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## OBSERVING DIRECT DEMOCRACY MECHANISMS

A MANUAL FOR OAS ELECTORAL  
OBSERVATION MISSIONS



# OBSERVING DIRECT DEMOCRACY MECHANISMS: A MANUAL FOR OAS ELECTORAL OBSERVATION MISSIONS

General Secretariat of the OAS



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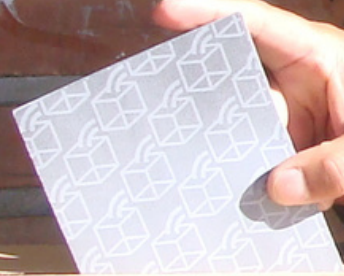
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# 1. FOREWORD

February 2022 marked the 60th anniversary of the electoral observation program of the Organization of American States (OAS). For the last six decades, the OAS has worked consistently to progressively modernize and enhance its electoral observation methods, offering professional, impartial and technically rigorous services to support efforts by OAS member states to improve their electoral institutions and processes.

As a result, the OAS Electoral Observation Missions (EOMs) deployed by the Department of Electoral Cooperation and Observation (DECO) of the Secretariat for Strengthening Democracy (SSD) are recognized as an essential tool for strengthening democracy and protecting human rights.

A key component of the OAS approach to modernizing its EOMs has been the development of methodologies and other technical tools that allow the organization to observe, in a professional and standardized manner, the many complex, and often sensitive areas of the electoral process, that have the capacity to influence the democratic character of elections. Among the methodologies developed by DECO in recent years are tools for observing conditions for the equal participation by men and women in electoral processes; media coverage of electoral campaigns; equity and transparency in political-electoral financing systems; the use of technology in electoral processes; conditions for the equal political participation of indigenous and Afro-descendant peoples; and the observation of electoral justice in electoral processes.

By applying the tools contained in these methodologies, the EOMs deployed in OAS member states are able to work in a highly rigorous, professional, and efficient manner, which, in turn, supports the development of improved recommendations and has contributed significantly to the enhancement of electoral processes throughout the region.

The majority of OAS/EOMs deployed in the hemisphere over the past 60 years have been for elections conducted within the framework of representative democracy. However, as the use of direct democracy mechanisms has grown globally and within the Americas over the past several decades, so too has the OAS increasingly been called upon to observe the implementation of these mechanisms in OAS member states.

DECO has developed a specialized methodology for the observation of direct democracy mechanisms, recognizing that there are differences between these processes and elections to public office. This manual ensures that DECO's observation and assessment of the essential aspects of direct democracy mechanisms adhere to the same technical criteria in all member states and, therefore, facilitate the development of recommendations consistent with the shared principles and standards of the hemisphere as a whole.

With this new publication, the OAS advances its efforts to continually improve and professionalize its EOMs and fulfills its mandate to innovate mechanisms and policies that support and strengthen democracy and democratic institutions in the Americas.

Luis Almagro  
Secretary General

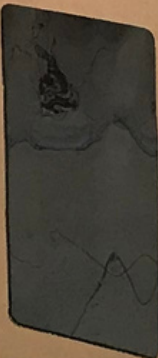


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## 2. ACKNOWLEDGEMENTS

This tool was developed through the contributions of many people and institutions.

Special thanks to the specialists who participated in the experts seminar and the peer review activities (in alphabetical order): David Altman, Alicia Lissidini, Mario Mitre (NDI), Benito Nacif, Sergei Kouznetzov (Venice Commission), Yuri Beltrán and Yanina Welp. Their contributions and technical knowledge were determining elements in the preparation of this document.

We also wish to thank the Swiss Agency for Development and Cooperation, which placed its trust in the professionalism and technical capacity of the General Secretariat of the Organization of American States to develop this observation manual, contributing not only financial resources, but also facilitating practical learning opportunities on the topic of direct democracy for staff members of the Secretariat for Strengthening Democracy and the Department of Electoral Cooperation and Observation.

### 3. INTRODUCTION

The defense and protection of democracy is a fundamental pillar of the work of the Organization of American States (OAS). The Inter-American Democratic Charter recognizes representative democracy and participatory democracy as forms of participation by the peoples of the Americas. Specifically, it establishes that “[i]t is the right and responsibility of all citizens to participate in decisions relating to their own development” and this is “a necessary condition for the full and effective exercise of democracy.”<sup>1</sup>

Bearing this in mind and based on the recognition by OAS member states that “[p]romoting and fostering diverse forms of participation strengthens democracy,”<sup>2</sup> the General Secretariat, through the Department of Electoral Cooperation and Observation of the Secretariat for Strengthening Democracy, has deployed electoral observation missions (EOMs) to observe diverse forms of direct democracy exercises in different countries of the region.<sup>3</sup>

The work of the EOMs is governed by observation methodologies reflected in manuals on basic concepts for observing democratic elections, as well as on specific topics, including electoral justice systems, political financing, and the participation of women, indigenous peoples, and Afro-descendants, among others. These methodologies allow the OAS to establish standardized criteria for issuing recommendations, thereby contributing to improving the region’s electoral systems and processes.

Direct democracy mechanisms—whose chief characteristic for this methodology is that they are implemented by universal vote—are often used in both the region and worldwide. With this in mind, the OAS has observed the regulation and implementation of these mechanisms for the last three decades and has made progress in this area by including specialists on this subject in its electoral observation missions.<sup>4</sup>

In keeping with the ongoing professionalization of electoral observation missions, this manual constitutes a tool for specific and technical observation of the key aspects of direct democracy mechanisms, which have fundamental differences when compared with elections for public office. Thus, in order to ensure an observation process that can be adapted to the different characteristics of these cases, this manual covers specific aspects of direct democracy mechanisms, such as their activation mechanism, the formulation of questions, and the technical and constitutional controls in place in the host country, among others.

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1. Inter-American Democratic Charter, Article 6.

2. Inter-American Democratic Charter, Article 6.

3. Different international and inter-American instruments, such as the Universal Declaration of Human Rights (Article 21.1), the American Declaration of the Rights and Duties of Man (Article 20), the International Covenant on Civil and Political Rights (Article 25.a), and the American Convention on Human Rights (Article 23) recognize that participation in government and the conduct of public affairs may take place through representatives, but also directly.

4. Since 2016, the electoral observation missions deployed to observe direct democracy mechanisms have included specialists on matters inherent to these types of processes.

The manual is divided into four sections. The first offers a conceptual definition of direct democracy mechanisms and categorizes the different existing instruments. The second discusses how direct democracy mechanisms are recognized in different instruments of the Inter-American system, and their uses in the region. The third discusses the observable attributes and conditions of direct democracy mechanisms. Lastly, the fourth provides a methodological framework, and tools for observation and presentation of information in the context of an electoral observation mission deployed for a direct democracy mechanism.



# 4. CONCEPTUAL FRAMEWORK



## 4. CONCEPTUAL FRAMEWORK

### 4.1 DEFINITION AND SCOPE

A review of the literature on this subject shows that, at the time of preparation of this manual, there was no universally accepted definition of direct democracy mechanisms.

This methodology considers that **direct democracy mechanisms are “a set of procedures allowing citizens to make political decisions directly through a vote, without the intervention of a parliament or a government.”**<sup>5</sup>

It is based on the premise that, in the democratic systems established by OAS member states, representative democracy allows citizens to participate in government and political decision-making through the authorities they have elected (through free, fair, competitive, and periodic elections), whereas in direct democracy, decisions do not require intermediaries; instead, citizens vote directly on issues they wish to adopt or those whose implementation they may, possibly, wish to prevent. Since many OAS member states recognize the recall as a direct democracy mechanism, this manual includes these types of exercises, which involve the early removal, by popular vote, of an elected authority.

A necessary condition for the implementation of this observation methodology is universal suffrage and the secret ballot. Therefore, since other types of processes, such as legislative initiatives, participatory budgets, prior consultations, and different rights to petition<sup>6,7</sup> are not implemented through universal suffrage and secret ballot, these types of direct democracy exercises are beyond the scope and mandates of OAS electoral observation missions. These, then, are mechanisms through which citizens decide or express their views on issues or the early removal of an elected authority, directly, through universal suffrage and secret ballot.<sup>8</sup>

Regional experience has shown that, in some cases, States opt to implement direct democracy mechanisms simultaneously with elections to public office. Therefore, this methodology has been designed for implementation in both exclusive direct democracy exercises and in those that combine the two citizen participation mechanisms.

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5. Serdült, U. and Welp, Y. (2012). Direct Democracy Upside Down (Taiwan Journal of Democracy, 8(1)), pp. 69-92.

6. For example, information requests, requests for volunteers, requests for citizen collaboration, public administration participation requests, requests for participation in town hall meetings and similar, accountability requests, requests for participation in agricultural policy, and petitions for the protection of different interests.

7. Inter-American Juridical Committee. (2011). Report of the Inter-American Juridical Committee on Mechanisms of Direct Participation and Strengthening of Representative Democracy.

8. Organization of American States - Department of Electoral Cooperation and Observation (2021). Mecanismos de democracia directa en las Américas: Disposiciones Legales y Usos [Direct Democracy Mechanisms in the Americas: Legal Provisions and Uses] pp. 2-3 (unpublished working document).

Since the terminology and effects of each type of mechanism vary from country to country, in this document, “**direct democracy mechanism**” will be used to refer to plebiscites, referendums, and popular initiatives,<sup>9</sup> among other instruments through which citizens are called upon to express their views at the polls.<sup>10</sup> In any event, regardless of the terms used in this manual, electoral observation missions will use the terminology used in the host country to refer to the direct democracy mechanism in question.

## 4.2 CLASSIFICATION

Direct democracy mechanisms constitute a broad category which incorporate a range of diverse instruments, such as popular initiatives, referendums, plebiscites, and recalls, among others.

There is a wide variety of terms and concepts regarding the different direct democracy mechanisms in the different countries of the region,<sup>11</sup> as well as by whom, how, and why these mechanisms can be activated.<sup>12</sup> Provided below is a classification based on the general characteristics of direct democracy mechanisms. They may be grouped by their activation mechanism, their purpose and their effects:

### ACTIVATION MECHANISM

Some direct democracy mechanisms are **mandatory**, that is, they are implemented based on a constitutional or legal mandate. In such cases, the regulations themselves establish a requirement that, in certain circumstances, in order to promote a reform or adopt a measure, a consultation, referendum, or plebiscite must be held. These types of mechanism are frequently used for ratifying constitutional reforms.<sup>13</sup>

There are also direct democracy mechanisms that are **optional** or elective. The latter in turn may be promoted at the initiative of officials (“top down”) or of citizens (“bottom up”) through the collection of signatures.

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9. In Uruguay, this term refers to consultation mechanisms (which in turn follows the terms used in Switzerland). However, it should not be confused with legislative initiatives or agenda initiatives, in which signatures are collected to present a legislative proposal for debate and possible adoption by the Assembly, Congress, or Parliament.

10. As used in this manual, “citizens” means generally those with the right to vote.

11. Zovatto, D. (2008). Las instituciones de la democracia directa a nivel nacional en América Latina. Balance comparado: 1978-2007, in *Democracia directa en Latinoamérica* (Prometeo libros), p. 255.

12. In any event, terminology may differ based on the definitions and languages of the member states. However, OAS missions use the terminology used by the host State.

13. Tuesta, F. and Welp, Y. (eds.) (2020) *El diablo está en los detalles*, pp. 9-10.

## PURPOSE

Direct democracy mechanisms may also be distinguished by purpose, or the objective in putting a matter to a vote. Here, those presenting proposed reforms (popular initiatives), and consultations regarding the adoption or veto of a law (consultations or referendums), stand out. Another purpose of a direct democracy mechanism may be to recall an elected official. Some frequently cited examples are:<sup>14</sup>

- Proposed reforms of specific wording of a legal text or a specific proposal to repeal existing provisions of that text, such as: Do you approve of constitutional reform to regulate the funding of political organizations?
- A question on the adoption or veto of a more comprehensive reform (that includes more than one matter), such as: Do you approve of the Constitution?
- A question on principles, such as: Are you in favor of introducing a presidential system of government?
- A specific proposal not in the form of an amendment with specific wording, such as: Are you in favor of reducing the number of seats in Parliament from 300 to 200?
- A question on recalling an officer-holder (by popular decision, not by political trial) before the end of the term to which he or she was elected,<sup>15</sup> such as: Are you in favor of recalling ....., Mayor of ...?

