The Use and Design of Citizens' Initiatives

An International IDEA Working Paper

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Part 1 Introduction to direct democracy

International IDEA's work on citizens' initiatives and direct democracy

In February 2004, International IDEA launched a project focusing on the use of direct democracy in a global context. The project is focusing on the three main direct democracy mechanisms:

- Referendums;
  - Allowing the electorate a direct vote on a specific political, constitutional or legislative issue.
- Citizens' initiatives;
  - Allowing the electorate to vote on a constitutional or legislative measure proposed by the people if the proponents of the measure gather enough signatures in support of it.
- Recall;
  - Allowing the electorate a recall vote on whether to end the term of office of an elected official if enough signatures in support of a recall vote are collected.

IDEA's interest in direct democracy concerns whether, when and how the use of direct democracy mechanisms is appropriate to enhance democratic systems. By involving voters directly in decision making processes, does the use of direct democracy increase voter participation? Does allowing voters the opportunity to initiate their own laws and to vote on others increase their satisfaction that political outcomes more accurately reflect their preferences? Does direct democracy reduce dissatisfaction with elected representatives, and does the existence of direct democracy mechanisms act as a discipline on the behaviour of elected officials? Criteria by which the success of direct democracy as a component of a democratic system might be judged include: levels of participation and engagement, or levels of satisfaction with the democratic system.

IDEA's project aims to produce a series of tools outlining options for the design of direct democracy institutions. In doing so, the project is pulling together comparative experience of direct democracy from Europe, Latin America and the rest of the world. Following a meeting in London in March 2004, five smaller working groups have now been established to focus on key areas of work relating to direct democracy. A global conference bringing together the work of the working groups is expected to be held during 2005.

Use of direct democracy

The use of direct democracy is usually contrasted with the wider use of representative democracy. Under representative democracy, voters choose which candidates and parties they want to elect to make decisions on their behalf. Conversely, when direct democracy is used, citizens are able to decide themselves about specific issues and do not delegate the decision making process to their representatives. For example, in referendums voters rather than their elected representatives make

decisions about constitutional or policy issues; when using citizen initiatives, voters can actually seek to introduce constitutional or legislative measures themselves. Finally, the recall tool provides voters with a mechanism by which they can replace their elected representatives if they are not satisfied with their performance (i.e. with the decisions that have been taken on their behalf).

Impact on representative democracy

Critics of direct democracy argue that it weakens representative democracy by undermining the role and importance of elected representatives. Since it is unlikely that any democratic system will ever be purely direct, weakening elected representatives has a negative effect on the democratic system.   However, supporters of the use of referendums argue that, in the context of increasing voter apathy and disenchantment with traditional forms of democracy, direct democracy can help to re-engage voters with politics and democracy. It is also argued that direct democracy acts as a useful discipline on the behaviour of elected representatives, ensuring that they fully consider the likely views of voters when taking decisions on their behalf.

Part 2   **Options when considering adoption of the citizens' initiative mechanism: Key overarching design principles**

Introduction

Citizen initiatives are a mechanism by which citizens can propose legal measures to be adopted if, firstly, enough people pledge support for the proposal to ensure it is put to a popular vote, and secondly, the measure is approved in the vote. The following notes set out issues to be considered when designing a citizen initiative measure for an administrative area.

What types of citizen initiatives are allowed?

There are various different types of initiative measure, and the legal basis for citizen initiative rights should identify the different types of measure that can be proposed.

Citizen initiatives are in some countries a means by which citizens can propose amendments to the constitution. In addition, citizen initiatives can be a mechanism to propose new legislation and laws.

In some jurisdictions, citizens can use initiatives to propose issues which must be considered by the legislature if enough citizens support the measure to demand it. Although these initiatives may not directly lead to a change in the law, they can be used to force issues onto the political agenda.

Initiatives are sometimes labelled as direct or indirect initiatives to reflect whether or not they have been reviewed or amended by the legislature or court. Initiatives which if approved are adopted as proposed are referred to as direct initiatives, whereas initiatives which are subject to review or amendment by other bodies are known as indirect initiatives.

