



Extracted from *Direct Democracy: The International IDEA Handbook*  
© International Institute for Democracy and Electoral Assistance 2008.

**International IDEA, Strömsborg, 103 34 Stockholm, Sweden**  
**Phone +46-8-698 37 00, Fax: +46-8-20 24 22**  
**E-mail: [info@idea.int](mailto:info@idea.int) Web: [www.idea.int](http://www.idea.int)**

# CHAPTER 7

CHAPTER 7

# Direct democracy votes: information, campaigning and financing

185. The conduct of referendum, initiative and recall campaigns raises a number of important issues which must be considered in addition to those that involve placing a proposal before the people or qualifying an initiative for the ballot. Mechanisms must be put in place to ensure that voters have enough information on the issue to allow them to make an informed decision. Both those supporting a measure and those opposing it must have sufficient opportunity to place their arguments before the electorate. These objectives require access to the media – both electronic and print media – and the expenditure of money – either public or private. This chapter discusses the issues involved in organizing, administering and financing referendum, initiative or recall campaigns.

## The principle of fairness

186. A commonly stated goal of campaign regulation and finance laws is to create and maintain a ‘level playing field’. But it is not an easy matter to define exactly what this is or how it can be created and maintained throughout the course of a campaign which will often be hotly contested. When the government places an issue before the electorate, government ministers often take public positions on the issue to be voted on, or become involved directly in the campaign. In the 2005 referendum in France on the EU Constitutional Treaty, for example, the president of the republic took the decision put the issue to the ballot and then actively campaigned for a ‘Yes’ vote (see box 7.1). In such circumstances the government is, by definition, not a neutral party. Similarly, the provincial government of Quebec called and organized the 1995 referendum on sovereignty. But all its actions were intended to secure a ‘Yes’ result, not to ensure neutrality. The federal government of Canada was also not a neutral party in this referendum. Although it had no formal role in the organization or conduct of the referendum, its officials and representatives were heavily involved in the campaign in a variety of ways. Some jurisdictions attempt to mandate government neutrality. In

the case of Spain (see box 7.1), during the 2005 referendum on the EU Constitutional Treaty, the EMB, the Central Electoral Board, acted to restrain the campaign activities of the government. In the Republic of Ireland, the courts have consistently ruled that the government and its officials must refrain from assuming an active role in referendum campaigns, and that public funds cannot be spent in support of one side of an issue.

**Box 7.1. Determining the role of government: the 2005 referendums on the EU Constitutional Treaty in Spain and France**

Spain was the first European country to put the proposed EU constitution to a vote of the electorate in February 2005. France held its referendum on the same issue a few months later. Neither country was legally required to hold such a referendum, but in both instances a political decision was taken to put the treaty to a popular vote.

In Spain, the government is not allowed to campaign either in favour of or against any specific outcome in a referendum that it has called. Article 50 of the Spanish electoral law explicitly forbids the government and other public officials to influence the vote of the electorate in any way. But governmental neutrality is not so easily achieved, or maintained, in a partisan campaign. Approval of the constitution was seen as crucial for the government, which launched a wide-reaching information dissemination campaign, complete with its own motto, 'First with Europe'. Prominent journalists and celebrated actors, singers and football players were employed to read articles from the constitution to the Ode to Joy from Beethoven's Ninth Symphony, the anthem of the European Union. Activities such as these led the supervisory body, the Central Electoral Board, to rule that 'the government should limit itself objectively to inform about the content of the treaty, eliminating all value judgements or mottos such as "First with Europe"' or 'any declarations which, directly or indirectly, influence the position or attitude of the citizens' (*Boletín oficial del Estado*, 3 February 2005).

In France, there is no legal requirement that the government remain neutral in a referendum campaign, nor was there any pretence of political neutrality in the referendum on the Constitutional Treaty. The referendum was called by the president of the republic, who campaigned actively for a 'Yes' vote along with other members of the government. The campaign in France was difficult because the major parties were divided on the issue, and the EU constitution quickly became caught up in other issues of French domestic politics. While French voters ultimately rejected the Constitutional Treaty in the referendum, the consequences of that rejection were unclear until well after the conclusion of the campaign. The difficulty of providing balanced information to the voters in a heated political atmosphere, with the president actively engaged in the campaign,

quickly became apparent. A televised address by the president in support of the treaty on the eve of the referendum failed to save it from defeat, and may in fact have prompted some voters to support the 'No' side. Thus, the defeat of the constitution was interpreted not only as a rejection of some specific provisions of the treaty but also as a defeat for both the governing party and the president who had campaigned on its behalf.

187. Initiative campaigns in US states are sometimes criticized because of the disproportionate amounts of money spent by one side or the other. For example, an individual, group or organization that has been able to bear the high costs of qualifying a proposal for the ballot is often able to spend far more money in a campaign to secure its passage than opponents are able to raise to defeat it. It is, however, also true that the expenditure of money does not in itself ensure the passage or defeat of any referendum proposal, and that groups or organizations that pursue such a strategy can just as easily fail to persuade the public. Regulations that limit the amount of money that can be spent on a campaign are intended to create a more equal balance between the groups active in a campaign. A less interventionist form of regulation simply requires disclosure of the sources of funding, but does not place limits on the amount that can be spent on a campaign. Public subsidies are another means of ensuring that a degree of balance is maintained between the two sides (see below), but they do not limit or control the raising or expenditure of funds from private sources.

188. Access to the media through which voters will obtain information on ballot propositions can also be a contentious matter. In countries where some media, such as television stations, are state-controlled, parties or groups on one side of an issue may be able to obtain preferential treatment or greater access. In countries where media are privately owned, groups with more resources may hold the advantage, particularly when the prices charged by newspapers, radio or television stations for access to their facilities are high. Such media themselves sometimes become involved in campaigns by taking editorial positions on an issue, thereby complicating further the question of fair access. In some jurisdictions, the media are required to provide 'equal time' to both sides of a referendum campaign. Alternatively, public funds may be used to subsidize media access in order to ensure that the voters hear both sides of an issue over the course of a campaign.

189. The answer to difficulties such as those described above could be found in tighter regulation of direct democracy campaigns. Measures can be taken to ensure that the amount of money spent in a campaign falls within defined limits, that campaigners for both sides of an issue have sufficient access to the media, and that voters hear the arguments put forward on both sides. But such regulations are difficult to formulate and sometimes even more difficult to enforce. For example, attempts to limit

disproportionate media access by one side in a referendum or initiative campaign may run up against free speech guarantees in countries that have a constitutional charter of rights. Attempts to limit disproportionate spending by one side in a campaign may be difficult to enforce if expenditures are indirect or difficult to track. It is sometimes assumed that campaigning can be regulated by making each side responsible for its campaign activities. But the various groups and individuals who become involved in initiative and referendum campaigns are not always directly affiliated with a formal campaign organization such as a political party or umbrella committee. Thus at least part of campaign activity can easily fall outside of any regulatory regime that might be imposed. One example of a regulatory regime which attempts to balance some of these concerns may be found in Colombia (see box 7.2).

