The human rights *concept of empowerment is not something done to people or given to people. It is a participatory process that engages people in reflection, inquiry and action in order to understand the power they themselves have to influence and change their lives.*

For participation to be truly rights based, development agencies and other actors need to include local stakeholders in every facet of the development process, ensure they understand and have the capacity to make decisions about the project, and respect the right of the local population to deny a project. Beyond being good practice, the concept of participation is firmly rooted in international law.

There are five major steps for development practitioners to incorporate participants according to a human rights based framework, and each of these are covered in detail within this Practitioner's Guide.

A Rights-Based Approach to Participation

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Executive Summary

Participation in development has been a widely established practice since the 1990s. Though a single human right to participation is not explicitly spelled out in international human rights instruments, there are numerous international conventions that outline the different aspects of participation as a human right, including for specific groups such as women, children, the disabled, minorities and indigenous people. Furthermore, some of the major issues that guaranteeing a right to participation can address include project sustainability, mitigating public opposition, preventing marginalization, and efficiency.

Beyond being good practice, the concept of participation is firmly rooted in international law. Indeed, numerous international conventions contribute to the right to participation. These include the concept of "free, prior and informed consent" (FPIC) in the Declaration on the Rights of Indigenous Peoples and the right to "active, free and meaningful participation" in the Declaration on the Right to Development. The right to participation has also been included in several international conventions on health and the environment as well as in pronouncements of several human rights mechanisms.

Participation in its fullest sense represents a partnership arrangement between the development agency and the local affected populations, where both parties have an equal say and local stakeholders maintain control over decision-making and resources. From the examination of four case studies, it becomes apparent that for participation to be truly *human rights based,* development agencies need to include local stakeholders in every facet of the developmental process, ensure they understand and have the capacity to make decisions about the project, and respect the right of the local population to deny services.

Free, prior and informed consent is considered a "gold standard" in participation; thus from it we can derive several useful guidelines when designing and implementing participatory methods. FPIC means that populations are free from coercion or manipulation, are involved in decision making before plans are made, have the technical and legal knowledge required to make decisions, and ultimately reserve the right to withhold consent. **In order for FPIC and the right to participation to truly be meaningful, the right to refuse consent to development projects and programs must be respected**.

There are five major steps for development practitioners to incorporate participants according to a human rights based framework: conducting a Stakeholder Analysis, conducting a Knowledge/Capacity Assessment, informing local participants, obtaining consent in accordance with FPIC standards, and finally involving participants in the planning, implementation and evaluation of the project.

What is a human rights-based approach?

In 1997, the United Nations Secretary-General launched a Programme for Reform that called for mainstreaming human rights into all programs and activities of the United Nations system (OHCHR, n.d.). Since then, a growing number of development agencies began to apply the human rights-based approach in their work. In 2003, a *"Common Understanding on a Human Rights-Based Approach"* was developed within the UN agencies, which helps UN agencies as well as governments and non-governmental agencies approach development programs in a coherent manner. This guide states:

> "All programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process. Programmes of development cooperation contribute to the development of the capacities of duty-bearers to meet their obligations and of rights-holders to claim their rights."
>
> -----A Common Understanding, 2003

As recognized by the Common Understanding on a Human Rights-Based Approach, human rights principles guide all programming in all phases of the programming process, including assessment and analysis, programme planning and design (including setting of goals, objectives and strategies); implementation, monitoring and evaluation.

Among these human rights principles are: universality and inalienability; indivisibility; inter-dependence and inter-relatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law. These principles are explained below.

• *Universality and inalienability*: Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The human person in whom they inhere cannot voluntarily give them up. Nor can others take them away from him or her. As stated in Article 1 of the UDHR, "All human beings are born free and equal in dignity and rights".

• *Indivisibility*: Human rights are indivisible. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked, a priori, in a hierarchical order.

• *Inter-dependence* and *Inter-relatedness*. The realization of one right often depends, wholly or in part, upon the realization of others. For instance, realization of the right to health may depend, in certain circumstances, on realization of the right to education or of the right to information.

• *Equality and Non-discrimination:* All individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind, such as race, color, sex/gender, sexual orientation, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth, physical or mental disability, health status (including HIV/AIDS) or other status as explained by the human rights treaty bodies. To achieve substantive equality, the needs of marginalized or vulnerable groups must be prioritized.

• *Participation and Inclusion:* Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized.

• *Accountability and Rule of Law:* States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

Introduction

Participation in development has been a widely established practice since the 1990s. Most organizations working in development — from large international agencies, such as the World Bank, to smaller non-governmental organizations (NGOs) — at least profess the inclusion of local peoples, stakeholders, and/or beneficiaries in one form or another in some stage of their development projects. Though a single "human right to participation" is not explicitly spelled out in international human rights instruments and declarations, there are numerous international conventions that detail the ways in which participation, in political, public and other spheres, is indeed a human right. Thus, participation is more than just good practice: people have the right to have a say in decisions which affect their lives. This guide seeks to provide an outline for how development practitioners can implement a human rights based approach (HRBA) to participatory development.