There are two other types of mechanisms which are sometimes labelled as initiatives, because they are invoked when citizens collect enough signatures in support of a measure. These are the abrogative referendum and the recall. Procedures for these mechanisms follow broadly the same process as for citizen initiatives. Details about these mechanisms can be found in the companion papers on referendums and recall.

Are there any subjects excluded from citizen initiative rights?

In some areas where the initiative measure can be used, there are restrictions on which issues can be the subject of initiative measures. Limitations might be imposed in relation to some subjects because it is assumed that they are too important to be restricted by any measures that might be supported by the electorate; for example, it might be difficult for an administration to balance its budget if an initiative measure restricts the ability of the administration to raise taxes. If restrictions are

to be imposed, there should be justifiable reasons for them.

What are the requirements for placing an initiative on the ballot?

To place an initiative on the ballot at an election, an initiative must be filed with the relevant authority, then circulated in petition form in order to gain the number of signatures deemed necessary to qualify the measure for the ballot. The number of initiatives that qualify for the ballot will clearly be affected by the design of the initiative mechanism, and in particular the likely difficulty of attaining the required number of signatures within the relevant timeframe. It may be the case that different types of initiatives may be subject to different requirements.

Number of signatures

The number of signatures required to place an initiative measure on the ballot is key to determining whether an initiative can be placed on the ballot; the higher the number of signatures required, the harder it is for an organisation to collect the number required. Typically, constitutional initiatives will be subject to more stringent requirements, since they cannot easily be amended once passed.

The number of signatures required to qualify an initiative measure might be a fixed number (for example 150,000 signatures), or a fixed proportion of the electorate (for example 10% of voters on the electoral register, or 10% of the number of people who voted at the last administrative election).

Deadline for collecting signatures

In addition to specifying a number of signatures required to place an initiative measure on the ballot, there is usually a specified deadline by when the signatures must be collected once the initiative has been registered. The time period allowed for collecting signatures may vary in proportion to the number of signatures required; if a large number of signatures are required, a longer period of time may be allowed to collect them. However, it may also be the case that the number of signatures required is high, and the time period allowed for collecting them is relatively short, particularly in the case of initiative measures that cannot easily be amended if passed.

Voting on citizen initiatives

When is the vote held?

A further key issue in the design of the initiative process is when an initiative will be placed on the ballot once it has qualified for a popular vote. Whilst most initiatives are likely to be placed on the ballot at the next election in the jurisdiction for which the initiative is proposed, there will be a cut-off point after which measures will be placed on the ballot at the following election, rather than the next one. This may be significant if an initiative campaign has built up a lot of momentum, in that the delay

may reduce the momentum of the campaign. A further issue is whether there are any limits on the number of initiatives that can be placed on any one ballot, which may be desirable in order that voters are able to make better informed judgements on a smaller number of issues. If this is the case, an initiative may not be voted on until a later election.

Participation thresholds

Referendums are sometimes subject to participation or majority thresholds, to ensure that decisions taken are taken by a minimum number of the electorate. The same principle could also be applied to the vote in the initiative process. For example, the process could be designed so that a vote on an initiative is only valid if more than 50% of electors vote for it, or if more than 50% of voters cast a vote on the measure. This might be particularly relevant if there is a large drop-off between the number of people voting at the relevant election at which the initiative is being voted on and the number of people who also cast a vote in relation to the initiatives which are also on the ballot at the election.

Legislative, executive and judicial scrutiny of initiatives

In several states in the United States, there is no provision for the state legislature or judiciary to get involved in the initiative process: the state's role is limited simply to that of an administrator responsible for overseeing the initiative process, and to implementing the measure if necessary. However, there is a growing acceptance that the initiative process could be improved by the controlled involvement of the legislature and/or judiciary, since this would ensure that only constitutional initiative measures reach the ballot stage. In addition, certain forms of involvement could also provide alternative measures for voters to consider.

There are various ways in which the legislature or judiciary could be involved in the initiative process.

