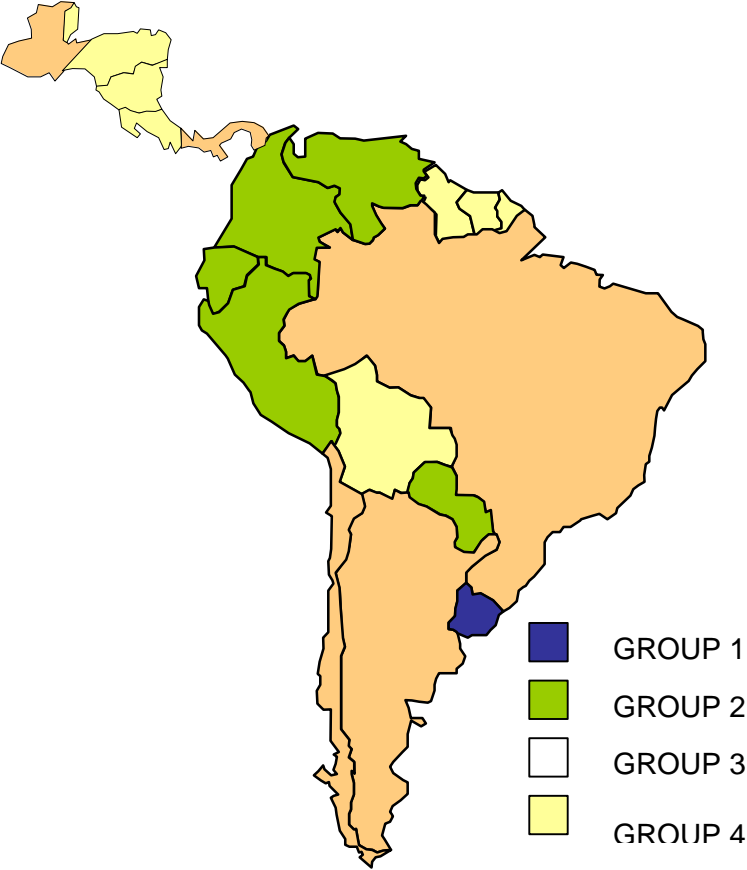


DIRECT DEMOCRACY IN LATIN AMERICA

STATUS OF DIRECT DEMOCRACY IN
LATIN AMERICA

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Mas Democracia is an independent organization in Spain with the objective of extending, strengthening and defending the political freedoms of direct democracy, and specially the initiative and referendum. We are promoting the knowledge and the collaboration with other organizations or individuals acting in those fields. Mas Democracia is a member of democracy international.



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democracy international is a network promoting direct democracy. Our basic goal is the establishment of direct democracy (initiative and referendum) as a complement to representative democracy within the European Union and in the nation states. We also work on the general democratisation of the European Union, democratic reform and more direct and participatory democracy worldwide.

April 2005
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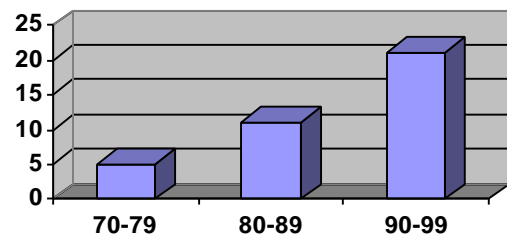
1) INTRODUCTION

A great wave of direct democracy?

The last decades of the twentieth century have seen a spectacular advance of Direct Democracy in many countries of Latin America, not only in respect of the numbers of referendums held (which have doubled in each of the last three decades), but also because of the inclusion of several tools of direct democracy in the national constitutions.

However, a detailed analysis shows the weaknesses in this apparent advance of democracy. As we will see in greater detail, most of the referendums held in Latin America resulted from the initiative of representative institutions (parliament or the executive). Only eight resulted from a popular initiative launched through the collection of voters' signatures, and all of them in a single country: Uruguay. In many cases the referendums were simply aimed at legitimising the power of the representative institution that called them, and in at least six cases they were used by authoritarian regimes with that objective.

REFERENDUMS HELD IN LATIN AMERICA



In reality, the wealth of tools of direct democracy included in some national constitutions contrasts sharply with the lack of experience in their application. In most cases these constitutional provisions have not been developed into legislation.

In addition, the fact that in many cases the result of the referendum is not considered binding reduces the legitimacy of the tool and makes it easier to use it to manipulate the citizens and to turn it into a plebiscitary

instrument for the legitimisation of

power.

A bit of history

We can distinguish two different stages in the transition to democracy in the countries that passed from an authoritarian regime to a democratic one. There was a strong advance of democracy during the eighties which removed most of the military dictatorships which had spread across the continent as a result of the Cold War. This same decade saw a big wave of democratic enthusiasm across the whole continent, during which citizens mainly approved the reinstatement of the democratic institutions.

By contrast, the second stage, during the nineties, has been marked by a strong disappointment with the democratic institutions on the part of the citizens. The economic crisis that has afflicted the continent added force to this perception, but the main reason has been the use of those very democratic institutions to reinforce the power of the various political elites and for the personal enrichment of the people around those elites. In addition, the lack of respect for democracy demonstrated by the political representatives in many of those countries, and the use of political violence to solve the power struggles among the various factions, has reinforced the citizens' disappointment. This questioning of representative democracy throughout the whole continent was reflected in the constitutional reforms affecting many countries, specifically through the introduction of a number of tools of direct democracy in those constitutions.

As a result of this, most of the constitutions reformed during the nineties introduced varying levels of direct democracy. The only country that already had direct democratic rights was Uruguay, which has enjoyed them

since the third decade of the last century.

Another consequence of the lack of trust in the democratic institutions was the coming to power of populist politicians who attributed all evils to representative democracy, such as Fujimori in Peru or Bucaram in Ecuador. As we will see later, the endorsement of direct democracy by those politicians was shown to be hollow when other people tried to use these tools to reduce and control the power of the same politicians.

This, together with the bad design of the tools in most cases (excessive number of signatures required to launch a legislative or constitutional initiative; non-binding referendums etc.), has also raised certain doubts about the validity of direct democracy in Latin America. These arguments are constantly being used by the politicians who control the representative institutions to disqualify direct democracy.

The conclusion is, therefore, bitter-sweet. Several countries have included direct democratic political rights in their constitutions, making those texts some of the most advanced in this respect, but those rights have seldom been applied in practice and they have design flaws which may make them completely unworkable. The only country where the citizens have used direct democracy to influence national legislation is Uruguay, where these liberties have been enjoyed for more than 70 years. The other country where these freedoms have begun to be used, Venezuela, is under an environment of increasing political violence.