What's at stake?
Though participation has already "gained the status of development orthodoxy" (Cornwall, 2006, p. 62), it is worth noting some of the important benefits:

Empowerment and preventing marginalization: As many development workers have found, "communities" are not homogeneous units. There are often internal divisions and hierarchies which lead to the marginalization of certain groups—such as women and minorities—and these groups being excluded from public life. However, including participants from marginalized groups will ensure they have the opportunity to express their opinions and reduce the incidence of discrimination. Seeking participation is not simply a neutral act. It has been described as "the organised effort to increase control over resources and regulative institutions . . . by those hitherto excluded." Thus, while lack of participation has been shown to lead to conflict, the transfer of power it implies is often difficult for those in power to concede, and may itself lead to (constructive) conflict (Stevens, Bur and Young, 2003, pp. 85-90). The empowerment of the previously marginalized is thus central to participative development.

Sustainability: A major concern for development organizations is sustainability. As Jordan's Ministry of Planning & Economic Cooperation has put it: "We seem to do all the right things, go through all the right steps, but then the projects don't work…We need someone who takes ownership of the project" (Burt, 2010, p. 3). If those affected by projects are engaged from the outset, people will more likely feel ownership over the project, which increases the likelihood of long-run sustainability compared to when there is little input from the grassroots (Burt, 2010). A project or development initiative that ignores people's opinions, local knowledge or cultural appropriateness will more likely meet opposition along the way. According to the World Bank, "projects in which affected peoples' views have been excluded suffer from more frequent delays and poorer quality" (World Bank Environment Department, 1992).

Efficiency: Engaging local peoples into the design, implementation, and evaluation of a project can appear time consuming. However, participation saves time and money in the long run by harnessing local and specific knowledge, avoiding disputes and allowing for alterations in the program's early stages. People will more likely accept a decision if they understand the reasons behind it, even if they are not in full agreement. Furthermore, through participation, beneficiaries can contribute by providing ideas, labor, and/or financial resources (Van Heck, 2003). The human rights that make up the human right to participation, especially rights to information and free expression, are also considered excellent protection against interference in development by corruption (OHCHR, 2006, p. 5).

Ultimately, Amartya Sen defined the expansion of freedom as both the "primary end" and "principal means" of development (Sen, 1998, p. 36). Sen recognised that institutional, normative and cultural arrangements creating or hindering opportunities are themselves influenced by the exercise of freedom through participating in social choice and public debate. Rather than asking if participation and dissent are "conducive to development," Sen described these as "constitutive components" of the term (Sen, 1998, pp. 4-5). In other words, HRBAs insist that development that does not involve and increase people's participation in the running of society is neither desirable nor effective.

Participation as a Human Right

While participation can potentially bring tremendous benefits to development projects or programs, the concept of participation is also firmly rooted in human rights principles and international law.

Participation is based on the fundamental principles of human rights stressing individual autonomy and self-determination as part of basic human dignity. Human dignity differs conceptually from ideas often traditionally used in development, such as 'satisfaction' or 'welfare,' in stressing active choice as opposed to making people "passive recipients of benefit" (Nussbaum, 2010, pp. 29-30).

Participation in all stages of development is grounded in the first article of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which states that all peoples have the right to self-determination and that "by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Participation is then further emphasised in the right to participation in public affairs articulated in ICCPR Article 25.

Furthermore, according to the Declaration on the Right to Development, people not only have an inalienable right to development, but also to "active, free and meaningful participation" in said development. This would include every facet of development work, from government-initiated infrastructure projects, to World Bank Education for All projects and initiatives, to NGOs implementing projects to combat HIV/AIDS.

According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), this right involves expressing policy ideas, choosing policies, implementing, monitoring and evaluating policy. Expert involvement is these stages should be transparent and presented in an understandable manner. In order to ensure people can participate, a minimum level of economic security must be ensured, capacity building activities (including human rights education) must occur and civil society should be allowed to flourish through guaranteeing freedom of association and other civil and political rights (OHCHR, 2006, pp. 15-16). Thus, rights to freedom of expression and information, freedom of association and assembly, and the right to participate in cultural life are key rights not just in and of themselves, but for ensuring meaningful participation.