## EFFECTS

Regardless of their activation mechanism, direct democracy mechanisms may also be grouped by their effects. Such mechanisms may be consultative or binding. In the first case, the vote is intended to ascertain citizen opinion and does not necessarily have legal effect. On the other hand, binding direct democracy mechanisms establish citizen preference regarding the issue consulted, and it must be reflected in the legal actions (reform, adoption, abrogation) to be taken by the authorities.

There are also hybrid models. For example, in some cases, a direct democracy mechanism of a consultative nature may be activated by the head of the executive branch, and, if it receives the support of the legislature, its results may become binding.<sup>16</sup>

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14. European Commission for Democracy through Law. Updated guidelines for the holding of referendums (CDL-AD(2020)031) ([https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)031-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)031-e)).

15. Inter-American Institute of Human Rights. (2017). Electoral Dictionary, p. 265.

16 *Idem*.

# 5. DIRECT DEMOCRACY IN THE AMERICAS

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## 5. DIRECT DEMOCRACY IN THE AMERICAS

### 5.1 RECOGNITION OF DIRECT DEMOCRACY MECHANISMS IN THE INTER-AMERICAN SYSTEM

Various decisions and judgments of the Inter-American Court of Human Rights (the Court) and the Inter-American Commission on Human Rights have confirmed the application of the American Convention on Human Rights within the framework of direct democracy mechanisms. The Inter-American Democratic Charter also refers expressly to the importance of promoting “diverse forms of participation” as a means of strengthening democracy. These instruments underscore the importance of the complementarity of and striking a balance between representative democracy and participatory democracy.

The Charter recognizes representative democracy and participatory democracy as forms of participation by the peoples of the Americas. Specifically, it establishes that “[i]t is the right and responsibility of all citizens to participate in decisions relating to their own development” and this is “a necessary condition for the full and effective exercise of democracy.”<sup>17</sup>

The Inter-American Court of Human Rights has expressly recognized that, once established in domestic law, the mechanisms of direct democracy become protected as part of the political rights established in Article 23 of the American Convention on Human Rights.<sup>18</sup> In the context of its judgments in this area, the Court has established the existence of a “right to participate actively in the conduct of public affairs directly through referendums, plebiscites or consultations”<sup>19</sup> while emphasizing the essential role of the individual in decision-making on public affairs, to influence the development of public policy through active participation, which allows them to decide directly.<sup>20</sup>

Furthermore, the Court has also held that, even for these types of democratic exercises, it reserves the authority to verify the compatibility of a ratified law or any decision adopted by a direct democracy mechanism, with international law, especially in cases of gross human rights violations, since protecting these rights is an “insurmountable limit on the rule of the majority” in the context of “control of conventionality.”<sup>21</sup>

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17. Inter-American Democratic Charter, Article 6.

18. Inter-American Court of Human Rights (2005). Case of Yatama v. Nicaragua, Series C-127, Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005, pars. 195-196.

19. Inter-American Court of Human Rights (2008). Case of Castañeda Gutman v. United Mexican States, Series C-184, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008, para. 147 and Inter-American Court of Human Rights (2021), Advisory Opinion OC-28/21, La figura de la reelección presidencial indefinida en Sistemas Presidenciales en el contexto del Sistema Interamericano de Derechos Humanos (Interpretación y alcance de los artículos 1, 23, 24 y 32 de la Convención Americana sobre Derechos Humanos, XX de la Declaración Americana de los Derechos y Deberes del Hombre, 3.d de la Carta de la Organización de los Estados Americanos y de la Carta Democrática Interamericana).

20. Inter-American Court of Human Rights (2008). Case of Castañeda Gutman v. United Mexican States, Series C-184, Preliminary objections, merits, reparations and costs. Judgment of August 6, 2008, pars. 145-147.

21. Inter-American Court of Human Rights (2011). Case of Gelman v. Uruguay, Series C-221, Merits and Reparations. Judgment of February 24, 2011, pars. 238-239.

Direct democracy mechanisms, as citizen decision-making exercises, must align with the general standards of democratic elections. To that end, and in compliance with its mandate to contribute to strengthening electoral systems and processes in the region, the Department of Electoral Cooperation and Observation of the Secretariat for Strengthening Democracy deployed observers and specialists for 27 direct democracy mechanisms implemented in the region between 1992 and the first half of 2022.

Since 2016, the aforesaid missions have included specialists specifically dedicated to this topic, as well as experts on electoral organization and election technology, the electoral justice system, and the financing system, among other key matters. This was the first step in recognizing that these types of exercises call for a specialized perspective.

Some OAS/EOM recommendations made regarding direct democracy mechanisms and their use in the region include the establishment of specific rules that comprehensively regulate their implementation. OAS/EOMs have also underscored the importance of assigning a neutral entity, one without manifest interest in the result of the vote, the responsibility for the wording of the questions submitted to the citizens, that those questions conform to formulation parameters (such as clarity and objectivity), and that debate is encouraged in a fair campaign among those promoting the different options submitted to the citizens. The Electoral Good Practices Guide for Strengthening Electoral Processes, published in 2021 by the GS/OAS, also includes recommendations on direct democracy.

As can be seen, judgments issued in the framework of the Inter-American system refer to direct democracy mechanisms and clearly recognize their role in democracy as a mechanism for direct and active citizen participation, in keeping with the mandate established by the Inter-American Democratic Charter.

Lastly, it is important to note that improving the implementation of direct democracy mechanisms has been an aim of other institutions of which OAS member states are members. For example, the European Commission for Democracy through Law,<sup>22</sup> known as the Venice Commission, has progressively adopted guidelines, good practices, and directives applicable to direct democracy mechanisms. These have been updated to 2020.<sup>23</sup> The Commission establishes, among other parameters, the need for such mechanisms to be carried out in accordance with the regulatory framework and with respect for fundamental rights (especially freedom of expression, assembly, and association); provision of objective information on the direct democracy mechanism by an impartial entity; avoidance of any possible influence by officials on the results (including prohibiting the use of public funds); guarantee of equal opportunity for proponents and opponents of initiatives; and equity in access to the media and public forums.

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22. As of January 31, 2022, the Venice Commission had 62 Member States, seven of which are also OAS member states. These are: Brazil, Canada, Chile, Costa Rica, Mexico, Peru, and United States. In addition, Argentina and Uruguay are observers.

23. The first Code of Good Practice on Referendums was adopted in 2007, Code of Good Practice on Referendums (CDL-AD(2007)008rev) ([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)). This was updated in 2018, and then new guidelines were adopted in 2020, Revised guidelines on the holding of referendums (CDL-AD(2020)031) ([https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)031-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)031-e)).

## 5.2 IMPLEMENTATION OF DIRECT DEMOCRACY MECHANISMS IN THE REGION

Since the early 1990s, there has been a steady increase in the use of direct democracy mechanisms.<sup>24</sup> In 2019, however, the number of exercises of this type worldwide (18) was less than half of the number recorded in 2018 (50). In 2020, despite the challenges of the pandemic, 30 direct democracy mechanisms were recorded.<sup>25</sup>

Between 1978 and 2022, 23 of the 34 member states of the Organization of American States<sup>26</sup> held some type of nationwide direct democracy mechanism.<sup>27</sup> From a subregional perspective, 55 national direct democracy mechanism processes were implemented in South America,<sup>28</sup> 13 in the Caribbean,<sup>29</sup> 9 in Central America,<sup>30</sup> and three in North America.<sup>31</sup> It is important to note, however, that on many occasions, the citizenry has been consulted on more than one matter in a single direct democracy process (the ballot paper contained more than one question).<sup>32</sup>

In addition to the above, there is also ample experience in the region at the subnational level, such as the state and local consultations frequently implemented in the United States, and which are also regulated in some countries, especially federal or decentralized consultations.

Experiences in the region have been mixed. A few countries have employed the direct democracy mechanism frequently, while in others, either scant use has been made of it, or nationwide direct democracy mechanisms have never been implemented. However, there are also cases where, despite numerous petitions by citizens for activation of a direct democracy mechanism, it has never been implemented because the requirements have not been met. Only six countries of the region have implemented<sup>33</sup> some type of citizen-initiated direct democracy mechanism at the national level:<sup>34</sup> Bolivia, Colombia, Mexico, Peru, Uruguay, and Venezuela. This reality shows that the relevance of direct democracy mechanisms cannot be measured solely in terms of the exercises actually held, but also in terms of failed attempts, as well as the political consequences of their possible activation.<sup>35</sup>

24. Altman, D. and Sánchez, C. (2021). Citizens at the Polls. *Direct Democracy in the World, 2020* (Taiwan Journal of Democracy, Volume 17, No. 2), pp. 27-48.

25. Ídem.

26. Only active member states have been counted

27. Centre for Research on Direct Democracy (<http://www.c2d.ch>).

28. Argentina (1), Bolivia (5), Brazil (2), Chile (5), Colombia (5), Ecuador (11), Paraguay (1), Peru (3), Uruguay (14) and Venezuela (8).

29. Antigua and Barbuda (1), Bahamas (3), Belize (2), Grenada (2), Guyana (1), Haiti (2), Saint Vincent and the Grenadines (1) and Suriname (1).

30. Costa Rica (3), Guatemala (3) and Panama (4).

31. Canada (1), United States (1) and Mexico (1).

32. For example, in Ecuador, citizens were consulted regarding many completely independent matters in one popular consultation (with a maximum of 17 questions asked in a 1997 consultation).

33. As of April 2022.

34. In other countries, signatures were collected but the processes did not culminate in a vote, such as in Costa Rica and Ecuador.

35. Tuesta F. and Welp. (Eds.) (2020). *El diablo está en los detalles. Referéndum y poder político en América Latina*. PUCP; and Altman, D. and Sanchez (2021). Citizens at the Polls. *Direct Democracy in the World, 2020*. In: *Taiwan Journal of Democracy*, Volume 17, No. 2, pp. 27- 48.

The analysis carried out for this methodology points to a wide variety of experiences and regulations in the region. In some cases, regulation is quite complete and detailed, while in others, it consists of more general provisions that require ad hoc measures for their implementation. It is also important to note that, thus far, there is no universally accepted terminology to refer to the different types of direct democracy mechanisms.

The types of direct democracy mechanism recognized by the Constitution and their effects vary from country to country. For example, most Latin American constitutions provide for the popular initiative, but it is not binding in all of them. Moreover, in some cases, it requires prior participation by another institution (Congress), which decides whether or not the measure is binding.

The forms of referendum also vary significantly in the region: while provision is made for a binding referendum in the regulatory frameworks of most OAS member states (26 of 35), fewer than 10 countries provide for a non-binding referendum. In the case of nationwide recall referendums, these are contemplated in the regulatory framework of six OAS countries.<sup>36</sup> Other differences include the activation mechanisms and requirements, as well as the institutions involved for the oversight, follow-up, and management of the process.<sup>37</sup>

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36. Bolivia, Ecuador, Mexico, Panama, Suriname, and Venezuela.

37. In this regard, Constitutions and legislation recognize the popular initiative, the referendum, the plebiscite, and the recall. The popular initiative (citizen proposal of laws or constitutional reforms) is recognized in 15 countries (Argentina, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela); while the referendum is regulated in 26 States (Antigua and Barbuda, Argentina, Bahamas, Bolivia, Brazil, Canada, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, Honduras, Jamaica, Grenada, Guatemala, Guyana, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Uruguay, and Venezuela). The right to participate in plebiscites is recognized in 12 countries of the region (Brazil, Canada, Colombia, Chile, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Uruguay, and Suriname), while the nationwide recall is regulated in six States (Bolivia, Ecuador, Mexico, Panama, Suriname, and Venezuela). Inter-American Juridical Committee (2011). Report of the Inter-American Juridical Committee on Mechanisms of Direct Participation and Strengthening of Representative Democracy, pp. 5-11.

# OAS ELECTORAL OBSERVATION MISSIONS TO DIRECT DEMOCRACY PROCESSES (1992 - 2022)





## 6. DEMOCRATIC ELECTIONS: ATTRIBUTES AND CONDITIONS

## 6. DEMOCRATIC ELECTIONS: ATTRIBUTES AND CONDITIONS

The Inter-American Democratic Charter establishes that elections are a key component of democracy, and must be “periodic, free, and fair [and] based on secret balloting and universal suffrage as an expression of the sovereignty of the people... .”<sup>38</sup> Every electoral process, whether the election of authorities or a direct democracy mechanism, must be implemented in accordance with international standards and best practices in the area.

