



Extracted from *Direct Democracy: The International IDEA Handbook*
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CHAPTER 1

CHAPTER 1

Overview

Introduction

1. This Handbook addresses the questions when and how direct democracy instruments might be employed to make certain types of political decisions. It considers a number of issues that arise in determining whether these mechanisms are appropriate in different political environments, and it draws on the experiences of political jurisdictions throughout the world in which the instruments and processes of direct democracy have been used at various times. Specifically, the Handbook examines four separate applications of direct democracy:

- referendums;
- citizens' initiatives;
- agenda initiatives; and
- recall.

Each of these four applications is discussed in detail in subsequent chapters of this Handbook, and a number of specific case studies of each type is used, in 'boxes' in the text and in the form of longer case studies after chapters 1, 4 and 7, to illustrate the operation of direct democracy processes.

2. The terminology used to describe the various instruments of direct democracy can vary between different jurisdictions, and different terms have sometimes been used to describe what are essentially the same institutions and processes. Referendums conducted by the government, for example, have sometimes been called plebiscites – a term that remains in use today in some jurisdictions. Citizens' initiatives – the term used in this Handbook – are sometimes also known as popular referendums or citizen-

initiated referendums, depending on the context in which the procedures are used. The meaning of some of the terms used to describe the different institutions and processes of direct democracy has changed over time, and is also subject to linguistic variations. The glossary at annex C clarifies some of these variations in terminology, and we will follow a consistent pattern in our usage of these terms throughout this Handbook.

3. *Referendums* are procedures which give the electorate a direct vote on a specific political, constitutional or legislative issue. As discussed in chapter 2 of this Handbook, referendums take place when a governing body or similar authority decides to call for a vote on a particular issue, or when such a vote is required by law under the terms of a constitution or other binding legal arrangement. In some cases, procedures also exist which allow citizens or a minority in a legislature to demand a referendum on an issue. The result of a referendum may be legally binding, as determined by the law or constitution under which it is called, or it may be used by the authorities for advisory purposes only. Case studies of both binding and consultative referendums are discussed in this Handbook.

4. *Citizens' initiatives* allow the electorate to vote on a political, constitutional or legislative measure proposed by a number of citizens and not by a government, legislature, or other political authority. To bring an issue to a vote, the proponents of the measure must gather enough signatures in support of it as the law under which the initiative is brought forward requires. As discussed in chapter 3, citizens' initiatives may deal with new proposals, existing laws or constitutional measures, depending on the jurisdiction in which they occur. As with referendums, the result of an initiative vote may be legally binding or advisory, depending on the provisions of the law under which such a vote takes place.

5. *Agenda initiatives* are procedures by which citizens can organize to place a particular issue on the agenda of a parliament or legislative assembly. As with citizens' initiatives, a minimum number of signatures is generally specified by law in order for the initiative to be brought forward to the legislature. Unlike the procedure followed for citizens' initiatives, no popular vote takes place when an agenda initiative is brought forward. The use of agenda initiatives at both the national and the sub-national level in a number of different countries, as well as proposed procedures for the use of agenda initiatives at the transnational level, are discussed in chapter 4 of this Handbook.

6. *Recall* procedures allow the electorate to vote on whether to end the term of office of an elected official if enough signatures in support of a recall vote are collected. Although the process of recall is often similar to that of citizens' initiatives, recall deals only with the question of removal of a person from public office, and the outcome is therefore always binding. The use of the recall process, together with appropriate case studies, is discussed in detail in chapter 5 of this Handbook.

The structure of the Handbook

7. The Handbook is organized to follow the steps which are generally involved in planning and then implementing a referendum, initiative or recall procedure. The first five chapters of the Handbook deal with questions of institutional design, and the potential implications of these. Agencies that may be considering the adoption of one or more instruments of direct democracy will need to decide the form that the institutions to be established will take, since once structures are put in place they are often difficult to change. In chapter 2 – ‘When the authorities call a referendum: design and political considerations’ – the various institutional forms of the referendum are examined. In particular, the differences between mandatory and optional referendums are discussed, illustrated by case studies in Europe, Africa, Asia and the Americas. In chapter 3 – ‘When citizens take the initiative: design and political considerations’ – institutional design issues that concern the use of citizens’ initiatives are examined, drawing on short studies from Germany, Italy, Lithuania, New Zealand, Switzerland, Uruguay and California, as well as some of the US states. In chapter 4 – ‘Agenda initiatives: when citizens can get a proposal on the legislative agenda’ – issues are discussed that might apply to the use of agenda initiatives, in which citizens are able to bring an issue before a legislative body. Examples of the use of this instrument in Austria, Poland and Argentina are examined, as well as the features of a proposed agenda initiative for the European Union (EU). In chapter 5 – ‘When citizens can recall elected officials’ – questions of institutional design involving the use of a recall election are examined, drawing on case studies from Venezuela, California and Romania.

8. The next two chapters of the Handbook deal with the process involved in getting an issue on to the ballot and conducting a vote. Once particular institutions are put in place, how do they function in practice? Chapter 6 – ‘How citizens get involved – step by step’ – considers the process that citizens in various jurisdictions must follow in order for a proposal to qualify for a popular vote. Once an issue has qualified for a ballot, how does the electoral process function? What are the administrative procedures? What are the rules regarding campaign finance and the dissemination of information during the campaign? Chapter 7 – ‘Direct democracy votes: information, campaigning and financing’ – examines the special problems involved in administering, regulating and financing direct democracy campaigns, in disseminating the necessary information to the voters, and in providing for the fair use of the media. The advantages and disadvantages of a heavily regulated process, such as that used in the Republic of Ireland, are contrasted with those of a less regulated model such as that used in Uruguay. Finally, chapter 8 provides a comparative overview of direct democracy procedures through the various regions of the world; and chapter 9, on ‘Recommendations and best practices’, considers strategies that might be of relevance to those jurisdictions that are considering adopting one or more of the instruments of direct democracy or seeking to make existing institutions and processes perform more effectively. This chapter also incorporates conclusions that might be drawn regarding the applications of direct democracy in the world today, and discusses some of the considerations that might enter into the decision to adopt any particular model of direct democracy practices.

9. The Handbook draws extensively on a database of direct democracy processes and procedures compiled by the International IDEA research staff (see world survey, annex A). Here may be found information on the existing use of instruments of direct democracy in 214 countries and territories worldwide. For every country, the world survey provides information on the existing legal provisions for, and the use of, referendums, citizens' or agenda initiatives, and recall at the national, regional and/or local levels of government. The world survey provides detailed information on provisions for the conduct of referendums, citizens' initiatives, agenda initiatives and recall in each of the 214 countries and territories. The Handbook is accompanied by a map showing the spread of the use of these instruments of direct democracy throughout the world.

The forms of direct democracy

10. Direct democracy takes many forms and shows many variations. Our categorization in this Handbook of four broad types of direct democracy – referendums, citizens' initiatives, agenda initiatives and recall – also recognizes that there are variations within each type. Within each category, we define a number of variations concerning the specific circumstances under which they might take place, the extent to which the results are legally binding, the rules governing campaigns and finance, and a host of other issues. Throughout the Handbook, we explore the significance of some of these variations in form and practice with respect to each of the four main categories of direct democracy instruments considered here.