### **Box 7.2. Organizing and financing direct democracy in Colombia**

In Colombia, the electoral authority, the National Electoral Council, has the responsibility to receive the registration of initiatives, check the validity of signatures, organize the administration of the process, count the votes and announce the result. It also has some functions relating to the dissemination of information, advertising and financing.

The general norm is that any group or individual can promote the collection of signatures and the participation of citizens, or support a particular position on an initiative or referendum question. When they pay for advertising, they are required to reveal the name of the person who is financing the activity. Similarly, the promoters of an initiative must draw up detailed accounts showing the source and destination of private contributions. Two weeks after the vote, a financial report must be presented which is signed by a certified public accountant.

The National Electoral Council is able to set the maximum amount of private money that can be spent in campaigns. This amount is set by law in January each year. For the October 2003 referendum promoted and carried out by the government of President Álvaro Uribe, a fixed amount of 274 million Colombian pesos (equivalent at the time to 93,000 USD) was allowed. There is no public financing for referendum or initiative campaigns in Colombia. Each political party decides in its internal regulations on its own activities in direct democracy campaigns.

The media are regulated by the principle of equal treatment. When a media outlet accepts advertising from any interested party in a campaign it must give all other interested parties the same financial terms. Additionally, the distribution of television slots and advertising space as well as the electoral organization

campaign are stipulated at the institutional level. With regard to the television slots prescribed for referendums, the promoters, the political parties and other groups with legal status will have the right to at least two slots on each national television channel within 30 days prior to the voting. The time assigned to the promoters cannot be less than the time assigned to the political parties and political movements. Moreover, the government, if it so wishes, may have three slots to set out its position on the matter. For the October 2003 referendum, the National Electoral Council drew up a resolution setting out the maximum limits on the number of radio slots, notices in the newspapers and billboards.

The national registrar, who is also the secretary of the National Electoral Council, must arrange for the referendum text to be published in three publications that have a wide circulation. In the same way, the National Electoral Council must conduct an objective campaign, putting forward the points in favour of and against the proposal, which includes a special audience with the interested parties. It is also required to circulate widely invitations to participate in the voting. According to a ruling of the Constitutional Court, advertising space must also be given to those who are promoting abstention in the referendum.

## Access models

190. In jurisdictions where referendums and initiatives are more widely used, different ‘access models’ have evolved that can help to illustrate alternative approaches to the regulation of campaign finance and media access in referendum, initiative and recall campaigns. The models commonly used to regulate campaign activities might be thought of as representing points on a continuum running from a high degree of regulation to little or no regulation. The Republic of Ireland and Uruguay (see boxes 7.3 and 7.4) might be thought of as representing nearly opposite points on the continuum with regard to their attitudes to the regulation of referendum campaign activities. When the electoral authorities or an independent regulatory commission attempt to restrain or manage campaign activity, to control or facilitate media access, or to impose limits on campaign spending, a high degree of regulation might be said to exist. In contrast, where such controls or limits do not exist, or where they are easily evaded, groups, individuals or organizations are free to campaign for or against an issue with little or no restriction on their activities. More nuanced positions also exist whereby some types of controls or limits are imposed but not others. For example, a regulatory authority may provide a certain level of free or heavily subsidized public access to the media to both sides in a campaign in order to ensure that voters hear both sides of the debate, but it may also permit the unrestricted purchase of additional advertising by those groups that can afford it.

### **Box 7.3. Regulating direct democracy: the Republic of Ireland's Referendum Commission**

A non-partisan commission oversees the conduct of referendum campaigns in the Republic of Ireland. A new referendum commission is set up for each referendum. It is chaired by a judge or former judge of the High Court. Other members of the commission are the Clerks of the Dáil and Seanad (the two houses of the parliament), the ombudsman, and the Comptroller and the Auditor General. The Referendum Commission is independent in its actions and is supported by a secretariat from the Office of the Ombudsman. Each referendum commission prepares independent and unbiased information about the referendum and makes that information available to the public. The commission publishes and distributes leaflets and brochures giving general information about the referendum. It also promotes debate and discussion about the referendum and advertises the referendum in the media.

High Court decisions in the Republic of Ireland have established that the government and its officials cannot participate directly in referendum campaigns, and that public resources cannot be used in support of one side in a campaign. Under the Referendum Act of 1998, the Referendum Commission initially had the role of setting out the arguments both for and against referendum proposals. Following amendment of the Referendum Act in 2001, it no longer has this responsibility. The 2001 act also removed from the commission the statutory function of fostering and promoting debate or discussion on referendum proposals. At present, the primary role of the Referendum Commission is to explain the subject matter of referendum proposals, to promote public awareness of the referendum and to encourage the electorate to participate. Putting forward the arguments for and against a proposal is left to the political parties and the other individuals and groups active in the campaign.

### **Box 7.4. Uruguay: a 'maximum freedom' model**

Uruguay has wide experience in the use of instruments of direct democracy. Its referendum law is designed to provide complete freedom to all groups and individuals participating in a referendum or initiative campaign. There is no framework to regulate campaign advertising, whether it appears in the print or electronic media. All campaign materials are designed and circulated by individuals or groups who choose to become active in a campaign. Of course, these parties use this freedom to promote their own positions, and there is no

law either to regulate the accuracy of the information provided or to ensure any kind of balance between the different sides. Turnout in referendums in Uruguay is very high because voting is compulsory. In the 2004 popular initiative on the defence of water as a human right, 90 per cent of eligible voters participated.

The state does not participate in any way, either in the regulation of campaign activities or in the financing of referendum and initiative campaigns. The instigators of an initiative are responsible for all costs relating to signature collection, as well as the costs of producing materials to be used in the campaign. There are no limits on campaign expenditure, nor are there requirements that an accounting of contributions and expenses be provided to the electoral authority. However, there is a ban on all campaign activity for 48 hours prior to the referendum vote.

The absence of any form of regulation in Uruguay could be seen as creating a risk that citizens will be poorly informed or uninformed regarding the issues of a campaign, or that many will be uninterested. However, the Uruguay model is defended not as one which is lax in regulation but as one that provides 'maximum freedom' which, in the view of its proponents, is the true goal of direct democracy.