The Methods for Electoral Observation: A Manual for OAS Electoral Observation Missions<sup>39</sup> establishes a concept of democratic elections based on the fundamental rights set forth in the legal instruments of the Inter-American system. Accordingly, they must have four basic attributes:

- Elections must be **inclusive**, meaning all citizens eligible under national law to exercise the right to vote must be effectively able to do so, so that there is equitable universal suffrage and effective exercise of the right to vote;
- Elections must be **clean**, an element that must be reflected in the integrity and the accurate recording of each voter’s preferences;
- Elections must be **competitive**, that is, the electorate must be able to choose among alternatives, which implies the right to run for public office<sup>40</sup> and a system of basic guarantees for an electoral campaign; and
- There must be a system of elective public offices, established through periodic elections, with due guarantee of **respect for the electoral results**, which may cover all popular balloting procedures, such as direct democracy procedures, when the consultation involves issues, legislative texts, and the removal of authorities.

Implementation of a direct democracy mechanism entails aspects similar to those of an election of authorities. Both participatory mechanisms must ensure equitable universal suffrage and effective exercise of the right to vote. The integrity and the precise recording of each voter’s preferences must also be guaranteed. As for competitiveness, they also have points in common, such as equal conditions in terms of security and the right to a free press, information, and respect for freedom of association, assembly, expression, and movement.

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38. Inter-American Democratic Charter, Article 3.

39. Organization of American States – General Secretariat (2007). Methods for Electoral Observation: A Manual for OAS Electoral Observation Missions. <https://www.oas.org/en/spa/docs/methods%20manual.pdf>

40. Since there are no candidates in a consultation, in observing direct democracy mechanisms, this condition focuses on the existence of basic guarantees during the campaign period or proposal dissemination period (whether or not the mechanism is described as a campaign).

For these reasons, this methodology takes as a starting point the same attributes as those of democratic elections. However, in some cases, slight adaptations<sup>41</sup> of the components and subcomponents established in *Methods for Electoral Observation: A Manual for OAS Electoral Observation Missions* are introduced in order to more accurately reflect the application of the principles to direct democracy mechanisms.

Differences and particularities of direct democracy mechanisms include the mode of activation, formulation and control of the questions put to citizens for consideration, the scope of the requirements of international law regarding the matters submitted for consultation, and whether a specific regulatory framework is in place that governs the process. Lastly, the campaign is conducted with different dynamics since there are no candidates and they do not always revolve around political party proposals.

In addition to these, this methodology also incorporates the conditions necessary to guarantee the implementation of an inclusive, clean, and competitive direct democracy mechanism which respects the electoral results. This document does not contain an exhaustive list of all conditions established in the instruments of the Inter-American system. Instead, it highlights those fundamental to the implementation of the direct democracy mechanism.

The minimum conditions to be assessed in observing a direct democracy mechanism are:

- **Independence of electoral authorities:** conditions of independence of electoral authorities, their role in guaranteeing a fair process, and their capacity for impartial oversight of the electoral process.<sup>42</sup>
- **Sufficient and timely budget:** the timely and sufficient provision of resources to electoral authorities for the implementation of the direct democracy mechanism, especially considering that, given their nature, they do not have a defined periodicity or fixed date.
- **Effective judicial guarantees:** legal security and certainty regarding the regulatory framework applicable to the direct democracy mechanism, i.e., whether the applicable rules are clear, and whether they were adopted in advance and applied evenly to all actors in the process.
- **Effective challenge and oversight mechanisms:** whether the main actions of the direct democracy mechanism implemented can be questioned and challenged and whether oversight measures are in place.

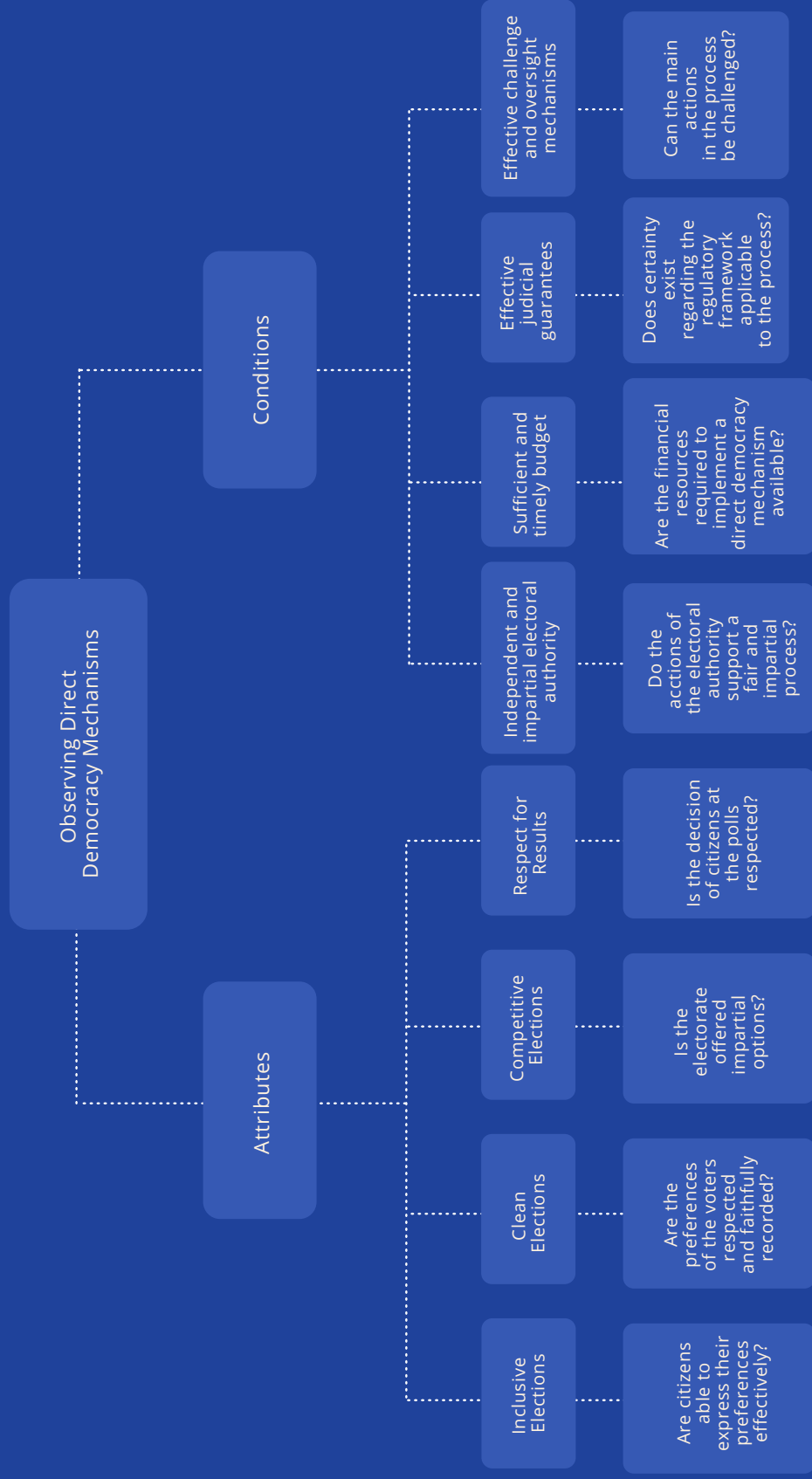
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41. For example, since the attribute of elected public office does not apply in the case of a direct democracy mechanism, the subcomponent regarding respect for results is chosen instead, in accordance with Table 8 of the *Methods for Electoral Observation: A Manual for OAS Electoral Observation Missions*.

42. Based on the provisions of the United Nations Committee on Human Rights, General Comment 25 on Article 25 of the International Covenant on Civil and Political Rights (1996)



**FIGURE 1: OBSERVING DIRECT DEMOCRACY MECHANISMS**

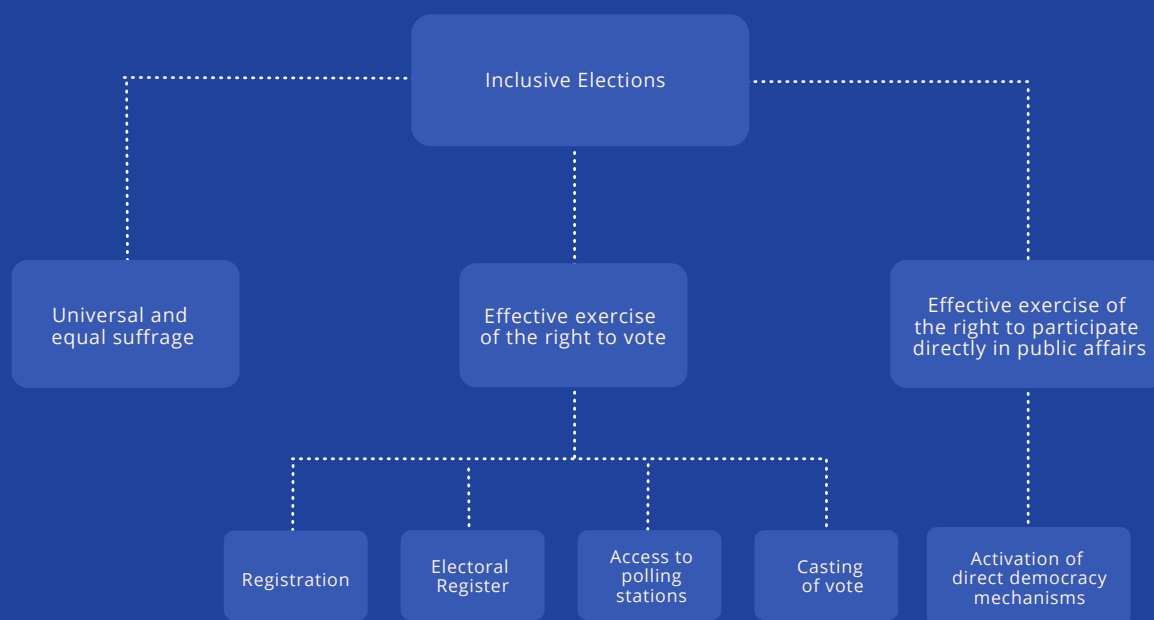


## OBSERVABLE ATTRIBUTES OF DIRECT DEMOCRACY MECHANISMS

### 6.1 ATTRIBUTE 1: INCLUSIVE ELECTIONS

The Mission will verify whether the vote is universal and equal, and whether the right to vote can be exercised effectively. In that regard, it will also assess whether the regulations on the exercise of political rights are consistent with the provisions of international instruments regarding the “elimination of all forms of discrimination, especially gender, ethnic and racial discrimination.”<sup>43,44</sup> It will also observe by whom these mechanisms may be activated (whether by all citizens, or if restrictions are imposed), as well as who may vote. The Mission will also observe whether the universe of persons eligible to vote in direct democracy mechanisms is coterminous with the universe of those who may cast their vote in elections of public office holders.

FIGURE 2: INCLUSIVE ELECTIONS



43. Inter-American Democratic Charter, Article 9.

44. American Convention on Human Rights, Articles 23 and 24.

## UNIVERSAL AND EQUAL SUFFRAGE

The Mission will assess the eligibility requirements for exercise of the right to vote in a direct democracy mechanism, e.g., citizenship criteria, voter eligibility, and restriction or exclusion established in the Constitution and in the law.

The Mission will also observe whether citizens are eligible under equal conditions (even as part of a group) to initiate a direct democracy mechanism. It will assess whether the universe of those eligible to vote is coterminous with the universe of citizens who may vote in elections for authorities.

## EFFECTIVE EXERCISE OF THE RIGHT TO VOTE

The Mission will assess whether all eligible citizens can exercise their right to vote, in terms of registering to vote, accessing voting centers, and casting their vote. It will observe whether there are restrictions or hurdles for historically vulnerable groups, such as women, indigenous persons, Afro-descendants, LGBTIQ++ groups, and people with disabilities, among others.

- **Registration and Electoral Register**

The Mission will assess whether there are hurdles to voter registration; whether the information on the electoral registers is correct; and the mechanisms employed for its periodic update.

- **Access to voting centers**

The Mission will assess whether any type of hurdle (legal or other) exist to accessing polling stations. It will also observe inclusion measures, in both polling stations and any other types of initiative to facilitate access to the vote.

- **Casting the vote**

The Mission will assess whether those persons who are eligible and willing to vote know where and how to vote.

## EFFECTIVE EXERCISE OF THE RIGHT TO PARTICIPATE DIRECTLY IN PUBLIC AFFAIRS

- **Activation Mechanism**

The Mission will assess the constitutional and legal framework to determine the established methods for activating a direct democracy mechanism in the host State, both “bottom up” (citizen initiative) and “top down” (initiative by State official or officials). In that regard, it will assess how broad or limited is the possibility of activating a direct democracy mechanism, especially by citizens.