11. The subjects on which referendums are held vary widely in different parts of the world. In most of Europe and in Australia, referendums are most often conducted on issues of extraordinary political or constitutional significance (e.g. European integration, institutional changes, etc.), and referendums on more day-to-day policy questions are less frequent. Some examples include the referendums on the proposed European Union Constitutional Treaty held in 2005 in Spain, France, the Netherlands and Luxembourg, and the referendums on adoption of the euro held in Denmark in 2000 and in Sweden in 2003. In Latin America and the United States (at the state level), referendums often address a wider array of internal political issues. Referendums have been held in Latin America on subjects as diverse as constitutional reform, political amnesty and the privatization of state industries. In the Republic of Ireland, the constitution requires that any issue involving a transfer of sovereignty must be put to a referendum. In practice, this has meant that all the major EU treaties have been voted on in a referendum in the Republic of Ireland, while this has not been the case in many other EU member countries. In Switzerland, where several votes take place each year on citizens' initiatives or constitutional proposals (see the case study following this chapter), the subjects of recent votes have included issues as diverse as membership of the United Nations (UN), retirement age and refugee policies.

Box 1.1. Forms of direct democracy in Colombia

The constitution of Colombia provides for the following mechanisms of direct democracy.

A *plebiscite* is a vote of the people, convened by the president, by means of which a decision already taken by the executive is either supported or rejected. The official declaration of a plebiscite must bear the signature of all the ministers and be submitted to and approved by the Senate (the upper house). Neither a plebiscite nor a referendum can coincide with another election.

A *referendum* is an official call by the president or the Congress for the public to approve or reject a draft law or to repeal an existing law or possibly a new law that has not yet been passed. For a referendum to be valid, a minimum turnout equal to 25 per cent of registered electors is required, as well as a simple majority of those voting. The approved text then becomes legally enforceable and is binding.

By means of a *consultative referendum*, a question of a general nature on an issue of national, regional or local importance may be submitted to popular vote by the decision of the president, a governor or a mayor. In some cases the result may be binding. Measures concerning taxes or public expenditures, international treaties, the granting of amnesties or pardons, and issues of law and order cannot be submitted for consultative referendum.

The *agenda initiative* (also called the *popular legislative initiative*) is the political right of a group of citizens to present a bill (constitutional, statutory or local) to be debated and then approved, amended or refused by the official body concerned. The initiative is filed before the National Registrar of the Civil State if it collects the support of at least 5 per cent of citizens on the electoral register. If the agenda initiative is turned down, 10 per cent of citizens on the electoral register can call for a referendum on the issue.

The *mandate recall* is a political right by which the citizens can end the mandate that they have conferred on a governor or mayor. For recall to take place, the official concerned must have been in office for at least one year and the request must be signed by a number of people that is not less than 40 per cent of the total number of votes he or she received. If a majority of those voting vote for the official to be recalled, his or her successor must be elected within 30 days.

Table 1.1. The instruments of direct democracy and the organization of this Handbook

Substantive issues		Representatives	
Referendums			
Mandatory	Institutional	Optional	
		Citizen's demand	
Predetermined issues	Predetermined situations	Legislative majority	Legislative minority
		Executive	Abrogative
		New legislation	Old legislation
		Rejective	Citizens' initiatives
		Agenda initiatives	
Chapter 2		Chapter 3	
		Chapter 4	
		Chapter 5	

12. Certain subjects may be constitutionally or legally excluded from being the subject of a referendum. In Uruguay, direct democracy instruments cannot be used in relation to laws concerning fiscal policy or laws applicable to the executive power (e.g. pension laws for civil servants) (see the case study following chapter 7). In Italy, tax and budget laws, amnesties and pardons, and international treaties cannot be submitted to a popular vote, and the Constitutional Court is empowered to determine whether a request for such a vote is legal. In countries where there has been a recent political transition, certain sensitive subjects may also be excluded from the referendum mechanism. In Colombia, for example, the issue of amnesty (as well as that of taxation) is excluded from being the subject of referendums (see box 1.1).

13. The instruments of direct democracy can be further subdivided according to the circumstances in which they might take place and the type of issue that each is designed to address (see table 1.1). A referendum, for example, may be *mandatory* because it concerns a certain type of issue or situation, as defined by law, or it may be *optional* when the government takes the decision to call a vote. Countries such as Switzerland require that important international treaties be submitted to a mandatory referendum. On the other hand, Sweden chose to hold a referendum on the adoption of the euro in 2003 even though it was not legally required to do so. In Australia, all proposed constitutional amendments must be submitted to a binding referendum, a provision also found in countries such as the Republic of Ireland and Switzerland. Most US states also require that constitutional amendments be submitted to a referendum, but there is no such provision at the national level in the United States.

14. Similarly, optional referendums can occur under different kinds of circumstances. Some, such as the Swedish example noted above, are initiated by the government for its own political reasons. There are also some jurisdictions in which a legislative minority of a sufficient size may demand a popular vote on an issue. In Denmark, for example, one-third of the members of the Folketing (parliament) can demand a referendum on an issue, even when it has been passed by a majority of the assembly. The Irish constitution has a similar provision, but it takes the form of a petition to the president to call a referendum, rather than an automatic procedure. In France, the decision to call a referendum rests with the executive – the president of the republic – alone, while in Brazil only the Congress is empowered to call for a popular vote on an issue. In Argentina, either the president or the Congress may authorize a ‘consultative’ vote.

15. The process by which citizens might demand a referendum varies according to whether the issue in question has already been passed into law. Where a referendum is demanded on pending legislation, the process is referred to as *rejective* – that is, citizens are given an opportunity within a certain period of time to reject a new law. Switzerland, for example, has a provision by which 50,000 citizens or the councils of eight or more cantons may demand a referendum on a law enacted by the Federal Assembly within 90 days of its passage. In Italy, 500,000 voters or five regional councils may trigger a similar process, but it can apply to any law, regardless of how long it has been in force. This procedure is known as an *abrogative referendum*.

16. Citizens' initiatives (chapter 3) or agenda initiatives (chapter 4) do not flow from or require any action by the government or other political institutions. Their use rests solely in the hands of citizens, generally determined by the number of signatures obtained in support of a proposal. But what happens after a document containing the legally specified number of valid signatures is filed can vary widely. Under the provisions of the EU agenda initiative contained in the Treaty of Lisbon, a proposal obtaining the signatures of 1 million EU citizens would require only that the European Commission 'consider' an issue. Austria has been one of the more frequent users of the agenda initiative. On obtaining 100,000 signatures in support of an initiative, the proposal must be debated in parliament. However, Austria does not have any provision requiring a direct popular vote on the issue presented. In Switzerland, by contrast, a proposed constitutional change put forward by 100,000 citizens must be submitted to a popular vote, the result of which is always binding. New Zealand's provision for citizen-initiated referendums permits citizens to force a vote on an issue, but the outcome of that vote is not binding on the government or parliament.

17. The final category of direct democracy discussed in this Handbook – recall (chapter 5) – is much rarer in practice than either citizens' initiatives or referendums, and its specific provisions and practices can also vary considerably from one jurisdiction to another. It may, for example, apply only to one or more members of the executive – such as the president – or it may extend to a wider range of public officials – legislators or judges, for example. It may involve simply removing an official from office, or it may provide for their replacement at the same time, thereby combining some elements of both representative and direct democracy in the same procedure. In California in 2003, the governor of the state was recalled, and his successor elected at the same time. Typically, a 'recall election' begins in the same manner as a citizens' initiative – with a petition containing a minimum number of signatures. In the California example noted above, the petition leading to the successful recall contained over 1.6 million signatures, more than meeting the legal requirement of 12 per cent of the votes cast for that office in the preceding election. In an attempted recall of the president of Venezuela in 2004, which was unsuccessful, the petition filed contained over 3.4 million signatures – over 1 million more than the minimum required to trigger the recall vote. However, the recall attempt failed in that instance, because 59 per cent of the voters in the following recall election said 'No' (see the case study following this chapter).

