

## Referenda and Citizen Initiatives

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### Tool summary

Democracy, as Winston Churchill, the Prime Minister of Great Britain said in 1947, is the worst form of government, except for all the others that have been tried. This may be the reason why, in countries around the world, new instruments to give citizens a stronger voice are being developed, adapted, and implemented. They can be found in countries with long democratic traditions, such as Switzerland and the United States of America and in countries where democracy is still trying to get a foothold, such as Zambia, Thailand, and Guatemala. But their purpose is the same i.e. to give citizens the power to influence and change government policies and practices at the local, regional, and national levels, through public debate coupled with direct democratic tools. These tools can take on different forms, depending on local needs and democratic experiences. But in this section, we will cover two primary direct democracy mechanisms: government-triggered referenda and citizen initiatives.

### What is it?

**Government-initiated referenda:** There are two principal types of government referenda. One is consultative and non-binding, sometimes called a plebiscite, and is used by a government to take the pulse of the electorate on a difficult or sensitive issue. The other is legally binding, as set out by law or the constitution. Either way, they are procedures which give the electorate a direct vote on a specific political, social, economic, or constitutional issue.

Referenda are conducted when the government decides to call for a vote on a particular issue, even when it is not obliged to do so. Such optional referenda might be initiated by the executive, by a majority in the legislature, or in some instances, by a minority in the legislature. They also take place when such a vote is required by law, such as an amendment to the constitution. More countries have government-initiated referenda than citizen-initiated referenda.

**Citizen-initiated referenda:** This is a legally provisioned procedure which allows citizens to initiate referenda on a wide range of social, economic and political issues, and can deal with legislative proposals or existing laws. It requires them to collect enough signatures from voters to signify a basic level of support for or against a particular proposal. One version, the abrogative referendum, allows repeal of an existing law or parts thereof. The other, the rejective referendum,

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allows citizens to demand a popular vote on a new piece of legislation that is not yet in force. The basic common feature of these instruments is that citizens are entitled to act on political or legislative issues by presenting proposals, and can themselves initiate the procedure for a vote of the electorate. These are to be distinguished from an agenda initiative, which too allows for proposals to be formally presented to the legislature or other governmental authorities, but does not lead to a popular vote.

### How is it done?

The process for a government-initiated referendum is set out by the law, and generally requires a period of time before the vote to allow for an information campaign. An information campaign is critical for the legitimacy of the vote, and it should be accompanied by government funding for the preparation and distribution of materials, fully explaining the issue. Sometimes it requires the creation of two umbrella committees to champion each side of the question, such as in the Canadian province of Quebec, where the provincial government put its proposal for Quebec sovereignty to a referendum in 1995 which was defeated. On rare occasions, there are multiple choices, such as in Sweden in 1980, where there were three alternative answers to a question on nuclear power, and in Australia when the government offered four options for a plebiscite in 1977 to choose the National Anthem.

Even for citizen-initiated referenda, the rules are spelled out by the law. It is important that they are clear and transparent, with specific administrative responsibilities assigned to the proper authorities, be it the president, a legislative committee, an agency, or an elections' office. Laws governing citizen initiatives generally include as a first step, the provision to verify the legality or constitutionality of the proposal. It is crucial at this stage that government officials interact with the initiators of the proposal in fairness and good faith, to avoid any appearance of political manoeuvring. Of course, even before that, it is essential that there is public knowledge about the direct democracy tool and how to initiate it.

Step-by-step guidelines for citizen initiatives:

1. *The idea*: It takes a group of citizens or an organization that wants to address a certain social or political problem to formulate a proposal, be it for an entirely new policy or legislative idea or in reaction to a government law. This non-official phase requires numerous meetings and discussion of strategies, and agreement on the proposal and question to be put forward.
2. *The organization*: In order to register a citizen-initiated vote, most countries require that concerned citizens create a *designated committee*, which needs to fulfill certain conditions. It is important because this group of individuals or

organization will be the legal body responsible for dealing with the authorities and other actors during subsequent steps.