Several other international conventions have strengthened participation for particular groups, including women, disabled people, children, minorities and indigenous groups. One area in which significant progress has been made in recognizing the right to participation is in regards to indigenous peoples. Historically, indigenous peoples have been forced off their ancestral lands to make way for large infrastructure projects, resource extraction ventures, or other so-called development initiatives. Without access to the land on which they depend, many end up in extreme poverty. With the recognition of the unique identity of indigenous peoples, it is regarded by international law that they have the right to decide their own future to ensure their cultural and physical survival (Amazon Watch, 2011). The United Nations Declaration on the Rights of Indigenous Peoples (DRIPS) declares indigenous people's particular rights to "free, prior, and informed consent" (FPIC) in matters which affect their lives and livelihood (UN General Assembly, 2007).

There are several populations that encounter similar marginalization as indigenous groups —including women, the poor, ethnic or religious minorities. Article 2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities affirms, "persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life" (UN General Assembly, 1992b). The right to participate has also been included in several conventions regarding specific topical areas, most notably health and the environment.

The following is a summary, by no means exhaustive, of international law and conventions supporting the right to participation. For a more extensive outline, refer to Appendix 1.

International Covenant on Civil and Political Rights
The right to self-determination means that peoples "freely determine their political status and freely pursue their economic, social and cultural development" (Article 1).

Everyone shall have "the right and the opportunity… to take part in the conduct of public affairs, directly or through freely chosen representatives" (Article 25).

Everyone has the right to freedom of expression, including the right "to seek, receive and impart information and ideas of all kinds" (Article 19).

People have the right to freedom of assembly and association (Article 21).

International Covenant on Economic, Social and Cultural Rights
The right to self-determination means that peoples "freely determine their political status and freely pursue their economic, social and cultural development" (Article 1).

People have the right to participate in cultural life (Article 15).

Participation is key to the effective provision of health services (General Comment 14: Right to the Highest Attainable Standard of Health).

Declaration on the Rights of Indigenous Peoples
Indigenous people have the right to "free, prior, and informed consent" (FPIC) in matters which affect their lives and livelihood.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
"Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life."

Declaration on the Right to Development
People not only have an inalienable right to development, but also to "active, free and meaningful participation" in development (UN General Assembly, 1986).

Convention on the Elimination of Discrimination Against Women (CEDAW)
Seeks the "maximum participation of women on equal terms with men in all fields" (preamble), specifically mandating the elimination of discrimination in political and public life (Article 7) and the participation of women "in the elaboration and implementation of development planning at all levels" (Article 14).

Convention on the Rights of the Child (CRC)
Children have rights to freedom of expression (Article 13), freedom of association and assembly (Article 15) and participation in cultural life (Article 31).

Convention on the Rights of Persons with Disabilities (CRPD)
Recognizes that disability itself "results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others" (preamble). "Full and effective participation and inclusion in society" is one of the "General Principles" (Article 3, see also Article 4, para. 3) of the treaty, emphasized in terms of accessibility (Article 9), living independently and being included in the community (Article 19), education to ensure participation (Article 24), habilitation and rehabilitation (Article 26), "political rights and the opportunity to enjoy them on an equal basis with others" (Article 29) and participation in cultural life (Article 30).

Declaration of Alma-Ata
People have "the right and duty to participate individually and collectively in the planning and implementation of their health care" (WHO, 1978).

World Charter for Nature
All people "shall have the opportunity to participate…in the formulation of decisions of direct concern to their environment" (UN General Assembly, 1982).

Rio Declaration on Environment and Development
"Environmental issues are best handled with the participation of all concerned citizens, at the relevant level." This includes "appropriate access" to information made widely available to the public (UN General Assembly, 1992a).

African Charter on Human and Peoples' Rights
"Every citizen shall have the right to participate freely in the government of his country either directly or through freely chosen representatives" (Article 13).

African Protocol on the Rights of Women
Seeks to ensure "participation of women at all levels in the conceptualisation, decision- making, implementation and evaluation of development policies and programmes" (Article 19).

Case Studies: Participation in the Field

Different organizations choose to elicit participation in many different ways. Participation in its fullest sense represents a partnership arrangement between the development agency and the local affected populations, where both parties have an equal say and the local stakeholders maintain control over decision-making and resources. Unfortunately, partnerships are not always sought. Less empowerment-focused participation falls in the realm of consultation and collaboration, a more "tokenistic" form in which development agencies incorporate ideas and suggestions from the local stakeholders. Still further reduced participation results when the development agency simply informs or employs local stakeholders to placate local opposition or meet international mandates (Cornwall, 2008; ADB, 2012). To further examine the idea of a rights-based practice of participation, we will look at four cases of the use of participation in the field. The section following the four case studies pulls together lessons learned from these case studies into a "best practice" guide for development practitioners.

