



Extracted from *Direct Democracy: The International IDEA Handbook*  
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# CHAPTER 3

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CHAPTER 3

# When citizens take the initiative: design and political considerations

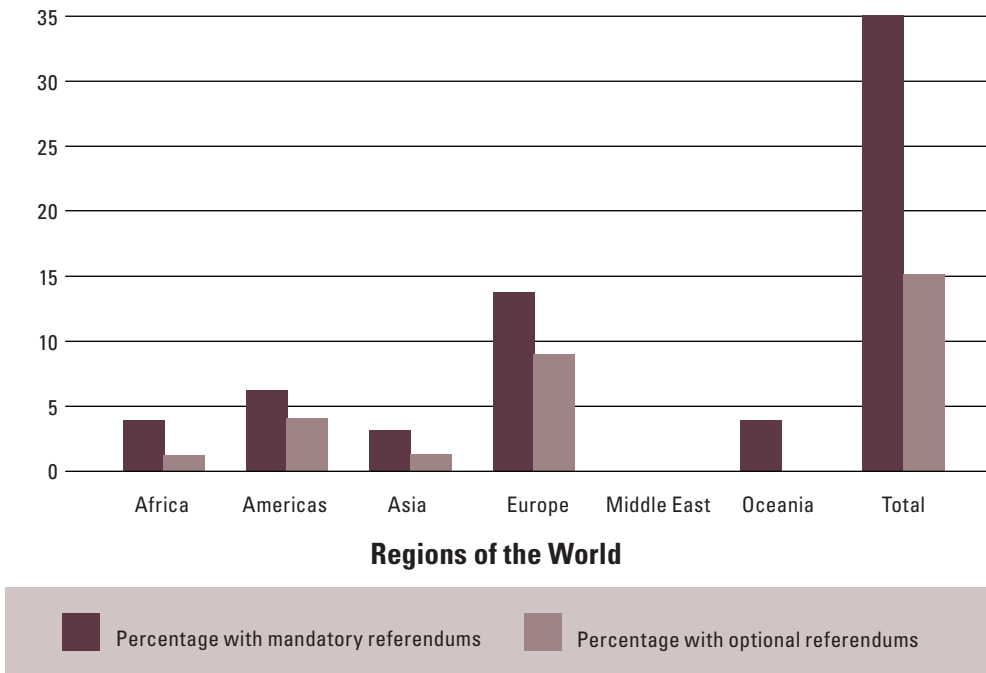
81. This chapter provides information on two direct democracy procedures in which citizens put forward an initiative – the citizens’ initiative and the citizen-demanded referendum, both of which are designed to be concluded with a referendum vote. Table 3.1 shows which countries provide these procedures and their distribution across the regions of the world. The chapter discusses variations of the instruments and issues of design, and presents some data on their use in practice in different countries and regions.

82. These two important variations of direct democracy are based on a process begun ‘from below’ rather than on decisions taken ‘from above’. With a citizens’ initiative (also called a ‘popular initiative’), a number of citizens present a political proposal (e.g. draft legislation) and register public support by obtaining a required number of signatures, thereby forcing a popular vote (referendum) on the issue. Initiatives can be either direct or indirect. In a direct initiative, the popular vote will take place without any further intervention by the authorities. An indirect initiative involves a procedure whereby the legislative authorities may either adopt the proposal or have the option of presenting an alternative proposal to the popular vote. A citizen-demanded referendum is an optional referendum initiated, or triggered, by a number of citizens referring to existing laws or political or legislative proposals. One version allows repeal of an existing law or parts thereof (the abrogative referendum). The other allows citizens to demand a popular vote on a new piece of legislation that is not yet in force (the rejective referendum). The basic common feature of these instruments is that citizens as non-governmental actors are entitled to act on political or legislative issues by presenting proposals, and can themselves initiate the procedure for a vote of the electorate. These should be distinguished from an agenda initiative, which also allows for proposals to be formally presented to parliament or other governmental authorities but does not lead to a popular vote (see chapter 4).

## Distribution and development

83. The number of countries which have initiative instruments is significantly lower than the number that have mandatory referendums or optional referendums called by government authorities. Legal provisions for initiative instruments are available to citizens in 37 countries, mostly in Europe and Latin America (see table 3.1). The citizens' initiative at the national level is legally available in many European countries, several countries in Latin America, and a few in Asia, Oceania and Africa. Provisions for the citizen-demanded referendum are distributed similarly, in smaller numbers, across the regions of the world (see table 3.1). The abrogative referendum is found in Europe only in Italy (since 1970) and in a few countries of Latin America. Some jurisdictions provide both instruments, others only one. However, some countries which have no such instruments at the national level do provide initiative rights at the regional and the local levels – particularly large federal countries such as Brazil, Germany or the United States. In the United States, 24 of the 50 states have provisions for citizens' initiatives. Other jurisdictions offer them at the local level only, for example, Mexico, Panama and many European countries.