We will begin with a small comparative analysis of the state of direct democracy in the continent, which will

allow us to classify each country according to the scope and application of direct-democratic tools. We will then list all the popular referendums held in the continent in the last 30 years and we

will analyse in more detail the only example of actual direct democracy in the continent - in Uruguay - and we will finally offer some conclusions.

2) DIRECT DEMOCRACY – REAL OR ONLY ON PAPER?

A survey of the Latin American constitutions.

Before comparing the constitutional provisions relating to direct democracy in the countries of Latin America¹, we will begin by defining the most important tools of direct democracy used throughout the world.

We consider that direct democracy can be effectively summarised by reference to just two tools: the mandatory referendum for reform of the constitution or certain types of ordinary laws; and the popular initiative, that is to say, the holding of a binding referendum once a certain number of signatures have been collected. This

latter mechanism can be further subdivided depending on what is dealt with by the referendum: the approval of a new law, the derogation of an existing law or the dismissal of an elected representative (termed 'recall' in Anglo-Saxon countries). In addition, we have included the legislative petition, which as a result of the collection of a certain number of signatures forces the parliament to debate the introduction of a new law or the modification of an existing one, but which does not involve the holding of a binding referendum if the parliament refuses to approve the proposed law. We will now examine each of these mechanisms in greater detail:

¹ There are two previous reports in which the Latin American constitutions are analysed in relation to direct democracy:

- Daniel Zобatto Garetto, *Las instituciones de democracia directa a nivel nacional en america Latina: Un balance comparado 1978-2001* Observatorio Electoral Latinoamericano
- Juan Rial, *Instituciones de Democracia Directa en América Latina*, October 2000
- Also, in the article *El sistema representativo y la democracia semidirecta*, published by Dr. Escobar Fornos in the proceedings of the VII Iberoamerican Congress on Constitutional Law, there is a deep review of Latin American constitutions regarding direct democracy.

Legislative Petition: by collecting a specified minimum number of signatures, any citizen can require the parliament to debate a new law, or a change to an existing law. The user-friendliness of this tool depends on the number of signatures required (an excessive number will make it unworkable) and on whether the petition promoters have the possibility of defending the proposal in parliament. However, this tool does not automatically imply the holding of a binding referendum if parliament does not make the proposed legislative changes - this being the reason why its effectiveness in controlling the power of the political elites is practically nil.

Legislative Initiative: the main difference from the previous mechanism is that in this case, if the parliament does not make the legislative changes proposed by the promoters of the initiative, a binding referendum on the proposal is required, in some cases jointly with possible Recall of elected representatives: in this case, after the collection of signatures, a referendum is called to dismiss an elected representative.

Constitutional Initiative: this is a similar mechanism to the legislative initiative, but it is used to propose reforms to the constitution. In some countries, like Uruguay, it is the only type of initiative accepted by the constitution, which means that constitutional reforms are introduced on issues that would more logically be dealt with by ordinary legislation.

Abrogative Referendum: in this case signatures are collected to call a referendum in which a law already approved by the parliament can be

counter-proposals by the legislative assembly. In some North American states parliamentary debate is not required, and once the signatures have been gathered a referendum is automatically called. This is called the Direct Initiative.

rejected. If the referendum is won, the law in question is repealed.

Mandatory Referendum: this is the only tool of direct democracy which does not require the collection of signatures. It provides a guarantee that some or all changes to certain laws (normally constitutional articles) must be approved in a referendum before being implemented. The scope of this tool varies, depending on whether any change to the law triggers a referendum, or only certain provisions.

The table below shows which tools are included in the constitution of each country, the number of the relevant constitutional article and any specific exclusions or restrictions.

COUNTRY	PETITION	INITIATIVE	RECALL	CONSTITUTIONAL INITIATIVE	ABROGATIVE REFERENDUM	MANDATORY AND BINDING REFERENDUM
Argentina	YES Excludes budgetary and fiscal issues, international treaties and penal legislation. Requires the signatures of 3% of the electorate. Art. 39	NO	NO	NO	NO	NO Only the president and the congress can call a referendum, which may be binding or not. Art. 40.

COUNTRY	PETITION	INITIATIVE	RECALL	CONSTITUTIONAL INITIATIVE	ABROGATIVE REFERENDUM	MANDATORY AND BINDING REFERENDUM
Brazil	YES Article 14 establishes the plebiscite, the referendum and the popular initiative, without specifying the modalities. Art. 61/2 specifies 1% of the voters in at least five regions.	NO	NO	NO	NO	NO Art. 49 allows the congress to call referendums and plebiscites, but without mentioning whether they are binding or not.
Chile	NO	NO	NO	NO	NO	NO Only for constitutional reforms in case of disagreement between the congress and the president Art. 117. Art. 5 establishes the plebiscite. Art. 32 indicates that it is a prerogative of the president, and Art. 119 fixes the steps of the process.

COUNTRY	PETITION	INITIATIVE	RECALL	CONSTITUTIONAL INITIATIVE	ABROGATIVE REFERENDUM	MANDATORY AND BINDING REFERENDUM
Colombia	YES Art. 155 allows 5% of the voters to send an initiative to congress, but it does not imply the automatic calling of a referendum .	YES If the legislative petition has been rejected by the Parliament, 10% of voters can request a referendum (excluding issues related with taxes, government budget, and international affairs.	YES Art. 40 and 103 recognise the right to the recall of elected representatives, but it does not elaborate the procedure . According art. 64 of Law 134, 40% of the votes casted to elect a representative can request his/her recall. It is required a majority of 60%.	NO According to Arts. 155 and 375, 5% of voters can propose reforms to the constitution, but there is no obligation to hold a referendum.	YES According to Art. 170, 10% of voters can call an abrogative referendum. A quorum of 25% of the electorate is required. Budgetary, fiscal and international issues are explicitly excluded.	YES, but only for civil rights and the mechanisms of popular participation, if it is demanded by 5% of the electorate (Art. 377). The president or the congress CAN call a referendum in case of constitutional reform. A quorum of 25% of the electorate is required (Art. 378)
Ecuador	YES Signatures of 0.25% of the electorate are required. Budgetary issues are excluded. Art. 146	YES Signatures of 8% of the electorate required to submit to referendum issues of significant importance , excluding constitutional reforms. Art. 105	YES Only for provincial deputies. Signatures of 30% of electorate required. Arts. 109 & 110.	NO 1% of electorate can propose constitutional reforms, but it does not imply the calling of a referendum. (Art. 281)	NO	NO Congress or the president can call a referendum, but it is not mandatory. Art. 283