Case Study 1: Non-Participation in Malawi

The 1994 Poverty Alleviation Program (PAP) in Malawi was designed to address several aspects of poverty plaguing the country, including food insecurity, low productivity, weak institutions, limited access to social services, and low capacity for poverty alleviation programs (Chinsinga, 2003). The PAP seeks to achieve these goals through four different programs: the *Smallholder Agriculture Productivity Programme*, which increases the use of technology, advocates for better environmental management, and focuses on sustainably utilizing the commons; the *Small Enterprise Development Programme*, which creates better policies, increases skills, and improves access to credit for non-farm income opportunities; the *Social Development Programme*, a program devoted to "strengthening the delivery of social services"; and the *Management For Development Programme,* which "aims to create efficient and effective managers of economic and social development" (Chinsinga, 2003, p. 135).

In theory, local community stakeholders are able to participate in identifying and implementing programs. In fact, the guiding philosophy of PAP is "beneficiary participation." However, in practice, it does not include participants on a significant level. The institutional structure of PAP prevents active participation by local stakeholders. The presidential council, comprised of professionals both from the public and private sector, is responsible for guiding development and ultimately has the final say. The National Steering Committee, comprised of representatives from civil service, NGOs and the private sector, is responsible for assessing the needs of the poor and planning interventions. In addition, established task forces are responsible for actively implementing the poverty alleviation programs and reporting to the National Steering Committee. The disconnect between the philosophy of PAP and its actual implementation suggests that its focus on participation is simply to mobilize local resources and prevent opposition. As a result, PAP has not been successful in alleviating poverty (Chinsinga, 2003).

Lessons Learned: Manipulation in Malawi

This case study illustrates the importance of active, free and meaningful participation to determine the needs of a local community and ensure a program's success and sustainability. It also brings to attention the lowest level of participation; manipulation. PAP manipulated the local community into believing they had power over the programs, and the international community was manipulated into thinking the PAP incorporated participants according to international conventions. In reality, the local stakeholders possessed no actual power over their own self-determination.

Case Study 2: Sufficient participation, a little too late, in Argentina

In the neighborhood of Aranda in Buenos Aires, Argentina, residents suffer from high levels of poverty. A lack of local law enforcement leaves these people vulnerable to local crime and a neglected local government creates political marginalization. In 1998, the state began focusing on Aranda, specifically to expand its neighborhood women's community participation network (Tabbush, 2010). This network, called *Plan Vida*, is the largest such network operating in the local community and consists of over 100 female community workers, referred to as *Manzaneras*. The *Manzaneras* were tasked with delivering food aid to their local community to alleviate poverty. As the government began to shift to a HRBA, they realized that local stakeholders, that is those people receiving food aid, were not included in the project. Because of this lack of participation, the food redistribution programs were inefficient. Some families received food aid whilst others did not depending on those families' relationship with the Manzanera. In an effort to correct this, the municipality created "informed citizen forums and audits to resolve disputes" and ensure equitable distribution (Tabbush, 2010). This method of including participants proved marginally successful in resolving issues, ensuring equitable distribution of food aid, and balancing power between the *Manzaneras* and local stakeholders in some areas.

Had the Argentinean government consulted the local community before the food distribution project they may have given insight into the corruption that could result from including specific *Manzaneras*.

But the results were uneven. Several areas experienced no change in the redistribution patterns. In fact, the *Manzaneras* in some areas acted as criminal overlords in their husbands' place; these women were feared by the local community and as a result, no one would challenge their inequitable distribution patterns. Had the program involved local participants in the planning phase, local stakeholders may have been able to preempt this power dynamic.

Lessons Learned: The Manzaneras Experience

The experience of participation "too late" teaches three important lessons. First, it shows the importance of including all local stakeholders in the planning and design phase of development projects. Had the Argentinean government consulted the local community members before the food distribution project, they may have given insight into the corruption that could result from including specific *Manzaneras*. Second, this case study highlights the importance of power structures in ensuring the success of projects. Development agencies must fully understand the power dynamics in their recipient communities before implementing programs. Third, on a positive note, the experience illustrates the importance of being "informed": the forums' success stemmed from the fact that they were informed about the project, the methods used in distribution, and their standing in the local community.

Case Study 3: Participation in health, South Africa

English Language Educational Trust (ELET) developed the Project for Health and Sanitation Education (PHASE), a sanitation and hygiene pilot program in South Africa. The program focuses on teacher-learner interactions and the learners' participation to develop interventions to increase hygiene and sanitation. In the first step of the program, teachers educate their students about good hygiene and sanitation practices. Then these students, the learners, become their own agents of change; learners identify issues of hygiene and sanitation in their community and then design an action plan to remedy the chosen problem. Learner action is the basis for PHASE.