In both cases, the Mission will aim to observe whether citizens have an opportunity to participate in the definition of issues and to request the recall of elected office holders. It will observe the provisions of national regulations (Constitution and/or law) regarding the requirements and deadlines for activating a direct democracy mechanism, as well as the specificities of those requirements (documents, evidence, or other). In that regard, it will assess whether the requirements are reasonable in the context in which they are imposed, or whether they may be excessive or disproportionate for the activation of a direct democracy mechanism.

The Mission will also assess whether oversight of the requirements is carried out in accordance with the rules (if any) or previously adopted criteria and whether procedures are applied evenly for all actors.

If a signature collection period is established, the Mission will verify whether the regulations clearly establish the minimum number required, how they are to be collected and recorded, and the mechanism for verifying their authenticity for counting purposes (if minimum requirements are established). The Mission will also observe whether procedures and criteria (legal and predetermined) are in place for accepting or rejecting signatures.

If a cost or fee is required for activation, the Mission will assess whether this amount does not impede or make excessively difficult the activation of the direct democracy mechanism.

Regarding the activation of a recall, the Mission will assess whether regulations require that specific reasons must be given for the request for consultation on the removal of an elective office holder, or whether this may be requested without offering specific reasons. If a list of reasons is required, the Mission will observe the reasons given for the consultation in light of the regulations in force.

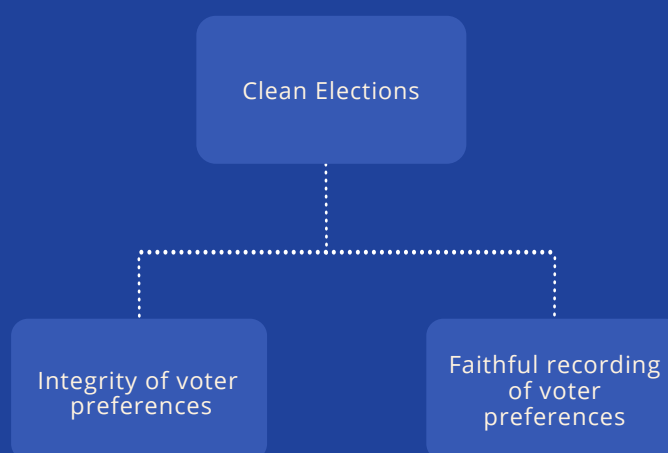
The Mission will also verify whether the country’s regulations allow for the withdrawal of initiatives (at will or with the necessary acceptance by the competent authority) or the withdrawal of signatures (which may lead to failure to meet the minimum required for activation of the direct democracy mechanism).

In addition to identifying and assessing the rules in force for activating a direct democracy mechanism, the Mission will observe the level of their application.

## 6.2 ATTRIBUTE 2: CLEAN ELECTIONS

The Mission will observe the initiatives to guarantee a true reflection of the preferences of the electorate, including respect for a free and secret ballot, and in the question formulation. It will also assess the mechanisms for ensuring that the counting and tabulation of votes results in a true reflection of the will of the electors as expressed at the polls.

FIGURE 3: CLEAN ELECTIONS



### Integrity of voter preferences

The Mission will observe whether the electoral process allows for an accurate reflection of the preferences of citizens, without coercion or fear of reprisal. Additionally, as a mechanism to preserve the integrity of voter preferences, it will check whether the question or questions are presented in a clear manner, without suggesting a certain way of voting, and provide complete information, among other characteristics.

#### - Free and secret ballot

The Mission will observe the conditions in which the right to vote is exercised. In addition to respect for the right to a secret ballot, it will observe whether votes can be cast without coercion, intimidation, manipulation, or fear of reprisal. In a direct democracy mechanism, special attention will be paid to whether civil servants may exercise their vote freely and without fear of reprisals should they wish to express a different view from that of the government.

## - Formulation of questions

The formulation of questions is a key task in implementing a direct democracy mechanism since the wording of questions may impact how voters vote. Therefore, this methodology considers that the question and how it is formulated should have, at a minimum, the following characteristics:<sup>45</sup>

- Clarity in the wording of the question (language that is simple and understandable to the elector). It should not be confusing or ambiguous.
- Each question should address only one issue/decision. Citizens must be able to accept or reject several issues individually, thus guaranteeing that a question does not require approval or rejection *en bloc*. It is, however, possible for a question to address a law/regulation in a comprehensive manner, that covers several issues, as occurs in the case of a consultation regarding the adoption or rejection of a constitution.
- The wording of the question should not suggest a particular way of voting (for or against). It must be neutral and not emotionally charged.
- The wording of the question should provide the greatest certainty possible regarding the effects of each vote (yes or no).<sup>46</sup>
- The question(s) should not have a disproportionate or differential impact on the equality relationship between men and women.

The regulatory framework (Constitution or law) may specifically establish the institution or institutions, or officials with the authority to formulate the questions and also establish, or not establish, the detail in which the initiative can be included on the ballot (proposal, summary, annex). The Mission will observe whether the formulation of the question is assigned to a neutral institution.

The Mission will also observe whether the question(s) are defined in accordance with a prior consultative process. If so, this process must be transparent and inclusive, and include both proponents and opponents, with the positions of the host country's different groups and actors, as well as institutions and/or independent experts with experience in the issue under consideration. In this case, the Mission will also observe whether the question(s) relate to the topic(s) presented during the prior consultative process.

In addition to the characteristics established in this manual, in cases where there are rules related to the formulation of the question, the Mission will observe the level of compliance therewith.

## Faithful recording of voter preferences

The Mission will observe whether the election faithfully reflects the preferences of the electors, expressed through their votes. This is especially related to the method of vote counting and to obtaining results impartially and exactly.

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45. The characteristics that the Mission will observe in question formulation are based on the criteria established in the Guidelines published by the Venice Commission: [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) and [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)031-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)031-e), as well as the relevant norms of OAS member states.

46. Public officials and entities may have to take decisions on the implementation of what was adopted or rejected in the direct democracy mechanism. This is not incompatible with a quest for the greatest possible certainty regarding the effects of a yes or no vote.

## 6.3 ATTRIBUTE 3: COMPETITIVE ELECTIONS

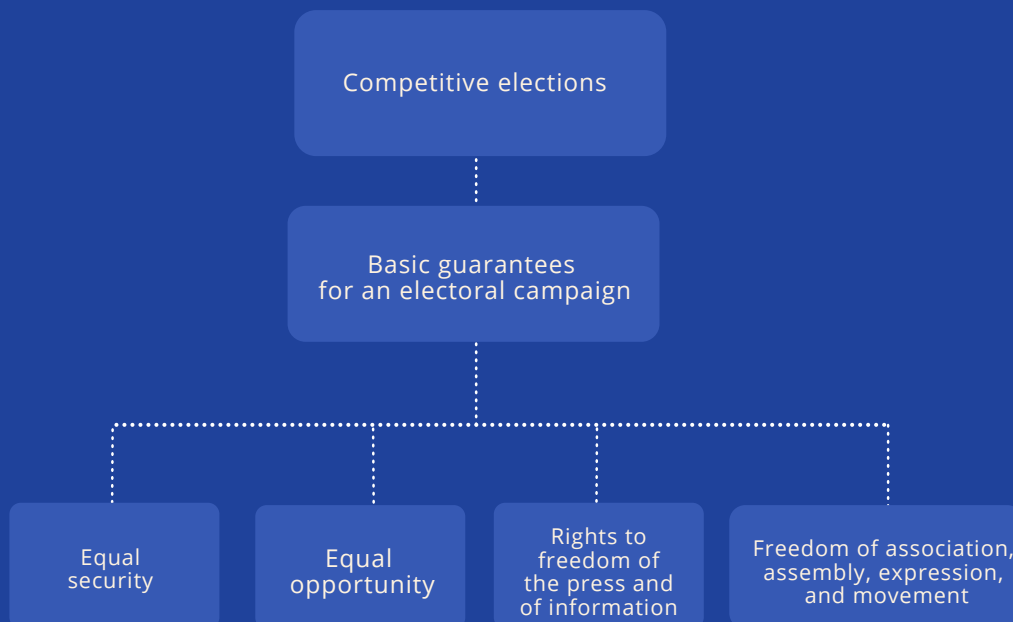
For analysis of this attribute, this section includes the basic guarantees for an electoral campaign with equal security conditions, equal opportunity, the right to a free press and to information, and freedom of association, assembly, expression, and movement.

With regard to campaign conditions, it is important to note that the host country's rules may not provide for a campaign period similar to that of an election of authorities. However, the components of this attribute have been elaborated in such a way as to be applicable both in countries where traditional campaigns are conducted and those where a period is established only for dissemination or consideration of the matters to be addressed by the direct democracy mechanism.

For the analysis, the Mission will also have to take into account whether the voting for a direct democracy mechanism is carried out on the same day as the election of authorities. Even if they are being held on the same day for cost-cutting reasons, it is important to assess the context in which it is carried out, especially if the issue(s) addressed in the direct democracy mechanism has/have any impact or relationship with the candidates or political parties participating in the election of authorities.

The Mission will pay particular attention to campaign conditions and equity among proponents and opponents of the issue submitted for consultation. Such equity means, in part, ensuring that no substantive obstacles exist to participation in the campaign by citizen groups promoting a vision other than that of the government, whether that vision is being promoted by state entities or through a citizen initiative.

**FIGURE 4: COMPETITIVE ELECTIONS**



## Equal security

The Mission will observe whether, in a direct democracy mechanism, the physical security of proponents, opponents, and other relevant actors is guaranteed, including journalists and those performing observation and/or oversight tasks.

As for every electoral process, the Mission will assess whether any type of intimidation or violence is present against proponents, opponents, or any other type of relevant actor in the context of a direct democracy mechanism. During observation, the Mission will also take into account whether any type of persecution exists, including legal measures employed to the detriment of the security and well-being of other persons.

## Equal opportunities

The Mission will assess whether proponents and opponents in the context of a direct democracy mechanism are participating with equal opportunities, including access to the media and other dissemination forums, and to public funding (if any), as well as the rules applicable to private funding. Additionally, it will observe whether citizens can participate under the same conditions as public officials, to which end it will observe the duties of and limits and prohibitions on public officials in such mechanisms, including the use of state resources and whether they can defend or disseminate their positions.

- **Equity in access to the media**

Once a direct democracy mechanism is activated, or such activation is sought, a period for deliberation and dissemination of proposals begins—formally or informally—in which, in contrast to the election of authorities, the aim is not to promote a candidate or competing political organization, but rather to disseminate the scope of and positions regarding an issue submitted for consultation.

The Mission will observe the possibility of access to the media or other mechanisms for disseminating all positions, as well as the existence of some type of positioning of the initiative and its debate in public opinion. The Mission will also analyze equity in the media presence of both proponents, opponents, and other actors relevant to the consultation.

The Mission will verify whether regulations are in place that promote equitable access to the media (both for proponents and opponents of the issue submitted for consultation or the authorities subject to recall), as well as the level of compliance therewith, and, if no specific regulations are in place, whether any measure has been adopted to ensure balanced coverage.

The Mission will also observe how far in advance these regulations were adopted and whether they clearly provide for those who can campaign in the context of a direct democracy mechanism. In assessing this attribute, the Mission will take into account whether measures are in place to prevent disproportionate media coverage of high government officials, such as those of the Executive Branch.



- **Equity and transparency in political financing**

In assessing the political financing system applicable to direct democracy mechanisms, the specialist in this subject will take into account whether its rules have characteristics that differ from those for the election of authorities. In particular because it is not a process where political parties or candidates contend for power positions, but rather a consultation on issues (for adoption or abrogation of a certain decision or rule) or the possible removal of an authority (through recall).

The Mission will identify whether specific rules are in place for political financing in direct democracy mechanisms, or whether the financing rules established for all electoral processes apply, in which case, it will assess the interpretations or adaptations for the direct democracy mechanism observed, and the way in which they are applied.

The Mission will take into account the rules applicable to both public and private financing. It will assess whether the rules establish that public financing (direct or indirect) is to be made available, and those eligible to access it. It will also take into account measures in place to guarantee equity in access to funding by the different parties to the issue. In the case of private financing, the Mission will observe whether regulations (specific or general) are in place that impose limits on contributions and expenditure, and prohibited sources of financing, among other matters related to contributions of this type.

