



POPULAR LEGISLATIVE INITIATIVE IN LATIN AMERICA: LAWS, PROCEDURES AND EFFECTIVENESS

Sérgio Mendonça Benedito¹

Abstract: This study aims to explore the local specificities of one of the mechanisms for popular participation, the Popular Legislative Initiative (PLI), which provides for the right of citizens to submit bills, reformative or constitutional amendments that are analyzed by the Legislature and may even be voted upon by the electorate. Here I inquire the manner in which the PLI has been implemented in the Latin American countries and the level of exigency of each of them. To do this, I resorted to the academic literature that investigates the mechanisms of direct democracy and the document analysis of the constitutions and laws of each country. The results show a high level of conditioning to take an initiative ahead, which does not translate into equal accountability of political institutions in their treatment and voting.

Keywords: Popular Initiative; Political Participation; Democracy; Latin America.

INTRODUCTION²

From the second half of the decade of 1970, with the end of authoritarian regimes and transition to democracy in most Latin American countries, there has been a growing popular pressure for inclusion and political participation. In such a context, the constituents ended up conforming the constitutional and legal bases of democracies not only procedural, but also participative. Several countries in the region have adopted new constitutions until the turn of the century and have introduced (or expanded) the so-called *mechanisms of direct democracy* to broaden the involvement of citizens (BREUER, 2012; BOOTH, 2012). After the transition period, and with evidence of the stability of democratic regimes in general, attention shifted to the assessment of the quality of democracy and institutional performance (LEVINE; MOLINA,

¹ Bachelor in Social Sciences and master in Political Science by Universidade Federal de Goiás (UFG). Contact: sergiombk@gmail.com

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2007). Democratic quality can also be considered under the aspect of participation, and how national legislatures have set up their institutions to enable people to influence political decisions.

The purpose of this work is to evaluate one of the mechanisms available to provide citizenship participation, the so-called *popular legislative initiative* (PLI). This instrument relates to the right of a certain number of people to elaborate an ordinary bill or constitutional amendment to be presented to the legislative body that then deliberated and decides for its implementation. The interest in the PLI is justified by the limited number of researches that have concentrated in their study, in a comparative way-perhaps, as we will see, because the approval of an PLI depends on the deliberation of the elected representatives, unlike other mechanisms that require popular voting. Majority of Latin American countries adopt the instrument, however with different requirements, rules and procedures: number of signatures required; matters which may be legislated by a popular initiative bill; deadlines to be fulfilled both for the collection of signatures and for the legislative process; among others. Thus, it was intended to investigate the different ways this instrument has been implemented in the region, to evaluate its level of demand and to observe how the adoption and use of the mechanisms in some of the countries was given-considering the contextual aspects of each locale.

This is a qualitative study, of a bibliographic and documentary nature. Supported in the literature concerning participatory democratic mechanisms in Latin America (HEVIA DE LA JARA, 2010; BARRIENTOS, 2012; ZOVATTO, 2014), the research analyses the constitutions and laws of the countries of the region to understand how people can formulate bills and introduce them to national legislation. In short, the objective was to verify the requirements, necessary procedures and incentives by the State. The first step of the study involved the localization of constitutions and laws in government sites available on the internet. Subsequently, in possession of the electronic documents obtained from these sources, undertook a documentary analysis from the search for expressions such as 'initiative of law', 'right of initiative', 'popular initiative' and 'legislative initiative citizen'. Thus, it was possible to locate the articles that involve the proposition of bills by citizenship and its determinations. At the end, it was possible to compare the levels of demand and make brief notes about their implementation and effectiveness – based on contextual aspects. The results obtained allow us to identify the best and worst examples, and to envisage improvements so that the instrument of the PLI is more widespread and successful in the future.