**Figure 3.1. Distribution of initiative procedures, by region**



**Table 3.1. Countries which have provision for initiative procedures at the national level, by region**

	Citizens' initiative		Citizen-demanded referendum
	Ordinary legislation	Constitutional amendment	
<b>Africa (4)</b>			
Cape Verde	•	•	•
Liberia		•	
Togo	•		
Uganda	•	•	
<b>Americas (8)</b>			
Bolivia			•
Colombia	•	•	•
Costa Rica	•	•	
Ecuador	•		•
Nicaragua	•		
Peru			•
Uruguay	•	•	•
Venezuela	•	•	
<b>Asia (3)</b>			
Philippines	•	•	•
Taiwan	•		
Turkmenistan	•		
<b>Europe (18)</b>			
Albania	•		•
Belarus	•	•	
Croatia	•		•
Georgia		•	
Hungary	•	•	•
Italy			•
Latvia	•	•	
Liechtenstein	•	•	•
Lithuania	•	•	
Macedonia, the former Yugoslav Republic of			•
Malta			•
Moldova, Republic of		•	
Russia	•		
Serbia	•		
Slovakia	•	•	

	Citizens' initiative		Citizen-demanded referendum
	Ordinary legislation	Constitutional amendment	
Slovenia			•
Switzerland		•	•
Ukraine	•		
<b>Middle East</b>	N/A	N/A	N/A
<b>Oceania (4)</b>			
Marshall Islands		•	
Micronesia, Federated States of	•	•	
New Zealand	•		
Palau	•	•	

84. The origins of the instruments vary widely. Switzerland was the first country to introduce the citizens' initiative (for a total revision of the constitution) in 1848; this was followed by the introduction of the 'facultative referendum' (citizen-demanded), in 1874, and the citizens' initiative to propose amendments to the constitution, in 1891 (see the case study on Switzerland following chapter 1). As in many US states after the 1890s, these instruments were intended to curb the misuse of representative institutions by powerful business interests. In other countries the instruments have been adopted in periods after dictatorial regimes, as in Italy or Germany (in the *länder* – the regional states) since 1945, as an expression of popular sovereignty and to support the re-establishment of democracy. Similarly, in the 1990s, initiative rights were introduced during the post-communist transition period in the majority of the countries of Eastern Europe and in some of the successor states of the Soviet Union. The above reasons also hold for some countries in Latin America after periods of dictatorial regimes. Some countries have provided initiative rights in their constitutions but have no laws to regulate their implementation: Guatemala and Paraguay are examples. Uruguay, which uses such instruments extensively, seems to be exceptional in Latin America (see the case study following chapter 7).

## Institutional design

85. Initiative instruments are designed to provide additional channels of political expression and participation beyond those that are available through representative institutions alone, emphasizing citizens' ability to articulate their opinions and the openness of the democratic system. Initiative procedures should, therefore, reflect the principles of democratic equality, fairness and transparency. Using initiative instruments generally implies criticism of the performance of a governing majority or of a representative institution such as a parliament or legislature. Thus, there will often be some tensions between major actors in the governmental system and the proponents of citizens' initiatives or citizen-demanded referendums, which often include opposition

parties, interest organizations or civil society groups. Such tensions may be reflected in the design of the regulations governing the initiative instruments, and in their practical application.

86. The citizens' initiative provides a procedure whereby political issues can be put on the agenda, a public debate can be encouraged, and issues can be finally decided by a popular vote. Such a proactive process can open the agenda to a broader range of issues and groups, working against the tendencies towards 'closure' of the political agenda that are found in many representative systems (e.g. two-party systems). One important design question may be whether initiative rights can be used primarily by strong parties or organized interest groups, or whether they also provide access points for smaller and less powerful groups, or for newly emerging groups and social movements. Highly restrictive regulations may be biased towards strong organizations or parties.

87. The citizen-demanded referendum can take two different forms. In Italy the abrogative referendum (see box 3.1) applies the initiative procedures only to repealing existing laws or parts thereof. It has some similarity to the citizens' initiative, but it provides for existing legislation to be repealed and does not allow explicit proposals to be put forward for a new law to replace the one being challenged. The second form, the rejective referendum, offers a procedure for citizens to stop new legislation before it comes into force and is therefore more a reaction to the activities of a parliament or legislature. This instrument can serve a function of political control to ensure that the representative law-making body does not violate the interests or convictions of sections of the citizens and social groups. Thus, majorities in the representative bodies can be questioned by appealing to a (supposed) popular majority, or by articulating the interests and values of large minorities which have a chance to find support in the popular referendum. Referendums, if called successfully by citizens, will mostly apply to rather controversial legislation and may lead to conflict resolution by a majority vote.

### Box 3.1. The abrogative referendum in Italy

Although the post-fascist constitution of 1948 (article 75) established the right to citizen-initiated referendums, a law to implement the procedure only came into force in 1970. The initiative procedure most often used in Italy, called the *referendum abrogativo*, allows citizens to propose the repeal (abrogation) of an existing law or parts thereof. No procedure for a citizens' initiative to propose a new law exists. Other direct democracy procedures (e.g. a constitutional referendum or agenda initiative) are of minor importance in practice.

To start a citizen-demanded *referendum abrogativo*, the signatures of 500,000 registered electors (c. 1 per cent of registered electors), or of five regional councils, are required. Tax and budget matters, amnesties and pardons, the ratification of

international treaties, and amendments to the constitution cannot be submitted to a referendum. The law to be abrogated must have been in force for at least one year. Proposals have to be submitted between 1 January and 30 September of each year, and signatures can be collected within a period of three months. The Constitutional Court will check the constitutionality of the proposal. All the referendum proposals of the year are put to the vote on a single voting Sunday between 1 April and 15 June of the following year. The referendum vote will be valid if, in addition to a majority of the votes cast, a majority of registered electors have voted (turnout quorum).