3. *The proposal:* The committee must agree on a text (with translations, as needed) of the proposal. One of the pre-conditions for registering a citizen-initiated proposal in most jurisdictions is the formulation of a legally and/or constitutionally acceptable text for the proposal and the whole process to follow, with the relevant authorities. In addition to the proposed legal text, the committee must also agree on a title for the proposal that clearly conveys its political purpose.
4. *Registration:* Formal registration of the proposal with the authorities usually also involves the formal registration of the designated committee, thereby assigning it certain duties and rights. Such a step brings new responsibilities, including political ones.
5. *Publication:* Signature gathering officially begins after the publication of the proposal in an official gazette.
6. *The signature-gathering process:* It has to consider certain rules, options and limitations. Signature by hand is still the most common method to formally support a proposal. In some countries, it is explicitly forbidden to use paid signature gatherers for this work.
7. *Submission of signatures:* Submitting sufficient number of signatures is a major step in each citizen-initiated procedure as it signals the point at which the issue of the few becomes an issue of the many. At this moment, the initiative committee must be sure that the required threshold of signatures (and any additional requirements) has been met.
8. *Validation:* The authorities check the eligibility and validity of the delivered signatures. Different methods of validation are used. In some jurisdictions, a sampling procedure is used to validate signatures while in others, every signature must be checked.
9. *Verification:* After fulfilling the validity check, the demand may be verified and be deemed qualified for the vote. For the demand committee, this means a new and even more challenging role, as it will have to interact with authorities, media, and critics of their proposal in a more serious way than before verification. A verified initiative sometimes also qualifies for additional support and services provided by the authorities.
10. *Legal or constitutional checks* by designated authorities may take place at several points during the process. These checks may occur after registration, after the required number of citizen signatures are collected, prior to a citizen vote, or after an initiative is passed.
11. *Interaction:* Once the proposal becomes an “official” matter, the legislative or governmental body may have the right to put an alternative proposal on the ballot and to give recommendations. As an element of interaction, the designated committee may have the right to withdraw their initiative in order to find a compromise.

12. *Certification*: It is now up to the specified authority to determine that the citizen- initiated referendum has qualified for a ballot decision in terms of time, final rules, campaign assistance etc.
13. *Campaign*: Campaign regulations for free and fair procedures may be applicable. This step is critical in ensuring the public is sufficiently well-informed to make a free and fair decision.
14. *Voting*: Voting may take different forms such as ballot, remote and e-voting and can span a period of several days or weeks. During the voting phase, specific rules may apply for the various actors. These rules can include a prohibition of all campaigning activities during a specified time, typically in the final 24 or 48 hours before the commencement of voting.
15. *Appeal*: In the case of irregularities brought forward by the committee or the authorities, an appeal procedure may become necessary. Otherwise, the decision of voters is final.
16. *Implementation*: To implement the voters' decision and to deal with any possible hurdles, the designated committee may need to remain active. The process of implementing the initiative proposal may be lengthy with the main responsibility for implementation vested with the authorities.

## Benefits

- Regardless of the outcome, the process of developing and submitting a citizens' proposal enriches the democratic process. Whether the proposal concerns a local or a national issue, citizens gain a better understanding of the political process, the role they can play, and the influence they can exert.
- If a proposal is rejected, especially by a narrow margin, the various actors might be persuaded to seek common ground.
- Research in the United States of America suggests that in states that have adopted citizen initiatives, the state government is also more likely to have made changes to improve its overall governance such as by bringing in strict election campaign finance rules and so forth.
- Proponents of this form of direct democracy also argue that the simple fact that citizen initiatives exist helps make governments more responsive.

## Challenges and lessons

- Referendums are costly a proposition, as they require money, time and political attention. Unless there are clear and transparent spending rules, special interest groups and corporate lobbies can abuse and discredit the initiative process. Similarly, attention must also be paid to membership of the

initiative committee, as again, a special interest group can disguise itself as a group of ordinary citizens.

- Critics of citizen initiatives worry about the “tyranny of the majority”, especially when it comes to measures that would threaten or discriminate against minorities.
- In order to improve democratic legitimacy in general, it is *recommended to regulate the use of referendums* in the constitution or through legislation, and to avoid ad hoc decisions particularly in jurisdictions that lack a long democratic tradition and a broad consensus on the democratic rules of the game.
- The *alternatives presented to the voters on each and every issue have to be considered carefully*. The clearest result is obtained when the voters are asked to choose between any two alternatives. If a choice between more than two alternatives is really necessary, a vote where the alternatives are rank-ordered could be applied.
- The *wording of the ballot text* can have an important effect on the result and on its legitimacy. In general, the ballot text should be as precise and clear as possible and should have one goal and one possible interpretation only.
- The process of *organizing referenda and the people responsible for ensuring that voting procedures are carried out in accordance with the law* must be well regulated. In general, in order to avoid deliberate manipulation by the political authorities, good practice is to apply the same rules in national elections and referenda.
- A critical issue to be considered is *when a referendum is judged to have passed*. General rules about turnout and approval quorums have to be made clear much before referendum. In some jurisdictions, a simple majority of votes cast (50% plus) is sufficient. In others, the bar is set higher, say, 60%; or in others still, the law may require both a majority of votes cast PLUS a certain voter participation rate. Although a high turnout is often seen as an indicator of democratic legitimacy, specifying a certain turnout level may not accomplish this goal because it may encourage opponents to abstain.
- The question of whether a referendum is to be considered as binding or only as consultative must also be carefully considered and, if possible, specified in the referendum law. A government that calls a consultative referendum and then ignores the result is open to criticism on democratic grounds. A binding referendum however means that sovereignty has, in effect been transferred to the people.