Pre-ballot consideration; the proposition of alternatives

In Switzerland, when an initiative measure qualifies for a federal ballot, the legislature is able to propose alternative measures which are also put to the electorate on the ballot. This enables the legislature to consider the issue, and make its own proposal in light of the fact that the public may decide that they want legislation or a change to the constitution in relation to a specific issue. It also provides the electorate with a choice of options, rather than just a single option which will be enacted if enough people support the issue. The involvement of the legislature might offset the concerns of some critics of direct democracy, who argue that direct democracy does not utilise the deliberative experience of representatives elected in a representative democracy.

Constitutionality and considerations by the courts

Another type of useful scrutiny of initiative measures is to ensure that

initiative measures are checked to ensure they are constitutional/legal. In some US states, a number of initiatives that have passed at ballot stage have been subsequently found to be unconstitutional when challenged in court. The time and money spent on the initiative campaign are therefore wasted. One way to prevent this is to introduce a constitutionality check on initiative measures at an earlier stage. There are various points at which these could be introduced, including at the initial filing stage, after the petition stage but prior to the ballot. A constitutionality test could be built into a process allowing legislators the opportunity to produce an alternative option; for example, if a court rules that a proposed measure is unconstitutional, both the proponent and the legislature could then be given the chance to propose alternative, constitutional measures.

Post-ballot amendments

A further option in allowing amendments to citizen initiatives is to allow the legislature the option to amend an initiative *after* it has been approved at ballot stage. This design means that once an initiative has a demonstrable level of support from the public, the legislature is allowed to refine and finalise the measure. In this design, it may be necessary to define the extent to which an initiative measure can be amended by the legislature. There may also be a limited time period in which the legislature has the opportunity to amend the approved measure.

In including any such checks in the design of initiative processes, consideration must be given to the extent to which they might delay the initiative process. When designing the process, specified time periods in which the legislative and/or court are allowed to deliberate over an initiative or propose an alternative measure may be useful to prevent the initiative process taking several years to complete.

Part 3   Options when considering adoption of the citizens' initiative mechanism: Key issues relating to administration

Introduction

There are a number of important administrative considerations in the citizen initiative process. These can be loosely grouped into three key stages; filing the initiative; the circulation of the initiative; and the ballot stage.

Filing an initiative

Filing an initiative is often a simple process. Typically, all that may be required is a description of the proposed initiative, and the signatures of a small number of registered voters (for example, 15-100 signatures). Once this has been checked, the initiative qualifies for circulation stage, which means that it can be presented to voters as a petition for them to support. However, before an initiative can actually be circulated, there may be additional administrative requirements; for example, an initiative

will need to be translated into other languages, and the meaning in each language checked to ensure that it is the same.

Depending on the design of the initiative process, some jurisdictions might also undertake more significant checks at this stage. In some American states, an initiative can be rejected at filing stage if it attempts to deal with more than one issue. In addition, as outlined above, it may be deemed appropriate to consider the constitutionality of the initiative at filing stage, to ensure that support is not gathered for a measure that is not constitutional.

Agreeing the ballot title and summary

A more difficult aspect of the filing process is the need to agree a ballot title and the summary, i.e. the description of the initiative that will be presented to voters at petition and circulation stage. This is critical to proponents of the initiative, in that the precise wording of the summary can significantly affect the chances of its success; indeed, some initiative proponents sometimes file several versions of the same initiative in order to test which version demonstrates greater levels of public support. However, there is also a clear need to ensure that the summary of the initiative accurately reflects the meaning of the proposal. Agreeing the ballot title and summary can therefore be a long and drawn-out process, which may require a court to reach a final decision if the initiative proponents and the administration are not able to agree one.

Overseeing the petition phase

The collection of signatures can be a contentious stage in the citizen initiative process. However, this stage of the process is key to the success of an initiative campaign, in that it determines whether or not the initiative is placed on the ballot at a subsequent election.

Signature collection

Signatures in support of the initiative are usually valid only if they are from individuals on the electoral register in the jurisdiction where the initiative measure is proposed. Invariably, a proportion of the signatures will be invalid (for example, because the signatory is not on the electoral register), and so it is generally assumed that in order to meet a requirement for, say, 150,000 signatures, proponents of the measure will need to gain well in excess of 150,000 signatures in order to ensure that they meet the target of 150,000 *valid* signatures.