The first *referendum abrogativo* took place in 1974, when a proposal to abolish the law of civil divorce was rejected by the voters. Since then, more than 60 votes (up to 2006) have taken place on a broad range of subjects. In June 1985, a proposal to eliminate the inflation adjustment of wages (*scala mobile*) was rejected. In June 1991, the voters agreed in a referendum to the abolition of the List proportional representation (PR) voting system – an outcome which led to the reform of the Italian party system. In June 1995, 12 propositions were on the ballot paper (turnout was c. 57 per cent), including the status of trade unions and several issues of television policy. Seven of these propositions attracted turnouts of only c. 30 per cent. In April 1999, a proposal to completely abolish the proportional element in the electoral system achieved a turnout of only 49.6 per cent and was thus invalid, despite a vote in favour of 91.5 per cent. In June 2005, four proposals on restricting research on human embryos, in vitro fertilization and related issues attracted a turnout of only c. 26 per cent. Since 1995, no referendum vote has been successful in abrogating a law, in part because of the turnout quorum.

88. If elected representatives anticipate that they will be used, the existence of initiative or referendum procedures may influence political decision making indirectly by inducing political leaders to act in a more responsive way to the concerns of citizens, thereby strengthening the legitimacy of political decisions. However, it can also have the effect of causing prominent political figures in the party system to become leading actors in this procedure as well as in electoral politics.

### **Subject restrictions**

89. In many countries the range of subjects that are open to initiative procedures is restricted. Three common groups of restrictions can be discerned: (a) restrictions referring to constitutional amendments; (b) those concerning issues of the integrity of the state, matters of war and peace, the transfer of state jurisdiction to supranational and international bodies, and international treaties; and (c) various limitations relating to ordinary legislation and other political decisions. Subject limitations which are too

narrowly defined may, however, destroy any potential for using these instruments.

90. Citizens' initiatives on constitutional amendments are most often found in countries in which mandatory or optional referendums on constitutional amendments called by the authorities are also available. These instruments most strongly reflect the idea that popular sovereignty may be expressed in a vote of the people. Countries which exclude an initiative on constitutional amendment may be motivated by the desire to protect the stability of the constitution against the contingencies of popular activities; yet the democratic principle of popular sovereignty would suggest that citizens' initiatives on constitutional amendments should be allowed. Constitutional amendments are formally open to citizens' initiatives in more than half of the countries which have provisions for initiative instruments (i.e. 20 out of 37 countries, see table 3.2).

**Table 3.2. Countries which have provision for citizens' initiatives for constitutional amendments at the national level, by region**

Region of the world	
Africa	Cape Verde, Liberia, Uganda
Americas	Colombia, Costa Rica, Ecuador, Uruguay, Venezuela
Asia	Philippines
Europe	Belarus, Georgia, Hungary, Latvia, Liechtenstein, Lithuania, Republic of Moldova, Slovakia, Switzerland
Oceania	Marshall Islands, Federated States of Micronesia, Palau

91. Even if initiatives on constitutional amendments are allowed, the subject matter may still be restricted. One example of this is Slovakia, where constitutional initiatives affecting 'basic rights and liberties' are excluded. In favour of this it may be argued that the fundamental guarantees contained in a democratic constitution should not be at the disposal of a majority or even a super majority in a vote. Sometimes the basic structures of governmental institutions are also excluded from initiatives. The Russian Federation has one very particular restriction whereby only initiatives referring to the structure of the federation are allowed.

92. In some countries, including Switzerland, a completely opposite concept of restrictions is to be found: the citizens' initiative is allowed only for constitutional amendments and not for proposals for legislation (although in Switzerland the citizen-demanded referendum can be used for all legislation except finance laws). In Panama, an initiative can only be used (by a minimum of 20 per cent of registered electors) to authorize the election of a constitutional assembly. Uruguay provides for the citizens' initiative for both constitutional amendments and proposals for legislation. In federal

countries which have initiative procedures only at the state or regional level, these normally include initiative rights for constitutional amendments, for example, in many states of the USA and most of the German *länder*.

93. Issues of the integrity of the state or a transfer of state jurisdiction to supranational or international bodies are often subject to a mandatory or optional referendum called by the authorities, but are rarely cases for a citizens' initiative. Sometimes these subjects are treated as constitutional issues and the rules for constitutional amendments therefore apply. In addition, questions of war and peace or of military service are sometimes excluded from initiatives (e.g. in Latvia). For similar reasons, only in a few cases can international treaties be the subject of a citizen-demanded referendum, and almost never of a citizens' initiative. International treaty negotiations seem very often to be excluded from initiative procedures, as regulated, for example, in Italy, Latvia and the former Yugoslav Republic of Macedonia. Switzerland, however, requires mandatory referendums for very important treaties. Sometimes the territorial integrity of the state is insulated against popular votes whereas in other cases it can be put to a mandatory or even an optional referendum vote.