- Careful consideration has to be given to *how far the rules, norms and principles of good practice are specified* in the law regulating referenda. On the one hand, voluminous regulation which is both detailed and specific may limit flexibility and transparency while on the other, an almost complete absence of regulations may open the door to arbitrariness and even deliberate manipulation. Therefore, finding a middle point between these two extremes is vital.
- *Law related to referenda often restricts the range of subjects that are admissible* for initiative instruments. Provisions for including constitutional amendments must be brought within the ambit of citizen-initiated referenda since as a set of 'fundamental laws', the Constitutions must be based on the consent of the people and therefore should be open for discussion and change by the citizenry.

## Key Resources:

Direct Democracy: The International IDEA Handbook

[http://www.idea.int/publications/direct\\_democracy/index.cfm](http://www.idea.int/publications/direct_democracy/index.cfm)

☞ This Handbook published by International IDEA delves into a global comparison of direct democracy mechanisms, including referendums, citizens' initiatives, agenda initiatives and recall. A detailed look into each of these instruments is discussed in a chapter by chapter analysis of each tool, including comprehensive definitions, how each instrument can be used to shape political decisions and an outline of the steps most often involved in planning any given procedure.

Guide Book to Direct Democracy published by Initiative & Referendum Institute – (IRI) Europe, Germany

<http://www.iri-europe.org/en/publications/guidebooks/>

☞ The IRI "Guidebook to Direct Democracy" (published in English, French, Spanish, German and Chinese) places the Switzerland's long history and experience with political tools for citizen's participation within the European and global contexts, where the rights of political co-decision making are being extended to more and more people in more and more countries.

ACE Encyclopaedia: The Electoral Knowledge Network

<http://aceproject.org/ace-en/focus/direct-democracy>

☞ The web link provides an introduction to the concept and practice of direct democracy and lists several other links on the subject.

Initiative and Referendum Institute, University of Southern California

<http://www.iandrinstitute.org/>

☞ The website of Initiative and Referendum Institute offers a wealth of information in the form of reports and books on Citizen Initiatives and referenda from across the globe

Innovations in Democracy, a project of The Co-Intelligence Institute.

<http://www.democracyinnovations.org/index.html>



- ☞ The website has a virtual library of reports and references related to global A to Z in the area of democracy innovations and best practices.

#### Cultural Initiative for Democracy Participatory, Inc (PDCI)

<http://democraciaparticipativa.net/>

- ☞ PDCI is a non-profit association operating from Miami, Madrid and Caracas comprised of volunteers dedicated to promoting democratic ideals and human rights. Their website, Participatory Democracy Net is a very useful resource on Latin American initiatives in participatory democratic governance and referenda in particular. The website is accessible in several languages including Spanish and English.

<http://democracy.mkolar.org/DDlinks.html>

- ☞ This is a Canadian website with links to democracy initiatives, experiments and organizations dedicated to direct democracy in over 40 countries and around the globe.



## Case studies

*International Institute for Democracy and Electoral Assistance (International IDEA)* has an extensive virtual library of reports and case studies on citizen initiatives and referenda from around the world.

More information is available at: <http://www.idea.int>

*Health Democracy Oregon*: The U.S. state of Oregon is testing a Citizens' Initiative Review process to improve both the quality of proposals and the information made available to voters. It was developed by Health Democracy Oregon, a non-partisan, non-profit organization.

More information available at: <http://www.healthydemocracyoregon.org/>

*Centre for Research on Direct Democracy (c2d)*: Among the various research projects of Centre for Research on Direct Democracy are some very useful studies of direct democracy in Uruguay, a highly active user of citizen initiatives, Costa Rica, and Brazil.

More information available at: <http://www.c2d.ch/>