The article is divided into three parts. The first section deals with definitions related to the popular legislative initiative based on the authors who addressed the issue. To guide the analysis of the constitutions and laws it is necessary to consider punctually the mechanisms of direct democracy and the different categories of popular initiative. The following is a survey of the Constitution and the laws of the countries that foresee the PLI as regards their requirements. In the third part, based on the evidence presented, some comparisons are made on the application

and use of PLI in Latin American countries. Finally, the final considerations bring a summary of the main points of the research and a possible research agenda regarding the PLI.

THE MECHANISMS OF DIRECT DEMOCRACY

The popular legislative initiative, according to the current denomination in the literature, is part of the so-called Mechanisms of Direct Democracy (MDD). It is therefore appropriate to revise the literature on these instruments, their definitions and the forms in which they are presented. A broader conceptualization of MDD postulates that their goal is to involve people directly in the decision-making process, as opposed to delegating the entire deliberation to elected representatives and elected (PAYNE et al., 2007). Thus, it is a political procedure of direct citizen participation in decisions affecting the whole population and impacting on the political system in general. Before this definition, we can think of forms such as: plebiscite, referendum, repeal of mandate, legislative initiative, popular veto and even prior consultation with indigenous and native peoples³ (ZOVATTO, 2014). Another definition, more restricted, is that presented by Altman (2011) for whom MDD are publicly recognized institutions for which citizenship decides or issues their opinions on certain topics directly in the urn, through universal and secret suffrage. In other words, this definition is central to the effective popular vote – which would exclude the legislative initiative in the way most countries put into practice, as we will see below.

These mechanisms are classified in various ways, depending on their characteristics and the way they are implemented in different contexts. As Altman enumerates (2011, p. 8), it is necessary to assess whether the instruments are regulated or not by law – so that the rules and the due process are clearly defined; whether they are binding / normative or consultative (*nonbinding*) – whether the decision taken by people is final or not; whether they are proactive or reactive – whether they change or sustain the *status quo*; and ultimately if are initiated by the legislature or legislator (*top-down*), by the citizens themselves (*bottom-up*) or are constitutionally mandatory. All these categories assist in evaluating the effectiveness of the mechanisms, their potential for change and the level of involvement and participation of citizens.

Dealing properly with the mechanisms it is necessary to make clear that among the different countries there is a variety of terms, definitions and procedures. What is called a 'referendum' in a context is understood as 'plebiscite' in another, for example, in addition to the various interpretations of what characterizes a 'popular initiative', which can encompass other types of decisions, such as the popular veto of laws and reforms already Approved by the Legislature (BARRIENTOS, 2012). It can also be considered the level of involvement or popular decision that each mechanism demands for decision-making. In this way we would have a

³ It is an instrument intended to be used when an action or bill of State interferes in the territory of an indigenous people. The consultations have been conducted in the region mainly regarding mineral extraction and hydroelectric construction bills – although there are frequent accusations that the consultations are not always performed according to the procedures foreseen (ZOVATTO, 2014, p. 20).

continuum that would go from the petition – request to the Legislature to elaborate law on a given matter – to the revocation of a mandate or judicial decisions – an effective decision of the electorate (FERRO, 2007). This is understood by adopting the most common categories and definitions present in the studies on these mechanisms.

Plebiscite and referendum are the most popular instruments, categorized under the *popular consultation* label, in which citizens vote to decide or express their opinion on certain topics. The most common is to refer to the plebiscite for voting on various public themes and the referendum for voting on constitutional laws and reforms, but there may be differences depending on the context (ZOVATTO, 2014; ALTMAN, 2011). Both may be mandatory – provided by law to be used in certain situations – or facultative – initiated by representatives or by citizenship, provided that the requirements are met. In addition, their decisions, according to the previous classification, may be binding or consultative (PAYNE et al., 2007).