Rules and procedures

18. A number of important variations in rules and procedures may also exist within each of the categorizations of direct democracy practice shown in table 1.1. For example, the number of signatures required for a citizens' initiative or recall can vary considerably from one jurisdiction to another. Setting a high minimum will make it more difficult for the process to be used. A lower threshold, in contrast, is likely to result in more initiative votes or recalls being held, but it does not ensure that such efforts will be successful.

Generally, a jurisdiction that wishes to use these processes will want to set the bar low enough for them to be accessible to citizens but sufficiently high to discourage their frivolous use. Likewise, there are many variations regarding the rules and procedures that apply to campaigns conducted within each of these procedures. Turnout quorums exist in many jurisdictions, and these can vary widely. Italy, for example, requires that 50 per cent of its citizens vote in a referendum in order for the result to be valid. In Colombia, the quorum required is 25 per cent. Lithuania has two types of turnout and approval quorums, depending on the nature of the proposal (see box 1.2).

Box 1.2. Direct democracy procedures in Lithuania

A law on referendums was passed by the Supreme Soviet of the Lithuanian Soviet Socialist Republic on 3 November 1989. Article 9 of the constitution stated that ‘the most urgent issues relating to the life of the State and the Nation shall be decided by a referendum’. The 1989 law covering referendums called by the Seimas (parliament) and those initiated by citizens was amended many times up to 2000, and was replaced by a new law on referendums in 2002.

Under the 2002 law, a referendum can be initiated by one-quarter of the members of the Seimas, or by 300,000 citizens (c. 11.5 per cent of registered electors).

There is a distinction between mandatory referendums and consultative referendums. Mandatory referendums are those which have to be called on specific constitutional issues, as well as those initiated by citizens ‘with regard to other laws or provisions thereof’; their result is always binding. Consultative referendums, also initiated by 300,000 citizens, or the Seimas, may be held with respect to ‘other issues of utmost importance to the State and the People’; their result is only advisory but must be deliberated in the Seimas.

Validity requirements for the referendum votes differ between the two types of referendums. For a mandatory referendum, in addition to a majority of the votes cast, the required approval quorum has been the approval of 50 per cent of all registered electors, since 2002 the turnout of one-half of the total electorate, and a ‘Yes’ vote of at least one-third of all registered electors. In a consultative referendum, the validity requirement is also a turnout of 50 per cent of all registered electors and a ‘Yes’ vote by at least half of the voters who participate (i.e. at least 25 per cent of the total electorate).

In addition, since 1998 a legislative initiative may be proposed by 50,000 registered electors to the Seimas which must consider this proposed law (agenda initiative).

In practice, citizens' initiatives on major issues of constitutional or economic transformation in Lithuania have not resulted in a valid vote. One feature has been strong party control of referendum initiatives. Because of the high level of citizen support required to initiate a referendum, only large political parties have been able to campaign successfully for a particular issue.

19. Double majorities or super majorities are also sometimes required in direct democracy votes. In Australia, for example, not only must a national referendum achieve an overall majority, but it must also obtain a majority in at least four of the six Australian states. In Switzerland, constitutional proposals must be supported by a majority of citizens both nationally and in a majority of the cantons in order to be successful. In a 2005 referendum on electoral reform in the Canadian province of British Columbia, and in a similar referendum in 2007 in Ontario, the referendum law specified that a total vote of 60 per cent of the total votes cast had to be obtained in favour of the proposal in order for the reform to be approved. It further specified that the proposal had to obtain a majority in 60 per cent of the voting constituencies. Thus, even though 57 per cent of voters in British Columbia supported the proposed change, it was deemed to have failed.

20. There are also a substantial number of administrative issues, such as the timing of a referendum or initiative vote (e.g. holding it to coincide with an election) and the wording of the question on the ballot paper (the ballot question). Votes on US ballot propositions, for example, are normally held on the same dates as other elections for public officials, and proposals often appear on the same ballot papers. In Switzerland, however, initiative and referendum votes are held at regular intervals three or four times a year and do not coincide with national elections. These decisions can affect turnout, as voters may be more likely to participate in a general election than in a separate issue vote. On the other hand, the US practice suggests that citizens do not always vote on propositions, even when they appear on the same ballot paper as other public offices. Furthermore, even when participation is higher due to turnout in a general election, a proposal may receive less attention if there are many other items on the ballot paper.

21. Campaign spending and access to the media are further administrative or regulatory issues that must be considered in enacting any initiative, referendum, or recall law. The amount of money spent on a campaign may be subject to regulation, or it may be left entirely to the discretion of those participating in the exercise. Arguments are commonly made in favour of both these views. Fewer restrictions on campaign activities are seen by some as providing for greater democratic freedom. However, others believe that limits on the amount of money that can be spent in support of or in opposition to a

proposal are necessary in order to ensure that the public is informed equally about both sides of an issue. Chapter 7 compares several jurisdictions that employ a ‘maximum freedom’ model with examples of more regulated regimes.

22. An updated electoral register is an important basis for a legitimate quorum (turnout or approval) in a referendum. Depending on the law, an electoral register may be updated continuously or periodically. An accurate electoral register should remove duplicate and deceased voters and add voters who have reached the minimum voting age. An inaccurate register could distort the voter turnout required for a quorum and thereby undermine the legitimacy of the referendum. In Colombia, the turnout quorum is 25 per cent. In the 2003 referendum, this was not reached, possibly because many people on the electoral register were either no longer alive or migrants who had left the country.

23. Some jurisdictions provide public assistance in the form of financial support for campaigns or free access to the media, while in others no subsidies or other forms of public support are made available to those participating in a referendum or initiative campaign. In some jurisdictions, the government or electoral authority assumes a role in providing information directly to the public, sometimes in the form of a pamphlet or brochure giving information on both sides of an issue. California and Oregon are two US states that have such a provision (see box 7.7 in chapter 7). In California, the state mails a pamphlet to each household summarizing the content of all ballot propositions and giving a synopsis of the arguments advanced by each side. In Oregon, any group or individual who wishes to do so may, on payment of a nominal fee or the filing of a petition, include a statement in the information booklet published by the state. Measures such as these help to neutralize somewhat the effects of disproportionate expenditure of private funds on campaign advertising and other activities.

The impact on representative democracy

24. Direct democracy is often contrasted with representative democracy, although in practice the two concepts are generally complementary to each other. Under pure representative democracy, voters choose which candidates and parties they want to elect and empower those representatives to make decisions on their behalf. Conversely, when direct democracy is used, citizens themselves are able to decide about specific laws and do not need to delegate the decision-making process solely to their elected representatives. For example, in referendums, voters rather than their elected representatives make decisions about constitutional or policy issues; when using citizens’ initiatives, voters can actually seek to introduce constitutional or legislative measures themselves. With agenda initiatives, citizens may organize to bring a particular issue to the attention of a legislature or parliament, but no direct vote is held. Finally, the recall tool provides voters with a mechanism by which they can replace their elected representatives if they are not satisfied with their performance, or with the decisions that have been taken on their behalf.

25. Critics of direct democracy sometimes argue that these processes might weaken representative democracy by undermining the role and importance of elected representatives. Referendums can, in some circumstances, provide a means for allowing elected representatives to avoid the necessity of confronting difficult or contentious political issues. Recalls might involve the risk of creating something like permanent election campaigns, diverting the attention of representatives from the responsibilities of their elected office. Frequent use of referendums also acts to create precedents, even when the result of a referendum is non-binding. Once a referendum has been conducted on a particular type of issue, it is sometimes difficult to avoid holding a referendum when a similar issue arises in the future. However, supporters of the use of referendums and initiatives maintain that, in the context of increasing voter apathy and disenchantment, and declining voter turnout, direct democracy can help to re-engage voters in the democratic political process.