In addition to the above, the Mission will observe whether the regulations clearly establish who may fund activities related to direct democracy mechanisms, since, in addition to the formal proponents of the initiative (public officials or citizens), there may be parties promoting positions both in favor of and against the proposed option or options.

On the other hand, the Mission will analyze the regulations regarding the accountability obligation, oversight, and possible sanctions. Given the importance of knowing who promotes these initiatives, as well as who supports, opposes and finances them, the Mission will observe those who meet the transparency obligations established in the rules in force in the host State. The aim is for all of this to be made public and to be subject to oversight by the competent bodies.

In that regard, the Mission will assess whether specific rules on political financing exist with regard to accountability, oversight, and sanctions during the consultation or whether financing rules established for all electoral processes apply (possibly with adjustments depending on the direct democracy mechanism in question). This also means that the Mission will assess whether regulations, specific or not, effectively establish transparency and accountability, as well as whether the authority with responsibility for oversight efforts exercises adequate control and applies the corresponding sanctions in cases of possible violations.

The Mission will also assess whether this duty of transparency extends to the different public and private entities (national and foreign) in order to allow adequate control and oversight through the competent authorities. Given the increased use of digital media during campaigns, the Mission will observe whether regulations establish transparency mechanisms applicable to technology companies.

The analysis of these aspects will take into account the transparency and equity indicators established in *Observing Political-Electoral Financing Systems: A Manual for OAS Electoral Observation Missions*,<sup>47</sup> focusing on the different positions and actors participating in the consultation.

- **Equal opportunity for citizens and public officials**

The results of a direct democracy mechanism may be impacted if the citizens or organized citizen groups do not enjoy the same opportunities as government authorities and officials. In this context, the Mission will assess the part played by public officials and civil servants of the different branches of government, including the head of the Executive Branch, at all stages of the direct democracy mechanism.

If there are regulations on the rights and duties of and prohibitions on government officials (both elected authorities and those appointed by a state institution), the Mission will observe their adherence to the rules and how such adherence is verified.

Since public officials are interested parties (whether as proponents or opponents), the Mission will analyze whether limits on or an express prohibition against using public resources or forums are in place. It will also observe whether there is a reporting or accountability obligation regarding the use of these types of resources or any oversight mechanism.

It will also assess whether the regulations in force allow the different political actors to publicize and/or defend their position regarding the matters submitted for consultation, including executive, legislative, and judiciary officials, and how they proceed based thereon during the specific direct democracy mechanism observed. The Mission will also evaluate these regulations taking into account the standards of freedom of expression.

## **Right to freedom of the press and of information**

The Mission will observe whether voters have access to the information needed to take an informed decision when casting their vote. The Mission will also take account of the content distributed through the media, the host country's political communications model, and the conditions for the practice of journalism.

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47. Organization of American States – General Secretariat (2012): *Observing Political-Electoral Financing Systems: A Manual for OAS Electoral Observation Missions* ([https://www.oas.org/es/sap/deco/pubs/manuales/EOM\\_Manual\\_e.PDF](https://www.oas.org/es/sap/deco/pubs/manuales/EOM_Manual_e.PDF)).

The Mission will observe efforts made to produce and disseminate sufficient, timely and quality information (related to the subject of the direct democracy consultation) to the electorate.

The Mission will analyze whether the rules in place establish a requirement for a state institution to produce and disseminate quality information to the electorate in order to promote informed voting, as well as if it determines the institution(s) with responsibility for this task, or the party that performs it in practice.

The Mission will also assess the objectivity of the public institution(s) in charge of disseminating information, especially if this is expressly required under the host country's regulations. It will observe both the content of the disseminated information on the direct democracy mechanism and efforts made for its equitable dissemination throughout the national territory. Such dissemination should not depend on the position of public officials (for or against) regarding the question(s), or the electoral preference of the various communities.

Information campaigns should be implemented through different channels that guarantee their widest possible dissemination. This should include the implementation of a variety of strategies to reach citizens in remote communities with poor media access. Information on direct democracy mechanisms may be disseminated through presidential debates, institutional messages, and videos circulated over traditional and digital media, among others.

Materials prepared for dissemination should include, where possible, the question(s) submitted for consultation, the details of the vote (how and when to vote), and the effects of each yes or no vote regarding the issue under consultation or the authority whose recall is the subject of debate.

With respect to campaigns in the context of direct democracy mechanisms, the Mission will assess whether sufficient and equitable forums are promoted, and whether a reasonable period is given to gain familiarity with the matters and to promote debate on the proposals and positions taken in their regard, which will also be analyzed based on international freedom of expression standards.

The Mission will also observe the tone of the campaign, including the role of the various actors participating in it, and whether they promoted programmatic content. It will also compile information on disinformation campaigns and information manipulation and whether effective steps were taken to prevent such situations.

The Mission will also observe whether information campaigns incorporate aspects of inclusion, as well as the impact of the proposals on different groups, especially historically vulnerable groups such as women, indigenous peoples, Afro-descendants, LGBTIQ++ groups, and people with disabilities, among others.

The Mission will also observe the use of indigenous idioms or languages in informative material (written, radio, or television) and on the ballots.

Analyzing access to the media (required by law or at least permitted) will include the different platforms, those traditionally used in campaigns (advertising in the public space, newspapers, other print media, radio and/or television) and those more recently used, such as the different e-platforms and social media; both whether channels are provided or authorized by the State and those that must be sought out by the proponents or opponents of the initiative themselves, and whether there is any regulation of or limit on the use of such media.

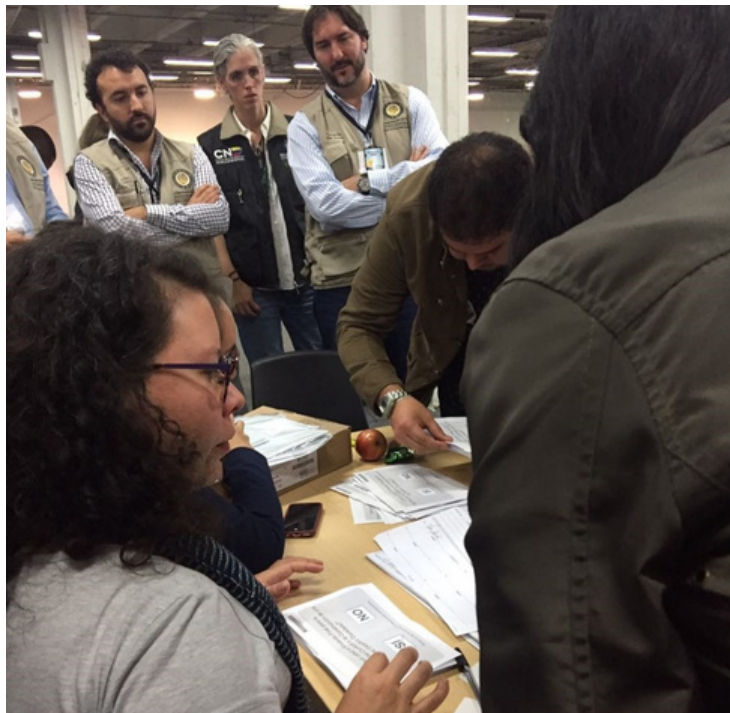
Regarding the use of traditional and digital media in the campaign or dissemination period, the Mission will analyze the respect for different rights and standards in accordance with national and international parameters (freedom of expression and political participation, protection of personal data, prohibition of violence and discrimination, transparency, and the existence of an effective remedy against human rights violations).

The Mission will observe whether conditions exist in the host country for the free exercise of journalism or whether, conversely, in the context of a direct democracy mechanism, some type of intimidation of journalists has taken place.

Lastly, it will assess whether the country's political communications model, including the media ownership structure, positively or negatively impacts the full enjoyment of the right of access to information.

## **Freedom of association, assembly, expression, and movement**

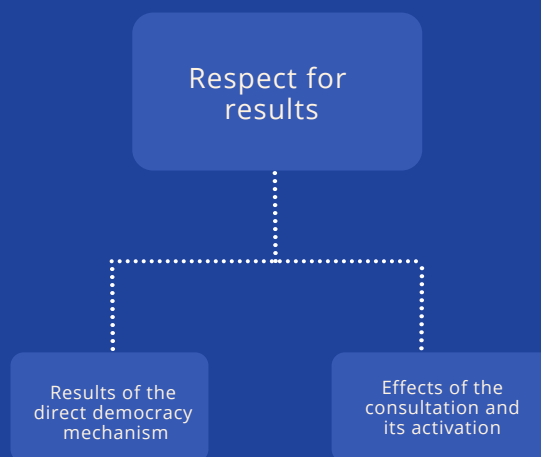
The Mission will observe whether in direct democracy mechanisms, as in the elections of authorities, citizens and the electorate are allowed to organize and interact freely. Consideration should be given to, for example, the existence of bans on civil society organizations, intimidation and threats against citizen groups, and/or possible restrictions on travel throughout the territory (if any).



## 6.4 ATTRIBUTE 4: RESPECT FOR RESULTS

This attribute refers to respect for the results expressed through the vote at the ballot box, as well as the effects of the consultation and its activation.

**FIGURE 5: RESPECT FOR RESULTS**



### Results of the direct democracy mechanism

The regulatory framework may establish minimum participation percentages<sup>48</sup> and/or percentages of votes in favor<sup>49</sup> for the approval of a direct democracy mechanism.

In the case of approval thresholds, the Mission will observe whether they have been specifically regulated for the direct democracy mechanism in question, or whether they are predefined in the rules.

In the case of a participation threshold, the Mission will analyze whether the regulations establish the consequence if the participation percentage falls below it (voiding of the process or other) and whether this may mean that a new vote will be held or whether this will be interpreted as a rejection of the initiative.

If a favorable voting threshold is required for approval, the Mission will observe whether the law establishes in advance the method for calculating this (valid votes or votes cast). It will also observe whether any type of double majority is required (such as national vote plus approval in a minimum number of districts of small size according to the host State).

48. Minimum number or percentage of electors who must vote for the vote to be considered valid.

49. Minimum number or percentage of electors who must vote in favor of the initiative for it to be approved. In some cases, the approval requirement includes a requirement of "double majorities," i.e., the majority of the electorate and in turn a majority in favor of the initiative in a minimum number of electoral districts of the national territory.

## Effects of the direct democracy mechanism

The Mission will observe whether the Constitution and the law clearly establish whether the result of the consultation is binding on public entities and/or citizens. If it is consultative, the Mission will observe whether this was established prior to the holding of the vote.

In the case of a binding direct democracy mechanism, the Mission will observe whether the popular will as expressed at the polls is respected. It should be taken into account, however, that the scope and period of observation may not include later stages in which this aspect could change due to decisions by public officials.

In the case of a recall, the Mission will analyze whether the regulations clearly establish its effects and procedures for replacing the recalled authority, which may imply a fresh election.<sup>50</sup>

Lastly, the Mission will assess whether the regulatory framework provides for the possibility of modifying the issues put to the citizens for consideration (the object) before or after a direct democracy mechanism is implemented, and whether it allows or prohibits modification of the object of a direct democracy mechanism (if any) by another means and/or through another consultation within a specific time period.

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50. Ruth, S., Welp, Y. and Whitehead, L. (editors) (2017) *Let the People Rule? Direct Democracy in the Twenty-First Century*, European Consortium for Political Research (ECPR).