The revocation of a mandate (*recall, revocatoria*) consists in the possibility of removing one or one elected representative from its position and replacing it before the end of the mandate through popular consultation. There are different procedures that generally determine which positions are subject to loss of mandate (at national or sub-national level); from how long after elected (and before the end of the mandate) the representative may have his/her position placed in question; and requirements regarding the number of signatures to place the decision in popular consultation. At the national level, it is foreseen in Bolivia, Ecuador, Panama and Venezuela, being more common that is available in regional scope in some countries (ZOVATTO, 2014).

The popular legislative initiative⁴ is defined by the right of citizenship to propose bills of law, legal or constitutional reform total or partial. It is a proactive instrument, since it enables the change of *status quo* in a given context, even if the final decision is made by elected and elect representatives through the legislative process⁵ (ALTMAN, 2011). Other 'subtypes' can be included in this category, among them: the so-called 'popular initiative', which refers to the right of citizens to submit bills to be voted by the electorate itself; the 'petition' whereby citizenship asks the legislature to formulate a law on a given subject (FERRO, 2007); and the 'facultative referendum' (or popular veto), which provides citizens with the right to reject or veto a law or reform already approved by the legislature (ALTMAN, 2011). In the course of the analysis presented here was emphasized the first type: the prerogative to present bills proper to the legislative organ for deliberation.

⁴ According to Ferro (2007), the popular legislative initiative dates back to the Constitutions of Austria (1920), Spain (1931) and Italy (1947), to mention the main cases. In Latin America, the pioneer countries were Venezuela (1961) and Uruguay (1967).

⁵ According to Montero (2004), the laws are a set of norms elaborated by a legislative authority, which express, in a written text, a political decision. The presentation of a bill activates the parliamentary procedure to achieve a political decision that may or might not differ from the text initially put into discussion. The legislative process, in the author's classification, is divided into the stages of initiative (formulation of a bill), constitutive (which involves the discussion in commissions and in the assembly, followed by voting) and effectiveness (when it is sanctioned or vetoed, wholly or partially).

Concluding this section, an existing debate is raised between researchers regarding the viability and effectiveness of these institutions in terms of encouraging popular participation. On the one hand, it is argued that MDD can weaken the institutions of representative democracy, such as the legislature and political parties, in contexts that the executive has the prerogative to initiate them – being co-opted by populist rulers or Authoritarian (BARCZAK, 2001). Thus, as opposed to promoting popular power, they submit citizens to the interests of political elites (ALTMAN, 2011). On the other hand, given the Latin American context of growing dissatisfaction and low confidence in representative institutions, MDD would constitute a possibility to improve the quality of democracy by encouraging participation. Such instruments would serve to promote the debate, strengthen the political consciousness of citizenship and open up space for a more effective vertical control of its representatives (BREUER, 2012).

The effectiveness of the mechanisms of participation should also be considered, taking into account the influence of the laws and constitutions of other countries in Latin America. After all, as we know, the transfer of these instruments to completely different contexts of those in which they were promoted to a large extent in Europe has occurred. Barrientos (2012) draws attention to this fact and analyses the roots of the mechanisms of direct democracy in Weimar and Switzerland at the beginning of the twentieth century – countries of socio-economic and political conformation quite diverse compared to those of the South. To the extent that such mechanisms have been built to adapt to institutions, customs and local political practice, their chances of success are greater than mere transplantation for societies which, in many cases, do not constitute liberals but highly hierarchical and unequal in all spheres. For this reason, the author draws attention to the need to situate the analysis (and even the implementation) of participative institutions considering the government objectives and the conformation of the State in which they apply (BARRIENTOS, 2012).

Briefly, what is extracted from this debate, based on case studies conducted in the region, is that the simple implementation of MDD does not directly translate into effective participation. These instruments will be conditioned by the political system in which they are inserted, in their strengths and weaknesses (ZOVATTO, 2014). In several countries, these mechanisms are recent and there is no practice for their use, which also needs to be considered in the analysis. It is noteworthy, however, the potential of those instruments initiated by the citizenship itself (*bottom-up*) in addition to the institutions of representative democracy, to improve and consolidate the democratic system in marked contexts of broader way by inequality (ALTMAN, 2011).