94. In a few countries, initiative instruments on ordinary legislation are restricted in a general way to the 'most significant issues concerning the life of the state and the people' (Lithuania) or 'important issues of public interest' (Slovakia). Other matters that are excluded from being the subject of initiative instruments are pardons (Italy) or issues related to elections (the former Yugoslav Republic of Macedonia). When restrictive clauses are not clearly defined, such as 'important issues' (Slovakia), they may be open not only to legal interpretation but also to political manipulation by the authorities in charge of approving initiative proposals. All restrictions should be clearly specified and give a transparent and unequivocal framework. In many countries budget, tax and public expenditure issues are excluded from initiative mechanisms (e.g. Hungary, Italy, Latvia, Slovakia and several Latin American countries). Financial matters, particularly taxes, are often regarded as being too complex for an initiative instrument or as likely to attract fiscally irresponsible campaigns. However, since public finances are a fundamental factor of political life, this exclusion can lead to a substantial restriction of the areas to which initiative instruments can be applied. If any kind of costs of specific legislative measures were excluded, the limits of initiatives would become quite unclear, and legal challenges would easily be provoked.

## **Procedural aspects**

95. A few basic features shape the procedural framework within which citizens or political groups can initiate a decision-making process for new proposals or to demand a referendum on legislation. Three kinds of requirements are important for the procedures: (a) a specific number of signatures of registered electors is required to demonstrate political support for a proposal or demand by a significant proportion of the citizenry; (b) the period of time allowed for collecting signatures; and (c) the specific conditions under which the result of the vote is declared to be legally valid (such as

quorums). Substantial variations in these requirements can be observed in different jurisdictions.

- The *number of signatures required* may be expressed as a percentage of the electorate (registered electors) (e.g. 10 per cent in Latvia), or as a share of the votes cast in a previous election (e.g. in California 5 per cent of the number of votes cast for governor is required for a proposal for legislation, and 8 per cent for a constitutional amendment), or as a fixed number of signatures, for example, 500,000 for an abrogative referendum in Italy (in this case the proportion relative to the total number of registered electors is around 1 per cent; see box 3.1 above). The thresholds show a wide range from about 1 or 2 per cent of the electorate (in Switzerland) up to 10 or even 25 per cent (in Uruguay).
- Some countries require a specific *geographical distribution of signatures*, for example, a minimum number in half or more of the administrative subdivisions of the country, as in some of the successor states of the Soviet Union (Belarus, Georgia, Russia, Ukraine).
- The *period of time* allowed to collect supporting signatures may range from a few weeks (e.g. two weeks in Bavaria, Germany) to 18 months (Switzerland, constitutional initiative).
- For the final referendum vote, only in some cases is a simple majority of votes cast sufficient (e.g. in Switzerland in the ‘facultative [rejective] referendum’). More often various versions of double majorities with additional *validity requirements* are applied. An *approval quorum* specifies that the votes cast in favour of a proposal must meet a specific proportion of registered electors (or a fixed number), for example, 50 per cent of registered electors in constitutional amendment votes in Latvia and Lithuania, or 25 per cent in Hungary (since 1997). A *turnout quorum* means that, in addition to a majority vote, a specific participation rate must be met, for example, 50 per cent of the whole electorate must have participated in the vote (as in Italy). Again, both versions can be combined with geographical distribution requirements.

96. For constitutional amendments several countries have set higher requirements for qualifying initiatives and defining valid referendums than apply for initiatives that concern ordinary legislation. Constitutions, as the source of the basic rules and values of the political system, are often expected to be more stable and to enjoy broader legitimacy and acceptance than ordinary legislation (there are often special requirements before a legislature can amend the constitution). There is, however, the exceptional case of Uruguay, where the signatures of 10 per cent of the electorate are required for a citizens’ initiative for a constitutional amendment, but 25 per cent is required for (rejective) referendums on legislation.

97. Countries vary in these basic requirements and also in the combination of these features. Some countries (e.g. Switzerland) combine a low signature threshold with low requirements for a valid vote. In other countries, high signature requirements (25 or even

33 per cent) can be coupled with a high validity requirement (as in Belarus). Between such extremes, other more moderate or mixed versions of these requirements can be found. Switzerland represents the classic case of low requirements. For a constitutional initiative only 100,000 signatures or about 2 per cent of registered electors are required, and for demanding a rejective referendum the requirements are even lower (50,000 signatures, or about 1 per cent of registered electors, and a simple majority in the referendum vote). Italy combines a low threshold of signature support (c. 1 per cent) for an abrogative referendum with the high turnout requirement of 50 per cent of registered electors for a valid popular vote. Lithuania represents a high requirement profile in both criteria (see table 3.3).

**Table 3.3. The requirements for a citizens' initiative to be held: some examples**

Signature requirement	Validity requirement	
	Low	High
Low	Switzerland (constitutional initiative) 100,000 signatures (c. 2% of registered electors) Simple majority of voters and a majority of the 26 cantons	Italy (abrogative referendum) 500,000 signatures (c. 1% of registered electors) 50% turnout of registered voters
High	Hesse (Germany) Signatures of 20% of registered electors Simple majority of referendum votes	Lithuania 300,000 signatures (c. 11.5% of registered electors) 50% turnout of registered electors plus 33% approval of registered electors

98. Low or moderate signature requirements give citizens easier access to the decision-making agenda and support the principles of an open democracy and political equality. High signature requirements are likely to limit or even prohibit the practical use of initiative instruments. They may be motivated by the need to avoid abuse of the mechanism, but at the same time they can undermine the whole idea of initiative rights. In countries with signature thresholds of more than 15 per cent of registered electors, almost no initiatives will qualify to go forward to a vote. In particular, high signature thresholds will provide preferential access to initiative rights for very strong political organizations (parties and large interest groups) and transform initiative rights into instruments of power for larger groups or organizations.