COUNTRY	PETITION	INITIATIVE	RECALL	CONSTITUTIONAL INITIATIVE	ABROGATIVE REFERENDUM	MANDATORY AND BINDING REFERENDUM
Guatemala	NO	NO	NO	NO	NO	YES Only for reforms not discussed by a constitutional convention. Art. 280
Panama	NO	NO	NO	NO	NO	YES Only issues relating to the status of the Panama Canal (Art. 319). It is one of the means of reforming the constitution. Art. 283
Peru	YES Recognised by Articles 31 and 107. However, its use is not regulated.	YES According to Article 32, legislative initiatives can be submitted to a referendum. However, its use is not regulated.	YES Article 31 recognises the right to recall elected representatives, but its use is not determined. However, Article 32 does not include the recall among the issues which can be submitted to a referendum.	YES It can be triggered by the signatures of 0.3% of the electorate. Art. 206	NO	YES Except when the reform has been approved by the deputies of two consecutive legislative terms. Art. 206

COUNTRY	PETITION	INITIATIVE	RECALL	CONSTITUTIONAL INITIATIVE	ABROGATIVE REFERENDUM	MANDATORY AND BINDING REFERENDUM
Uruguay	NO	NO Not in practice. Article 79 guarantees the right to legislative initiative, but it has never been applied, and it could contradict other articles of the constitution (Arts. 85.6, 86, 133)	NO	YES Article 331 requires signatures of 10% of the electorate and a 35% quorum.	YES Article 79 requires the signatures of 25% of the electorate. Fiscal matters are excluded.	YES Art. 331 of the constitution.

COUNTRY	PETITION	INITIATIVE	RECALL	CONSTITUTIONAL INITIATIVE	ABROGATIVE REFERENDUM	MANDATORY AND BINDING REFERENDUM
Venezuela	YES Article 204 recognises the right to legislative petition if 0.1% of the electorate requests it.	YES Article 71 allows the submission to referendum of any question of national interest if 10% of the electorate demands it. Article 73 mentions the right to submit a law to referendum if 2/3 of the congress requests it, without mentioning the popular initiative. This article also allows international questions to be put to referendum if demanded by 15% of the electorate.	YES Article 70 recognises this right, and no. 72 fixes as a requirement the collection of signatures of 20% of the census. The recall will be accepted if the number of votes favouring it is higher than the number obtained by the representative in the last elections, and a quorum of 25% of census.	YES Article 70 recognises this right and no. 341 regulates it, requiring the signatures of 15% of the census. SI	YES Article 74 allows the call of an abrogative referendum from the initiative of 10% of the census, and 5% of the census to repeal laws decreed by the president. It's required a quorum of 40% and budgetary, fiscal, human rights and international treaties issues are excluded.	YES Article 344 makes mandatory to submit to referendum any constitutional reform.
El Salvador	NO	NO	NO	NO	NO	YES But only in case of union with another Central American republic.

COUNTRY	PETITION	INITIATIVE	RECALL	CONSTITUTIONAL INITIATIVE	ABROGATIVE REFERENDUM	MANDATORY AND BINDING REFERENDUM
Nicaragua	YES From 5000 signatures (art. 140.4) , excluding organic laws, taxes, international treaties and amnesties.	NO 50000 citizens can request a referendum , but it should be approved by the Parliament. Also, the referendum is not binding.	NO	NO	NO	NO The parliament can consult the reform through a referendum, but it is no mandatory.
Paraguay	YES Article 123 recognises this right. Its regulation will be established by a specific law.	NO Article 123 does not require the calling of a referendum for legislative initiatives. Also, Art. 121 mentions that referendums do not need to be binding, and Art. 122 excludes issues of international relationships, expropriations, fiscal and budgetary issues, etc.	NO	YES According to Article 290, a reform can be demanded by 30,000 voters,	NO	YES Article 290 makes mandatory the calling of a referendum to approve constitutional reforms.
Bolivia	NO	NO	NO	NO	NO	NO
Costa Rica	NO	NO	NO	NO	NO	NO
Honduras	NO	NO	NO	NO	NO	NO
Mexico	NO	NO	NO	NO	NO	NO

COUNTRY	PETITION	INITIATIVE	RECALL	CONSTITUTIONAL INITIATIVE	ABROGATIVE REFERENDUM	MANDATORY AND BINDING REFERENDUM
Dominican Republic	NO	NO	NO	NO	NO	NO

It is important to note that only in three cases have the direct-democratic provisions included in the constitution been developed into a formal law. These are the cases of Uruguay (electoral law), Colombia (participation law) and Guatemala (electoral law). In the case of Venezuela, the constitutional articles are quite specific regarding the implementation of these tools, so that they can be applied even without further legislative development.

Based on the data shown in the previous table we are proposing a classification of the countries of Latin America based on the scope and depth of the measures of direct democracy included in their constitutions, as well as on their experience in the application of these measures in each country. For this purpose, we assume that a country

possesses genuine tools of direct democracy when it is possible, by means of a popular initiative launched through the collection of signatures, to call a binding referendum to propose a legislative change or the recall of an elected representative. In other words, when a country only has the right to legislative petition (that is, without the obligation to call a binding referendum) or the right to the mandatory referendum for constitutional reforms, we will rate the mechanisms of direct democracy as minimal.

In addition, we have considered the experience of the practical application of the tools of direct democracy that lead to a binding referendum. Using these premises, we have divided the different countries into four groups:

GROUP 1	GROUP 2	GROUP 3	GROUP 4
Countries with direct- democratic tools and with experience in their application.	Countries with direct- democratic tools but without experience in their application.	Countries with referendum mechanisms, but without the option of the citizens' initiative.	Countries without any type of direct-democratic tools.
URUGUAY	VENEZUELA COLOMBIA PERU ECUADOR PARAGUAY	ARGENTINA BRAZIL GUATEMALA PANAMA EL SALVADOR CHILE	NICARAGUA BOLIVIA COSTA RICA HONDURAS MEXICO DOMINICAN REP.