The learners' participation in PHASE represents a consultation form of participation. Although the learners were responsible for creating and implementing interventions within their communities, they

were not involved in the planning period of PHASE. ELET decided that sanitation and hygiene were significant problems within the communities of South Africa; they decided that a teacher-learner format would be an appropriate way to create interventions, and ELET and the governing bodies of the schools had final say over which interventions were implemented (Brownlee-Greaves, n.d.). Teachers and learners were consultants to the PHASE project, to help the program identify the pervasive problems in sanitation and hygiene according to the local populations. Also, PHASE project agents conducted a stakeholder analysis to determine and engage all relevant stakeholders in the program process: stakeholders for this program included teachers, learners, parents, school officials, and funders. By informing all stakeholders about PHASE, the project agent prevented possible opposition from the lesser stakeholders.

Without proper leadership, to ensure organization and productivity, high levels of participation mean little.

PHASE had success in many of the schools and communities where it was implemented, however some communities showed little improvement in sanitation and hygiene. Barriers to the success of PHASE include interference by school officials in the learners' action plans and a lack of significant leadership within specific low-income communities. The project agent and project funders were responsible for facilitating the interaction between teachers and learners and monitor the implementation of the programs. "Without the project agent, the programme would not happen at all (Brownlee-Greaves, n.d.)."

Lessons Learned: Learner Participation in South Africa

This case study clearly shows a higher level of participation than the previous two studies. The Learners in the PHASE project in South Africa acted as consultants to identify the local community's concerns about hygiene and sanitation. This case study also illustrates the importance of leadership roles in participation; without proper leadership to ensure organization and productivity, high levels of participation mean little. In addition, the PHASE project highlights the importance of acknowledging all of the possible stakeholders. Nonetheless, the consultative nature of the program does not meet the rigorous standards of a HRBA which require more robust participation including at the planning and design phase.

Case Study 4: Free and Prior Informed Consent, the "Gold Standard" for Participation

The highest level of participation is when local stakeholders have control over decision making and resources, where they partner with development agencies to design, plan, implement and monitor/evaluate programs, and when the local communities reserve the right to withhold consent for a project. Free and Prior Informed Consent (FPIC) ensures that the relationship between the development agency and local community is one of the partnership. This case study comes from a briefing paper compiled by Amazon Watch, a critical watchdog group that focuses on the advancement of the rights of indigenous peoples in the Amazon Basin (The Amazon, 2012).

The indigenous peoples living throughout the Amazon in South America have been subjects of studies about FPIC in recent decades (Amazon Watch, 2011). Since indigenous populations are protected by international law, many groups have been able to hold industries and governments responsible for not guaranteeing FPIC. An example of success comes from the Kichwa people of the Sarayaku territory in the Ecuadorian Amazon. The Kichwa people have been battling oil companies and the Ecuadorian Government from encroaching on their tribal lands without consent for over ten years. They began their struggle with negotiations with the Ecuadorian soldiers and local, regional, and national leaders. After negotiations fell through, the tribal leaders sought assistance from local attorneys at Pachamama Foundation in Ecuador and later from the Center for Justice and International Law. Finally, using another

key component of the HRBA, namely accountability, Kichwa delegations traveled to the Inter-American Court of Human Rights (IACtHR) in Costa Rica and made TV and radio appearances to plead their case. As a result of their efforts, in April and July 2012 the Kichwa people won two major litigations: the Ecuadorian government acknowledged responsibility for allowing oil companies to illegally operate on indigenous lands, and the IACtHR ruled that the government not only has to obtain consent from local indigenous populations, but they are also responsible for paying restitution (The Amazon, 2012).

FPIC means that indigenous populations are free from coercion or manipulation, are involved in decision making before plans are made, have the technical and legal knowledge required to make decisions, and ultimately reserve the right to withhold consent.

-Amazon Watch

Consequently, knowing that they cannot rely on the government to ensure indigenous rights, many companies working within these indigenous homelands have begun to focus on achieving FPIC to both ensure the successful implementation of their operations and limit the risk of local resistance.

Lessons Learned, the "gold standard"

FPIC can be considered the "gold standard" because it allows for the highest form of participation of local stakeholders in development projects. The experience of the Kichwa peoples brings to light many important factors involved in FPIC level participation: the importance of the state, knowledge, capacity, local decision-making bodies, independent and impartial accountability mechanisms and the right of people affected by a proposed project to withhold consent. Companies working in the Amazon cannot always rely on governments to protect indigenous rights, so incorporating FPIC is necessary. A more actively involved government could ensure that companies adhere to the FPIC framework and that the rights of indigenous peoples are respected. A major factor in FPIC is the knowledge and capacity of local stakeholders to participate. Experiences in the Amazon stress the importance of informing the indigenous populations about both the risks and benefits in the short and long-term, and making sure they understand all of the implications before they consent. Finally, including local decision making bodies and acknowledging their role in consenting or declining services is important; not including every member of an informal decision making body could result in conflicts over the project.