TABLE 1: OBSERVABLE ATTRIBUTES OF DIRECT DEMOCRACY MECHANISMS

ATTRIBUTES	COMPONENTS OF ATTRIBUTES	SUB-COMPONENTS OF ATTRIBUTES	ISSUE AT STAKE	RELEVANT INFORMATION
<p><b>I. Inclusive Elections</b></p>	<p>1. Universal and equal suffrage</p>	<p>Registration and electoral register</p>	<p>Who is legally allowed to vote?</p> <p>Are there legal hurdles to voter registration?</p> <p>Is the information on the electoral register accurate?</p>	<p>Exclusions of eligible voters</p> <p>Documentation required to register to vote, residency requirements, and voter registration procedures (e.g., automatic registration, centralized vs. decentralized registrations, registration period)</p> <p>Regular updating of the electoral register, mechanisms for challenging incorrect inclusions, exclusions, or other errors, response to petitions for corrections to the electoral register</p>
	<p>2. Effective exercise of the right to vote</p>	<p>Access to polling stations</p> <p>Vote casting</p>	<p>Are there legal or other hurdles to access polling stations or otherwise cast a vote?</p> <p>Are all eligible and willing voters instructed on how to cast their vote?</p>	<p>Voting sites close to current residence, mobile voting, absentee voting, overseas voting</p> <p>Exclusion of registered voters at the polling station, provisional vote, ballot design, voter education on where and how to vote</p>
	<p>3. Effective exercise of the right to participate directly in public affairs</p>	<p>Activation mechanism</p>	<p>Who is permitted by law to activate the direct democracy mechanism?</p> <p>Are there hurdles to meeting the requirements for activating direct democracy mechanisms?</p>	<p>Exclusion of persons eligible to vote for the activation of a direct democracy mechanism.</p> <p>Possibility of promotion by an authority independently or concurrently (executive, legislative, other)</p> <p>Reasonable requirements (no excessive prohibitions or disproportionate requirements) for activation of the direct democracy mechanism</p> <p>Oversight of fulfillment of direct democracy mechanism activation requirements in accordance with regulations (if any), criteria, and procedures previously adopted and applied evenly to all actors</p>

ATTRIBUTES	COMPONENTS OF ATTRIBUTES	SUB-COMPONENTS OF ATTRIBUTES	ISSUE AT STAKE	RELEVANT INFORMATION
<b>II. Clean Elections</b>  4. Integrity of voter preferences	Free and secret ballot	Are electors able to vote without any coercion, manipulation, or fear of reprisal?	Secret ballot, voter intimidation, electioneering at polling stations and on election day	
	Question formulation	Can electors vote with clarity on the scope of a direct democracy mechanism?	<p>Clarity in question formulation, not confusing or ambiguous, with only one matter/decision put for consultation and not suggesting a specific answer. Competent officials. Participation by proponents or opponents in formulation.</p> <p>Observe whether the question(s) has/have a disproportionate or differential impact on the relationship of equality between men and women.</p> <p>Inclusion of details on the direct democracy mechanism on the ballot. Competent officials. Participation by proponents and/or opponents in the content.</p>	
<b>III. Competitive Elections</b>  5. Faithful recording of voter preferences  6. Basic guarantees for an electoral campaign <sup>51</sup>	Equal security	Are all ballots checked and counted and/or tabulated or are all votes added up impartially and exactly?	Secure ballot and protection of the voting protocol at each relevant stage of the electoral process, counting and totaling of votes, number of contested ballots and resolution method, number of null or invalid votes, possibility of oversight at all stages of the count by accredited representatives and observers, prompt publication of results, prompt and impartial dispute resolution, possibility of access to and auditing of materials and tools for obtaining the total final vote results.	
	Equal opportunity	Is the physical security of the proponents, opponents, and other actors in the direct democracy mechanism guaranteed?  Can proponents and opponents access the media under equal conditions?	<p>Intimidation and/or violence against proponents, opponents, and other actors in the direct democracy mechanism; legal harassment.</p> <p>Equitable access to the media and other spaces for disseminating proposals on the direct democracy mechanism</p>	

51. Specific reference is not made in all States to "electoral campaign," but, in all cases, reference is made to the period for deliberation on and dissemination of the matter or office holder that is the object of the direct democracy mechanism.



ATTRIBUTES	COMPONENTS OF ATTRIBUTES	SUB-COMPONENTS OF ATTRIBUTES	ISSUE AT STAKE	RELEVANT INFORMATION
<p><b>III. Competitive Elections (Cont'd)</b></p>	<p>6. Basic guarantees for an electoral campaign (Cont'd)</p>	<p>Equal opportunity (Cont'd)</p>	<p>Is there equity and transparency in political financing for proponents and opponents?</p> <p>Can citizens participate under the same conditions as public officials?</p> <p>Are duties, limits, and/or prohibitions established for participation by public officials in the direct democracy mechanism?</p> <p>Do all voters have access to the information needed to make an informed choice when casting their vote?</p>	<p>Rules applicable to public and private funding: Direct and indirect public funding provided (if any). Equity in access to funding. For private funding, regulation of contribution and expenditure limits, and prohibited funding sources, among others.</p> <p>Transparency and accountability requirements for those promoting, supporting, or rejecting an initiative and those funding its activities. Possibility of control.</p> <p>Duty or responsibility of transparency by public and private entities (national and foreign).</p> <p>Role of public officials, including the head of the Executive Branch.</p> <p>Regulation and enforcement of duties, limits, and prohibitions.</p> <p>Limits on and control of the use of State resources.</p> <p>Whether it is possible to issue or defend positions in connection with the direct democracy mechanism</p> <p>Production and wide dissemination of sufficient, timely and quality information (that is related to the object of the direct democracy mechanism) to voters.</p> <p>Sufficient and equal opportunity, for a reasonable period, for debate on the object of the direct democracy mechanism during the campaign</p> <p>Tone and content of the debate on the proposals prior to implementing the direct democracy mechanism of the campaign. Compliance with freedom of expression standards</p>

ATTRIBUTES	COMPONENTS OF ATTRIBUTES	SUB-COMPONENTS OF ATTRIBUTES	ISSUE AT STAKE	RELEVANT INFORMATION
<p><b>III.</b> <b>Competitive Elections (Cont'd)</b></p>	<p>6. Basic guarantees for an electoral campaign (Cont'd)</p>	<p>Right to a free press and to information</p>	<p>Do all voters have access to the information needed to make an informed choice when casting their vote?</p>	<p>Access to relevant information on the direct democracy mechanism</p> <p>Aspects of inclusion in information campaigns (ethnic diversity and impact of proposals on different historically vulnerable groups). Use of indigenous idioms or languages in informative material</p>
			<p>Do adequate conditions exist in the media and for journalists to be able to do their work?</p>	<p>Media used to disseminate the object of direct democracy mechanisms: advertising in the public space, advertising in newspapers or other print media, radio and/or television, e-platforms, and social media. Mandatory access by law or sought out by proponents or opponents of the direct democracy mechanism</p> <p>Respect for different rights and standards in accordance with national and international parameters</p> <p>Conditions for the free exercise of journalism or any type of intimidation of journalists</p> <p>Political communications model (including the media ownership structure)</p>
		<p>Freedom of association, assembly, expression, and movement</p>	<p>Are proponents, opponents, and the electorate allowed to organize and interact freely?</p>	<p>Bans on civil society organizations, intimidation and threats against citizen groups, restrictions on travel throughout the territory</p>
<p><b>IV.</b> <b>Respect for results</b></p>	<p>7. Results of the direct democracy mechanism</p>		<p>Do clear rules exist on the approval requirements in a direct democracy mechanism?</p>	<p>Has a minimum participation percentage been set?</p> <p>Has a minimum percentage of votes in favor been set for approval? Is there a double majority requirement?</p>

ATTRIBUTES	COMPONENTS OF ATTRIBUTES	SUB-COMPONENTS OF ATTRIBUTES	ISSUE AT STAKE	RELEVANT INFORMATION
<p><b>IV.</b> <b>Respect for results (Cont'd)</b></p>	<p>8.Effects of the direct democracy mechanism</p>		<p>Is there clarity regarding the effects of the direct democracy mechanism?</p> <p>Can officials modify the object of the direct democracy mechanism during the campaign?</p> <p>Can officials modify the object of the direct democracy mechanism after its implementation?</p>	<p>Greatest possible certainty, prior to its implementation regarding the effects of the direct democracy mechanism</p> <p>Have restrictions been established against modification of the object of the direct democracy mechanism prior to and after its implementation?</p> <p>Have periods been established that permit or prohibit modification of the object of the direct democracy mechanism (if any)?</p>

## NECESSARY CONDITIONS FOR THE IMPLEMENTATION OF A DIRECT DEMOCRACY MECHANISM

These and other conditions are discussed in greater depth in various observation tools, such as *Methods for Electoral Observation: A Manual for OAS Electoral Observation Missions*; *Observing Electoral Justice Systems: A Manual for OAS Electoral Observation Missions*; and *Electoral Good Practices Guide for Strengthening Electoral Processes*. However, given their relevance in guaranteeing the quality of a direct democracy mechanism, specific conditions related to this type of exercise are discussed below.

### 6.5 CONDITION 1: INDEPENDENT AND IMPARTIAL ELECTORAL AUTHORITY

As indicated in *Methods for Electoral Observation: A Manual for OAS Electoral Observation Missions*, “the actions of electoral bodies have a big impact on the electoral process and hence are an integral part of an assessment of the quality of elections.”<sup>52</sup>

### 6.6 CONDITION 2: SUFFICIENT AND TIMELY BUDGET

Electoral bodies must be “independent as regards their ability to decide and act, without their performance being subject to any governmental, political, or other influence.” In that context, and in line with international standards, the Mission will observe whether the electoral authority that supervises the electoral process is independent ... “to ensure that it is conducted fairly, impartially ...”.<sup>53</sup> The above does not imply an evaluation or position regarding the way in which the electoral authorities are constituted (designated or elected).<sup>54</sup>

In direct democracy mechanisms, it is particularly important to observe whether the electoral authority has its own budget (financial resources) that is sufficient and timely for the implementation of the direct democracy mechanism, especially since, by its nature, it is not a process that is held periodically or on a predetermined date.

Since the budget may impact the successful implementation of a direct democracy mechanism, the Mission will assess whether the electoral authority has its own budget,<sup>55</sup> in whose preparation it participates, and over which it has exclusive control, which is also key to guaranteeing its independence.<sup>56</sup>

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52. Organization of American States – General Secretariat (2007). *Methods for Electoral Observation: A Manual for OAS Electoral Observation Missions*

53. Organization of American States – Department of Electoral Cooperation and Observation (DECO) of the Secretariat for Strengthening Democracy (2021). *Electoral Good Practices Guide for Strengthening Electoral Processes*

54. United Nations Committee on Human Rights, General Comment 25 on Article 25 of the International Covenant on Civil and Political Rights (1996).

55. Organization of American States – Department of Electoral Cooperation and Observation (DECO) of the Secretariat for Strengthening Democracy (2021). *Electoral Good Practices Guide for Strengthening Electoral Processes*

56. Guarantees for the independence of justice operators. Towards strengthening access to justice and the rule of law in the Americas, Inter-American Commission on Human Rights, OAS/Ser.L/V/II. Doc. 44, 5 December 2013, pars. 49-55.

## 6.7 CONDITION 3: EFFECTIVE JUDICIAL GUARANTEES

### - Legal certainty and security

Effective judicial guarantees are among the essential conditions of a democratic process.<sup>57</sup> In this context, the Mission will observe whether those participating in a direct democracy mechanism (proponents, opponents, and voters) have security and certainty regarding the applicable legal framework. That is, that all parties know the rules governing the way in which the participatory process will be implemented.

The Mission will determine whether there is a clearly defined regulatory framework prior to the activation of the direct democracy mechanism. It will observe whether the regulations are specific to a direct democracy mechanism or whether the same rules as those governing elections of authorities apply. In either case, the Mission will assess the level of compliance with the regulations governing the exercise observed.

It is desirable that previously approved legislation is in place and that regulations specific to each direct democracy exercise are avoided. The Mission will observe whether the process of approving, creating, and disseminating the rules applicable to a democracy mechanism is transparent, whether said rules provide certainty, and whether they are impartial for all actors.

The Mission will also ascertain whether the applicable regulations are approved in due time by the competent authority, and whether they are published in a manner that allows them to be known by all actors in a timely manner. It will also assess the compatibility of these regulations with the national legal framework and, if applicable, with international law.

In that context, the Mission will also assess the thoroughness of the rules in establishing solutions to the different aspects related to direct democracy mechanisms. In that regard, it will consider whether the Constitution and the law clearly establish the bases for the obligation to convene the consultation and, where they do not, whether the regulatory framework assigns this authority to the citizens or other specific public entities.

The Mission will also assess whether the Constitution and the law clearly predefine who may activate the direct democracy mechanism (independently or concurrently), in what scenarios, and whether the direct democracy mechanism in question is binding or consultative.

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57. Universal Declaration of Human Rights (1948), Article 8; American Declaration of the Rights and Duties of Man, Article XVIII; United Nations Committee on Human Rights, General Comment 25 on Article 25 of the International Covenant on Civil and Political Rights (1996); Organization of American States – Department of Electoral Cooperation and Observation (DECO) of the Secretariat for Strengthening Democracy (2021). Electoral Good Practices Guide for Strengthening Electoral Processes

## 6.8 CONDITION 4: EFFECTIVE CHALLENGE AND OVERSIGHT MECHANISMS

The Mission will assess whether it is possible to challenge the different stages of the process, including formulation of the question and ballot design; constitutionality, conventionality and respect for international parameters regarding the issue(s) put for consultation; the decisions related to signature collection; and fulfillment of the requirements for requesting the recall of an authority, among others.