Let us now analyse the first two groups in greater detail

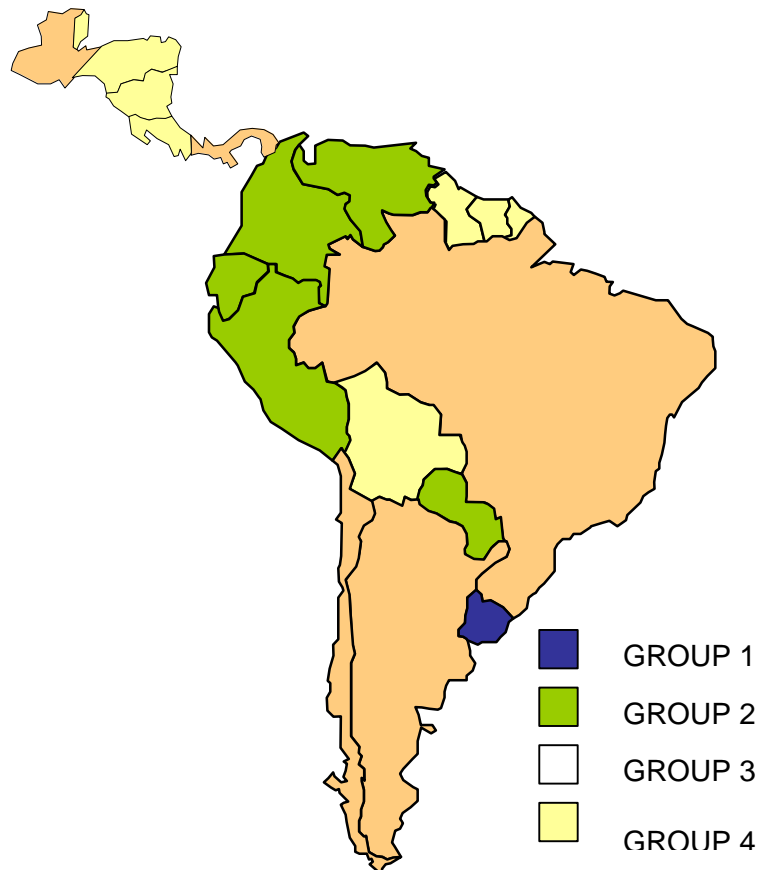
GROUP 1:

The only country included in this group is Uruguay, since it is the only place in the whole region where binding referenda have been called arising from the collection of voters' signatures. As we will see later, eight referenda have been held which were triggered by a popular initiative. Of those, three were abrogative referenda and the rest were constitutional reforms.

Although the number of referenda held in some countries, such as Ecuador, is also quite high, they have not been included in this group because none of them arose from a popular initiative, but were triggered by representative institutions such as the legislative or the executive branches.

Due to the importance of the Uruguayan experience, a specific section has been dedicated to describing this model in more detail. It will be sufficient to mention here, therefore, that although the Uruguayan

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constitution includes fewer mechanisms of direct democracy than some other Latin American countries (it only provides for the abrogative referendum and the popular initiative for constitutional reform), it is the only country where those tools have been applied.

GROUP 2:

Taking into account only the constitutional provisions included in some of the countries of this group, we have here some of the more advanced semi-direct democracies in the world. However, when we review the list of

referenda held in the last thirty years in those countries, we find that many of the mechanisms have not been applied up to now, at least in respect of those referenda triggered by the collection of voters' signatures.

It is a fact that in most cases these mechanisms have only been included in the constitutions in recent years, so it could be that this is the reason why those mechanisms have not yet been worked up into a specific law. However, the design flaws revealed in many of the provisions (for instance, not making clear the binding nature of the referenda, or requiring a disproportionate number of signatures to launch an initiative) make us pessimistic about the possibility of these provisions being effectively applied in the short term.

The case of Venezuela is especially important, due to the wealth of direct democratic tools included in her constitution. In addition to the right of legislative petition and the mandatory request to call a binding referendum in the case of any constitutional reform, the Venezuelan constitution includes all the other mechanisms of direct democracy that we have mentioned previously.

However, both the small amount of time that has passed since the approval of the new constitution in 1999, and the climate of political violence that the country has suffered after the accession of President Chavez to executive power, make us doubt whether those direct-democratic tools included in the constitution will be consistently applied in the future. Nonetheless, the Venezuelan constitution is one of the most advanced in the world in terms of direct democracy.

Although the constitution does not make specific provision for the legislative initiative, Article 71 allows the calling of a referendum on any question of national interest with the signatures of 10% of the voters. Since the article is not specific, we presume that those questions of national interest include the approval of new laws or

legislative reforms considered important by the citizens.

However, the number of signatures required to launch each of these tools is too large to be practical. The requirement that at least 20% of the electorate must give their signatures in order to trigger the recall of an elected representative is disproportionate; it means that only those groups which already possess the capability of mobilising large numbers of people or which are economically powerful will be able to trigger the process - as is being demonstrated by the recall process to dismiss President Chavez which is happening as we write. In other cases, such as the abrogative referendums for presidential legislative decrees, the percentage of signatures required is much more reasonable (5% of the voters).

The fact that the constitutional provisions have not been developed into legislative form is not so important in the Venezuelan case as in the remainder of the countries included in this group. This is because the constitution is, in general, sufficiently specific for the implementation of the mechanisms mentioned here.

Article 73 - which allows the citizens to call a referendum to deal with issues of national sovereignty - deserves a special mention here. If this definition covers the issues of a possible declaration of war and the neutrality of the country, it makes it one of the most democratically advanced provisions included in the constitution of any country, and of special relevance from the point of view of democratic pacifism.

Nevertheless, the climate of political violence from which the country has suffered in recent years has prevented a reasonable application of these mechanisms. As we will see in the conclusions of this study, the absence

of political violence and the strength of the democratic institutions are a necessary precondition for the implementation of direct democracy anywhere, and especially in Latin America. This precondition is absent in the Venezuelan situation.

President Chavez, who acceded to power in December 1999 with ample electoral support² (56.2% of the votes) and who was confirmed in office a year later with an even better result (59.75%), promoted a new constitution which, as well as introducing mechanisms of direct democracy, also increased the presidential character of the Venezuelan state. The new constitution introduced in addition other changes that, in general, strengthened the power of the president. The president obtains more powers and the duration of the presidential term is increased to six years, although a limit of two terms is also included. In addition, a parliament with only one chamber is established, and two new powers are introduced (additional to the three accepted traditionally: legislative, judiciary and executive): the electoral power (an independent electoral commission) and the civic power (through the tools of direct democracy).