## Campaign structure and organization

191. In some jurisdictions, referendum, initiative or recall campaigns are highly structured according to rules set down in legislation or by the electoral authorities. For example, groups or individuals who wish to participate actively in a campaign may be required to join or affiliate with one of two 'umbrella committees' – one representing the 'Yes' side and the other the 'No' side. Activities channelled through such committees are more easily regulated. However, it may be difficult to force all the individuals or groups who wish to become involved in a campaign to affiliate with such committees, particularly in jurisdictions where certain types of political activity are protected by a constitutional charter of rights. In addition, some types of campaign activity may be beyond the reach of any regulatory regime, particularly if they emanate from outside the jurisdiction of the regulatory authority. Moreover, if a government, either acting on its own or through a political party, is active in a referendum campaign, it may be difficult to force it to affiliate with an umbrella committee or to abide by any external set of rules.

192. Campaign activities in initiatives, recalls and referendums are sometimes, as in elections, channelled through political parties. Since political parties are often subject to specific rules regarding campaign activities, finance and so on, they can be convenient organizations around which to structure a referendum campaign. However, campaign

activities in a referendum or initiative may not necessarily be partisan in character: opinion on the particular issue may not be divided on party political lines, and political parties are not always the prime movers behind an initiative or referendum proposal. Moreover, in some circumstances parties may be internally divided on a referendum issue or initiative proposal, with some of their members campaigning on one side and some members on the other. In the 1994 referendum in Sweden on membership of the EU, for example, members of the governing Social Democratic Party campaigned on both sides of the issue. It is difficult under these conditions to hold parties responsible for the activities of all of their supporters who may wish to participate in the campaign.

193. In the absence of a structure that requires campaign activities to be channelled through either umbrella committees or political parties, referendum, initiative or recall campaigns could be wide open to campaigning by any organization, individual or group that wishes to participate. Such a model may be favoured by those who prefer to allow direct democracy to find its own means and methods of communication with the electorate over the course of a campaign. A wide-open, essentially unregulated, model does not specify what the role of government should be in a campaign (active or neutral), does not seek to level the playing field with regard to expenditure or media access, and does not attempt to channel all campaign activities through political parties or formal campaign organizations such as umbrella committees (see box 7.4).

## **Campaign finance**

194. The role played by money in initiative and referendum campaigns – as in elections – remains a source of contention in many jurisdictions. If there is little regulation or disclosure of contributions or expenditures, there is a risk that the side that is able to raise and spend the most money will have an unfair advantage. However, experience in some of the US states suggests that excessive expenditure by one side or the other can sometimes precipitate a backlash among voters. The side which spends the most money in a campaign does not always win. Nevertheless, the funding of initiative and referendum campaigns and/or the control and regulation of campaign expenditures present challenges in many jurisdictions. At a minimum, the expenditure of more money by one side will make the electorate more aware of its position than of that of its opponents.

195. One of the simplest and most basic models of campaign finance regulation in referendum or initiative campaigns provides for disclosure of monies spent on the campaign and the nature of such expenditures. Where all campaign activities are channelled through umbrella committees, it is a relatively simple matter to require such committees to file financial reports during or at the end of the campaign; but where other types of groups are active in a campaign it may be difficult to track all of their expenditures and activities. And disclosure of campaign contributions and expenditures does not necessarily imply any controls or limits on such expenditures. As mentioned above, the disclosure or reporting of expenses does not in itself act to provide a more level playing field, although it may achieve greater transparency in campaign activity.

**Box 7.5. Online disclosure in Oregon**

In 2006 the US state of Oregon developed an Internet-based system to allow citizens to track the flow of money used in election campaigns more easily. Campaign committees are required to disclose their contributions and expenditures on a database called OreStar. Citizens and the news media can use OreStar to easily ‘follow the money’ to see who is influencing the campaign and how the money is being spent.

196. Models that range from relatively little control of private expenditure in campaigns to those that provide for some form of public subsidy to both sides might be considered. In an entirely privatized model, there is a danger that either too much or too little money will be spent on the task of informing voters about the issues of a referendum or initiative proposal. The case of excessive expenditure by one side (sometimes the proposers of an initiative or recall) creating the conditions for an unequal contest has been mentioned above, but the opposite problem can also exist. If a system relies entirely on private expenditure by parties or groups to inform voters, it is equally possible that too little money will be spent to accomplish the task of informing the electorate on both sides of the issue. This may lead to lower turnout if voters fail to become engaged in the debate, or it may lead to poorly informed or erroneous choices. Thus, many advocate that the state or the electoral authorities should also play a role in the process of disseminating information in order to facilitate the process of engaging voters and to ensure that they are well informed on the issue(s) of the referendum. In the 1999 Australian referendum on becoming a republic, the government funded a public education campaign organized and run by a neutral expert group (see box 7.6).

197. One way in which the state or the electoral authorities can become involved in the financing of referendum or initiative campaigns is through the provision of public subsidies in some form. Generally, to qualify for a subsidy, an organization will have to be part of a formal campaign structure, for example, a legally registered political party or an official committee established for a particular referendum campaign. As is the case in elections, subsidies may be given on the basis of the share of the vote obtained in a previous election or as a lump sum. The expenditure of such subsidies, when granted to a group or organization, would then have to be accounted for at the end of a campaign through the filing of an official report with the electoral authorities, along with the return of any unexpended funds. A regime of this type has the advantage of ensuring that adequate funds will be available for the purposes of informing voters, but it does not attempt to direct or control the expenditure of such funds.

198. Another method may be to provide for a portion of campaign expenditure to be reimbursed by a public authority. A registered party, group or organization is free

to raise and spend its own funds, but may also apply for reimbursement of a certain amount or a certain type of expense. Public funds may also, in some instances, be granted directly to official campaign organizations. In the case of the 1999 Australian referendum, grants of 7.5 million Australian dollars (AUD) were made to each of the officially sanctioned ‘Yes’ and ‘No’ committees (see box 7.6).

**Box 7.6. Providing public education: the 1999 Australian constitutional referendum**

In November 1999, Australians voted on a proposal to end the role of the British monarchy in Australia and to replace the monarch as head of state with a president chosen by parliament. In Australia, all constitutional amendments must be approved by the voters in a mandatory referendum, and passage requires both an overall national majority of the votes cast and a majority in at least four of the six states. Voting is compulsory, both in elections and in referendums.

To ensure that the proposal received sufficient debate and discussion in the campaign, the Australian parliament authorized a subsidy of 7.5 million AUD to each of the two officially sanctioned umbrella committees supporting the ‘Yes’ and ‘No’ sides, respectively. An official pamphlet summarizing the ‘Yes’ and ‘No’ arguments was prepared under the direction of the Australian Electoral Commission and delivered at public expense to every household. In addition, an allocation of 4.5 million AUD was made to a neutral expert group for the purpose of funding a public education campaign.

The purpose of these various public subsidies was to ensure that Australian voters were adequately informed regarding the proposed constitutional change and the arguments for and against it. However, individuals and groups were also free to promote their own views over the course of the campaign. In spite of these attempts to provide balance, there were several incidents of litigation during the campaign.

