how subsequent decisions should be informed by participation. It can thus be of use to decision-makers, whether public or private, in designing, evaluating and adapting participatory programmes, to civil society in demanding participation and in criticising existing programmes, and to scholars interested in studying, evaluating, and advocating participation.

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