



INITIATIVES AND REFERENDUMS:

*WHY DO CITIZENS PREFER TO TAKE THE
STREETS IN LATIN AMERICAN
COUNTRIES?*

YANINA WELP
MARÍA LAURA ESCUDER

Funded by:



CHICAGO CENTER ON
DEMOCRACY
THE UNIVERSITY OF CHICAGO

UNDEF



The United Nations
Democracy Fund

INITIATIVES AND REFERENDUMS:

Why Do Citizens Prefer to Take the Streets in Latin American Countries?

YANINA WELP
MARÍA LAURA ESCUDER



**CHICAGO CENTER ON
DEMOCRACY**
THE UNIVERSITY OF CHICAGO

Funded by:



TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	3
INTRODUCTION.....	4
CHALLENGES FOR THE ACTIVATION OF THE DDM IN LATIN AMERICA	7
A REFORM AGENDA TO PREVENT A BLOWOUT	9
1. Clearly defined regulatory framework before the activation of the direct democracy mechanism.....	9
2. Building institutional trust.....	9
3. Open campaigns.....	10
4. Digital identity.....	10
REFERENCES.....	11

EXECUTIVE SUMMARY

We explore why citizens in 21st century Latin America prefer to “take the streets,” while participation mechanisms are mostly a dead letter (described in constitutions but barely used) or an executive weapon (presidents activating referendums to resolve partisan power struggles). The exception to this trend is Uruguay, where citizens do organize to collect signatures and activate referendums. Is the general path due to a lack of knowledge or organizational capacity, or is there another explanation? In this report, we

analyze the role of referendums in Latin American democracies and why it seems that citizens have generally failed to use them as a mechanism for accountability and agenda-setting. First, we explore the context and particularities of Latin American countries to introduce how direct democracy tools are used. Second, we analyze some countries’ experiences in terms of their institutional performance. At last, we suggest a few lines of work to achieve success in the use of Direct Democracy Mechanisms (DDMs).

INTRODUCTION

Popular initiatives and mandatory referendums allow citizens to influence the definition of public affairs beyond the election of authorities. In 2022, in Latin American countries, these mechanisms are regulated in Uruguay (a pioneer on the topic in the region), Costa Rica, Honduras, Ecuador, Bolivia, Peru, Colombia, Venezuela, and Mexico. In addition, all countries in the region have, to a greater or lesser extent, broadened the regulation of –Direct Democracy Mechanisms (DDMs). This is caused by the attribution of competencies to the executive and/or legislative branches and the incorporation of mandatory consultation for ratifying special decisions, such as constitutional reform¹.

There are several classifications of the DDMs, the specific names and characteristics of which vary from case to case. On a general level, a distinction is made according to how the consultation is triggered: by the authorities ("from above," by the president or Congress), by the citizenry or civil society organizations ("from below" or by signature collection), or by legal mandate (mandatory, because it is established by the constitution in predefined situations, usually to ratify constitutional reforms). Besides the actor triggering the vote, it is relevant to consider who writes the final question and other specific requisites such as the

allowable time to collect signatures, in the cases of Citizens Initiated Referendums (CIR). Results can be binding or consultative.

Almost all countries in the region allow their authorities (president and/or congress) to activate popular consultations. A good number also regulate the activation of DDMs by signature collection (including Bolivia, Colombia, Costa Rica, Ecuador, Honduras, Mexico, Peru, Uruguay and Venezuela) and the mandatory referendum (e.g. Bolivia, Ecuador, Panama, Uruguay and Venezuela).

“ Besides the actor triggering the vote, it is relevant to consider *who writes the final question and other specific requisites such as the allowable time to collect signatures*, in the cases of Citizens Initiated Referendums (CIR). ”

However, outcomes of this regulatory change in the countries' region have been erratic, poor, or outright bad. Except for Uruguay, presidents are the players who most frequently appeal to these mechanisms, usually to promote institutional changes that allow them to concentrate power. Meanwhile, citizens have generally not embraced them as a mechanism for accountability and agenda-setting.

¹ For more information on other regions and countries, the Chicago Center on Democracy (University of Chicago) has developed, and will soon publish, a dataset of national referendums from 1960 to present, organized by category, country, results, and other variables. Visit democracy.uchicago.edu for more information.