199. A more tightly regulated model might demand that any public funds be expended in a strictly neutral manner, rather than leaving such expenditure to the discretion of a party or umbrella committee. This may be accomplished by turning the task of disseminating information over to a neutral body, perhaps the electoral authority itself or a subsidiary body created for this purpose. It may be the task of such a body to prepare and distribute materials presenting the arguments for and against the referendum or initiative question in a balanced manner. Under provisions such as these, representatives of both sides of the issue might be invited to prepare, submit, and/or review materials

which are to be disseminated to voters during the campaign. In some jurisdictions, this takes the form of a booklet or brochure which is distributed to every household within the electoral region. This type of model seeks to ensure that adequate information is made available to all voters and that it is presented in a balanced or neutral manner. However, such balance or neutrality is often difficult to achieve, and one or more of the parties may be inclined to challenge such a claim of ‘neutrality’.

### Access to the media

200. One of the most important issues in the management and administration of referendum and initiative campaigns is that of access to the media. It is largely through the media – the newspapers, radio and television – that voters are able to follow the campaign discourse and learn about the issues involved. In the privatized or unregulated models discussed above, access to the media depends largely on the financial resources available to particular campaign groups and organizations. Those that have substantial private resources or receive large contributions will be able to purchase television time, radio spots and newspaper advertisements accordingly. Attempts by electoral authorities to ensure a more level playing field will most likely involve the limitation of such open access, subsidies to groups or organizations with fewer resources, or the provision of ‘free’ time through public access. In countries with state-owned or -controlled television stations, such access may be provided directly as a public service, as is sometimes done in elections. In many countries, political advertising on radio or television is not allowed. Where the media are privately owned, access may be facilitated either by means of financial subsidy or through licensing regulations regarding the public service obligations of private media.

201. However, the provision of public access to television or radio time also raises issues of neutrality and balance. If groups or organizations are able to write their own television or radio copy and present their own point of view directly, others may demand the same right. Where umbrella committees have been sanctioned, access can be restricted to persons appointed by such committees to speak for their organizations. Where political parties are involved, the issue may be more complicated when parties are divided, or when more than one person claims the right to speak for the party. The editors of news programmes that report on campaigns may not feel compelled to give equal weight to both sides or may report on the campaign in a manner that is considered unsatisfactory by one side or the other. The increasing use of the Internet in political campaigns also presents a challenge, since this resource remains largely unregulated.

202. In general, the principle of ‘equal access’ to the media is considered important to ensuring that referendum and initiative campaigns present arguments in a manner that is fair to both sides. But it is not easy in practice to do this. Public-service broadcasters may attempt in their news programmes to present both sides of an argument within a neutral framework, but the results are often seen by the voters as uninteresting, and can sometimes have the effect of robbing the campaign of spontaneity and a sense of

political engagement. Where multiple media channels exist, equal access may be possible in some instances but not in others. Regulatory authorities that have faced these types of dilemma have on occasion found themselves in court, defending themselves against alleged restrictions on the rights of freedom of speech or freedom of the press.

## **Voter participation and information**

203. Direct democracy requires a well-informed citizenry. Voters acquire the necessary information regarding a referendum proposal or initiative over the course of the campaign. When an issue is a partisan one, information is likely to come through the political parties. In the case of citizens' initiatives, which are often undertaken by groups or organizations formed for the purpose, these groups or organizations may become the primary sources of information for voters. Surveys taken in the aftermath of a campaign often show that 'insufficient information' is one of the most common complaints of citizens. Many jurisdictions in which direct democracy procedures are used have developed mechanisms to provide information to voters. In others, voters will often have to depend on interested groups to provide that information through advertising and other means, and information emanating from these sources will inevitably reflect opposing positions. The assumption is that, as in a jury trial, hearing both sides of an argument will provide voters with sufficient information to arrive at an informed decision.

204. In some jurisdictions this problem is addressed by having neutral authorities provide 'balanced' information. In the Republic of Ireland, for example, an independent Referendum Commission (see box 7.3) is charged with the responsibility of disseminating unbiased information to the public through its own publications, and of promoting debate and discussion of the issue(s) over the course of the campaign. However, this mechanism proved insufficient in the case of the first (2001) referendum on the Treaty of Nice, and the relative lack of information concerning the treaty was one of the factors leading to the low turnout which was widely blamed for the proposal being defeated. Changes in the law regarding the function and powers of the commission were made following that referendum, and the Referendum Commission mounted a more substantial public information campaign during the second (2002) referendum. The mainstream political parties also ran much stronger campaigns. While many other factors certainly came into play, the level and quality of the information made available to voters may well have been the deciding factor accounting for the opposite results of these two referendums. Turnout in the 2001 referendum was 35 per cent of the Irish electorate, while that in 2002 was 49 per cent.

205. The role of an electoral commission or other public authority in an initiative or referendum campaign is often to encourage voters to participate. Voter turnout may be higher when the initiative or referendum occurs concurrently with an election, although this also means that the issue of the referendum may receive less attention from voters, and that turnout may fluctuate with the type of election being held. In the United

States, for example, turnout is generally higher in presidential elections than in state or congressional elections, but propositions may be on the ballot paper in either case in those states which use direct democracy procedures. Voter information guides (see e.g. box 7.7) are intended both to stimulate voter turnout and to inform voters about the content of ballot propositions and the arguments for and against them. In Switzerland, turnout fluctuates considerably between referendums depending on the level of interest in a particular issue, the amount of publicity it receives, and the number of items on the ballot paper (see the case study following chapter 1).

### **Box 7.7. Informing the voters: voter information booklets in California and Oregon**

In some jurisdictions, the government or an independent 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 of the US states that have such a provision.

In California, the secretary of state is legally responsible for publishing a *Voter Information Guide*, which contains information regarding every proposition on the ballot. Included in the booklet is a summary of the proposal, a statement by the legislative analyst regarding its meaning and consequences, and unedited statements by groups supporting and opposing the proposition. Added to the latter are rebuttal statements by each of the supporting and opposing groups. The intention is to provide voters with a source of information which is balanced between the two sides over and above that which comes directly from the campaign.

Similarly, Oregon publishes a state-sponsored *Voter's Pamphlet*. It contains an impartial statement explaining the measure written by a committee of five members including two proponents of the measure, two opponents and a fifth member chosen by the first four committee members, or, if they fail to agree on a fifth member, appointed by the secretary of state. In Oregon, any group or individual who wishes to do so may, upon payment of a 500 USD fee or the filing of a petition containing 1,000 signatures, also include a statement in the *Voter's Pamphlet*.