99. As to the time factor, most countries that employ citizens' initiatives allow for reasonable periods, such as some months, for signatures to be collected and, after an initiative has formally qualified, for the referendum vote to be held. These time periods are also important to allow for information to be distributed, opinions on the issue disseminated and a process of public deliberation started. Time needs to be allowed for

immediate, possibly emotional reactions to give way to rational debate. This has not been realized, so far, by some of the German *länder*, such as Baden-Württemberg or Hesse, which allow only as little as two weeks after official registration of an initiative for signature collecting.

100. Defining the criteria for the validity of the voting result raises questions similar to those that apply in the cases of mandatory or optional referendums. If a jurisdiction has mandatory referendums, optional referendums called by the authorities and referendums initiated by citizens, the level of votes required should surely be defined in a consistent way for all three types. A simple majority of votes cast would reflect issue preferences in the clearest way. A high approval quorum (perhaps combined with a double majority) would stress the legitimacy of the referendum decision, or the need to take into account other political or territorial considerations. However, the existence of an approval quorum can exaggerate the effect of abstentions, since they have the same effect as ‘No’ votes. The consequence can be that opponents of an initiative need only to recommend abstaining from the vote in order to get a negative referendum result, and it may be easier to convince potential voters not to bother than to convince them to vote a certain way. It may often follow that high approval quorums discourage the use of initiative instruments. Turnout quorums produce even more such consequences: opponents of a referendum proposal must actively avoid negative votes being cast because they would help to reach the quorum. Turnout quorums tend to work against the basic idea of initiatives and referendums, which is to encourage citizen participation, and they are not generally recommended as a criterion for determining the validity of a referendum. On the other hand, there is often a concern that a proposal that is endorsed by less than a majority of the electorate may call the legitimacy of the result into question.

### **Interaction between the initiators and government bodies**

101. Initiative instruments are institutionally linked with other governmental actors in the political system. Institutional and political tension and competition are often involved, and there are various reciprocal influences and interactions. Governmental actors should interact with the initiators in fairness and good faith and not use their procedural role for political manoeuvring and manipulation of the process. The procedural rules should make sure that the functions of citizen initiatives cannot be counteracted by the elected representatives, otherwise the basic ideas of keeping democracy open and under popular control might be lost.

102. One function of governmental (institutional) actors may be the formal administration of the procedure, including verifying the legality or constitutionality of the citizens’ initiative. It is important that clear and transparent rules and specific administrative responsibilities are assigned to the proper authorities – for example, a president’s office, government agencies, the central administration of the legislature or an EMB (which may or may not be a government body). Regulations should make sure that the controlling authorities act in a way that is as politically neutral as possible and not allow these functions to become combined with a political interest.

103. Checking the constitutionality of an initiative proposal is of special importance. Sometimes this is within the competence of an administrative authority with the right to appeal to a court, especially the constitutional court; in some countries (e.g. Italy) this function lies directly with the constitutional court. Some jurisdictions do not provide this check of constitutionality at an early stage of the procedure but only at the end. For example, in several US states, judicial review of a proposal occurs only after the popular vote. There may, however, be advantages in having the question of constitutionality settled after the initiative is registered and before the collection of signatures begins or, at the latest, before the referendum vote is called. Otherwise the debate on the issue may become mixed up with constitutional questions and, if a positive vote is declared unconstitutional, the citizens may become frustrated or the entire process may be delegitimized as a consequence. Questions may be raised, however, if the regulations are ill-defined and/or a constitutional court is acting as a quasi-political institution. Under such circumstances, an early check of constitutionality or legality might be transformed into inadequate or politically motivated limitations on initiative activities.

104. In the design of a citizens' initiative, two types of procedure can be distinguished. In a 'direct initiative' (as in many US states), after the initiative has been registered and qualified, no formal interaction with the legislature takes place before the popular vote is called. In the 'indirect initiative' version (as in some European countries), a qualifying initiative will be referred to the legislature, which then has two options – either to adopt the (legislative) proposal and thereby avoid a referendum, or to refuse approval and allow the referendum to take place. In some countries the legislature can also put its own alternative proposal to a referendum vote (e.g. Switzerland, the German *länder*, and Uruguay in the case of the constitutional initiative). Since initiative procedures operate within the institutional environment of representative democracy, there are good reasons for having an interactive process between the various actors. If a legislature can formally consider and debate an initiative, and can adopt it or opt for an alternative proposal to be put to the popular vote, the political process may be enriched by more complex deliberations and greater public involvement in the issues to be decided. A choice between clear alternatives in the popular vote may also be more rewarding for the citizens.

105. There are circumstances under which minor modifications may transform the initiative procedure into the form of an agenda initiative (see chapter 4). For instance, if the required number of signatures is not reached for an initiative proposal but the parliament or legislature can decide freely whether it wants to call a referendum or not, then a hybrid type of institution has been created. The combination of an initiative started by citizens and decisions made by a parliament or legislature based on such action may have the potential to combine elements of both direct and representative democracy.