The political situation in Venezuela makes it difficult to hope that the advanced tools of direct democracy will be applied in an impartial way. The Armed Forces have been politicised by an initiative of the President. The army can deliberate on political issues and it is relatively autonomous in relation to the civilian authorities. Furthermore, it has a growing role in the management of public administration; it is becoming more and more common to find army people in key government positions. It is important also to mention the so-

² Román D. Ortiz. *Venezuela: una revolución en crisis*, Cuadernos Hispanoamericanos, AECI, Madrid, March 2002

called “Bolívar Plans”, through which certain resources are subtracted from the municipal and regional budgets and assigned to the army for the development of public works, health care programs, etc. This politicisation of the army has been resisted in some measure in the armed forces, but it remains an extremely dangerous tool in Latin America. We cannot forget that the continent has just emerged from a period of violent military dictatorships.

In the late 90’s, the Venezuelan economy was under strong pressure. The Venezuelan currency, the Bolívar, had been overvalued in order to contain inflation, avoiding the implementation of unpopular policies. This had caused considerable discontent in the exporting sector and a significant flight of capital. Although the oil bonanza of 1999 and 2000 had enabled this plan to be reasonably well maintained - accompanied by strong investment in social policies and in the redistribution of wealth (expropriation of large estates not properly run etc.) - the fall in the world price of oil, together with the lack of investment in the country has had restrained the recovery of the job market. This led to the Central de Trabajadores de Venezuela (the main union) joining in the protests of the opposition against President Chavez. However, the high oil prices in the last years has reversed the situation. Undoubtedly, this has helped to support the massive increasing in public spending and the rapid expansion of emergency welfare programmes, therefore increasing the popularity of President Chavez.

In the year 2003, the opposition Coordinadora Democrática announced that it had 3.6 million signatures calling for a referendum to recall President Chavez’ mandate³ (a minimum of 2.4

³ *Signed but not sealed*, The Economist, 4 December 2003

million is required). Although international observers were satisfied with the process of the collection of signatures, President Chavez called on his followers to take to the streets to prevent the collection of signatures, which he described as a "mega-fraud". However, his call met with little response. Although the honesty of the opposition during the period of the collection of signatures was questionable, the president's reaction - interfering with a direct-democratic process and appealing to popular violence - raised doubts about his democratic sincerity. Nevertheless, at the end of January 2004, the president announced his acceptance of the results of the referendum. However, the electoral council ruled in February that the opposition was 600,000 signatures short of the 2.4 million required. The court's electoral chamber ruled in March that 876,000 disputed signatures should be counted, unless signatories disavow them. During May 28-30 the doubtful signatures underwent a "repair" process. On June 3, the CNE announced that the opposition had obtained barely a sufficient number of signatures to trigger a referendum.

Finally, the recall was held on 15th August, giving a clear advent age to President Chavez's supporters. 58% of voters refused to recall the president, over 42% for the opposition. International observers, led by Jimmy Carter (a former U.S. president) and Cesar Gaviria (the secretary-general of the Organisation of American States), were quick to endorse the result as fraud-free. Foreign government, including the U.S., swiftly recognised the result.

On August 17th, however, international observers announced that there would be an audit of the vote, following opposition allegations that the electronic voting machines, used for the first time in the referendum, were tampered with. On 7th September,

however, the Carter Center certified that there was no fraud in the use of the voting machines, and therefore the vote was valid.

The constitution of Colombia includes the recall of elected representatives and the abrogative referendum. Nevertheless, this first political freedom has not been developed into a specific law, and the constitution does not indicate the number of signatures required nor the obligation to call a referendum after collection. This makes it impossible to apply this mechanism at the present time. With respect to the abrogative referendum, the number of signatures required (10% of the electorate) makes its practical application very difficult.

On the other hand, the Colombian constitution allows the citizens' initiative for constitutional reform with a moderate number of signatures (5% of the electorate), but it does not specify the holding of a referendum to ratify the reform. This makes this tool completely useless, since the parliament can decide not to do anything about the matter. The same applies to the legislative initiative, which requires the same number of signatures; the constitution does not guarantee a mandatory referendum if parliament does not accept the proposed legislative changes. In both cases, the number of signatures required for the small benefit obtained makes us doubt whether any interest group would be interested in launching such a process.

Finally, the calling of a referendum for constitutional reform is only allowed for very specific issues, and it requires the collection of a relatively high number of signatures.

Colombia is thus a very instructive example of how mechanisms of direct democracy can be included in a constitution with sufficient design flaws to make their real use impossible. This

has been demonstrated by the zero use of these mechanisms since the approval of the present constitution. The only referendum called through the collection of citizen's signatures was an informal one, called by the students' organisation "Septima Papeleta" to trigger the reform of the constitution in March 1990. The exemplary organisation of the referendum, the high turnout and the overwhelming majority in favour of constitutional reform resulted in the Supreme Court judging the result to be binding. Some months later, the president of the republic called a formal referendum which approved the setting up of a constitutional convention, which then drafted the present constitution.

If we look only at the number of referendums held in Ecuador (on five occasions, and on 34 different subjects) it is possible to imagine that we are in a country where Direct Democracy is not only protected constitutionally, but is also put into practice. However, a more detailed analysis shows us that Ecuador is, if anything at all, an example of how the bad design of direct-democratic tools and the lack of honesty in their application can result in the citizens becoming even more alienated and demotivated.

The Ecuadorian constitution permits both the legislative initiative and the recall of elected representatives when a certain number of signatures has been collected (8% of the electorate, in the case of the initiative). Despite this, none of these tools has been used since they were included in the constitution. All the referendums held in the country have been triggered by the initiative of the president of the republic, except for the one which approved the new constitution.

In fact, the experience of Ecuador is a clear instance of using the tools of Direct Democracy not with the aim of ascertaining the citizens' views, but of

strengthening the authority of the executive. The referendums which were held (except for the one approving the constitution) were not binding, and even when the vote went in favour – such as in the 1997 referendum-survey - the new policies were never implemented. We can only hope that the constitutional provisions allowing legislative initiatives and recall will be used in the future.

Peru is another example of a constitution with advanced democratic provisions that have never been applied (except in the referendum to approve the new constitution). In Peru, the introduction of the mechanisms of Direct Democracy also came from populist politicians, in this case President Fujimori, who wanted in the first instance to weaken the institutions of representative democracy.

The Peruvian constitution allows the legislative initiative (although it has not developed the procedures to apply it), the constitutional reform and the mandatory constitutional referendum. In addition, in the case of the initiative for constitutional reform, the number of signatures is very reasonable (only 0.3% of the electorate).