THE POPULAR LEGISLATIVE INITIATIVE IN THE LEGISLATION OF LATIN AMERICAN COUNTRIES

Made this synthetic discussion about the definitions of MDD and its implementation in Latin America, we pass, in this section, to deal specifically on the rules, requirements and

procedures related to the popular legislative initiative (PLI) in each the country. In summary, based on the research carried out, it appears that only *three* of them do not foresee the PLI in their constitutions: Chile, El Salvador and Panama. In *fourteen*, the PLI is foreseen in the major law: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, Uruguay and Venezuela. As we will see below some countries, despite predicting the mechanism, have not carried out the regulation of it in secondary legislation. This fact, as we will see, often hinders the use of the instrument and gives scope to divergent interpretations of judicial and legislative organs.

In what follows, I will concentrate on the prerogative of citizens to elaborate bills, legal or constitutional reform, which must be subscribed by a certain number of registered and active voters. These bills are sent for deliberation of the legislature that arrives at a decision without consulting the electorate (indirect PLI). In some cases, the proposals are decided by the population itself (direct PLI). For example, in Uruguay, when a legislative initiative contains the signature of at least 10% of the electorate; and in Colombia, when a popular initiative is rejected by the legislature and voters request a referendum. Other details relate to the regulation of the instrument, which may be provided for in the Constitution but has not been specified in secondary laws; to legislative deadlines, which can or may not be differentiated for popular initiatives; which themes are likely to be legislated in each country; and if there is any kind of compensation or support from the state to the organizers of a bills (HEVIA DE LA JARA, 2010).

ARGENTINA

The *Constitución de la nación Argentina* (ARGENTINA, 1995) provides, in its article 39, that "citizens have the right of initiative to present bills in the Chamber of Deputies". The law 24.747 (ARGENTINA, 1996) regulated article 39 as provided for in the Constitution, defining the requirement for signatures in one and a half percent of voters distributed in at least six electoral districts. As for the legislative process, Congress must analysis the bills within a maximum of twelve months. Restrictions include constitutional reform, international treaties, taxes, and criminal matters. The aforementioned law also details the process by which the bill is admitted by the legislature, providing in particular the procedures for authenticating signatures (art. 7), the treatment by the committees (art. 10) and restrictions on the financing of organization of bills (art. 12). Finally, it is expressed that the rejection of a popular bill does not admit any appeal (art. 9).

BOLIVIA

The *Constitución Política del Estado Plurinacional de Bolivia* (BOLÍVIA, 2009) provides, in its article 11 (II), that "democracy is exercised in the following forms, which will be specified by law: 1. Direct and participatory, through [the] citizen legislative initiative..." And in article 162 that citizens "have the Faculty of legislative initiative, for their compulsory treatment

in the Plurinational Legislative Assembly". In art. 411 (II), it is foreseen that the partial reform of the Constitution may be initiated by means of the popular initiative, with the signature of at least 20% of the electorate. There is no secondary legislation regulating the PLI instrument in the country, which prevents or hinders the submission of proposals. In the course of this research no records of submissions were found.

BRAZIL

The *Constituição da República Federativa do Brasil* (BRASIL, 2019 [1988]) provides, in its article 14, That "popular sovereignty shall be exercised by universal suffrage and by direct and secret voting, with equal value for all, and, in accordance with the law, by: I-plebiscite; II-referendum; III-Popular initiative ". Art. 61, Paragraph 2, defines that the bills must be subscribed by at least 1% of the national electorate, distributed at least by five states, with not less than three tenths per cent of the voters of each of them. The Law 9,709 (BRASIL, 1998), in its Art. 13, and the bylaws of the *Câmara dos Deputados do Brasil* (2019 [1989]), in its Art. 252, details other requirements – on the required data of each voter, organization of the subscription lists and the unique thematic requirement per bill – making it clear that the PLI will have the same procedure as the other bills. The propositions cannot be rejected by problems of form (language, lapses and technical imperfections), and cannot be dealt with on subjects of private initiative of the President of the Republic (Constitution, art. 61, paragraph 1), among them: that they have on the armed forces; creation of public positions, functions or jobs; creation and extinction of ministries and organs of the public administration; administrative and judicial organization, tax and budgetary matters. The art. 60 of the Magna Carta is inferred, by exclusion, that the reform or amendment of the Constitution cannot be made by means of PLI.