26. It is also argued that direct democracy can act as a useful discipline on the behaviour of elected representatives, ensuring that they fully consider the views of voters when taking decisions on their behalf, and that there will thus be a greater correspondence between the views of citizens and the decisions of their representatives. Referendums can provide greater transparency in political decision making. Criteria by which the success of direct democracy as a component of a democratic system might be judged include levels of participation and engagement, or levels of citizen satisfaction with the democratic system. Many advocates of direct democracy argue that greater use of initiatives and referendums can help to engage citizens in the democratic process in ways that elections often do not. However, direct democracy does not in itself guarantee greater citizen participation or engagement. While voter turnout and the quality of citizen participation in many referendums are quite comparable to those found in national elections, in other instances they may fall short of expectations. In other words, both representative and direct democracy can suffer from problems of voter apathy under certain circumstances.

The usage of direct democracy

27. The use of referendums and initiatives has increased dramatically, both in the number of countries employing such devices and in the number of issues being put to a direct vote. These trends have occurred at least partly in response to a growing sense of dissatisfaction with democratic performance in many countries, and to a decline in participation in democratic elections in some. One argument often advanced in favour of referendums is that they can be used to resolve difficult political problems, particularly where political parties are divided over an issue. In such circumstances, holding a referendum can help reach a solution on the issue without splitting the party. Similarly, initiatives may allow citizens to raise issues that may be difficult for a political party to deal with, particularly when its own members are divided on the issue. The use of a referendum in many European countries to determine whether or not to join the EU (nine of the ten countries that joined the EU in 2004 held referendums on the

issue) provides an example of this trend towards the use of direct democracy to resolve important political questions.

28. Referendums have also been important in some instances in establishing new democracies or in managing a transition from authoritarian to democratic rule. Conducting a direct vote on a new constitution, for example, provides a mechanism for legitimizing the document, both in the minds of a country's own citizens and in the international arena. Such votes, however, can also become caught up in party politics, or in questions of government popularity, as was the case in Kenya in its 2005 constitutional referendum (see box 1.3). Referendums might also provide a mechanism for resolving territorial or sovereignty issues, as in cases of secession or the creation of a new state. Many of the former Soviet republics conducted referendums to affirm their independent status following the dissolution of the Soviet Union in 1991. A referendum held in Montenegro in 2006 dissolved the union between Serbia and Montenegro, ending the last remaining ties between the states of the former Yugoslavia. Some referendums, such as that on devolution in Scotland in 1997, are conducted by the national government, while others, such as the two Quebec 'sovereignty' referendums of 1980 and 1995 are conducted by the provincial government. The US territory of Puerto Rico has held three referendums (in 1967, 1993 and 1998) dealing with the question of its political status. Occasionally, referendums are held under international supervision, as in the case of the UN-administered referendum in Timor Leste in 1999.

Box 1.3. Bananas or oranges?

The November 2005 referendum in Kenya on a new constitution

Kenya was ruled by the Kenya African National Union (KANU) as a one-party state from 1969 until 1991, when President Daniel arap Moi yielded to internal and external pressure for political liberalization and accepted multiparty elections. However, the ethnically divided opposition failed to remove KANU from power in elections in 1992 and 1997. In December 2002 President Moi stepped down and Mwai Kibaki, running as the candidate of the 'Rainbow' coalition, defeated the KANU candidate following a campaign that focused on fighting corruption and endorsing constitutional change. His coalition splintered in 2005 because of disagreement over amendment of the constitution, and government defectors joined with KANU to form a new opposition coalition, the Orange Democratic Movement.

On 21 November 2005, a referendum was held on the new constitution proposed by the government. This was the first referendum in Kenya and no previous legislation could be applied. Although the referendum was advisory rather than binding, the government chose to accept the result as if it were binding.

The referendum was organized by the Electoral Commission of Kenya (ECK). After the proposal for the new constitution was published on 22 August, the ECK registered referendum committees, respectively referred to as ‘bananas’ (‘Yes’) and ‘oranges’ (‘No’). The question on the ballot paper was ‘Are you for or against the ratification of the proposed new constitution?’ and voters selected the symbol of a banana if they backed it or an orange if they did not. The ECK set a campaign period of one month, from 21 October to 19 November. The registration of voters lasted for two months, ending on 19 October, and coincided with the period of voter education conducted by the ECK. Both the bananas and the oranges started campaigning weeks before the official campaign period and were criticized for this by the ECK. The ‘Oranges’ mainly claimed that the proposal failed to limit the president’s powers.

As President Kibaki campaigned for the adoption of the new constitution, it is likely in a country with high levels of illiteracy that many voters ignored the complex constitutional details and taken the vote simply as a vote of confidence in his leadership.

The proposed new constitution was rejected by 57 per cent of the votes cast. The voter turnout was 52.4 per cent. The assessment of international observers was that the referendum had been conducted in a peaceful and orderly manner, and that the poll represented the will of the Kenyan people through a process and a vote that were largely free and fair. The independent media covered both sides of the campaign in a balanced manner, but the state-controlled Kenya Broadcasting Corporation was biased in favour of the ‘Yes’ campaign, according to a report from the Chr. Michelsen Institute, in Bergen, Norway.

Citizen information and competence

29. Direct democracy demands from citizens a relatively high level of knowledge of issues that are sometimes complex. Concerns are often expressed that voters may not always have the capacity or information to make well-informed decisions about the issue at stake, and instead could make ill-considered decisions based on partial knowledge of an issue or the emotion of a campaign, or on the basis or unrelated factors such as feelings about a particular political party or personalities. In some jurisdictions, the government or an independent electoral authority assumes responsibility for providing citizens with detailed information concerning the issues on the ballot paper, while in others this task is left to those involved directly in the campaign. Propositions can be complex. A 2004 California proposal supporting stem cell research, for example, contained within a single measure proposals to establish a new research institute, prohibit cloning, and fund a bond issue (see box 3.3 in chapter 3). Voters therefore had either to accept or reject the entire package.

30. In jurisdictions where direct democracy is common practice, voters are often asked to consider a number of different propositions at the same time. In the United States, the most common complaints from voters about ballot propositions are the sheer number of items appearing on the ballot papers and the sometimes confusing or complex question wording. Arizona voters in the 2006 US congressional elections faced no fewer than 19 ballot propositions, dealing with subjects as diverse as property tax limitation, immigrant rights, smoking bans and same-sex marriage. Swiss voters typically consider three or four proposals at a time, at specific intervals over the course of a year. Even the most conscientious voters may find it difficult to be well informed on a large array of proposals, particularly in jurisdictions where they are competing with candidates in an election for the attention of the electorate.

31. The tactics employed in a referendum or initiative campaign can sometimes inhibit public deliberation of an issue rather than promote it. Opposing sides in an initiative or referendum campaign, whether they be political parties, interest groups, or umbrella committees, aim to win the contest, not always to foster careful deliberation of an issue. The amount of money spent on a campaign may be a factor, particularly when funds are used disproportionately by one side to purchase large amounts of television and print advertising in support of their position. Voters in referendums sometimes complain about insufficient information, confusing question wording, or contradictory lines of argument regarding the possible consequences of a referendum vote. However, referendums also promote greater public responsibility for political decisions, and encourage citizens to become better informed about important issues.

Concerns about minority rights

32. Modern democracy theorists are generally positive about the use of initiatives and referendums to foster greater citizen participation and improve the quality of democracy, but they also raise some warnings. Referendums, and particularly initiatives, could possibly threaten the civil rights of vulnerable minorities or exacerbate racial or ethnic tensions in some societies. Popular majorities might, either deliberately or inadvertently, use the processes of initiative or referendum to deprive unpopular minorities of certain rights. Divided societies may find that the victory of one side over another in a referendum could re-ignite old grievances or create new divisions. In some circumstances, it could be necessary to provide safeguards against the unmitigated power of electoral majorities through protection by the courts or by the specification of majorities other than a simple '50 per cent plus one' of those voting in a referendum. The requirement of double majorities or super majorities is sometimes directed towards protecting minorities.