## **The practice of initiative procedures**

106. The extent of the use of initiative procedures varies significantly between countries

(see table 3.4) and seems to be influenced by several factors. Only four countries use these instruments of direct democracy frequently: Italy, Liechtenstein, Switzerland and Uruguay. For their low restriction profiles and long tradition, Liechtenstein and Switzerland are the most famous cases. In Italy, the many initiatives for an abrogative referendum may also have been invited by relatively low signature requirements. In addition, the party system in Italy has a long history of polarization, and the transformation process of the early 1990s worked as a second factor in promoting the use of the abrogative referendum. Uruguay also has a significant number of initiatives and votes on constitutional amendments for which signature support of 10 per cent of the electorate is required. Rejective referendums and legislative initiatives, however, need 25 per cent signature support, which makes it more difficult to use these instruments. A general conclusion may be that under low-requirement conditions ‘cultures’ of frequent use may develop which can establish initiative instruments as an integral part of the political system.

**Table 3.4. Usage of citizens’ initiatives and citizen-demanded referendums at the national level (frequency of votes, up to 2006): some examples**

Region of the world	Frequent votes	Occasional votes	No votes
Africa			Cape Verde, Liberia, Togo, Uganda
Americas	Uruguay	Bolivia, Colombia, Ecuador, Venezuela	Costa Rica, Nicaragua, Peru
Asia			Philippines, Taiwan, Turkmenistan
Europe	Italy, Liechtenstein, Switzerland	Hungary, Latvia, Lithuania, the former Yugoslav Republic of Macedonia, Slovakia, Slovenia	Albania, Belarus, Croatia, Georgia, Malta, Republic of Moldova, Russian Federation, Serbia, Ukraine
Oceania		Federated States of Micronesia, New Zealand	Marshall Islands, Palau

107. In contrast, in a number of countries where initiative rights exist formally, no votes have taken place. This applies to the Russian Federation and other successor states of the Soviet Union, such as Belarus, Georgia, Republic of Moldova and Ukraine. Highly restrictive requirements such as subject restrictions and procedural thresholds, as well as a non-participative political culture, particularly in the context or the tradition of an authoritarian political system, mean that initiative procedures are hardly used and are regarded as eccentric features of the political system in these countries. In other polities, if the system of representative institutions is fragile or unstable, this may create an unlikely context for initiative rights to be practised. Other, very different, factors may also lead to a situation in which they are little used in practice and in fact there is little

need to resort to initiative procedures. If a party system is open enough for new issues and change to occur, for example, or in a consociational democracy where all the major minority interests have an integrated position in political decision making, initiative instruments may be less likely to be used even when the legal procedures exist. Malta may be an example of this type of polity.

108. A considerable number of countries show infrequent use of initiative procedures, even though they exist in law. In the Central and East European countries (e.g. Hungary, Latvia, Lithuania, the former Yugoslav Republic of Macedonia, Slovakia, Slovenia) initiatives have focused mostly around issues of transformation from communist rule. For instance, in Hungary, four out of six referendum votes took place in the critical transitional year of 1989. In some countries in Latin America there has been only minimal use of initiative rights because the structural conditions for exercising those rights have not been supportive. The instability of the political system (Bolivia), the shaky general condition of the state (Colombia) or the context of the 'Bolivarian Revolution' (under President Hugo Chávez in Venezuela) mean that the initiative mechanism is not likely to develop. New Zealand introduced a new law providing for non-binding citizen-initiated referendums in 1993 (see box 3.2).

### **Box 3.2. New Zealand's citizens-initiated referendum**

In 1993, New Zealand introduced provisions for citizens' initiatives. Any citizen or group who wishes to do so may submit a proposed question to the clerk of the House of Representatives. The question is then advertised, and comments on its wording are invited. Within three months of its submission, the clerk will determine the final wording of the question. The proposer then has 12 months within which to obtain signatures in support. For the proposal to qualify for the ballot, the signatures of at least 10 per cent of registered electors must be obtained. Upon submission of the required number of signatures, the clerk conducts a random check of the signatures to determine their validity. When these qualifications have been met, the question is submitted to parliament, and the governor general sets a date for the referendum to be held.

In the ten years following passage of the Citizens Initiated Referenda Act in 1993, 40 proposals were submitted to the clerk. They dealt with a wide range of issues such as the prevention of cruelty to animals, a reduction in the size of parliament, minimum sentences in criminal trials, guaranteed access to health care and education, welfare benefits, conservation and euthanasia. Only three of these obtained the number of signatures required to be put forward for a vote.

The results of the vote on a proposal are not binding. parliament alone determines

whether it wishes to act on a proposal, regardless of the number of votes obtained in the referendum. Two of the three questions submitted to a vote since implementation of the act – a proposal to reduce the size of parliament and a proposal to impose harsher sentences for violent crimes – received overwhelming public support but were not acted on by parliament.

The non-binding character of New Zealand's initiative process has been much criticized, and was itself the subject of an initiative proposal put forward in 2003. The high signature requirement has also acted to prevent many proposals from going forward to a vote. Taken together, the difficulty of qualifying a proposal for the ballot and the uncertainty of parliamentary action even if it passes have reduced public enthusiasm for the initiative process in New Zealand, and fewer proposals have been submitted to the clerk in recent years. However, New Zealand's citizens' initiative law remains an experiment in the use of direct democracy, and future reforms to the process are likely to be considered based on the experience with the current law.