In order for FPIC and the right to participation to truly be meaningful, the right to refuse consent to development projects and programs must be respected.

Operationalizing Participation as a Human Right

From the review of international conventions and the four case studies, it becomes apparent that for participation to be truly *human rights based,* development agencies need to include local stakeholders in every facet of the developmental process, ensure they understand and have the capacity to make decisions about the project, and respect the right of the local population to deny consent. Rights-based participation goes beyond simple consultation, "tokenistic" representation, opportunistic use of resources, cost sharing, or co-production of resources (Amazon Watch, 2011; Cornwall, 2008; De Vos et al, 2009).

Since FPIC can be considered a "gold standard" in participation, from it we can derive several useful guidelines when designing and implementing participatory methods in various countries, populations, and projects. In particular, there are three fundamental issues to take into consideration: who is

participating, what people are participating in, and how people are being included in decision-making processes. This section concludes with a five step operational guide with useful resources.

Who is participating?

A major motivating spirit which prompted establishing FPIC consent was that indigenous peoples "have suffered historic injustices…thus preventing them from exercising their right to development in accordance with their own needs and interests" (UN General Assembly, 2007). This is true not only for indigenous populations, but also for many traditionally marginalized groups, particularly the poor, women and minorities. The FPIC framework can and should be applied to these groups as well.

While some may advocate for a scenario in which beneficiaries decide what interventions they want and development organizations merely implement them, this may not be plausible or practical. However, no matter how well-meaning a development project may be, people's participation must convert into genuine influence to be deemed truly meaningful. "Being involved in a process is not equivalent to having a voice" (Cornwall, 2008, p. 278).

Organizations may choose to include community members in several different ways: participants can be advisors, consultants, volunteers or partners as long as their participation is empowering them to achieve self determination and have a "say so" over their own lives.

One of the caveats to FPIC is that there are also power relations within communities—such as class, gender, or party membership—which prevent certain groups from benefiting from development (Masaki, 2009). Therefore, the viewpoint of a group or spokesperson should not necessarily be taken as representative of the whole. At the same time, the methods of arriving at a consensus within a community should be understood and respected. One of the core principles of FPIC is that indigenous peoples are allowed to make decisions in ways which are culturally appropriate and according to their own decision-making processes (UN General Assembly, 2007).

While it may be inconceivable to guarantee the participation of every single person in decision-making (as opposed to giving all individuals the opportunity), particular attention needs to be paid to groups traditionally marginalized—women, the poor, indigenous peoples, and ethnic or religious minorities—in order to be aligned with not only the right to participate but also the right to freedom from discrimination (Fonjong, 2001; Amazon Watch, 2011; Burfoot, 2003; Tabbush, 2010; De Vos et al, 2009). Organizations may also want to include government officials, local leaders, members of traditional decision making bodies and other stakeholders.

To determine the stakeholders of a project within a target community, development organizations should conduct a *Stakeholder Analysis*. The process of a stakeholder analysis includes: making a checklist of all possible stakeholders in the project; disseminating this list to concerned parties, asking for suggestions on including additional stakeholders and consulting other agencies working in the area; anthropologic data about the people and culture of your area of interest; and consulting local authorities for additional information (ADB, 2012). The key stakeholders identified from this analysis should be included in the development process to ensure participation adheres to a rights based framework.

How are people participating?

To answer this question, FPIC provides a useful framework. First, **free** means that people are "not coerced, pressured or intimidated in their choices" (Commission on Human Rights, 2005). At times it has been the case—particularly with government or multinational corporation development

projects—that an organization will attempt to elicit a hasty decision to meet organizational deadlines or even bribe or threaten a community into acquiescence (Amazon Watch, 2011). However, in order to be truly free, as outlined in both FPIC and the Declaration on the Right to Development, people must be allowed to participate in ways which are culturally appropriate, at times which are acceptable, and utilizing their own norms and customary laws and practices. For example, if people are allowed to participate but meetings take place at inconvenient times such as during important planting or harvesting cycles, this could not truly be called "free" participation (Colchester, 2010).

Second, **informed** refers to giving people "full information about the scope and impacts of the proposed development activities" (Commission on Human Rights, 2005). This information must include analyses of short-term benefits and risks as well as long-term benefits and risks of development projects. A critical aspect of providing information is whether the recipients can understand it. Thus, information should be provided in local languages and technical terms should be explained. To ensure a community's comprehension an organization should conduct a *Knowledge and Capacity Assessment*. This assessment is important to determine if a community has the knowledge and capacity to participate fully in the proposed program. Methods of assessment include: examination, focus groups, survey, interview, and discussion. According to Fonjong, good participation begins with training and skills (2001). If an organization finds the key stakeholders in the target community lacking in knowledge about the development topic, the NGO should hold educational workshops to better inform the local stakeholders. Finally, in order to be truly informed, people should also have the "liberty and the resources to engage independent counsel" such as other NGOs or lawyers (Colchester, 2010, p. 23). These are useful ways to operationalize the rights to freedom of expression and association, and the need for capacity building, that are so vital for meaningful participation.