33. It can also be argued that the existence of instruments of direct democracy can empower minorities, because direct democracy processes provide alternative ways to raise issues that are not necessarily favoured by the majority, particularly the majority within a legislature or parliament. Citizens' initiatives can often be triggered by a small minority of the electorate. In some countries, initiative campaigns are sometimes begun by smaller political parties or groups that have little or no representation in a legislative

assembly. When such an initiative succeeds, it can demonstrate that the power of majorities is not absolute. Thus, the majority/minority question is complex when applied to the instruments of direct democracy. However, it is clear that these instruments are more appropriate in some societies than in others, and their possible consequences for the rights and protection of minorities must be weighed carefully.

Other concerns

34. While most jurisdictions that practise direct democracy do so in an effort to facilitate greater democratic participation of citizens in deciding important issues, and to give political decisions greater democratic legitimacy, other motives are sometimes present. On occasion, referendums or 'plebiscites' have also been employed by authoritarian rulers, either to create a veneer of democratic legitimacy for their actions or to counter domestic political opposition. In authoritarian polities where pressures for democratization exist, referendums might provide, intentionally or unintentionally, an alternative outlet for genuine democratic expression. In modern times, referendums have been employed by regimes such as those of Augusto Pinochet in Chile, Ferdinand Marcos in the Philippines, or Park Chung Hee in South Korea, for purposes that would have been considered at the time to be anti-democratic. Yet it can be argued that some referendums may have actually accelerated the process of democratization. Pinochet unexpectedly lost the 1988 referendum which was intended to extend his term of office, and his regime collapsed shortly thereafter.

35. Initiatives may sometimes be put forward by powerful groups, acting to promote their own economic or social interests, or they may unduly favour those with the money and resources to mount strong campaigns. There can be many different reasons for calling a referendum on a specific issue, or for promoting an initiative. Even in those countries where democratic practices are well entrenched, referendums are sometimes used to postpone or avoid dealing with complex issues, or to gain advantage over political opponents. Initiatives can also be used by powerful interest groups to constrain the powers of the state in harmful ways, or to advantage specific political interests. In the United States particularly, there is a growing literature that is critical of California-style ballot propositions because of such concerns regarding their fairness. On the other hand, direct democratic devices are generally popular with the public in those jurisdictions that use them the most (e.g. California, Switzerland).

Direct democracy in Switzerland

Nadja Braun*

Historical background

The historical roots of direct democracy in Switzerland can be found in pre-modern forms of democracy. There was a living culture of popular assembly democracy and the federative referendum (a referendum that can be triggered by federative entities) dating back to the Middle Ages. Inspiration for direct democracy in Switzerland can also be found in the experience and the ideas of the American and even more of the French revolutions.

The cornerstones of the history of modern direct democracy at the national level are the introduction of the citizens' initiative for a total revision of the constitution and the mandatory constitutional referendum in 1848; of the optional referendum in 1874; and of the citizens' initiative in 1891. After 1891, direct democracy was further extended. The referendum on international treaties was introduced in 1921, and extended in 1977 and 2003. It allows citizens to be involved in decisions on foreign policy. The creation of the so-called resolute referendum in 1949 restricted the ability of the Federal Assembly to protect decisions from exposure to referendum by declaring them to be 'emergency measures' (in the 1930s the government had used the emergency clause to systematically avoid referendums). The 'double yes' option with a deciding question where there is an initiative and a counter-proposal was introduced in 1987 and extended in 2003.

Direct democracy procedures and legal provisions

Switzerland is a federative state with 26 cantons (individual constituent states) and around 2,740 communes. Swiss voters have the right to cast their votes at the federal, cantonal and local levels. On average, four times a year there are referendums at all three levels.

*The opinions expressed in this case study are those of the author and do not reflect any official statement.

The two main pillars of direct democracy in Switzerland are the *citizens' initiative* and the *citizens' demand* (optional/popular referendum).

The legislative framework at the national level

All Swiss citizens, whether living in Switzerland or abroad, who have reached the age of 18 and who are not disqualified on grounds of mental incapacity are entitled to vote in referendums (article 136 of the Swiss federal constitution (FC)). The issues that the people are called to vote on at the federal level are set out in the constitution (articles 138–142 FC). There are no quorum requirements such as a turnout quorum for a referendum to be valid.

The outcome of a referendum – be it an optional or a mandatory referendum – is always binding (articles 142 and 195 FC). A basic distinction is made between mandatory and optional referendums.

A mandatory referendum must be held (article 140 § 1 FC)

- in the event of a total or partial revision of the federal constitution;
- to join a collective security organization (e.g. the United Nations) or a supranational community (e.g. the EU); or
- to introduce urgent federal legislation without the required constitutional basis and which will be in force for longer than a year.

Such a decision requires the approval of both a popular majority and the majority of the cantons. A popular majority means a simple majority of those voting (article 142 § 1 FC). A majority of the cantons is achieved when the popular vote has been in favour of the proposal in a majority of cantons (article 142 § 3 FC). In calculating the majority, the results in six – out of a total of 26 – cantons each count as half a cantonal vote (article 142 § 4 FC).

A referendum is also mandatory (article 140 § 2 FC)

- for citizens' initiatives aimed at a total revision of the federal constitution;
- for citizens' initiatives aimed at a partial revision of the federal constitution which were presented as a general proposal and have been rejected in the Federal Assembly; and
- in order to reach a decision where the Federal Council (the government) and the National Council and the Council of States (the parliament) have disagreed as to whether a total revision of the federal constitution should take place or not.

In the latter three cases, the referendum is decided by a simple majority of the voters.

Swiss citizens who are entitled to vote can propose a partial or total revision of the constitution (articles 138 and 139 FC). Before a citizens' initiative can be officially validated, the signatures of 100,000 citizens who are entitled to vote (corresponding to approximately 2 per cent of the electorate) have to be gathered within 18 months.

A citizens' initiative can be formulated as a general proposal or presented as a fully worked-out text. If the initiative is qualified, a referendum on it is mandatory.

An optional referendum takes place when it is requested within 100 days after the official publication of a statute either by 50,000 citizens (corresponding to approximately 1 per cent of the Swiss electorate) entitled to vote or by eight cantons. The following can be the subject of an optional referendum (article 141 FC):

- federal laws;
- federal laws declared urgent with a validity exceeding one year;
- federal decrees to the extent that the constitution or the law foresee this; and
- international treaties which
 - (1) are of unlimited duration and may not be terminated;
 - (2) provide for the entry into an international organization (e.g. International IDEA); or
 - (3) contain important legislative provisions or if their implementation requires provisions in federal laws.

The relevant law, decree or international treaty is approved if the people vote in favour of it (popular majority).

The legislative framework at the cantonal and communal levels

The instruments of initiative and referendum are available to Swiss voters not only at the national (federal) level, but also at the cantonal (regional) and communal (local) levels. Because each canton can choose its own way of allowing citizens to participate, there are extra possibilities: in addition to the constitutional initiative and the legislative referendum, all the cantons except Vaud also have the so-called finance referendum (see the table).

Another important instrument in the cantons is the obligatory legislative referendum, and in the communes the administrative referendum. Some cantons and communes link the referendum question with a popular counter-proposal (the so-called 'constructive referendum'). In the canton of Zurich there is the individual (agenda) initiative. In addition, citizens in several cantons have the right of recall of the administration. In other words, the lower the political level, the more opportunities citizens have to be directly involved in decision making.