COLOMBIA

The *Constitución Política de Colombia* (COLÔMBIA, 2016 [1991]) provides, in its article 155, that "may present bill or constitutional reform, a number of citizens equal to or greater than 5% of the electoral census in force on the respective date". The laws 134 (COLÔMBIA, 2002 [1994]) and 1,757 (COLÔMBIA, 2016 [2015]) regulated the mechanisms of participation, setting in particular the following points: deadline (six months), requirements for formulation and collection of signatures for a popular bill; period (45 days) and procedures for validating signatures by the competent institution; restrictions on matters which may be legislated by the instrument (law 1,757, art. 18), including: budgetary, tax or tax issues; foreign trade and international relations; public positions and salaries; administration structure, ministries and departments. It is also foreseen the possibility of convening a referendum if a popular bill was rejected by the legislature (law 134, art. 32). For this it is necessary the support of 10% of the electorate. Finally , in addition to the priority attributed to bills that will obtain 20% signatures

(law 1,757, art. 9, paragraph 1), the regulations of the *Congreso de la República de Colombia* (2010 [1992]) provides preferential treatment for popular initiatives (art. 192) and the Constitution gives the President the right to prioritize bills (art. 163).

COSTA RICA

The *Constitución Política de la República de Costa Rica* (COSTA RICA, 2019 [1949]) provides, in its article 123 (reformed by the Law 8,281 of 2002), that "the initiative to form laws corresponds to any member of the Legislative Assembly, the executive branch, through the Ministers of Government and the 5%, as a minimum, of the citizens enrolled in the electoral registry, if the bill is of initiative popular". The article also defines that the initiative will not be able to deal with "budgetary, tax, fiscal, approval of loans and contracts or acts of an administrative nature". The Law 8,491 (COSTA RICA, 2006) regulates the instrument and expresses that the initiative can be a bill or constitutional reform; formal requirements regarding voters' data and procedure for collecting signatures; the deadline (thirty days) for validating the signatures by the electoral body; and the deadline (two years) for the processing of the popular bill in the legislature – with the exception of constitutional reforms, which must follow the specific rules (Constitution, art. 195). Finally, it is foreseen the free technical assistance and advisory by the Assembly legislative to citizens wishing to formulate a law proposition (art. 7).

ECUADOR

The *Constitución de la República del Ecuador* (EQUADOR, 2018 [2008]) provides, in its article 61, that "Ecuadorians enjoy the following rights... 3. Present bills of normative popular initiative". To this end, according to Article 103, the proposal "must rely on the support of a number not less than zero point 25% of the persons enrolled in the electoral register of the corresponding jurisdiction". For constitutional reform bills, according to the last article, it is necessary the support of 1% voters. The Organic Law of Citizen Participation (EQUADOR, 2011 [2010]) regulates the various mechanisms of participation arranged in the Constitution and, when referring to the popular initiative of law, defines in main: that bills will not be able to "create, modify or suppress taxes, increase public spending or modify the organization territorial and political-administrative state" (art. 6); the requirements for the submission of a bill (art. 8); the prerogatives of the legislature in the analysis of bills and validation of signatures (art. 9); the possibility of a legal regulation entering into force if it is not analyzed in 180 days (art. 10), and the possibility of requesting a popular consultation if the original bill is rejected or modified (art. 11); finally, the determination that the President may amend a popular bill, but cannot fully veto it (art. 12). It is worth noting that the law also allows amendments to the constitution by referendum (direct voting) if the support of 8% voters to the proposal was obtained (art. 13).