## **Conclusion**

206. Any jurisdiction that is considering the adoption of an initiative, referendum or recall law will need to consider regulatory, finance and media access issues. One of the principal sources of variation between different models is the role played by government. In different circumstances the government may be the proposer of a ballot proposition,

an active campaigner on its behalf, or a neutral regulator. An unregulated model does not attempt to organize or control any campaign activities, and is sometimes justified in terms of allowing the maximum amount of democratic freedom to all individuals or groups who wish to become involved in a campaign. A 'light regulation' model may require disclosure of campaign contributions and expenses, may provide for some limited form of public subsidy to campaign groups, and/or may require the state or an independent authority to provide some type of basic information to the electorate. Heavier models of regulation may try to channel campaign activities through officially sanctioned groups or organizations, to impose limits on campaign spending, and/or to provide subsidized or free access to the media in order to ensure that the public is well informed on the competing positions. More heavily regulated models place greater responsibility on the government acting as a neutral party, or on an independent electoral authority or commission, and in this way seek to ensure that the arguments on both sides of an issue are given equal treatment throughout a campaign.

207. Heavier models of regulation are sometimes defended and justified on grounds of fairness, or the need to create a level playing field for the competing sides. Others may emphasize the responsibility to provide voters with adequate information or the need to protect essential freedoms of speech and the press. While some of these goals are difficult to achieve in practice, they nevertheless reflect differing philosophies about how initiative, referendum or recall campaigns ought to be run or managed. Those considering the adoption of a referendum, initiative or recall law will need to consider the types of regulatory activities that may be applicable in different jurisdictions. Certain types of rules or limitations may not be suitable in some settings, particularly if they are at odds with the prevailing political culture, or if they conflict with other established constitutional provisions, such as a charter of rights. Some types of regulation may prove unenforceable, or may be evaded or challenged in a court. The choice of an appropriate regulatory regime that will be regarded as fair by all sides competing in a referendum or initiative campaign is an important goal, but it is not always easy. The Republic of Ireland, for example, has experimented a great deal with different regulatory mechanisms, but has been required to make changes to its model on several occasions as a result of legal challenges, uneven results, or the impracticality of certain regulatory measures. Its use of an independent referendum commission and its emphasis on government neutrality provide one of the best examples of both the risks and the benefits of tighter regulation.



# Direct democracy in the Republic of Uganda

Jennifer Somalie Angeyo, Mugenyi Silver Byanyima and Alfred Lock Okello Oryem

## Introduction

The cornerstones of direct democracy in Uganda are mainly questions of law rather than practice. The authority of government and its organs is vested in the people, who express their will and consent on who shall govern them and how they shall be governed through regular, free and fair elections of their representatives or through referendums and the provision for recall – the instruments of direct democracy. The constitution entrenches the right to choose both the actors and the method of governance while at the same time allowing the rights of referendum and recall. Ugandan voters thus regularly choose who governs them and how they shall be governed, and may at any time, at will, recall those chosen, and from time to time decide their destiny on various questions through elections and referendums.

The promulgation of at least the current constitution came against a background of protracted and exhaustive soul-searching, consultative gathering of the people's views, and lengthy national debate. The provisions of the constitution have been tested for over ten years.

## Historical background

Scholars of African history will largely agree that the Republic of Uganda would not have taken its present form without the advent of colonialism in the 19th and 20th centuries, which eventually precipitated the struggle for independence in the 1950s and the achievement of independence in 1962. Prior to that, Uganda was a group of kingdoms, chiefdoms, and tribal, clan or family groupings. What little forms of direct democracy there were could be traced to a few of the chiefdoms and tribal groupings, with the bulk of the kingdoms largely practising authoritarian governance by royal decree. Pre-colonial Uganda therefore hardly provides a fertile ground for searching for the roots of direct democracy. Periods of democratic, quasi-democratic, military and pseudo-military government punctuated the history of the independent Uganda

of the 1960s, 1970s and 1980s. Any search for direct democracy practices during those periods will attract numerous different schools of thought, and a number of myths.

Consequently, this case study is confined to the period leading up to the constitution of 1995 and since then, which has seen and is still seeing the progressive cementing of direct democracy.

The early 1990s saw a new wave of demands for constitutional reforms in Uganda, eventually leading to the establishment of the Uganda Constitutional Commission, commonly referred to as the Odoki Commission. The commission traversed the country seeking the views of the people of Uganda on necessary constitutional reform. Its report produced the 1994 Constituent Assembly of directly elected delegates, and it was these delegates who debated on behalf of the people and subsequently promulgated what is now the 1995 constitution of Uganda.

In general, the term ‘direct democracy’ usually refers to citizens making decisions on policy and law without going through their elected representatives and legislatures. The supporters of direct democracy argue that democracy is more than merely a procedural matter (i.e. voting).

## **The legislative framework and direct democracy in Uganda**

The procedures for direct democracy discussed below include the right to amend laws and the constitution through *referendums* and also the right of *recall*.

The government of Uganda finances both the referendum and the recall process. All monies required to defray expenses that may be incurred in the discharge of the functions of the Electoral Commission are charged to the Consolidated Fund. The Electoral Commission’s funds may, with prior approval of the minister responsible for finance, include grants and donations from sources within or outside Uganda. The Electoral Commission must ‘give equal facilitation to all sides in a referendum’.

### ***Citizen-initiated procedures***

*Referendums.* The voters have the right to demand a referendum. This is subject to an enabling law that must be passed by parliament as a mechanism for the citizens’ demand to be accommodated and the referendum conducted. Under article 255 of the constitution, parliament shall by law make provision:

- (a) for the citizens’ right to demand the holding by the Electoral Commission of a referendum, whether national or in any particular part of Uganda, on any issue; and
- (b) for the holding of a referendum by the Electoral Commission if the government refers any contentious matter to a referendum.

The result of the referendum is binding on all organs and agencies of the state and all persons and organizations in Uganda. However, a referendum does not affect the

fundamental human rights and freedoms guaranteed in the constitution or the power of the courts to question the validity of the referendum.

*The right of agenda initiative.* Rule 105 of the Rules of Parliament allows private citizens to propose new laws or amendments to existing laws by submitting to parliament a private member's bill. The parliament has passed several such bills.

### **Referendums on change of the political system**

Under article 69 of the constitution (1995), the people of Uganda shall have a right to choose and adopt a political system of their choice through free and fair elections and referendums. A political system is defined there subject to the constitution and shall include the Movement political system; the multiparty political system; and any other representative political system. Under article 70 of the constitution, the Movement political system is broadly based, inclusive and non-partisan and shall conform to the principles of participatory democracy – democracy, accountability and transparency; access to all positions of leadership by all citizens; and individual merit as a basis for election to political office.