The regulatory framework governing direct democracy instruments

In Switzerland, federal elections and federal direct democracy instruments are managed by the executive branch through the Federal Chancellery. However, the Federal Chancellery (national level) does not do this on its own, but jointly with the 26 cantonal electoral management bodies.

The organization of referendum votes

The national polling days are appointed according to the rules laid down in article 10 of the Federal Law on Political Rights (FLP) of 17 December 1976 and article 2a of the Decree on Political Rights (DPR) of 24 May 1978). Federal referendum votes are not held during federal elections. A minimum of four months before polling day, the Federal Council (government) determines which proposals are to be submitted to the vote. The Federal Chancellery provides the cantons with the proposals to be submitted to a vote of the people and the ballot papers (article 11 FLP).

The Federal Council explains each proposal that is put to the vote in a so-called referendum booklet. It has to include the arguments of the committee responsible for the initiative or referendum (article 11 FLP). It is published by the Federal Chancellery in the four official languages and sent to the cantons for distribution to all eligible voters.

Each canton is responsible for the conduct of the vote within its own territory and has its own regulations (article 10 FLP). These regulations sometimes vary considerably. For example, four cantons have one or more centralized electoral registers, while the other 22 cantons have decentralized registers, that is, the communes keep the electoral registers.

The federal law requires that all voters receive the documents required in order to cast a valid vote at a minimum three and at the earliest four weeks prior to the polling day (article 11 FLP). The cantons have to execute this provision but the way they do this is up to them and also depends – among other things – on whether the canton or a commune in that canton decides to organize another referendum vote on the same day.

The management of the polling stations is also organized by the cantons or communes. After the vote, the cantons collect reports on the popular ballots from each polling station, compile the provisional results from the entire canton, and notify the Federal Chancellery of the results. The Federal Chancellery then validates the results and prepares the decision of the Federal Council, which determines the results of the overall vote.

Administering citizens' demands (popular/optional referendums)

The request for a popular referendum must be submitted to the Federal Chancellery before expiry of the referendum period, furnished with the required number of signatures and the certificates of eligibility to vote (article 59a FLP). Certificates of eligibility to vote are issued by cantonal or communal offices (article 59a FLP). These offices certify that the signatories are eligible to vote on federal matters. After expiry of the referendum period (100 days), the Federal Chancellery checks the validity of the signature lists and establishes whether the signature list contains the required number of valid signatures.

Administering citizens' initiatives

Prior to the start of the collection of signatures, the Federal Chancellery checks the

signature list and declares in a ruling whether the signature list corresponds to the form prescribed by law (article 69 FLP). This preliminary check by the Federal Chancellery includes checking whether the title of an initiative is misleading, or if it contains commercial advertising or personal publicity or gives rise to confusion; and examining whether the text of the initiative is the same in all the official languages. This usually means that the Chancellery translates the text of the initiative.

The Federal Chancellery does not check the content or wording of the initiative text. Both the title and the text of a citizens' initiative are determined by the proponents of the initiative. However, the proponents do not have an entirely free hand: they must bear in mind certain restrictions on what can be proposed arising from national and international law. The constitution states that, in the case of a popular initiative for a partial revision of that constitution, 'If an initiative does not respect the principle of unity of form, the principle of unity of subject matter, or mandatory rules of international law, the Federal Parliament shall declare the initiative invalid, in whole or in part' (cf. article 139 § 3 FC).

After the preliminary check, the Federal Chancellery publishes the title and text of the initiative, together with the names of the authors (i.e. the members of the initiative committee) in the *Official Federal Gazette* (article 69 FLP). Starting from the day of publication in the *Official Federal Gazette*, the initiative committee has to collect 100,000 signatures and get the certificates of eligibility to vote of the signatures on the signature lists from the cantonal/communal offices within 18 months.

After expiry of the period allowed for the collection of signatures, the Federal Chancellery checks the validity of the signature lists and establishes whether the popular initiative contains the required number of valid signatures. The Federal Chancellery publishes the ruling on the success of the signature lists in the *Official Federal Gazette* together with details of the numbers of valid and invalid signatures for each canton (article 72 FLP).

The financing of the use of direct democracy instruments

In Switzerland, there is no public assistance for campaigners. The initiative or referendum committee is granted space (one page) in the official voters' pamphlet.

There has been a debate in recent years over the financing of referendum campaigns. According to one political scientist, Claude Longchamp, it takes 'around 10 million francs' to organize a professional national citizens' initiative from the initial launch through the actual campaign to tying up all the loose ends after the vote. On the other hand, the example of the 'Sunday Initiative' shows that it can be done with considerably less money: although the group campaigning for 'four car-free Sundays per year' had no more than 50,000 Swiss francs (CHF) with which to campaign, they still managed to get 37.6 per cent of the votes. Even in those cases where wealthy interest groups are involved, there is no evidence that money can directly influence referendum results in Switzerland. Quite the opposite: there are plenty of cases where, despite the spending of large amounts of money, voters went against the majority of the political or financial elites.

The use of direct democracy in Switzerland

How direct democracy procedures have been used and on what issues

The tools of direct democracy are growing in popularity. Since 2000, an average of 10.8 national issues have been voted on per year, compared to 10 in 1990–99 and 6.2 in 1980–89.

Between 1980 and the time of writing (June 2008), a total of 200 constitutional initiatives were started at the national level. Of these 200, 73 did not achieve a sufficient number of valid signatures. Of the 127 initiatives that did achieve the necessary number of valid signatures, 82 were voted on, 29 were withdrawn by the initiative committee shortly before the vote, two were declared invalid by the parliament, and 14 are currently pending at an earlier stage of the process. Over the same period, at the national level, 72 citizen-demanded referendums achieved the necessary number of valid signatures and were voted on.

The issues on which the people are called to vote at the federal level are set out in the constitution (articles 138–142 FC). Except for the invalidity criteria for initiatives, no topics are excluded from a vote – provided the formal conditions are fulfilled.

Coverage of the use of direct democracy instruments by the media

The public broadcasting stations are in a rather special position as regards their reporting of referendum processes: unlike in the private media, the chief editors of the three national radio and television stations make no specific recommendations. Although there is no advertising on public radio, television is partially financed by advertising. However, political advertising is banned. In their dealings with initiatives and referendums, the public broadcast media follow an internally devised code of conduct – the ‘handbook of journalism’ – which is designed to ensure accuracy, impartiality and fairness.

Voter participation in direct democracy votes, and an analysis of the political dynamic of campaigns related to such votes

Until the end of World War II, at the national level, average voter turnout was around 50 per cent. Between 1960 and the mid-1980s it fell to below 40 per cent, but since the late 1980s it has increased again – up to around 45 per cent. The single most important factor for mobilizing voters is the referendum topic. Accordingly participation varies from one referendum to the next.

Voter education regarding the subject of a referendum is done by means of the referendum booklet. The little red booklet is mailed out to all registered electors, together with the voting slips and the certificate of entitlement to vote. Initiative and referendum committees can draft their own arguments and have them included in the booklet. The government recommends whether the initiative or referendum should be accepted or rejected. The government is not actually allowed to campaign, but it is its duty to give information to the voters. The fact that the four major political parties are represented in the government ensures that the information presented to the voters is balanced.

The experience of Switzerland: lessons learned, problems and controversies regarding the use of direct democracy procedures

The number of signatures required for citizens' initiatives and optional referendums and the collection deadlines have been the subject of political debate for many years. On several occasions the government has proposed raising the signature quorums for initiatives and referendums, and initiative committees have demanded a reduction in the time allowed to the authorities to process initiatives. The proposal to cut the time allowances suffered a clear defeat at the ballot box, and the plan to increase the signature quorums did not even get through the parliament. Although the signature quorum remained the same, it has not become any easier to collect the 100,000 signatures required for a national citizens' initiative. Quite the opposite: it has actually become harder. The trend towards more postal voting has adversely affected the traditional method of collecting signatures outside voting centres.