Finally, FPIC specifies that populations should be allowed to make decisions in ways that are acceptable to them **prior** to implementation. In many cases this may take time, which requires patience on the part of development practitioners. Decision-making processes may take different forms unfamiliar to an NGO or donor. Furthermore, for some impoverished groups interests are diffuse or traditional decision making mechanisms have broken down, and it is challenging to come to some sort of consensus. In all these cases, development workers should take the time to foster and support methods to come to a consensus, or as close as possible, within the community on what services are to be delivered, and how.

What are people participating in?

According to the Legal Commentary on the Concept of Free, Prior and Informed Consent, FPIC is founded on the idea of the right of all people to self-determination, "to freely pursue their economic, social and cultural development, to freely dispose of their natural wealth and resources and to be secure in their means of subsistence" (Commission on Human Rights, 2005). Thus, in order for FPIC and the right to participation to truly be rights based, the right to refuse consent to development projects and programs must be respected (Commission on Human Rights, 2005). The most empowering and important aspect of participation would be for a local group to decide to deny services. In the absence of this right to say "no," participatory methods can be empty and meaningless, or, at worst, "smokescreens for elite control" in which elites merely provide information on decisions already made and listen only to placate (Crocker, 2007).

In the absence of this right to say 'no,' participatory methods can be empty and meaningless, or, at worst, 'smokescreens for elite control' in which elites merely provide information on decisions already made and listen only to placate.

Following an FPIC framework, local peoples should be involved in all facets of development including planning, design, implementation, and monitoring/evaluation. According to FPIC, the most important period of time for local participants to be involved is "prior to the authorization and [the] start of development activities" (Commission on Human Rights, 2005). While it may be impractical to have beneficiaries set a project's goals and objectives, people should be empowered to give input and potentially modify these goals during the planning and implementing stages, particularly since development should aim to meet the needs of rights-holders as well as prioritizing marginalized or vulnerable groups. Finally, participants should take part in the evaluation of the development program before and after completion. Who better to give an honest evaluation to questions of whether a project had its desired impact than the beneficiaries themselves. The inclusion of a mid-way evaluation allows for the NGO to modify its programs according to local participants' needs.

In conclusion, the operationalization of participation in development is by no means simplistic. Organizations must consider the local power dynamics, stakeholders, knowledge base, capacity, language, culture, and customs of their target communities, while simultaneously involving local participants in all stages of development: design, planning, implementation, and monitoring/evaluation. In addition, NGOs must acknowledge the issues of self-exclusion and the stakeholders' right to deny services, while ensuring their development work empowers the local participants. The following is a five step guide to incorporating participants in development according to a human rights based framework.

Step 1: Conduct a *stakeholder analysis*. This step will allow organizations to determine exactly who to include in the processes of their development project/program. Organizations may want to include government officials, local leaders, members of traditional decision-making bodies, affected populations, and members of marginalized groups.

Sources:
- The Guide to Managing for Quality, A joint effort of Management of Sciences and Health and United Nations Children's Fund.
- Stakeholder Analysis Guide, World Bank.

Step 2: Conduct a *Knowledge/Capacity Assessment.* An assessment of this nature will determine the local communities' ability to give their "informed" consent, as well as the local communities capacity to absorb and maintain the program. This will identify priorities for capacity building.

Sources:
- Knowledge Assessments, Project Management Institute
- Capacity Assessment Methodology User Guide, UNDP

Step 3: *Inform* the local participants about the project in a culturally acceptable manner, taking into account the power dynamics, knowledge, and legal base of the community.

Step 4: Obtain *consent* from the local stakeholders according to FPIC, with no coercion, manipulation or pressure. Allow for the population's right to withhold consent, and be patient to the local populations' decision making process.

Step 5: *Involve participants* in the program, planning, implementing and evaluation stages. This particular step will be different for each organization as well as each specific project. Keep in mind that the method of inclusion should be empowering not exploitative of local stakeholders, include marginalized peoples, and be gender and culturally sensitive.

Call to Action

For Governments: All facets of development, including participation, do not occur in a vacuum; they are influenced by political factors and other power dynamics that can hinder participation and damage the rights of marginalized groups (Yamin, 2009). When the participation of a certain group challenges the monopoly on power, the more powerful groups may assert themselves and create problems for the participation of marginalized peoples (De Vos et al, 2009). Yamin notes that powerful groups in society may dictate the "boundaries and agendas for participation," which can further exclude already marginalized groups (2009). It is the government's responsibility to ensure organizations both private and non-profit respect the right of marginalized groups to participate in development that affects their lives. Non-participation can lead to further marginalization, conflict, and non-compliance, which can harm the social and economic well being of a state.