The constitution also spells out when the referendum on a change of political system should be held. Article 74 of the constitution provides as follows:

- ‘74. (1) A Referendum shall be held for the purpose of changing the political system:
- (a) if requested by a resolution supported by more than half of all members of parliament; or
  - (b) if requested by a resolution supported by the majority of the total membership of each of at least one half of all district councils; or
  - (c) if requested through a petition to the Electoral Commission by at least one-tenth of the registered voters from each of at least two-thirds of the constituencies for which representatives are required to be directly elected under paragraph (a) of clause (1) of article 78 of this Constitution.
- (2) The political system may also be changed by the elected representatives of the people in parliament and district councils by resolution of parliament supported by not less than two-thirds of all members of parliament upon a petition to it supported by not less than two-thirds majority of the total membership of each of at least half of all district councils.
- (3) The resolution or petitions for the purposes of changing the political system shall be taken only in the fourth year of the term of any parliament.’

### ***Referendums on amendment of the constitution***

Mandatory referendums are held to approve or reject certain types of constitutional amendment. Article 260 of the constitution provides that an act of parliament seeking to amend any of the provisions of the constitution must be supported at the second and third readings in parliament by not less than two-thirds of all members of parliament, and it must have been referred to a decision of the people and approved by them. Other specific constitutional amendments under article 261 are not subject to referendum but must be ratified by at least two-thirds of the members of the District Council in at least two-thirds of all the districts of Uganda.

### ***Provisions for recall***

The constitution and the enabling Parliamentary and Local Governments Act provide for recall of elected representatives by the electorate subject to the procedures and grounds shown in table 1. However, under the Presidential Election Act, recall of the president is not possible. The recall of a member of parliament has to be initiated by a petition in writing setting out the grounds for a recall and signed by at least two-thirds of the registered electors of the constituency and shall be delivered to the speaker of parliament.

**Table 1. Summary of the grounds for recalls at national level**

Article of the constitution	Scope of effect	Provision of the law
84	Recall of elected members of parliament	A member of parliament may be recalled for misconduct, desertion, or mental or physical incapacity by a petition signed by at least two-thirds of the registered electors of his or her constituency.
185	Recall of elected district chairpersons and speakers of parliament	A district chairperson or speaker may be removed for misconduct, abuse of office, or mental or physical incapacity by a resolution supported by not less than two-thirds of all members of the District Council.

## **The use of direct democracy in Uganda**

### ***Referendums on political systems***

Uganda held a referendum on a political system in 2000. Under article 271 (3) of the constitution, and during the last month of the fourth year of the term of parliament, a referendum was held on 29 June 2000 to determine the political system the people of Uganda wished to adopt. A total of 4.9 million voters participated (51 per cent); 91 per

cent voted for the Movement political system and 9 per cent voted for a multiparty system.

The second referendum on a change of the political system, called by parliament for 28 July 2005, was for a change away from the Movement political system to a multiparty political system. The result of this referendum was that, with a turnout of 47 per cent of registered electors, 90 per cent of those voting voted 'Yes' in favour of a multiparty system. A series of meetings were held, culminating in the formation of the 'Yes' and 'No' sides for purposes of the 2005 referendum. In accordance with the Referendum and Other Provisions Act 2005, and in consultation with both sides, the referendum question was formulated as follows: 'Do You Agree To Open Up The Political Space To Allow Those Who Wish To Join Different Organizations/Parties To Do So To Compete For Political Power?' The 'Yes' side chose a tree as their symbol, while the 'No' side chose a 'closed house', as depicted below.



The 2005 referendum was a landmark in the political history and democratic process of Uganda as it ushered in a new era of multiparty politics. Uganda is currently governed under a multiparty political system and subsequent elections have been conducted under the multiparty dispensation.

### **Challenges and lessons learned**

Both referendums held in Uganda were conducted successfully. In both, voter participation was somewhat constrained by the fact that the voters are more accustomed to voting for individuals than for sides represented only by symbols.

Voter apathy affects turnout in most of the key stages of the process. Voters may make a last-minute attempt to turn out for activities such as registration and display of the electoral register; thus the Electoral Commission has to intensify the sending out of reminder messages and/or increase the numbers of registration venues and personnel, and/or even extend the period unless it is constrained by a constitutional deadline.

In both referendums on change of the political system, some sections of the public made a deliberate attempt to derail the referendum campaigns by calling on the electorate or the parties to boycott the referendum. However, this did not prevent the enthusiastic section of the public from participating in the two referendums.

Both referendums required intensive voter education since the referendum process is quite distinct from that for general elections. The electorate has to be informed about the differences between a referendum and an election. Most voters tend to associate the symbols with individuals. Voter education messages are disseminated through the electronic and print media and usually one person per parish is appointed by the Electoral Commission to conduct voter education and the dissemination of information. Other channels for voter education include commercial advertising through bill-boards, street poles and banners; printed materials like handbooks, manuals, booklets, posters, fliers, leaflets and handbills; mobilization materials like mobile shows or films or drama groups; rallies, and so on.

In an effort to improve its voter education, the Electoral Commission has undertaken to diversify the methods of voter education by using non-commercial methods such as drama groups and mobile units, using district registrars as part of the voter education process and decentralizing the voter education. This is, however, subject to the availability of funds.

It is worth noting that (a) timely enactment and amendment of the legal framework of operation and (b) funding are important issues for the successful conduct of a given referendum. This also enables the stakeholders in the process to be involved at the earliest opportunity. The referendum process is much more demanding financially than the recall process. This is because a referendum is a universal adult suffrage exercise involving all registered electors in the country and key components such as the display of the electoral registers for all the polling stations, the printing of ballot papers for all registered electors, ballot box procurement, and so on. Recall processes, by contrast, involve only the electorate from a given area. Moreover, the grounds for a recall are often not substantiated or the legal requirements are not complied with, and most attempts to initiate a recall do not succeed on grounds of non-compliance with the law. Petitions under the Local Governments Act, however, have had a degree of success, resulting in a recall, in contrast to recalls under the Parliamentary Election Act.

The concept of direct democracy is still evolving in Uganda and is yet to be appreciated by the citizens, especially in the rural setting, despite the legal framework in place. This challenge can be overcome by both civic and voter education, although the process is constrained by limited resources.

# Direct democracy in Uruguay

Rodolfo González Rissotto and Daniel Zovatto\*

Uruguay has one of the longest and richest traditions in the use of direct democracy mechanisms. Since the first half of the 20th century, it has been able to combine and articulate representative democracy alongside direct democracy. Since 1934 the constitution has stated that national sovereignty is expressed directly by means of elections, popular initiatives and referendums, and indirectly, by means of representative powers.