In terms of the modernization of direct democracy, the government is also looking at the possibility of using the Internet. The first regular referendum at which e-voting was allowed took place on 14 January 2003 in the small community of Anières in the canton of Geneva. Since then several tests were carried out during national referendums in the cantons of Geneva, Neuchâtel and Zurich.

Figure 1. Voter turnout, 1995–2005

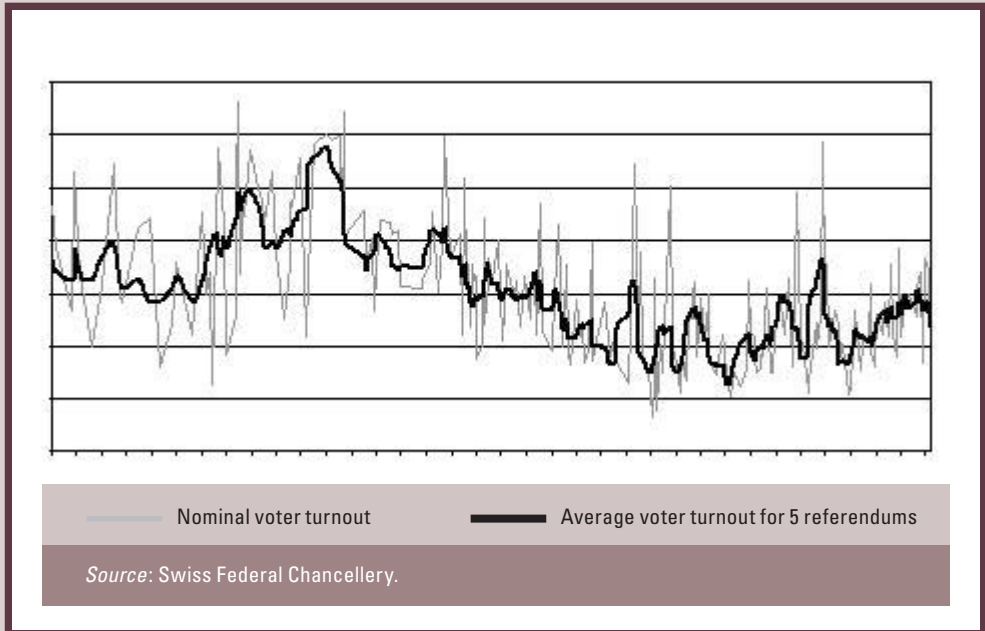


Table 1. Direct democracy instruments in the Swiss cantons as of December 2004

Canton	Constitutional referendum	Legislative referendum		Finance referendum		Administrative referendum		Initiatives
	Mandatory	Mandatory	Optional	Mandatory	Optional	Mandatory	Optional	
Zurich	•	•	•		•			•
Bern	•		•		•		•	•
Lucerne	•		•	•	•			•
Uri	•	•		•	•		•	•
Schwyz	•	•	•	•				•
Obwalden	•		•		•			•
Nidwalden	•		•	•	•	•		•
Glarus	•	•		•		•		•
Zug	•		•		•			•
Freiburg	•		•	•	•			•
Solothurn	•	•	•	•	•	•	•	•
Basle (city)	•		•		•		•	•
Basle (county)	•	•	•		•			•
Schaffhausen	•	•	•	•	•	•	•	•
Appenzell Ausserrhoden	•	•	•	•				•
Appenzell Innerrhoden	•	•		•	•			•
Sankt Gallen	•		•	•	•			•
Graubünden	•		•	•	•			•
Aargau	•	•	•		•			•
Thurgau	•		•	•	•			•
Ticino	•		•		•			•
Vaud	•	•	•					•
Valais	•		•		•			•
Neuchâtel	•		•		•			•
Geneva	•		•		•			•
Jura	•		•	•	•			•

Source: Swiss Federal Chancellery.

Direct democracy in Venezuela

Miriam Kornblith

Recent experience and the regulatory framework

Hugo Chávez was elected president of Venezuela for the first time in December 1998. His main promise during the electoral campaign had been to convene a Constituent Assembly and enact a new constitution which would allow for the consolidation of a participatory democracy. The constitutional process took place throughout 1999 and unfolded in three electoral phases: the consultative referendum of 25 April 1999 to call an Asamblea Nacional Constituyente (ANC) or National Constituent Assembly; the election of representatives to the ANC in July 1999; and the consultative referendum of 15 December 1999 to approve the draft constitution drawn up by the ANC. These electoral events took place within the legal framework of the 1961 constitution and the Organic Law on the Suffrage and Political Participation of 1997, which introduced the consultative referendum at the national level.

With the 1999 constitution approved, a series of other events associated with direct democracy took place – the consultative referendum on the renewal of the trade union leadership on 3 December 2000; the failed attempts to initiate a consultative referendum to demand the president's resignation during 2002 and 2003 and a presidential recall referendum (PRR) in 2003; the PRR of 15 August 2004; and, finally, the referendum of 2 December 2007 on reform of the 1999 constitution.

The regulatory framework of direct democracy

In the 1999 constitution, democracy was conceived as 'participatory and protagonistic', in contrast to representative democracy. The constitution established several direct democracy instruments, including consultative referendums, referendums to repeal and approve national and international laws and to amend or reform the constitution, and recall. The recall was given privileged status in the 1999 constitution. The government

of Venezuela is defined as democratic, participatory, elective, decentralized, responsible and pluralist, and its mandate can be recalled.

The presidential recall referendum of 15 August 2004

According to the 1999 constitution, when half the term of office of an elected official whose mandate the voters want to recall has elapsed, at least 20 per cent of the registered electors of the corresponding electoral district can demand a recall referendum. When (a) a number of voters that is greater than or equal to those who elected the person in question votes in favour of his or her recall, (b) at least 25 per cent of registered electors participate in the recall referendum, and (c) the votes in favour of the recall outnumber those against it, the official is considered recalled and will be replaced according to the law.

The end of the first half of President Chávez' term of office fell on 19 August 2003. A call for a recall before the fourth year in government should lead to the election of a new leader within 30 days, but if the recall occurs after four full years the vacancy must be filled by the executive vice-president. The Supreme Court of Justice has never clarified whether a president whose mandate has been revoked has the right to stand again as a candidate in order to complete his term in office.

The number of signatures needed to validate a demand for a PRR was 2.4 million, and the number of votes required for an actual recall was 3.8 million. This figure also has to exceed the number of votes in favour of keeping the president in office.

The recall process

The first attempt to recall President Chávez took place on 20 August 2003. Different organizations opposed to the president, united under an umbrella body called the Democratic Coordinator, filed 3.2 million signatures on petitions demanding the activation of the PRR with the Consejo Nacional Electoral (CNE, National Electoral Council), the electoral management body (EMB). The newly appointed CNE was composed of five members. Although it should be an impartial body, it was made up of three members identified with the ruling coalition, and two with the opposition forces (and the ten substitute members with similar affiliations). The CNE evaluated the request for a PRR and rejected it by three votes to two for 'failing to comply with essential formalities'.

On 25 September 2003 the CNE approved the rules to regulate the recall referendum. This regulation shaped the process significantly. It legalized the interference of the CNE in all phases of the recall referendum and the discretionary nature of such interference; established a complex process for checking the petitions; provided for the automation of the process; and introduced a timetable which unnecessarily prolonged the entire process to six months (in practice it took 11 months). The process unrolled in three phases: the collection of petitions; the checking of the petitions and the handling of objections to them; and the convening and carrying out of the PRR.