The regulations should establish those lawfully entitled to seek legal remedies and the dispute resolution authority, the deadlines established for this purpose, and the specific parameters for deciding them. Regarding the parties entitled to seek remedies, it is advisable to obtain an interpretation of the regulations and a practical implementation that allows leeway in determining those entitled to seek remedies.

The Mission will also assess whether the regulations establish the authority responsible for deciding these types of remedy, as well as the established deadlines and parameters for doing so.

The regulations may also establish the obligatory nature or the possibility of carrying out some type of constitutional or conventional control over the matters submitted for consultation and even over the wording of the questions, by determining some topics that may be beyond the scope of direct democracy mechanisms. Such stipulations may be found expressly in national regulations (Constitution or law), but may also derive from international standards, especially those of the Inter-American system. In that regard, for example, the Mission will observe whether a direct democracy mechanism may have been activated in connection with matters possibly entailing contravention of Inter-American standards (especially those of the Inter-American Court of Human Rights), such as the suppression or attenuation of human rights.<sup>58</sup>

The Mission will also assess whether the host country's legislation establishes entities or organs in charge of these competencies (exclusive or shared) and the timing for this (concurrent or consecutive). This may include although not necessarily be limited to the electoral authority, since authority may also be given to entities with responsibility for constitutional control in the country (Constitutional Tribunal or Court, Specialized Chamber of the Supreme Court of Justice). The Mission will also determine whether the regulatory framework establishes parameters for technical evaluation of the question.

If these matters are not expressly included in the regulations, the Mission will observe the procedure carried out to define the institution in charge and the criteria employed for review of the question or questions.

The electoral and/or constitutional justice system controls the constitutionality of the issues that are the object of the direct democracy mechanism, both in accordance with the regulations and in practice. The Mission will take note of the main decisions or judgments in this area, if any, especially if there are matters beyond the possible scope of direct democracy mechanisms in accordance with the host country's regulations or international standards.

In order to guarantee the usual checks and balances of a democratic system, it is desirable that the activation of the consultation, the formulation of the question(s), and its control (technical evaluation) not fall entirely on a single institution, but rather on different authorities.

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58. Inter-American Court of Human Rights (2011). Case of Gelman v. Uruguay, Series C-221, Merits and Reparations. Judgment of February 24, 2011.

TABLE 2: NECESSARY CONDITIONS FOR THE IMPLEMENTATION OF A DIRECT DEMOCRACY MECHANISM

CONDITIONS	COMPONENTS OF CONDITIONS	ISSUES AT STAKE	RELEVANT INFORMATION
<b>Independent and impartial electoral authority</b>		Do the actions of the electoral authority promote a fair and impartial process?	The electoral authority is independent and can oversee the electoral process and ensure that it is implemented impartially
<b>Sufficient and timely budget</b>		Is the budget granted in a timely manner and is it sufficient for the implementation of the direct democracy mechanism?	The competent authorities grant sufficient resources for the direct democracy mechanism and provide it to the electoral authority in a timely manner for implementation of the direct democracy mechanism
<b>Effective judicial guarantees</b>	Legal certainty and security	Do all actors have certainty regarding the regulations applicable to the specific direct democracy mechanism?	A specific regulatory framework governing the direct democracy mechanism is in place (previous or <i>ad hoc</i> )  Clear rules applicable to the direct democracy mechanism are in place, adopted sufficiently in advance by the competent authority, published in a timely manner and compatible with the prevailing national and international legal framework.
<b>Effective challenge and oversight mechanisms</b>		Can the principal actions be challenged in the framework of a direct democracy mechanism?	Possible challenges at the different stages of the direct democracy mechanism:  - Question formulation and ballot design  - Constitutionality, conventionality, and respect for international parameters on the issue or issues submitted for consultation  - Decisions related to signature collection  - Fulfillment of requirements for submitting an authority to recall  Regulation of those legally entitled to request remedies and the deadlines for presentation of requests and remedies  Regulation of the authority in charge of deciding remedies, the deadlines established for this purpose, and the parameters for resolution.
		Are regulations in place or is any type of constitutional or conventional control effected for the direct democracy mechanism?	The national regulatory framework establishes constitutional control (mandatory or optional) over the issues subject to the direct democracy mechanism, or these derive from international standards (especially Inter-American standards)



## 7. METHODOLOGICAL FRAMEWORK



## 7. METHODOLOGICAL FRAMEWORK

### 7.1 CRITERIA FOR OBSERVING DIRECT DEMOCRACY MECHANISMS

#### 7.1.1 WHAT TO OBSERVE?

This manual describes the attributes and conditions to be observed in direct democracy mechanisms within the framework of the Electoral Observation Missions of the Organization of American States (OAS/EOMs). This manual may be used both in processes combining elections of authorities with consultations, and in those where a direct democracy exercise is held exclusively. It establishes a conceptual framework, procedures, and tools for observing these types of participatory exercises in the different OAS member states. In addition to analysis of the national regulations in force, the manual proposes observation of the level of compliance with the applicable rules.

The manual focuses on observation of the general attributes of democratic elections (inclusive, clean, competitive, and with respect for results), adjusted for direct democracy exercises, as discussed in the preceding chapter. This methodology also discusses the conditions necessary to ensure the implementation of a direct democracy mechanism that is inclusive, clean, and competitive, and in which the electoral results are respected: the existence of an independent electoral authority, a timely and sufficient budget for the implementation of the direct democracy mechanism, the existence of effective legal guarantees that generate legal certainty and security regarding the applicable rules, and the existence of an effective challenge and control mechanism.

The manual does not attempt to address in an exhaustive manner each of the attributes and conditions for direct democracy mechanisms; rather it seeks to identify the minimum elements that must be observed. Reference should be made to the other OAS methodologies and analysis of specific thematic areas, which supplement the methodology presented herein.

## 7.1.2 HOW TO OBSERVE?

First, specialists should compile all information necessary to familiarize themselves with the regulations on and practices of each variable of the attributes and conditions established in the Methods for Electoral Observation: A Manual for OAS Electoral Observation Missions. Their work should be carried out in close coordination with the other Mission specialists to ensure that all key aspects included in this Manual are evaluated. The information described in this manual to be compiled for implementation is qualitative. The Mission may also have quantitative analysis tools.

This manual is intended to facilitate the uniformity of observation criteria and contribute to the production of homogeneous criteria that support the professionalization of OAS/EOMs in assessing direct democracy mechanisms. To that end, it includes models, templates, and checklists for use as guidance. However, specialists in the area should broaden their observation to include all aspects they deem relevant, including those not included in these tools, provided they identify normative elements or elements for practical application deemed relevant and consistent with international standards.

## 7.1.3 INFORMATION SOURCES

Observation should focus first and foremost on verifiable documentation and/or data. Specialists will give priority to a review of official and public sources, which will be cited in the reports prepared by the Mission, notwithstanding the possibility of reviewing others that arise from interviews or other on-site activities. All information received by the Mission will be assessed in conjunction with other data and, preferably, compared with official documentation or sources.

The applicable regulations—constitutional, legal, and regulatory—and the decisions issued by the competent authorities (electoral, but also jurisdictional and/or constitutional, as the case may be) are considered official public sources, whether or not disseminated by official media, provided that their authenticity is corroborated. In the case of regulations, the Mission will identify the versions in force, as well as recent modifications. Regarding decisions of public officials, the establishment, modification, or retention of the criteria adopted can be assessed.

Implementation of the methodology for observation of direct democracy mechanisms is the responsibility of the direct democracy specialist, who is a member of the core group of an OAS/EOM. During information compilation, the direct democracy specialist should work in coordination with the other specialists to ensure comprehensive observation by the OAS/EOM.

## 7.2 COMPOSITION OF OAS/EOMS AND OBSERVATION OF DIRECT DEMOCRACY MECHANISMS

The structure of OAS/EOMs, including those that will implement this methodology, is governed by the Methods for Electoral Observation: A Manual for OAS Electoral Observation Missions. EOMs are headed by a person designated by the OAS Secretary General. The Mission leadership also includes the leadership of the Secretariat for Strengthening Democracy and officials of the Department of Electoral Cooperation and Observation.

An OAS/EOM Core Group comprises persons who coordinate the implementation of the methodologies and the international observers. In addition to the direct democracy specialist, the Mission may include specialists in electoral organization and technology; political financing, electoral justice, and statistics, among other areas that DECO deems relevant.

### 7.2.1 FUNCTIONS OF THE DIRECT DEMOCRACY SPECIALIST

The functions of the direct democracy specialist are to:

- Sign and comply with the Code of Conduct for International Election Observers
- Identify, in collaboration with the Methodologies Coordinator, key actors in the host country related to the subject of direct democracy
- Schedule meetings with the key actors identified
- Prepare and submit to the leadership all required documents
- Participate in meetings with other core group specialists
- Participate in any meetings that the Mission leadership considers relevant
- Conduct a brief training session for the regional coordinators and/or any other members that the Mission deems relevant
- Coordinate and carry out all actions necessary for implementation of the direct democracy mechanism observation methodology
- Prepare and submit a list of all contacts collected during the exercise of the functions described above
- Prepare an initial report, a preliminary report, and a final report containing observations and recommendations on issues related to direct democracy
- Adhere expressly to the guidelines for drafting reports for DECO specialists, in order to comply with the requirements of form and substance
- Fulfill any other functions assigned by the DECO leadership or Chief of the Electoral Observation Section, the Methodologies Coordinator, and/or the Deputy Chief of Mission.

## 7.2.2 OBSERVING DIRECT DEMOCRACY MECHANISMS

The implementation of the methodology for observing direct democracy mechanisms includes the analysis of the applicable regulations and relevant aspects involved in activating these mechanisms (even if they occurred prior to the Mission's installation in the host country), as well as the reports and findings of prior OAS missions in the country. It also includes observation of the consultation itself and the post-election stages up to the submission of the final report. It includes the following stages and steps:

### STEP 1: PREPARATION OF THE INITIAL REPORT

The purpose of preparing an initial report is to have a general initial assessment of the direct democracy mechanisms of the country observed prior to travelling to the host country.

The initial report is the first step in observing a direct democracy mechanism. It should be descriptive, contain data on the regulations in force, and provide an account of legal reforms subsequent to the preceding election, as well as the diverse ways they were applied in earlier electoral processes and in the process under observation.

Preparation of the initial report includes the collection of documents and information, including the regulatory framework, as well as monitoring of news, systematization of information,<sup>59</sup> and drafting the text.

The initial report must be drafted using the template included in this manual.

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59. Information systematization includes a review of the normative texts, for which the general direct democracy mechanism questionnaire should be used as a guide.

## STEP 2: SCHEDULING MEETINGS

Given the importance of OAS/EOM meetings with key actors, it is important to schedule and organize them properly.

The organization of meetings includes:

- Preparation of the meeting agenda: The proposed agenda is presented to the Methodologies Coordinator by the specialist. It should include the list of actors and institutions, together with a brief profile (experience, training, institutional affiliation, and possible topics for the meeting). The leadership, in coordination with the Deputy Chief of Mission, defines the final agenda in keeping with priorities and types of actors identified
- Identification of the topics to be raised in the meeting (for completion of the form)
- Identification of possible documents or official information to request at the meetings (especially in the case of meetings with institutions)

### Types of actors/institutions for meetings<sup>60</sup>

- State authorities, including the Executive and Legislative Branches
- Specialists on direct democracy issues and their analysis in the host country
- Media, journalists, and institutions that conduct public opinion polls
- Electoral bodies, especially their agencies responsible for the matters discussed in this manual
- Any international organizations or institutions based in the country that have funded or implemented projects or initiatives related to the consultation
- Political organizations, through their representatives
- Other public institutions and civil society organizations or national research centers that carry out activities related to the consultation, including observation groups
- Proponents of the direct democracy mechanism

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60. Listed in Spanish alphabetical order. The Mission is not limited to these if it is necessary to contact other institutions and persons relevant to the process.

## STEP 3: CORE GROUP MEETINGS

Once they have travelled to the host country, the Chief of Mission, Deputy Chief of Mission and/or the Methodologies Coordinator convene meetings among the subject matter specialists.

The specialists may also meet if they consider that there are common areas that require special coordination with one another, for joint meetings, and/or for report preparation.