In the United States, where signature collection in the citizen initiative process is a common feature of state politics, there has been much controversy about whether there should be any controls on signature collection. It has been argued that it goes against the nature of direct democracy to allow paid signature collections or professional initiative firms to manage the collection of signatures, and that well-funded campaign groups will be more likely to meet the signature requirements because they have the funds to employ professionals.

Various restrictions can be imposed to try to minimise the influence of paid signature collectors if it is considered that the professionalisation of the process has a negative impact. One option is to ban outright the use of paid signature collectors to gather signatures. Another is to ban payment per signature. Alternatively, it could be a requirement for signature collectors to identify whether or not they are being paid or acting voluntarily.

A further issue to consider is how supporters should be required to indicate their support on the petition. In many countries, supporters will be required to sign their name under a statement of support for the initiative measure. It might also be necessary for the signature gatherer to sign alongside, to verify that the supporter has indicated their support. However, in less developed countries, or areas where illiteracy may be commonplace, a thumb print might be an acceptable indication of support. Whichever method is chosen, the most important criteria are that firstly, the process is easy to understand and clear (to prevent the rejection of support because forms have not been properly completed) and secondly, there is a means of verifying the support indicated in the petition.

Signature verification

It is important that a transparent system of signature verification is in place. Verification of signatures (or otherwise) might take place at one central point within the jurisdiction of the official in question, or at various localities, with the main administration in the jurisdiction co-ordinating and collating the verification procedure.

Depending on the number of signatures required in order for the initiative measure to qualify for the ballot, it is unlikely that it will be feasible to check all the signatures collected by proponents of the initiative. Most countries and states will therefore opt to verify a random selection of the support indicated in the petition. Where this is the case, the basis on which signatures are selected should be clear.

It is also important that the organisation responsible for verifying the signatures is seen as impartial.

Campaigning at the ballot stage

Once the initiative measure qualifies for a vote, the administrative issues created will be similar to those involved in running an election or referendum; the initiative vote is, in effect, a type of referendum, in which voters vote yes or no to a particular issue. Whilst some of the issues will be familiar, there are key issues specific to an initiative process.

Financial controls on campaigners

Controls on campaigning at the ballot stage may to be similar to controls on candidates and parties at elections. Democracies that limit expenditure at candidate/party elections as a means to try to ensure a 'fair' campaign

may take a similar view in relation to other types of vote, whilst those that do not have a tradition of regulating campaigners at elections are less likely to impose them. There are arguments in favour of and against imposing campaign controls, but in the context of the initiative process, consideration needs to be given to the practicalities of administering the controls; if, for example, there are a number of initiatives on the same ballot, it might be difficult to register and monitor the expenditure of each group campaigning for or against every initiative on the ballot.

If it is decided that controls are appropriate, different types of financial controls might be imposed.   Campaign groups might be subject to controls limiting the amount of money that can be spent on campaigning, or restricting the level or sources of private contributions that can be accepted for the purpose of the campaign; in addition, disclosure of expenditure and contributions may apply after the initiative vote takes place. In contrast, an alternative approach is to leave the campaign unregulated, allowing all campaigners the opportunity to spend as much money as they can raise.

Voter information

One interesting feature of many initiative processes is the level and format of information provided to the electorate about the initiative measures on a ballot. In addition to the partisan campaign information inevitably produced by proponents and people opposed to initiative measures, many administrations also produce a mixed information document in order to provide a balanced source of information for voters. The information booklet produced by the US state of Oregon, for example, provides space for yes/no campaigners for each measure to include a one-page advertisement outlining their case, but also includes a neutral analysis of the initiative as interpreted by the state. The booklet is distributed to every household in the state. In addition, state/authority websites might include an indication of whether the administration is in favour of or opposed to the measure. For many voters, these information booklets are the biggest single source of information about initiative measures, and are extremely influential.