The collection of signatures

Between 21 and 24 November 2003, signatures were collected to recall the mandate of opposition deputies, and between 28 November and 1 December 2003 signatures were collected to recall government deputies and the president. The CNE took more than a month to organize the process, and the legality and efficiency of its work were much disputed.

On 19 December 2003, the Democratic Coordinator presented the CNE with 3.4 million signatures. This number comfortably exceeded the number needed by nearly 1 million. The responsibility for collecting and processing the forms containing the signatures and individual petitions lay with Súmate, a civil society organization.

The checking of the petitions

According to the regulations, the checking and validation of petitions must be completed within 30 days and starts when the CNE receives them. In practice, however, this was extended by over 100 days, and only on 2 March 2004 did the CNE announce the preliminary results of this phase.

The regulations on the checking of signatures were approved in September and November 2003. When the checking of the petitions started and the initial criteria were applied (albeit in an arbitrary manner), it was clear that there were enough petitions to call the PRR. The pro-government members of the CNE then promoted a procedure to invalidate signatures on a massive scale, fabricating the criterion of '*planillas planas*' (forms containing similar signatures) – 'signatures in similar writing' or 'aided forms'. By applying retroactively an instruction that was produced only at the end of February 2004, around 1 million signatures were invalidated. This decision generated the greatest controversy of the whole process and caused violent disturbances and protests against the CNE's decision, some resulting in fatalities. The representatives of the observation missions of the Organization of American States (OAS) and of the Carter Center objected to this criterion. This issue caused a major confrontation between the electoral and constitutional chambers of the Supreme Court of Justice, the former opposing the CNE's decision and the latter backing it.

On 2 March 2004 the pro-government majority on the CNE approved the resolution applying the *planillas planas* criterion and others that were equally doubtful, and recognized only 1.8 million of the signatures as valid. However, tremendous pressure from the country and the international community against this decision caused the CNE to agree to submit the *planillas planas* to 'ratification' and not cancel them, as was the initial intention.

The lack of professionalism and the poor level of security in the checking of signatures were even more obvious given the profusion of databases containing the results of the verification. The first 'final' database, which upheld the resolution of the CNE, was submitted on 10 March, and the fourth 'final' database on 23 April, after which two further databases were generated. Between the first and the fourth database, 956,268 signatures changed status—an inexplicable situation given that according to the first announcement only 78,701 petitions still needed to be checked.

Objections to the petitions

Around 1.1 million voters whose petitions were considered to be *planas* (in similar handwriting) had the ‘right’ to ratify them, but 375,241 voters whose petitions were rejected without any clear grounds did not have the right to object. The CNE conceded the right to ‘change’ to those petitioners who supposedly changed their opinion between November 2003 and June 2004. Once again, the international observation missions disputed this decision.

Objections were lodged between 28 May and 1 June 2004. Voters were coerced into withdrawing their signatures (some 91,000 did so) or not ratifying them. Finally, on 9 June 2004, almost six months after the petitions had been presented, the CNE recognized the existence of 2.5 million valid signatures to activate the PRR, and it was called.

The calling and running of the recall

The date chosen for the recall referendum was 15 August, the last available Sunday before the end of the fourth year of the presidential term. The question asked was ‘Do you agree with recalling the mandate, conferred by legitimate democratic elections, of Mr Hugo Chávez Frías, as president of the Bolivarian Republic of Venezuela for the current presidential term of office?’. Contrary to conventional practice, the ‘No’ option was placed first on the ballot paper.

To carry out the automation of the election process, in conditions that were hardly transparent, the CNE contracted the Smartmatic-Bizta-Cantv consortium, which did not have previous election experience. Automated touch-screen voting was introduced for the first time in Venezuela using lottery machines transformed into voting machines. Digital fingerprint-reading machines were incorporated, supposedly to detect cases of multiple voting – something that gave rise to misgivings about the protection of the secrecy of the vote.

The names of the voters who signed the petitions to recall the president and the government deputies were given by the CNE to the pro-government party and were published on the web page of Luis Tascon, a deputy of the ruling party in the National Assembly. The voters included in Tascon’s list suffered discrimination, lost their jobs in the public sector, were refused official documentation and were pressed to withdraw their petitions.

Moreover, throughout the first semester of 2004 more than 2 million new voters were included in the electoral registers, many of whom had not followed the legal procedures for obtaining their identification cards and did not fulfil all the necessary criteria. This massive inclusion of new and dubious voters reshaped the composition of the electoral register and created great suspicion about the reliability of the registration lists used for the recall referendum.

The day of the referendum was chaotic. From an organizational point of view, this was the worst electoral event in Venezuela’s long experience of elections. There were long queues at the voting centres for many reasons: the massive turnout; inefficient ‘re-engineering’ of the voting centres and polling stations; the introduction of fingerprint-

reading machines; deficiencies in the training of polling staff; last-minute mobilization of voters by government officials; and more. Officially, polling stations close at 4 pm, but voting was extended on several successive occasions and some stations stayed open until past midnight.

The strong political polarization and the fact that voters were aware of the importance of their decision and highly motivated accounted for the patience with which they bore the completely unjustifiable conditions in which the voting took place.

The results of the recall

The final official figures were 5.8 million ‘No’ votes (59 per cent of valid votes) and 4 million ‘Yes’ votes (41 per cent of valid votes). Turnout was 70 per cent. The results showed the stability of political preferences (for the government in power and the opposition) compared to the previous elections and the continued polarization of opinion. Both sides had mobilized all the resources they could and achieved their best performance since 1998; the combined effects of polarization, the increase in the size of the electoral register and the reduction in the abstention rate generated an absolute and relative increase in the turnout of both sides.

The results of the PRR were controversial. Leaders of the Democratic Coordinator claimed that there had been massive electoral fraud, although the OAS and the Carter Center observation missions endorsed the official results. Perceptions were closely linked to the polarization of society: in October 2004, 96 per cent of those who felt that there had been fraud identified with the opposition, and the 96 per cent who accepted the results identified with the government.

The aftermath of the recall

In December 2007, the electorate voted on a proposal to reform the 1999 constitution and rejected it by 51 per cent of the vote. The proposal aimed at reforming 69 articles of the current constitution. Thirty-two articles were initially presented by the president and the National Assembly added the remaining articles. Among the changes, the legislators proposed to increase the number of signatures and the turnout required for a recall referendum to be called and approved. In the case of the recall, the legislators proposed to increase to 30 per cent the proportion of registered electors needed to demand a recall and to 40 per cent of registered electors the participation threshold required to validate a recall referendum.

Assessment: the opportunities and risks of direct democracy

Contrary to the expectations generated both in and outside the country, the 2004 PRR did not succeed in alleviating the tensions or reducing the degree of polarization in the country, nor did it rebuild confidence in Venezuela’s institutions or elections. The activation of the PRR in circumstances which did not guarantee pluralism and transparent decision making eroded the institutional strength and democratic beliefs of

the country even further, reinforced the existing polarization, undermined the voting and failed to convince the losers.

Instruments of direct democracy were used again in Venezuela during 2007. Very few voters participated in the processes to recall some governors and mayors. In a tight electoral contest, the voters rejected the attempt to reform the 1999 constitution in order to establish a socialist state and economy, grant indefinite re-election to the president and introduce restrictive conditions on the calling and approval of referendums, among other changes. Although some improvements were achieved in the organization of the electoral processes compared to the 2004 recall referendum, much remains to be done in terms of institutional fairness and equilibrium if the full meaning and potential of direct democracy are to be realized.