Table 1: Referendums in 18 Latin American countries (1900-April 2022)

Country	Mechanism			Authorities	Implemented		
	Mandatory Referendum	ICR	Recall		1900-1950	1951-2000	2001-2020
Argentina	No	No	No	Yes*	--	1 (1984)***	--
Bolivia	Yes	Yes	Yes	Yes	1 (1931)***	--	6 (2004, 2006, 2008, 2009, 2016)
Brazil	No	No	No	Yes*	--	2 (1963***, 1993)	1 (2005)
Chile	No	No	No	Yes	1 (1925)***	4 (1978***, 1980***, 1988, 1989)	1 (2020)***
Colombia	No	Yes	No	Yes	--	4 (1957, 1990)***	4 (2003, 2009, 2016, 2018)
Costa Rica	No	Yes	No	Yes	--	--	1 (2007)
Ecuador	No	Yes	Yes	Yes	--	5 (1978***, 1986, 1994, 1995 1997)	6 (2006, 2007, 2008, 2011, 2017, 2018)
El Salvador	No	No	No	No	--	--	--
Guatemala	No	No	No		1 (1935)***	1 (1954)***	--
Honduras	No	Yes	No		--	--	--
Mexico	No	Yes	Yes	Yes	--	--	2 (2021, 2022)
Nicaragua	No	Yes	No	No	--	--	--
Panama	Yes	No	No	No	1 (1940)***	2 (1977, 1983, 1992, 1998)	1 (2006)
Paraguay	Yes	No	No		2 (1938, 1940)***	--	1 (2012)
Peru	Yes*	Yes	No	Yes**	2 (1919, 1939)*	1 (1993)*	(2) 2010, 2018
Dominican Republic	Yes	Yes	No	Yes**	--	--	--
Venezuela	Yes	Yes	Yes	Yes	--	4 (1967, 1999)***	4 (2001, 2003, 2007, 2009)
Uruguay	Yes	Yes	No	Yes	6	13	5 (2003, 2004, 2009, 2014, 2019)



Source: c2d database

Figures indicate the number of issues placed on the ballot. Thus, in cases where several options were submitted to the electorate, the vote was counted singularly (e.g. in Brazil in 1993, monarchy or republic; or in Uruguay on several occasions between options for a constitution).

* Peru regulates the mandatory referendum for constitutional reform but only if the reform is not approved by the voting of two consecutive legislatures.

** In Argentina and Brazil, the president and the congress can initiate it, but the presidential consultation is consultative if it does not have congressional approval. In Uruguay, the president cannot initiate a consultation.

*** Ad hoc, this was not stated in the Constitution, but a legal framework was created to enable the consultation

To address these questions and the impacts on the implementation of the DDM, three virtual conversations were held with experts from different countries, representing the views of academia, civil society and electoral bodies². In each meeting, the trigger was the same: why civil society does not make use of the DDM to propose changes within an institutional framework, and instead prefers direct action (protests, mobilizations, camping, etc)? We also delve into the reasons why, in those countries where the DDMs exist, these do not seem to work, as well as the role of DDMs when people protest in the streets. Uruguay is the exception in the region, where it seems that representative democracy is strengthened by the use of DDMs.

² Recordings of the three webinars are available, respectively, at: vimeo.com/703450412, vimeo.com/731447727, and vimeo.com/731453094.

CHALLENGES FOR THE ACTIVATION OF THE DDM IN LATIN AMERICA

When analyzing the cases, institutional and regulatory designs are a key point. Unclear objectives—with many questions poorly drafted, such as the case of Colombia in 2003; with a plebiscitary purpose of government or presidential acts (e.g. Mexico in 2021); and excessive administrative requirements or little commitment from the elites and political parties (as in the case of Costa Rica in 2007)—limit the scope of these instruments.