109. A very different picture can be found in federal countries which provide initiative instruments at the state or regional level. Much activity can be observed in many of the 24 states of the USA that have initiative provisions, particularly Arizona, California, Colorado, North Dakota and Oregon (see the case study following chapter 4). A typical example of the process found in many of the US states may be seen in the example of California's Proposition 71 to facilitate stem cell research, which was approved by the voters in the 2004 election (see box 3.3). In Germany, where all the *länder* have such instruments, a number of initiatives, some resulting in referendum votes, have been launched by citizens (particularly in Bavaria, Brandenburg, Hamburg and Schleswig-Holstein).

### Box 3.3. A US state initiative: California Proposition 71

Official title and summary (prepared by the state attorney general)

Stem Cell Research. Funding. Bonds – Initiative Constitutional Amendment and Statute

- Establishes the California Institute for Regenerative Medicine to regulate stem cell research and provide funding, through grants and loans, for such research and research facilities.

- Establishes the constitutional right to conduct stem cell research; prohibits the institute's funding of human reproductive cloning research.
- Establishes an oversight committee to govern the institute.
- Provides a General Fund loan of up to 3 million USD for the institute's initial administration/implementation costs.
- Authorizes the issuance of general obligation bonds to finance Institute activities up to 3 billion USD subject to an annual limit of 350 million USD.
- Appropriates monies from the General Fund to pay for bonds.

California Proposition 71 was one of 17 state measures that appeared on the California ballot paper at the time of the November 2004 US presidential election. Twelve of these measures, including the stem cell research proposal, were citizens' initiatives and the other five were items put on the ballot paper by the state legislature. Proposition 71 was initiated by the Coalition for Stem Cell Research and Cures, which became the registered committee supporting the proposal. The initiative was developed in part in response to a 2001 federal regulation prohibiting federal funds from being used on research that involves newly derived embryonic stem-cell lines. Private funds, however, were exempt from these federal restrictions, and the individual states were also free to make their own decisions regarding funding biomedical research, which might include stem cells. However, the issue was very contentious. Five other groups registered officially with the California secretary of state as committees in opposition to Proposition 71 and campaigned actively against it.

As is the practice in California, the legislative analyst provided a neutral summary and explanation of the proposal, which was included in the 2004 *Voter Information Booklet*. The individuals and committees supporting the proposition were also allowed to include their own statement in the booklet, as were the opponents of Proposition 71. The measure passed by a vote of 59 per cent to 41 per cent, with approximately 49 per cent of eligible California electors voting on Proposition 71. Following its passage, it then became the responsibility of the state to implement the proposal.

110. Many jurisdictions which have initiative instruments at the national or regional level also provide such procedures at the local level (e.g. Germany, Italy, some of the US states). Very often, restrictions and requirements are similar to those that apply at the national or regional levels. In addition, many other countries that do not have instruments of this type at the national level provide initiative channels at the local level

(e.g. Belgium, the Czech Republic, Mexico, Norway, Poland, Spain, Sweden). The scale of initiative activity varies significantly between countries, according to restrictions on subjects, profiles of procedural restrictions, and political cultures.

### Box 3.4. Citizens' initiatives at the local level: Germany

The Federal Republic of Germany, in contrast to the Weimar Republic (1919–33), did not include initiatives and referendums at the national level in the constitution of 1949. However, the regional states (*länder*), founded after 1945, introduced initiative procedures, as did the re-established *länder* of East Germany after 1990. During the 1990s all the *länder* also introduced initiative rights at the local level. The associated regulations vary significantly between the *länder* for the state and the local level.

In *Bavaria*, at the state level, for a citizens' initiative proposing a law or a constitutional amendment, the signatures of 10 per cent of registered electors are required to be collected within a period of two weeks. Parliament can consider the proposal and put forward a counter-proposal to the referendum vote. The referendum vote is valid with a simple majority of the votes cast (plus, since 1999, a turnout of 25 per cent of registered electors for a constitutional amendment). Between 1946 and 2005, 38 initiatives (out of 172 in all Germany) were submitted in Bavaria. Of these, 16 were registered for collecting signatures, five (out of 13 in all of Germany) led to a referendum vote, and two (out of seven in all Germany) were successful at the referendum vote. Subjects have included schools, radio regulation, waste management, the introduction of local referendums and the abolition of the non-elected Senate.

At the local level, initiative and referendum procedures were introduced in 1995 by a citizens' initiative at the state level. For an initiative, the signatures of 10 per cent of registered electors are required, decreasing to 3 per cent in large cities. A valid vote requires a double majority including the approval of 20 per cent of registered electors, decreasing to 10 per cent in large cities. Up to the end of 2005, some 1,200 initiatives (out of about 3,000 in all of Germany) were submitted, leading to 538 referendum votes, and a valid and successful result in 305 cases. In addition, local councils started 217 referendums with a successful vote in 103 cases.

In *Hesse* at the state level, the signatures of 3 per cent of registered electors are required in order for an initiative to be submitted, and 20 per cent for it to qualify as a citizens' initiative. This requirement has not been met in any instance since 1946. In 1993, local initiative rights were introduced, with a requirement for the signatures of 10 per cent of registered electors. For a valid referendum vote

a double majority including 25 per cent of registered electors is needed. Up to the end of 2005, in 426 municipalities, 240 citizens' initiatives had been submitted, of which 79 were declared inadmissible. Of the resulting 90 referendum votes, 45 ended in a success for the initiators. Referendum votes are binding for three years. The subjects have included city planning, public facilities for childcare and sports, investment projects, environmental issues and road plans. Taxes, budget matters and the structure of the local administration cannot be the subject of an initiative.