Nevertheless, there is a serious flaw in the design of the recall of elected representatives. Although formally the right to recall elected representatives is allowed (Art. 31), the same constitution specifically excludes the recall from the list of all those subjects that can be submitted to referendum (Art. 32). We believe that an initiative to recall elected representatives that is not launched through the collection of signatures and that does not result in a binding referendum does not deserve the name. We do not know whether this is an inadvertent error in the design of the tools of Direct Democracy or a deliberate attempt to deactivate this political freedom from the beginning

Peru is also an example, as in Ecuador, where a constitution with advanced democratic provisions cannot be applied in practice. Not a single referendum has been called in application of the political rights described above - which is not so surprising if you know who the institutional promoters of Direct Democracy in Peru were. President Fujimori was responsible for a self-coup in 1992 that was followed by a new constitution one year later. Although President Fujimori was re-elected by a sizable majority in 1996, his lack of democratic honesty soon became clear. The Peruvian constitution only allows for the president to serve two consecutive terms of office, which the president's supporters soon tried to oppose. They attempted to avoid the restriction to two terms by means of a Law of Authentic Interpretation of the Constitution, and through intervention in all branches of the state (judiciary, legislative, etc.).

Another example from the time of Fujimori was the attempt to call a referendum on the privatisation of the state-owned oil company, Petroperú. The attempt was resisted in several

ways: arguing that it was a budgetary matter, and therefore excluded from the subjects that can be submitted to referendum; trying to raise the number of signatures to 20% of the electorate. In this case, as in other cases, the Fujimori regime was able to deactivate the use of the tools of direct democracy when it went against its interests. It perhaps goes without saying that the government never tried to develop the provisions of direct democracy included in the constitution through a specific law. This is the reason why, even after Fujimori's fall from power, Peru remains a semi-direct democracy only on paper.

Finally, Paraguay has no practical experience in the application of the measures of direct democracy included in its constitution. This provides for the initiative to change the constitution (30,000 signatures - a reasonable proportion of the electorate), as well as the mandatory referendum for constitutional reform. However, not a single referendum has been held in the last thirty years. The constitutional provisions have not been elaborated into a specific law.

3) REFERENDUMS HELD SINCE 1970

The table below⁴ shows the 39 referendums held in Latin America since 1970. Most of them (19) dealt with constitutional reform or the approval of a new constitution. Five of these arose from a citizens' initiative launched through the collection of signatures, all of them in Uruguay. In addition, another three referendums arose from a popular initiative, all of them abrogative referendums in

Uruguay. Most of the 17 remaining referendums were not binding.

Of those 39 referendums, 16 were triggered by the executive. Another 15 were agreements by the political class for constitutional reform and only eight were initiated through the collection of signatures, all of them in Uruguay. At least six of these referendums were attempts at the legitimisation of authoritarian regimes, called by ex-presidents Fujimori in Peru and Noriega in Panama, and by the military juntas of Chile and Uruguay.

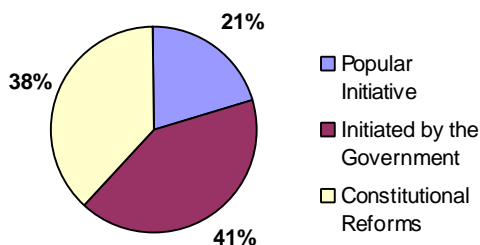
⁴ The main source consulted for this table is the *Direct Democracy DataBase*, Centre D'études et de documentation sur la démocratie directe, Université de Genève

In addition, there have been some informal referendums, some with great influence on political events. This was the case in Colombia in March of 1990, where a referendum was called by the students' organisation "Septima Papeleta" to bring about the reform of the constitution. The high turnout and the overwhelming majority favouring constitutional reform led to the Supreme Court declaring the result binding. Some months later, the

president of the republic called a formal referendum which approved the setting up of a constitutional convention, which wrote the present constitution.

Another example of an informal referendum with significant repercussions is the one held in Brazil in 2000 on the continuation of the agreements with the IMF and payment of the external debt. In this instance, the citizens rejected the proposal.

**ORIGINS OF REFERENDA
IN LATIN AMERICA**



COUNTRY	DATE	ISSUE	RESULT	COMMENTS
Argentina	Nov. 84	Laudo Beagle	Approved	Not binding
Brazil	Apr. 93	Monarchy or republic	Republic	Binding
Brazil	Apr. 93	Parliamentarian or presidential government	Presidential government approved	Binding
Bolivia	Jun. 86	Several economic measures.	Rejected	Economic measures promoted by government to fight against hyperinflation.
Colombia	Dec. 90	Constitutional reform	Approved	Consultation pushed by the president after the Supreme Court ruled that the informal referendum called by the students' movement "septima papeleta" to reform the constitution was binding. At the same time, the representatives for the constitutional assembly were elected.
Colombia	Oct. 97	Support to the peace process	Approved	Initiative of several NGOs and with government support.

COUNTRY	DATE	ISSUE	RESULT	COMMENTS
Chile	Jan. 78	Legitimation of General Pinochet's rule.	Approved	Referendum called by General Pinochet to legitimise his regime, facing international protests due to the human rights violations in Chile. The beginning of the questions tells us everything about its purpose: "In the face of international aggression against the Fatherhood's government, I support General Pinochet in his defence of Chile's dignity..."
Chile	Sep. 80	New constitution	Approved	Referendum legitimising General Pinochet's regime.
Chile	Oct. 88	Extension of the rule of General Pinochet	Rejected	Extension for 8 years of General Pinochet's mandate.
Chile	Jun. 89	Constitutional reform	Approved	
Ecuador	Jan. 78	New constitution	Approved	
Ecuador	Jun. 86	Allowing independent candidates.	Rejected	Not binding
Ecuador	Aug. 94	Consultation survey (several issues)	All approved, except one issue	Not binding, and initiated by the president. The issues submitted to referendum were: Reviewing of the constitution by the parliament. Participation of independent candidates in elections. Administration of the budget by the parliament (rejected) Division of the budget in thematic areas (versus division according provinces) Re-election of elected representatives not restricted. Election of members of parliament in one round. Recognition of double nationality.