In Latin America, in those cases where DMMs are activated, ad-hoc rules apply because they are "unique" situations. This causes the instruments to be highly politicized and personalized. If the DMMs are misused, their effect is de-democratizing, that is, contrary to the purpose of their implementation

An aspect that emerged from the literature review (Altman: 2010; Breuer: 2009; Durán-Martínez: 2012; Kornblith: 2005; Linares and Welp: 2019; Lissidini: 1998 and 2015; Mayorga Ugarte: 2006; Raventós: 2018; Salazar Elena: 2009; Serdült and Welp: 2012; Tuesta Soldevilla and Welp: 2020; The Venice Commission: 2007; ODIHR: 2010) and from the experts' discussions was the resistance to validating the use of a DDM by the executive branch. However, it is necessary to analyze if these are activated to unblock a conflict and this appears as the institutionalized solution. In this sense, it is important that political parties get

involved in activating a DDM. The DDM can strengthen representative democracy and political parties. A cooperative relationship between citizens and trade unions, social movements and political parties should be fostered.

But, what are the biggest challenges for citizens' activation of a DDM? The gathering and authentication of signatures is certainly a challenge, as is access to accurate, timely information and funding for an information campaign. Civil society must be able to express its positions without conditioning. In this sense, can public funds be used to disseminate the initiatives? Some say yes, others argue that it would benefit the government, while regulation is

“

Civil society *must* be able to express its positions *without conditioning*. In this sense, can public funds be used to disseminate the initiatives?

”



diverse and generally incomplete. Further questions arise: in case the DDM is activated by the executive, what would the financing be like? In the case of civil society, who receives it? Who are the spokespersons? Those who organized themselves to activate the DDM? Can the private sector make contributions? Switzerland, as the most prominent global user DDMs, has a particular model in which the government is never allowed to trigger a referendum but does need to offer a voting recommendation (each citizen receives it in paper at home). Promoters do not receive money from the government, and, further, there is no regulation limiting money in campaigns. Some elements could inspire a model for Latin American countries while others should be carefully considered according to contextual variables.

Also, and from a more regulatory point of view, the wording and order of questions play a key role in the instrument's effectiveness.

A REFORM AGENDA TO PREVENT A BLOWOUT

1. **Clearly defined regulatory framework before the activation of the direct democracy mechanism.** There should be a specific regulation for the use of the DDM, in which it should be stated:
 - a. Who can activate the mechanism and how it is carried out. Although there is a broad majority against the DDM being activated by the executive branch, it happens. Therefore, it is very important to set the limits for its activation and define clear rules for its application.
 - b. Who is the electoral management body
 - c. Who is responsible for the wording and order of the questions and which criteria apply, if any
 - d. Who validates the technical and constitutional controls that apply
 - e. How the poll officers and electoral monitors are designated, in case the election is not held in conjunction with a general election
 - f. How the campaigns run
 - g. Financing: how the budget is stipulated, who receives it, and how it is controlled

2. **Building institutional trust.** The DDMs have to be seen as complementary mechanisms for representative democracy: they can help solve institutional impasses that the system cannot solve absent such mechanisms. It requires political leaders who know how to read the outcome and can accept it. Two central issues:
 - a. *Exercising pedagogy*: establishing a clear objective: what is being done, why it is being done and what it is being done for. Perhaps it does not depend so much on who activates it, but on why it is activated. In this sense, if an initiative is activated "from above" it cannot be used to validate a government administration, but rather to settle issues related to the enforcement of rights (or not), conflict resolution, etc. It is necessary that there is enough time for citizens to be informed and to make an informed choice.
 - b. *Straight questions*: The question or questions are presented in a clear manner, without suggesting a certain way of voting.
 1. Clarity in the wording of the question (language that is simple and understandable to the elector)
 2. Each question should address only one issue/decision.
 - c. *Transparency*:
 - i. Towards external electoral monitoring if necessary.

- ii. National electoral monitoring: who monitors citizen-initiated procedures.
Presence of public monitors?
- iii. Electoral registry open to review
- iv. Public scrutiny
- v. Publicity of polling acts with immediate results to guarantee traceability.
- d. *Political elites' commitment to honoring the result*

3. Open campaigns. The success in implementing a DDM is partly due to its campaign. To achieve this goal, important factors include:

- a. Provision of accurate and complete information during the campaign.
- b. Establishing a limited time frame for the campaign.
- c. Establishing a time and space schedule in traditional media such as open TV channels, cable, radios, newspapers (print and digital), billboards, and digital media such as websites, social networks, browsers and cell phone applications.
- d. Establish an ad-hoc task force to detect and fight against false information. This can be done in cooperation with civil society organizations working on the matter.
- e. Establish clear funding criteria for all stakeholders, including an audit report at the end of the process.
 - i. Define who receives the economic contributions and their source.
- f. Personal data protection.