GUATEMALA

The *Constitución Política de la República de Guatemala* (GUATEMALA, 1993 [1986]) provides, in its article 277, that "have the initiative to propose reforms to the Constitution" the President of the Republic, ten or more Deputies of Congress, the Court of Constitutionality and "the people by petition addressed to the Congress of the Republic, for not less than five thousand citizens duly regulated by the Citizens Registry". The Constitution does not presume the popular initiative for ordinary laws, according to art. 174 of the third section (formation and sanction of the law). There is no secondary law that regulates the instrument.

HONDURAS

The *Constitución de la República de Honduras* (HONDURAS, 1982) provides, in its article 213, that "have exclusively the initiative of the law" the President of the Republic, the deputies of the National Congress and, among others, "the number of at least three thousand (3,000) citizens by means of the mechanism of citizen initiative". The Decree 275-2010, published in 2011, formalized the inclusion of participatory mechanisms in the Constitution, among them the popular initiative. The Decree 190-2012 (HONDURAS, 2013) regulates this instrument. The law lists the requirements for the collection of signatures, as to the data of the voters that need to be presented (art. 13). The electoral authority shall verify the signatures within a maximum period of one month (art. 5) and the National Congress shall initiate the deliberation within fifteen days; the vote of the simple majority for ordinary and two-thirds laws for constitutional matters approval of the proposal (art. 6). The law also provides for the contribution of the State through the electoral authority in the organization, promotion and training of civil society entities for the elaboration of bills that fall within the proposed participatory mechanisms (art. 12). The analysis of the documents cited reveals that, on the one hand, there is no differentiation between the requirements (number of signatures) for initiatives of law and constitutional reform; on the other hand, the laws do not clearly express the matters which cannot be legislated through this instrument.

MEXICO

The *Constitución Política de los Estados Unidos Mexicanos* (MÉXICO, 2019 [1917]) provides in its article 71 that "the right to initiate laws or decrees competes", among others, "to the citizens in an equivalent number at least to zero point 13% of the nominal list of voters, in terms that sign the laws". The popular initiative was added to the Constitution in the political reform of 2012, and the Organic Law of the *Congreso General de los Estados Unidos Mexicanos* (2019 [1999]) was modified in the year 2014, aiming at the regulation of the instrument. The Art. 130 of the latter clarifies that citizens may present bills or constitutional reform concerning matters of competence of the Congress of the Union, listed in art. 73 of the Constitution. In the

following articles are exposed the requirements for formulation and presentation of the bill; deadlines for evaluation of signatures and presentation at the Congress; and the proposal's proceeding, which is similar to any bill. If the PLI has exhausted the regimental deadlines in the committees, it should be placed on the agenda of the next session (art. 130, 3).

NICARAGUA

The *Constitución Política de la República de Nicaragua* (NICARÁGUA, 2014 [1987]) provides, in its article 140, that "have the initiative of the law" the members of the National Assembly, the President of the Republic and, among others, citizens". In this case, the initiative should be backed by a number not less than 5000 signatures. "They are excerpts of organic, tax or international laws, and those of amnesty and indulgence". The law 475 (NICARÁGUA, 2003) regulates the participative mechanisms provided for in art. 2 of the Constitution. The articles 9 to 18 relate specifically to the instrument of the popular initiative, detailing: matters which may not be legislated by the instrument, in addition to what is listed in the major law – including laws of constitutional level (art. 10); the need for the formation of a promoter committee consisting of fifteen people, with a legal representative, in addition to the requirements pertinent to the collection of signatures (art. 11); the six-month deadline for the collection of signatures, counting from the formation of the promoter committee (art. 13); and finally, the legislative procedure (common) by which the bill will pass, and the popular consultation of civil society groups is foreseen for the purpose of gathering suggestions.