## Terminological variations

Several types of direct democracy mechanisms are in use in Latin America, and there are several ways to describe them. National constitutions often use different terminology to refer to similar mechanisms. The most common terms include ‘popular legislative initiative’ (*iniciativa popular legislativa*); ‘referendum’, ‘*plebiscito*’ (a referendum on constitutional matters), or the more direct translation, ‘popular consultation’ (*consulta popular*); recall (*revocatoria de mandato*); and ‘open town meeting’ (*cabildo abierto*). As a result of the variations in usage, it is not possible to arrive at a common terminology for the purpose of cross-country comparison that is faithful to the diverse set of concepts currently in use throughout the region.

The language used in this case study classifies the mechanisms of direct democracy into three types – *popular consultations* (by far the most commonly used term), *popular legislative initiatives*, and *recall votes*. Given that these mechanisms are interconnected (for instance, a legislative initiative can lead to a popular consultation), the classification is somewhat loose and is intended merely to enhance the clarity of the description of the various mechanisms in the region.

---

\* Parts of this case study are based on earlier work by Daniel Zovatto, published in Payne, J. Mark et al., *Democracies in Development: Politics and Reform in Latin America* (Washington, DC: Inter-American Development Bank, International Institute for Democracy and Electoral Assistance and Rockefeller Center for Latin American Studies, Harvard University, 2007).

## The Latin American context

The transition towards democracy in Latin America over the past three decades can be broken down into two main periods, the first covering the 1980s – considered a ‘lost decade’ in economic terms, but fairly progressive in the sense of democratic advance – and the second taking place throughout the 1990s, characterized by the crisis of representation in the political party system and a growing discontent with politics. A twofold approach was used to deal with both these situations in several countries throughout the region, including constitutional reforms and the option of direct democracy mechanisms. Thus now, when parliaments and political parties are the object of mistrust in public opinion, some sectors see mechanisms of civic participation as a viable option for enhancing representation, boosting participation and keeping political parties stable. Debate over the potential benefits and risks of these mechanisms has become established on the Latin American political agenda.

Direct democracy mechanisms were incorporated into the great majority of the reformed constitutions which were adopted in Latin American countries throughout the 1990s. They were adopted for two main reasons. The first was the crisis in the party system, which produced an increasing gap in political representation – a gap which was filled, in some countries, by neo-populist leaders who achieved power by criticizing representative democracy and promising to solve national problems by means of participative democracy and a direct relation with the people (presidents Alberto Fujimori in Peru and Hugo Chávez in Venezuela, among others). The other was that, in countries that were in extreme institutional crisis, the dominant elite incorporated mechanisms of direct democracy as a safety valve to prevent the collapse of the democratic system (Paraguay and Colombia, among others).

Despite these provisions, over the past three decades, most countries in Latin America have made only modest use of mechanisms for direct citizen participation at the national level. Historically, direct democracy mechanisms have been used for a variety of reasons, ranging from demagogic manipulation to the defence of conservative or traditionalist interests and the implementation of reforms sought by voters.

Overall, direct democracy mechanisms have been applied in only 11 of the 16 countries in which they are provided for in the constitution. Of these 11 countries, only two – Uruguay (in terms of frequency) and Ecuador (in terms of number of issues voted on) – show extensive use of these mechanisms.

## The usage of direct democracy mechanisms: the case of Uruguay

In Uruguay, direct democracy mechanisms predated the process of democratic restoration. After the return of democracy, the only innovation was the ability of the citizens to repeal laws by means of a referendum.

The usage of direct democracy mechanisms throughout Latin America has often led to mixed, and at times unanticipated, results. For instance, in two extreme cases where authoritarian regimes resorted to these mechanisms to keep themselves in power – Chile in 1988 and Uruguay in 1980 – their use backfired. In Uruguay, in 1980 the military

regime drew up a charter that would have provided for a strong, continuing role for the military along the lines of the 1976 constitutional decrees, including legitimizing the new role of the National Security Council (Cosena, the Consejo de Seguridad Nacional). The document would also have greatly reduced the roles of the General Assembly and the political parties. A *plebiscito* held on 30 November 1980, however, rejected the new military-drafted constitution.

In regard to the electoral participation of the citizens in the processes of direct democracy, Latin America had an average voter turnout of 68.13 per cent over the period 1978–2007. Uruguay has one of the highest turnouts of the region – on average 87.4 per cent over the same period.

## The constitutional framework

The constitution of Uruguay provides for the use of referendums at both national and sub-national levels and may be used to repeal or abrogate laws. The recall does not exist.

The referendum is the mechanism by which citizens who are entitled to vote express their decision to ratify or reject a duly approved law within a year of its coming into force. The referendum can also be used to oppose a decree issued by a sub-national assembly, such as the *Junta Departamental*.

The popular initiative is the power granted to the electorate to propose constitutional, legal or municipal-type regulations or to oppose the validity of a law or decree of the *Junta Departamental*.

The constitution also provides for yet another type of popular consultation, which is the referendum on constitutional matters, called the *plebiscito*. This is the procedure by which citizens approve or reject a proposed constitutional reform. This is the last stage of a process at the end of which, in order for the change to be valid, the electorate has to be consulted.

Article 79 of the constitution states that ‘Twenty-five percent of the total number of persons eligible to vote may, within one year of its promulgation, lodge a referendum petition against the laws and exercise the right of initiative before the legislative power’, and sets out the limits to its application as follows: ‘These instruments cannot be applied with regard to laws which establish taxes. Neither can they be applied in cases in which the initiative is restricted to the executive power’.

## The application of the provisions for direct democracy

Popular consultations encompass both *plebiscitos* and referendums. In Uruguay this process may be initiated by the executive branch, the legislative branch or the citizenry. In Latin America, the results of popular consultations carried out to ratify constitutional reforms are in all cases binding. In only a few countries, such as Uruguay, which requires a minimum turnout of 35 per cent of registered electors, is a minimum level of participation necessary for the approval of binding consultations. Furthermore,

in Uruguay, the results of popular consultations called to ratify laws are also always binding.

As table 1 shows, between 1980 and 2007, 12 popular consultations took place in Uruguay, of which nine were to approve or reject constitutional reforms. The consultations that took place in 1989, 1992 and 2003 sought to annul legislation: the first was rejected and the law remained in effect, but in the other two cases the laws were repealed.