4. Digital identity. In many countries the gathering and certification of signatures is a problem. Consideration could be given to creating a "digital citizen identity"—which could be a code or a fingerprint scan—that would facilitate the gathering, authentication and certification of signatures.

“ The DDMs have to be seen as complementary mechanisms for representative democracy; they *can help* solve institutional impasses, issues that the system cannot solve absent such mechanisms. *It requires political leaders who know how to read the outcome and can accept it.* ”

REFERENCES:

- Altman, David. 2010. "Plebiscitos, referendos e iniciativas populares en América Latina: ¿Mecanismos de control político o políticamente controlados?" *Perfiles Latinoamericanos* 35: 9-34.
- Breuer, Anita. 2009. "The use of government-initiated referendums in Latin America. Towards a theory of referendum causes." *Revista de Ciencia Política* 29(1): 23-55.
- Durán-Martínez, Angélica. 2012. "Presidents, parties and Referenda in Latin America." *Comparative Political Studies* 45(9): 1159-1187.
- European Commission for Democracy through Law (Venice Commission) Code of Good Practice on Referendums, adopted by the Council for Democratic Elections at its 19th meeting (Venice, 16 December 2006) and the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007).
[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)008rev-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)008rev-cor-e)
- Kornblith, Miriam. 2005. "The Referendum in Venezuela: Elections versus Democracy." *Journal of Democracy* 16(1): 124-137.
- Linares, Sebastián y Yanina Welp. 2019. *La Iniciativa Ciudadana de Referéndum: lineamientos para su reforma*. Documento de trabajo N° 14. México: Observatorio de Reformas Políticas en América Latina, IIJ-UNAM, Organización de los Estados Americanos (OEA).
https://reformaspoliticas.org/wp-content/uploads/2019/10/DT-14-Iniciativa-Ciudadana-de-Referendum-_Policy-Paper-_RefPolOEA-1.pdf
- Lissidini, Alicia. 1998. "Una mirada crítica a la democracia directa: el origen y las prácticas de los plebiscitos en Uruguay." *Perfiles Latinoamericanos* 12: 169-200.
- Lissidini, Alicia. 2015. *Democracia directa en América Latina: avances, contradicciones y desafíos*, Disponible en <http://nuso.org/> (visitado el 15 de abril de 2016).
- Mayorga Ugarte, Fernando. 2006. "Referéndum y Asamblea Constituyente: autonomías departamentales en Bolivia", *Colombia Internacional* 64: 50-67.
- Organisation of American States (OAS) Observing Direct Democracy Mechanisms: A Manual for OAS Electoral Observation Missions. 2022.
<http://www.oas.org/es/sap/deco/Pubs/Manuales/OBSERVING-DIRECT-DEMOCRACY-MECHANISMS.pdf>
- Raventós, Ciska. 2018. *Mi corazón dice No. El movimiento de oposición al TLC en Costa Rica*: Editorial UCR.
- Salazar Elena, Rodrigo. 2009. "Bolivia: El referendo", en Welp, Yanina y Serdült, Uwe (Coords.). *Armas de Doble Filo. La participación ciudadana en la encrucijada*. Buenos Aires: Prometeo: 217-237.

Serdült , Uwe y Welp, Yanina. 2012. “Direct Democracy Upside Down.” *Taiwan Journal of Democracy* 8(1): 69-92.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR). *Election Observation Handbook* Sixth edition. 2010. www.osce.org/odihr

Tuesta Soldevilla, Fernando y Welp, Yanina. Coordinadores. 2020. *El Diablo está en los detalles. Referéndum y poder político en América Latina*. Pontificia Universidad Católica del Perú, Fondo Editorial.



CHICAGO CENTER ON
DEMOCRACY
THE UNIVERSITY OF CHICAGO



THE UNIVERSITY OF
CHICAGO

democracy.uchicago.edu
democracy@uchicago.edu
[@uchidemocracy](https://twitter.com/uchidemocracy)