COUNTRY	DATE	ISSUE	RESULT	COMMENTS
Ecuador	Nov. 95	Consultation survey (several issues)	All rejected	Not binding. The issues submitted to referendum were: Decentralisation of health authorities. Privatisation of social security. Distribution of expenses among the provinces. Abolition of the right of strike in the public sector. Authority of the president to dissolve parliament. Terms of four years for local authorities. Terms of two years for the congress president Implementation of the reforms in 90 days. Judiciary reform Legal guarantees for civil servants. Appointment of the constitutional court.
Ecuador	May. 97	Consultation survey (several issues)	All approved	Not binding. The issues submitted to referendum were: Dismissal of ex-president Abdala Bucaram Confirmation of new president Fabian Alarcon Creation of a constitutional assembly. Direct election of the constitutional assembly. Limitation of campaign expenses in elections. Modification of candidates lists from the voters. Presidential election in one round. Banning of political parties that don't obtain more than 5% of votes in two consecutive elections. Composition of the supreme court. Responsibility of parliament to select the executives of state-owned companies. Modernisation of the

COUNTRY	DATE	ISSUE	RESULT	COMMENTS
				<p>judiciary. Appointment of judiciary authorities in the supreme court. Dismissal of elected representatives who break the law. Implementation of reforms in 60 days after the referendum. Most of those decisions were not implemented after the referendum.</p>
Guatemala	Jan. 94	Constitutional reform	Approved	
Guatemala	May. 99	Constitutional reform to implement the peace treaties.	Rejected	
Guyana	Jun. 78	Mandatory referendum for certain constitutional reforms.	Approved	Launched by the president.
Panama	Oct. 77	Approval of the Canal Treaty	Approved	Launched by General Torrijos to legitimise the Panama Canal treaty with USA
Panama	Apr. 83	Constitutional reform	Approved	Legitimisation of General Noriega's regime.
Panama	Nov. 92	Constitutional reform	Rejected	
Panama	Aug. 98	Constitutional reform	Rejected	
Peru	Oct. 93	New constitution	Approved	Legitimisation of president Fujimori's regime
Surinam	Sep. 87	New constitution	Approved	Called by the military junta after the coup of 1982
Uruguay	Nov. 71	Limitation of presidential terms.	Rejected	Started by the president.
Uruguay	Nov. 80	New constitution	Rejected	Legitimisation of the military regime
Uruguay	Apr. 89	Repeal of the general amnesty for the military.	Approved	Abrogative referendum that managed to repeal the amnesty for the military.
Uruguay	Nov. 89	Adjustment to old-age pension.	Approved	Constitutional reform launched through popular initiative. The initiative was promoted by the

COUNTRY	DATE	ISSUE	RESULT	COMMENTS
				pensioners union.
Uruguay	Dec. 92	Privatisation of telephone company.	Approved	Abrogative referendum launched through popular initiative.
Uruguay	Aug. 94	Separation of municipal and national elections.	Rejected	Constitutional reform approved by parliament but rejected in the referendum.
Uruguay	Nov. 94	Protection for pensioners.	Approved	Constitutional reform launched by popular initiative promoted by the pensioners union.
Uruguay	Nov. 94	To assure 27% of the budget for education.	Rejected	Constitutional reform promoted through popular initiative by the teachers union.
Uruguay	Dec. 96	Electoral system change.	Approved	Constitutional reform promoted by parliament.
Uruguay	Oct. 99	Banning members of state-owned companies from being candidates.	Rejected	Constitutional reform promoted through popular initiative.
Uruguay	Oct. 99	Setting a percentage of the budget to fund the judiciary.	Rejected	Constitutional reform promoted through popular initiative.
Uruguay	Dec. 03	Repeal of the law on privatisation of the oil company ANCAP	Approved	Abrogative referendum promoted through popular initiative.
Uruguay	Oct. 04	Definition of water as a natural resource essential to life and access to it as a fundamental human right	Approved	Constitutional reform promoted through popular initiative by the Unions and civil society organisations.
Venezuela	Apr. 99	Election of constitutional assembly.	Approved	Start of President Chavez's reforms.
Venezuela	Dec. 99	Constitutional reform	Approved	
Venezuela	Dec. 2000	Re-election of union leaders.	Approved	Only 22% of electorate took part. It was promoted by the parliament.
Venezuela	Aug. 2004	Recall of the president.	Rejected	58% rejected the recall of President Chavez.

4) THE URUGUAYAN CASE

Uruguay is the only example in Latin America where there is a consistent use of the tools of direct democracy recognised by the constitution. Also, it is the only country that has enjoyed these political freedoms for more than 70 years, while in the rest of the countries covered by this report the tools have been included in the constitution only during the last two decades. The only novelty, introduced in 1966, is the abrogative referendum.

The main tools of Direct Democracy available in Uruguay at national level are the obligatory constitutional referendum, the initiative for constitutional reform and the abrogative referendum. In the last two cases, the number of signatures required to launch the process is too high: 10% for constitutional reform and 25% for the abrogation of laws.

Although article 79 of the constitution recognises the right to popular initiative, it has never been applied, and it apparently contradicts other articles of the same constitution which reserve the legislative initiative to the legislative and executive branches (articles 85,6, 86 and 133). Due to the non-existence of the citizens' initiative for regular legislation, the initiative for constitutional reform has been used to introduce legislation that by its nature would correspond to ordinary laws. Six referendums for constitutional reform have been called, of which three have been approved (in 1989 and 1994, in both cases in reference to the rights of pensioners, and in 2004 defining access to water as a fundamental human right).

In addition, three abrogative referendums have been held (on the law of amnesty for the military, on the privatisation of the telephone company and the third, in December 2003, on the privatisation of the oil company

ANCAP), which were all approved by the citizens. In 2001, signatures began to be collected to repeal a law that allowed the privatisation of the telecommunications company ANTEL-ANCEL; the required number of signatures was reached in January 2002. However, despite doubts on the possible unconstitutionality of the initiative (since it affected tributary subjects), the government decided to repeal the law unilaterally.

The national abrogative referendum was regulated in 1989 by a specific law, which was amended in 2000. In the 1989 law, the initiative mechanism was very complex. Basically, after the collection of the signatures of 0.5% of the electorate, the voters were called to a 'pre-referendum' to decide whether the law in question had to be submitted to an abrogative referendum. If a minimum of 25% of the electorate approved this pre-referendum, the definitive referendum was called to repeal the law. If the proposal was rejected in the pre-referendum, a second pre-referendum would be called a year later with the same question. The main disadvantage of this mechanism is the excessive number of popular consultations, which may overburden the citizens. The big plus-point was that the costs of the collection of signatures for the 25% of the electorate required by the constitution were assumed by the state through the pre-referendum⁵.

This law was modified in 2000, increasing from 0.5% to 2% the number of signatures required to call a pre-referendum (which will follow the same procedure as explained above) and allowing as well for the possibility of

⁵ Oscar A. Bottinelli, ***Ocho actos electorales en cuatro años***, El Observador, 21 December 1997

calling the abrogative referendum through the collection of signatures amounting to at least 25% of the electorate (in which case the pre-referendum is not required).