For NGOs: The initiation of development projects intrinsically presupposes a division between developer and beneficiaries (Green, 2010). Indeed, while participation requires long-term organising, mobilising and capacity building, much of development is still project-based More often than not, the purpose, plans, and agenda for development projects are decided elsewhere and brought before a community, even in cases where a community's opinions are elicited. Practitioners should be aware of the distinction between "invited" and "claimed spaces" for participation. The former implies close control of the terms for participation by powerful actors, while the latter is defined and created by civil society itself. Similarly, research shows that overly legalistic approaches to participation "do little to develop people's sense of themselves as citizens and subjects of rights, or their capacity to engage with and reshape power." Human rights practitioners needs to be aware of the "hard won lesson" development practitioners have learned in "the importance of starting where people are" in their everyday lives. Crucially, the human rights concept of empowerment "is not something done to people," but "a participatory process that engages people in reflection, inquiry and action" in order to understand the power they have to influence their position (Miller, Klasen and Clark, pp. 32-34). Furthermore, those who have power and represent organized interests are uniquely situated to set the agenda and decide which issues are and are not brought to the table (Yamin, 2009). It is also vital to ensure that participation is not based on predetermined ideas about who participants and the extent to which they are involved. This can entrench existing power relations (Secker and Skogly, 2010, p. 363). As anthropological studies have shown, development projects that stress participation can create arenas for "public action" where existing power relations can be both challenged and entrenched (Mosse, pp. 276-277). An organization utilizing a HRBA to participation must recognize and account for these relationships when conducting projects.

For Private Companies: Not all governments ensure indigenous and marginalized peoples rights to self-determination, thus companies working within indigenous homelands or conducting business that affects local communities should strive to adhere to the FPIC framework. Following an FPIC framework will both ensure the successful implementation of operations and limit the risk of local resistance. Private companies can also advocate for the rights of indigenous and marginalized peoples' participation from unconcerned governing bodies.

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Appendix: The Right to Participation in International Standards

International Covenant on Civil and Political Rights

Article 1
1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 19
1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Article 21
The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22.1
Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

Article 25
Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:
(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
(c) To have access, on general terms of equality, to public service in his country.

General comment No. 25 (1996): The right to participate in public affairs, voting rights and the right to equal access to public service (on art. 25 of the Covenant).

International Covenant on Economic, Social and Cultural Rights

Article 1
1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 15.1
The States Parties to the present Covenant recognize the right of everyone:
(a) To take part in cultural life.

General Comment 14: Right to the Highest Attainable Standard of Health
Promoting health must involve effective community action in setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health. Effective provision of health services can only be assured if States secures people's participation.

Declaration on the Right of Indigenous Peoples

Article 32
States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Article 2
Persons belonging to minorities have the right to participate effectively in cultural, religious, social, and economic and public life.
Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

Declaration on the Right to Development

Article 2
States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

Article 8
States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

Convention on the Elimination of Discrimination Against Women (CEDAW)

Preamble
Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.

Article 7
States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right…
(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government ...

Article 14
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
(a) To participate in the elaboration and implementation of development planning at all levels ...

Convention on the Rights of the Child (CRC)
Article 13
1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or
(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 15
1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 31
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Convention on the Rights of Persons with Disabilities (CRPD)

Preamble
(e) Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others ...
(m) Recognizing the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty ...

Article 3 - General principles
(c) Full and effective participation and inclusion in society ...

Article 4 - General obligations
3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

Article 9 – Accessibility
1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas…

Article 19 - Living independently and being included in the community
States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community…

Article 24 - Education
3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community.

Article 26 - Habilitation and rehabilitation
1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and

extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:
(a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;
(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

Article 29 - Participation in political and public life
States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:
(a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

Article 30 - Participation in cultural life, recreation, leisure and sport
1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life…

Declaration of Alma-Ata
Article 4
The people have the right and duty to participate individually and collectively in the planning and implementation of their health care.

Article 7
Primary health care…requires and promotes maximum community and individual self-reliance and participation in the planning, organization, operation and control of primary health care.

World Charter for Nature
All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation.

Rio Declaration on Environment and Development
Principle 10
Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available.

African Charter on Human and Peoples' Rights
Article 13

1. Every citizen shall have the right to participate freely in the government of his country either directly or through freely chosen representatives in accordance with the provisions of the law…

African Protocol on the Rights of Women
Article 19
b) Ensure participation of women at all levels in the conceptualisation, decision- making, implementation and evaluation of development policies and programmes…

The Global Initiative
for Economic, Social and Cultural Rights

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