**Table 1. The use of mechanisms of direct democracy in Uruguay, 1980–2007**

Date	Mechanism	Topic	Decision	Outcome
Nov. 1980	<i>Plebiscito</i>	New constitution proposed by the military regime	Rejected	Rejection generated pressure on the military to start the liberalization process of the regime. The government was in favour of the new constitution. <b>The government's position lost.</b>
Apr. 1989	Referendum	To repeal the law of expiration, which was an amnesty law for members of the military and police officers	Rejected	The law was kept, giving popular support to a very controversial decision. The government favoured the expiration law. <b>The government's position won.</b>
Nov. 1989	<i>Plebiscito</i>	Constitutional reform to establish procedures and criteria that should be used to periodically increase pensions	Approved	Promoted by the national Commission of Retirees. A new system of readjustment of pensions established in the constitution came into effect. The government opposed it. <b>The government's position lost.</b>
Dec. 1992	Referendum	Proposal to repeal a law that would partially privatize the state telephone company	Approved	Expression that the sentiments of the electorate prevailed. The government opposed the abolition of the law. <b>The government's position lost.</b>
Aug. 1994	<i>Plebiscito</i>	Constitutional reform to separate in the ballots national and municipal elections	Rejected	Both the government and the opposition favoured the reform but the citizens rejected it. <b>The government's position lost.</b>
Nov. 1994	<i>Plebiscito</i>	Constitutional reform to establish regulations to protect retirees	Approved	Constitution was reformed to include protections for this group of citizens. The government opposed the reform. <b>The government's position lost.</b>
Nov. 1994	<i>Plebiscito</i>	Constitutional reform that sought to assign 27% of the budget to education	Rejected	The government opposed the constitutional reform. <b>The government's position won.</b>

Date	Mechanism	Topic	Decision	Outcome
Dec. 1996	<i>Plebiscito</i>	Constitutional reform aimed at modifying the electoral system	Approved	Important reforms to the electoral system took place by eliminating the simultaneous double vote, and replacing it with primary and general elections. The government favoured the reform. <b>The government's position won.</b>
Oct. 1999	<i>Plebiscito</i>	Constitutional reform forbidding employees of state companies from running for candidates	Rejected	The government opposed the reform. <b>The government's position won.</b>
Oct. 1999	<i>Plebiscito</i>	Constitutional reform to establish a fixed percentage for the budget of the judicial branch	Rejected	The government opposed the reform. <b>The government's position won.</b>
Dec. 2003	Referendum	Appeal against Law no. 17.448 of 2002, which authorized ANCAP* to associate with private enterprises and eliminated the import monopoly for fuel as of 2006	Approved	Binding. ANCAP is not able to associate with other private enterprises for those purposes established in the law. The government opposed the repeal; however, the citizens repealed it. <b>The government's position lost.</b>
Oct. 2004	<i>Plebiscito</i>	Constitutional reform to include a series of regulations regarding the right to use water resources	Approved	Water resources cannot belong to private citizens or companies, and all drinking water supply services must belong to the state companies. The government opposed the reform. <b>The government's position lost.</b>

\* Administración Nacional de Combustibles, Alcoholes y Portland

### ***Funding of the mechanisms of direct democracy and publicity***

The funding of direct democracy mechanisms such as referendums and popular initiatives is the sole responsibility of their promoters and advocates. The state does not take part, directly or indirectly, in the funding, except in those cases that originate in the Electoral Court, and events leading to a call for elections.

There is no regulation on questions of advertising and propaganda in referendums (or acts of adhesion), popular initiatives, and *plebiscitos* to ratify constitutional reforms. Thus, all types of propaganda and advertising are allowed through any of the mass media, whether intended for the general public or for paying subscribers. The propaganda is designed by the interested parties and advocates for or against the referendum or *plebiscito*, and they can address any issue they deem relevant and linked to the direct democracy mechanism they are promoting.

### ***The role of civil society***

The constitutions of several Latin American countries allow citizens to initiate constitutional reforms, thus giving them a significant decision-making role. Each country requires a certain percentage of registered electors to sign a petition to take the process forward. To date this mechanism has been used only in Uruguay. Reform initiatives launched by civil society organizations in 1989, 1994 and 1999 aimed at increasing the budget or benefits for pensioners and in the education and judicial sectors (see the table).

Popular initiatives have also led to referendums to overturn laws in Uruguay. A coalition of left and centre-left parties and an ad hoc civil society movement sponsored the ultimately unsuccessful 1989 referendum aimed at revoking the amnesty law, which had been designed to protect members of the armed forces from prosecution for human rights violations committed during the military regime (1973–85). Although the legal outcome was accepted, the dispute over the memory and history, as well as over compensation, is still ongoing.

The 1992 referendum, which successfully overturned a law that would have partially privatized the state-owned telephone company, was spearheaded by a similar coalition of forces working in tandem with the labour unions representing telephone workers. The 2003 referendum to repeal this law was promoted by the workers' union of the state fuel company, with the support of parties on the left. The participation of Uruguayan civil society organizations was limited, since in both cases ad hoc social movements sought alliances with political parties as opposed to these civil society organizations.

In terms of the effect these mechanisms have had, in general their use at national level has not given civil society a major role. Until now, and only in a few cases, their role has mainly been that of controlling and restraining rather than creating and innovating. The strengthening of citizen control over the government or any other bodies of the representative system has had limited efficacy.

### ***The behaviour of the citizenry***

During the past 30 years in Latin America, citizens' behaviour with respect to direct democracy has varied, with no overall trend having emerged. It is clear that Latin Americans frequently fail to vote in a manner that focuses on the particular issue put before them; rather, they use the vote as an opportunity to vent their frustration at the poor performance of the government in power. In some cases popular consultations have served as a means of expressing overall disenchantment with politics and politicians.

One example is the unequivocal rejection by Uruguayan citizens of the 1994 'mini' constitutional reform, which had the backing of all the major political parties. It was apparent that the outcome had little to do with the specific content of the issues presented to the public.

The complexity of economic and financial issues at the national level means that it is difficult to address them through mechanisms of direct democracy, as these require a high level of citizen participation. As a result, constitutions in most Latin American countries have expressly excluded such matters from popular consultations.

However, in Uruguay (and Ecuador) these mechanisms have been used by civil society organizations tied to centre-left parties seeking to impose limits on economic reforms. The paradigmatic case is the 1992 referendum in Uruguay to repeal the law enacted by the government to partially privatize the state-owned telephone company. However, a similar attempt several years later to overturn a law regulating the distribution of electricity and gas failed, as did a challenge to the private retirement and pension system. In 2003, a referendum repealed a law that allowed Uruguay's national fuel agency to set up joint ventures to refine and distribute petroleum products.

## **Conclusion**

Direct democracy mechanisms must be seen as instruments for consolidating the democratic system, and which complement but do not replace the institutions of representative democracy. While such mechanisms can help to strengthen political legitimacy, and open up channels for participation that foster reconciliation between the citizens and their representatives, political parties and the legislative branch must remain the central institutions where citizens articulate and combine their preferences. Hence, parties and legislators must be strengthened in order to improve the quality and legitimacy of democratic representation. Although in the beginning some people saw participatory democracy as something opposed to representative democracy, it is now generally accepted that they are complementary formulas. Even so, people sometimes attribute over-dimensioned functions to direct democracy mechanisms and have excessive expectations of them – functions and expectations that are beyond the capabilities of direct democracy.