We can see that in Uruguay the popular initiative has been used several times to resist the wave of globalisation that affects the country, mainly with regard to the privatisation of state-owned companies and the protection of the rights of pensioners. We can see also that these initiatives have been successful in five cases (twice in protecting the pensioners and three in preventing the privatisation of state companies); in another case the collection of signatures succeeded in forcing the government to repeal the law unilaterally, in order to prevent a possible defeat in a referendum (the above-mentioned case of ANTEL-ANCEL).

A good example of the use of referendum to fight globalisation is the last referendum held in Uruguay. On 31st November 2004, the voters approved through referendum a constitutional reform that defines water as a public good and guarantees civil society participation at every level of management of the country's water resources.

More than 60% came out in favour of introducing a constitutional clause stating that "water is a natural resource essential to life" and that access to piped water and sanitation services are a "fundamental human right". The referendum was promoted by the National Commission for the Defence of Water and Life, made up of the trade union representing the employees of the state-owned water and sewerage company Obras Sanitarias del Estado (OSE) and several civil society organisations.

According the environmental group Friends of the Earth International, in a

letter that was also signed by 127 organisations from 36 different countries, the referendum "Sets a key precedent for the protection of water worldwide, by enshrining these principles into the national constitution of one country by means of direct democracy". The Spanish companies Uragua and Aguas de la Costa, which have contracts to supply water in the southeastern department of Maldonado, were hit hardest by the reform.

Traditionally the Uruguayan left has supported the use of mechanisms of direct democracy, and it has participated actively in several popular initiatives. The traditional Uruguayan parties (Colorado Party and Blanco Party) have tended, however, to reject the use of the tools of direct democracy on the grounds of its supposed threat to representative democracy. We can see in the Uruguayan case a situation already observed in other countries where direct democracy was implemented many years ago: it is generally an instrument introduced by the left (as happened in Switzerland or the United States), but neutral in its results.

At the present time there is a lively debate about direct democracy in Uruguay, motivated mainly by the assumed fatigue of an electorate which has had to take part in frequent elections. The mechanism used for the holding of abrogative referendums could aggravate this perception of the Uruguayan citizens, but the number of referendums in Uruguay in recent years does not seem to us excessive, if we compare it with other countries. It is not difficult to suspect that this debate is in part being fomented by the traditional political parties, especially the conservatives, which do not feel comfortable with the institutions of direct democracy.

We can conclude that Uruguay is the only country where the institutions of direct democracy are not only included in her constitution but have been applied on several occasions, most of them over the last two decades. Nevertheless, these institutions are limited by several flaws in their design, which makes their application difficult. The most critical problem is the excessive number of signatures required to call both an abrogative referendum and the initiative for constitutional reform, which makes the initiative difficult for those groups that are not powerful enough from an economic or organisational point of view. Due to this reason, all the referendums called until now have been promoted by the political parties or by strong unions.

On the other hand, the complex mechanism required for the abrogative

5) CONCLUSIONS

We can derive from the present study two basic conclusions on the situation of direct democracy in Latin America:

In the last two decades the continent has experienced a wave of constitutional reforms which have brought direct-democratic mechanisms within reach of the citizens of many countries. Practically all constitutions approved or modified during this period have included some of these direct-democratic mechanisms. The practical application of these mechanisms depends not only on a good design in the respective constitutions, but also on the existence of an established democratic state where political violence is absent.

The main premises that we can establish to guarantee the proper use of the tools of direct democracy are the existence of a stable democratic state with an effective political pluralism, as

referendum, which implies in some cases the holding of up to three referendums on only one issue, causes a fatigue in the electorate that represents a danger to direct democracy. In addition, the ambiguity of the constitution with respect to the regular legislative initiative has prevented its practical application until now.

It is possible to hope, nevertheless, that a future reform of these mechanisms to reduce the number of signatures required will result in a more frequent use of these political liberties. The stability and political education of the Uruguayan people, on the other hand, seems to guarantee that these tools will be used in a more practical way in the future.

well as an established freedom of expression and information. On the other hand, this cannot be understood as criteria for direct democracy alone, since these same premises apply to the success of representative democracy in those same countries. We should not forget that many of those mechanisms have been introduced by authoritarian regimes with the sole purpose of attacking representative democracy. Experience shows that those same regimes ignore the very mechanisms of direct democracy that they have established.

As we can see if we analyse the referendums held since 1970, the political elites only apply the mechanisms of direct democracy voluntarily in two instances: when they are sure to win and when they need some kind of extra-parliamentary legitimisation to hold onto their position in their internal fights. Even in these

cases, the decisions confirmed in referendum are often never applied in practice, as has happened in Ecuador.

On the other hand, the level of participation is usually low, which should not surprise us if we consider the lack of democratic honesty of the political elites when they decide to use these mechanisms.

We have also found several cases of bad design of these tools of direct democracy. A promising seed of direct democracy such as that represented by Uruguay can be aborted due to the excessive number of signatures necessary to initiate these mechanisms. In other cases, as in Ecuador, the fact that the referendum is not binding makes it absolutely ineffective. In many other cases (the recall of elected representatives in Peru, or the ordinary legislative initiative in Uruguay) it is the ambiguity of the constitution with regard to these mechanisms which makes its practical application difficult.

The main problem that affects direct democracy in the continent is, nevertheless, the lack of honesty in its use on the part of the political elites. As we have seen in the Venezuelan case, a situation of political violence is also a very important limitation when applying these mechanisms.

Another example of the bad use of direct democracy has been seen in Ecuador, where a weak executive authority used the tools to legitimise its policies, only to ignore the citizens' decisions later on. This use of direct democracy is dangerous not only to itself, but also to democracy in general, and may cause the citizens to distrust all democratic institutions.

However, the examples of the bad use of direct democracy in Latin America are not an argument against direct democracy itself, but against a messy

design of those mechanisms and against a dishonest use of the tools by the political elites. Very similar examples of bad use can be found in respect of the mechanisms of representative democracy, without this being an argument against it.

Latin American and worldwide democrats have reason to congratulate themselves on the advanced tools of direct democracy which have been made available in some constitutions in the continent. We have to work towards the correction of the limitations affecting those tools at the moment (especially reducing the number of signatures required in most cases to launch a direct-democratic procedure) and to hope that political violence and the lack of responsibility of the political elites will not prevent the seed of direct democracy planted in the last years from producing strong and healthy fruit.