**Table 3.5. Countries with provision for initiative procedures at the regional or local level, by region**

Region	Regional level	Local level
Americas	Brazil, Colombia, Ecuador, Peru, United States	Bolivia, Brazil, Canada, Colombia, Ecuador, Mexico, Peru, United States
Asia		Philippines, Taiwan, Turkmenistan
Europe	Germany, Italy, Sweden, Switzerland	Austria, Croatia, Czech Republic, Finland, Germany, Hungary, Italy, the former Yugoslav Republic of Macedonia, Norway, Poland, Slovenia, Sweden, Switzerland

## Conclusions

111. Citizens' initiatives and citizen-demanded referendums as instruments of direct democracy can contribute to the quality of democracy by providing supplementary channels of political articulation and control with a focus on political issues rather than on candidates or parties. Apart from the final referendum vote, the initiative process itself is often regarded as supportive of democracy, since proponents have the opportunity to put forward ideas, attract political input and political support 'from below', and induce the participation of citizens in the legislative process. To perform these functions, initiative and referendum procedures should be designed according to the principles of political equality, transparency and fairness.

112. Empirical data show that initiative instruments are available in significantly fewer countries than those with mandatory or optional referendums called by the political authorities (compare figure 2.1 in chapter 2 with table 3.1). In Europe, for instance, the proportion is less than one-third, and in Africa and Asia, where there are very few initiative instruments in existence, the difference is even more striking. It seems that referendum procedures and votes controlled by the political authorities have a stronger

institutional basis than those which can be initiated by citizens. While there may be good arguments for the instrument of the referendum, an enhanced role for initiative processes may also deserve stronger support. There is a good case for arguing that citizens' initiatives and citizen-demanded referendums have strong democratic qualities since they originate from citizens' activities 'from below'. Thus, initiative procedures may be an option for enhancing the quality of democracy in many countries.

113. Restrictions on the subjects included in initiative procedures should be consistent with the rules for optional referendums called by the authorities, and not put particularly excessive limits on initiative procedures. If restrictions are deemed to be necessary, they should be fairly specific and formulated in clear and transparent terms in order to avoid political manoeuvring by the authorities to outlaw initiatives which may be politically unpopular with them.

114. If initiative instruments are generally available in a jurisdiction, constitutional amendments may also be included. Since in a democracy the citizens are considered to be the owners of the constitution, there are good reasons for allowing citizens to initiate amendments on constitutional matters. To secure the stability, coherence and broad legitimacy of a constitution, rather than ruling out citizens' initiatives, special requirements for the validity of a constitutional referendum vote could be established.

115. For designing initiative procedures, the main issues are the requirements for qualifying an initiative for the referendum and the criteria for a valid referendum vote. Signature requirements will determine the access citizens have to initiative procedures. Lower thresholds are more user-friendly and attract more active participation by citizens. This trend is seen in countries which have signature requirements not higher than 5 per cent of registered electors. In countries requiring the signatures of more than 10 to 15 per cent of the electorate, hardly any initiative activity can be observed, suggesting that a lower signature requirement may be preferred if public participation is to be encouraged. Adequate design for the validity requirement of the popular vote is a more complex choice. The normal requirement of a majority of votes cast is quite often supplemented by criteria of qualified majorities or double majorities which are supposed to ensure the broader legitimacy of the referendum vote. However, they can also have some problematic side effects. Turnout quorums tend to attract abstention campaigns which undermine debate and participation. Approval quorums with majorities qualified by high percentages of votes or double majorities can impose requirements that can hardly ever be reached, and therefore may discourage use of the instrument. If the approval of a certain percentage of all registered electors is required, this means in effect that all undecided and non-participating citizens are treated as equivalent to 'No' voters. This may also invite campaigns to recommend abstention from voting.

116. The procedures of direct democracy serve as a supplement to, not a substitute for, representative democracy. The quality of an initiative procedure may be improved by cooperative interactions with governmental institutions, particularly with legislatures. In most US states, however, the procedure of a 'direct initiative' does not include any

formal interaction with a state legislature. A debate in the legislature and the option of presenting an alternative proposal to the initiative can offer clearer and more qualified alternatives to the referendum vote of the citizens.

117. The result of a referendum initiated by citizens should be legally binding rather than purely consultative. In the case of a citizen-demanded rejective referendum on new legislation, this should be self-evident since the very meaning of the procedure is to stop the new law from coming into force. In the case of a citizens' initiative, it is fairly unusual for the result to be non-binding, although this is the case in a few jurisdictions (e.g. New Zealand under the law adopted in 1993). This may also be counterproductive since citizens can become frustrated if their referendum vote is not taken seriously. As a procedure without a binding referendum vote, the agenda initiative provides an alternative process (see chapter 4). For a legally binding vote the regulations should specify clearly whether the referendum decision is only legally sustained for a certain period of time (as with local referendums in some German *länder*), and whether after that period it can be replaced by a decision of the legislature, or only by a new referendum vote.