## STEP 4: MEETINGS WITH KEY ACTORS

The meetings with key actors in the process are the most important part of the observation, and will include three activities:

1. Confirm meetings and agenda (as indicated in the previous step)
2. Hold the meetings (according to the established guidelines)
3. Prepare a document containing the most important information obtained during the meetings

## STEP 5: COMPILATION OF THE DATA OBTAINED BY THE OBSERVERS

The international observers will collect any information considered relevant for the direct democracy specialist. The General Coordinator will receive this information and deliver it to the direct democracy specialist.

## STEP 6: GENERAL QUESTIONNAIRE

The general questionnaire is a working tool to guide the compilation of the information to be analyzed by the person responsible for direct democracy mechanism observation at the different mission levels. This document includes a detailed description of the subcomponents of the attributes that are to be observed.

## STEP 7: PREPARATION OF THE PRELIMINARY REPORT

The preliminary report prepared by the direct democracy specialist should expand upon the analysis made in his/her initial report and include preliminary observations and recommendations to improve the implementation of future direct democracy mechanisms in the country observed.

The OAS/EOM will issue a preliminary report presenting its initial findings and recommendations on the implementation of the direct democracy mechanism in the host country, based on the indicators and elements evaluated, and the practices observed during the process. In its preparation, the OAS/EOM will take into account the reports and briefs of the Mission's specialists and the Methodologies Coordinator and abide by the decisions of the Chief of Mission, the DECO Director, the Chief of the DECO Electoral Observation Section, and the Deputy Chief of Mission.

## STEP 8: PREPARATION OF THE FINAL REPORT

The objective of the final report is to have a full assessment of the direct democracy mechanisms of the country observed.

The document will be the input for the OAS/EOM final report.

Accordingly, the resulting document should have the following characteristics:

1. Be descriptive and analytical, that is, it should identify the characteristics of the regulations and practices and explain how the variables and indicators observed impact inclusive, free, and competitive elections with respect for results.
2. It should be exhaustive.
3. It should focus on the electoral process observed and provide any background information needed for a fuller understanding of that process.
4. It should confine itself to the focus and thematic areas of the methodology.

The direct democracy specialist is responsible for drafting the text in accordance with the template included in this manual. The first draft of the final report on the direct democracy mechanism should be presented by the direct democracy specialist when so decided by the Methodologies Coordinator. The report will be reviewed by the different leadership members and those in charge of coordination and/or the Deputy Chief of Mission will provide those comments. Having amended the report based on the comments and any observations, as well as any new data deemed relevant, the specialist will deliver the final version of the Final Report, which will be approved and included as a direct democracy annex to the OAS/EOM final report.



# 8. TOOLS FOR DATA OBSERVATION, COMPILATION, SYSTEMATIZATION, AND PRESENTATION

REPUBLICA DEL ECUADOR  
CONSEJO NACIONAL ELECTORAL  
REFERENDUM Y CONSULTA POPULAR  
7 DE MAYO DEL 2011  
**EL VOTO  
ES  
SECRETO**

REPUBLICA DEL ECUADOR  
CONSEJO NACIONAL ELECTORAL  
REFERENDUM Y CONSULTA POPULAR  
7 DE MAYO DEL 2011

PROVINCIA: PICHINCHA  
CANTON: QUITO  
PARROQUIA: La Floresta



## 8. TOOLS FOR DATA OBSERVATION, COMPILATION, SYSTEMATIZATION, AND PRESENTATION

### Document verification sheet

Documents on Regulations and Practices				
N°	TYPE OF DOCUMENT	YES	NO	OBSERVATIONS
1	Constitution of the Republic			
2	Electoral legislation			
3	Regulatory standards on direct democracy mechanisms			
4	Relevant organizational and legal decisions of electoral authorities on direct democracy			
5	Relevant decisions of other authorities on direct democracy			
6	Academic documents and studies			

TABLE 2: GENERAL QUESTIONNAIRE ON DIRECT DEMOCRACY

COMPONENTS OF ATTRIBUTES	SUB-COMPONENTS OF ATTRIBUTES	ISSUES AT STAKE	LEGISLATIVE REFERENCES	OBSERVATIONS
<b>ATTRIBUTES</b>				
<b>ATTRIBUTE 1: INCLUSIVE ELECTIONS</b>				
<b>Universal and equal suffrage</b>		Who is legally allowed to vote?		
<b>Effective exercise of the right to vote</b>	Registration and electoral register	Are there legal hurdles to voter registration? Is the information on the electoral register correct?		
	Access to polling stations	Are there legal or other hurdles to access polling stations or otherwise cast a vote?		
	Vote casting	Are all eligible and willing voters instructed on how to cast their vote?		
<b>Effective exercise of the right to participate directly in public affairs</b>	Activation Mechanism	Who is permitted by law to activate direct democracy mechanisms?		
		Are there hurdles to meeting the requirements for activating direct democracy mechanisms?		

COMPONENTS OF ATTRIBUTES	SUB-COMPONENTS OF ATTRIBUTES	ISSUES AT STAKE	LEGISLATIVE REFERENCES	OBSERVATIONS
<b>ATTRIBUTES</b>				
<b>ATTRIBUTE 2: CLEAN ELECTIONS</b>				
<b>Integrity of voter preferences</b>		<p>Are electors able to vote without any coercion, manipulation, or fear of reprisal?</p> <p>Can electors vote with clarity on the scope of a direct democracy mechanism?</p>		
<b>Faithful recording of voter preferences</b>		<p>Are all ballots checked and counted and/or tabulated impartially and exactly?</p>		
<b>ATTRIBUTE 3: COMPETITIVE ELECTIONS</b>				
	Equal security	<p>Is the physical security of the proponents, opponents, and other actors in the direct democracy mechanism guaranteed?</p> <p>Can proponents and opponents access the media under equal conditions?</p>		
<b>Basic guarantees for an electoral campaign</b>	Equal opportunity	<p>Is there equity and transparency in political funding for proponents and opponents?</p> <p>Can citizens participate under the same conditions as public officials?</p> <p>Are duties, limits and/or prohibitions established for participation by public officials in the direct democracy mechanism?</p>		

COMPONENTS OF ATTRIBUTES	SUB-COMPONENTS OF ATTRIBUTES	ISSUES AT STAKE	LEGISLATIVE REFERENCES	OBSERVATIONS
<b>ATTRIBUTES</b>				
<b>ATTRIBUTE 3: COMPETITIVE ELECTIONS</b>				
<p><b>Basic guarantees for an electoral campaign</b></p>	<p>Right to press freedom and to information</p>	<p>Do all voters have access to the information needed to make an informed decision when casting their vote?</p>		
	<p>Freedom of association, assembly, expression, and movement</p>	<p>Do adequate conditions exist in the media and for journalists to be able to do their work?</p> <p>Are proponents, opponents and the electorate allowed to organize and interact freely?</p>		
<b>ATTRIBUTE 4: RESPECT FOR RESULTS</b>				
<p><b>Results of the direct democracy mechanism</b></p>		<p>Do clear rules exist on the requirements for approval of the direct democracy mechanism?</p>		
		<p>Is there clarity regarding the effects of the direct democracy mechanism?</p> <p>Can officials modify the object of the direct democracy mechanism during the campaign?</p> <p>Can authorities change the object of the direct democracy mechanism after its implementation?</p>		
<p><b>Effects of the direct democracy mechanism</b></p>				

COMPONENTS OF ATTRIBUTES	SUB-COMPONENTS OF ATTRIBUTES	ISSUES AT STAKE	LEGISLATIVE REFERENCES	OBSERVATIONS
<b>CONDITIONS</b>				
<b>Independent and impartial electoral authority</b>		Do the actions of the electoral authority promote a fair and impartial process?		
<b>Sufficient and timely budget</b>		Is the budget granted in a timely manner and is it sufficient for the implementation of the direct democracy mechanism?		
<b>Effective judicial guarantees</b>	Legal certainty and security	Do all actors have certainty regarding the regulations applicable to the specific direct democracy mechanism?		
<b>Effective challenge and oversight mechanisms</b>		Can the principal actions be challenged in the framework of a direct democracy mechanism?  Are regulations in place or is any type of constitutional or conventional control effected for the direct democracy mechanism?		

## Report Templates

### Initial Report

**DIRECT DEMOCRACY MECHANISM OBSERVATION  
OAS/EOM (HOST COUNTRY/DATE)  
INITIAL REPORT**

**1. Introduction (maximum one page)**

Description of the elements of the political and electoral system related to direct democracy mechanisms in the country observed: governmental political organization, type and origin of the direct democracy mechanism to be observed, entities in charge of the process, and questions to be put to the citizens for consideration, among other relevant elements.

**2. Direct democracy mechanism (maximum two pages)**

Description of the regulations governing the consultation, prior experiences, recent reforms and/or current situation.

Description of the process that gave rise to/activated the consultation and the institutions involved.

Preliminary assessment of the questions to be submitted to vote.

Determination as to whether constitutionality or conventionality reviews have been made, or whether there is pending litigation regarding the activation, the mechanism used, or the questions.

**3. Conclusion (maximum one page)**

Description of the initial findings regarding the process and the matters preliminarily identified as the central object for observation

### Preliminary Report

**OAS/EOM (HOST COUNTRY/DATE)  
PRELIMINARY REPORT**

**Findings and Recommendations (maximum two pages)**

Assessment of the regulations and practices regarding the direct democracy mechanism in relation to the attributes, components, and indicators shown to be the most relevant in the consultation according to analysis of the information compiled by the OAS/EOM

Based on the findings, formulate recommendations to improve future direct democracy mechanisms in the host country

## Final Report (Direct Democracy Annex)

**OBSERVATION OF DIRECT DEMOCRACY MECHANISMS  
OAS/EOM (HOST COUNTRY/DATE)  
FINAL REPORT**

**1. Introduction (maximum two pages)**

- General relevant information on the specialty in the country to be observed.
- Summary of the main findings

**2. Legal framework (maximum one page)**

- Regulations governing the consultation

**3. Background**

- Employment of the direct democracy mechanism in the host country (number of consultations, types, and years in which implemented)
- Context for the consultation observed

**4. Analysis of the direct democracy mechanism****Attributes**

## 4.1 Inclusive Elections:

- Who is permitted by law to vote in a direct democracy mechanism?
- Who can activate a direct democracy mechanism?
- Activation requirements and fulfillment

## 4.2 Clean Elections

- Can citizens vote without any coercion, manipulation, or fear of reprisals?
- Formulation of the Question:
  - Clarity, not confusing or ambiguous, with only one matter/decision for each question, does not suggest a specific vote
  - Authorities with jurisdiction for definition of the question and the information going on the ballot
  - Participation by proponents and opponents in formulation
  - Information on the direct democracy mechanism on the ballot

## 4.3 Competitive Elections

- Equitable access (proponents and opponents) to the media and other forums for dissemination of proposals
- Equitable access to public funding (if any) and application of the regulations on contributions, limits, and caps, and prohibitions of private funding (if any)
- Regulation of rights and duties of, and bans on the different actors of the process
- Role of public officials, including the head of the Executive Branch
- Whether a position can be defended or opinion issued regarding the direct democracy mechanism
- Production and broad dissemination of sufficient, timely, and quality information (that is related to the object of the direct democracy mechanism). Tone and content of the debate
- Sufficient opportunities for consideration of the object of the direct democracy mechanism and for a reasonable time
- Access to relevant information on the direct democracy mechanism. Aspects of inclusion in information campaigns from the perspective of historically vulnerable groups
- Conditions for the free exercise of journalism
- Political communications model

## Final Report (Direct Democracy Annex)

### OBSERVATION OF DIRECT DEMOCRACY MECHANISMS OAS/EOM (HOST COUNTRY/DATE) FINAL REPORT

#### 4.4 Results

- Result of the consultation. Participation or approval percentage (if any)
- Respect for results: Effects of the direct democracy mechanism; pre and post electoral context for the matters that are the object of the mechanism

#### Conditions

#### 4.5 Independent and impartial electoral authority

- The electoral authority is independent and can oversee the electoral process and guarantee its impartial implementation

#### 4.6 Sufficient and timely budget

- The authorities with jurisdiction provide sufficient resources for the direct democracy mechanism and provide it to the electoral authority in a timely manner for implementation of the direct democracy mechanism

#### 4.7 Effective judicial guarantees

- Existence of specific regulatory framework governing direct democracy mechanisms
- Existence of clear rules applicable to direct democracy mechanisms, adopted by the competent authority sufficiently in advance, published in a timely manner, and compatible with the national and international legal framework in force

### 5. Findings and Recommendations (maximum two pages)

### 6. Bibliography

### 7. Appendices



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