PARAGUAY

The *Constitución de la República de Paraguay* (PARAGUAI, 1992) provides, in its article 123, that "the voters recognize the right to the popular initiative to propose bill to the Congress. The form of the proposals, as well as the number of voters who must subscribe to them, will be established in the law". The Paraguayan Electoral Code (PARAGUAI, 2007 [1996]) defines in its article 266 that citizenship should present an "articulated text of the bill, endowed with substantive unity, preceded by an explanatory statement" and signatures (authenticated and collected in forms provided by Electoral Justice) of at least 2% of the electorate. The matters which cannot be legislated include international relations, treaties, covenants and agreements; national defense; tax, monetary and banking issues; electoral, departmental or municipal laws (art. 267). It is necessary to form a committee promoting the bill, with five persons, who will represent it legally (art. 268); if the proposal, submitted prior to the Legislative (without the necessary signatures), complies with the requirements, the President of Congress may request the priority of processing for up to 180 days, period in which the required signatures must be collected (art. 270). If the organizing committee allows 75% of the signatures within the deadline (as evidenced by the electoral court), it can be extended for more 60 days; after that deadline, even

with the signatures, there is no possible resource (art. 272). Finally, the law states that the state will repay the costs of the promoter committee in 2,000 Guarani by subscription if the bill becomes law (art. 273). Bills rejected or that did not gather the signatures in a timely manner may be presented again in two years (art. 274).

PERU

The *Constitución Política del Perú* (PERU, 2019 [1993]) provides, in its article 107, that "its citizens possess the initiative in formulating the laws". Art. 206 further defines that "a number of citizens equivalent to zero point 3% (0.3%) of the electoral population" has the right of initiative of constitutional reform. The Law 26,300 (PERU, 1994), concerning the rights of participation, details the necessary requirements for the formulation and presentation of the bill. Since the proposition does not treat topics such as taxes, budgets, finances, international treaties, among others (Art. 12)⁶ and has its signatures validated by the electoral body, will receive the priority in the procedure in Congress (art. 11), where it should be deliberate and voted within 120 days. Popular bills that have been rejected or substantially modified by the legislature may be submitted to a referendum if the additional support of 9.7% of the electorate is obtained (art. 41). There is no established deadline for certification of signatures by the electoral body. However, if a proposal is submitted and the validated signatures do not reach the minimum required, the promoters will have 30 additional days to collect them.

URUGUAY

The *Constitución de la República Oriental del Uruguay* (URUGUAY, 2004 [1967]) provides, in its article 331, that the Constitution may be reformed, in whole or in part, "on the initiative of 10% citizens enrolled in the National Civic Registry, presenting an articulated bill that will lead to the president of the General Assembly, and should be subject to the popular decision in the subsequent election". In addition, the "General Assembly, in a meeting of both chambers, may formulate substitutive bills that will submit to the plebiscitary decision, together with the popular initiative". In short, Uruguay has the model that was classified in the first section of this article as 'popular initiative': the bills go through the Legislative but the final decision is of citizenship – different from the other countries under analysis. It is not arguably foreseen in the Law Greater the possibility of formulating ordinary bills⁷, even if voters can also intervene in a

⁶ See also the Art. 76 of the Regulations of the *Congreso de la República del Perú* (2018).

⁷ Article 79 says: "Twenty five percent of the total number of subscribers entitled to vote may, within one year of its enactment, be able to intervene in a referendum against laws and exercise the right of initiative before the Legislative Branch. These mechanisms are not applicable in relation to laws that establish taxes. They neither apply in cases where the initiative is exclusive to the Executive Branch. Both mechanisms will be regulated by law, consented by the absolute majority of the total components of each Chamber". It is understood that this article refers only to the initiative of revoking laws, considering even though, when considering the possibility of an ordinary law initiative, we would find ourselves in the peculiar situation in which the requirements for the reform of the Constitution would be less demanding than to propose laws. During the survey, no records were found that ordinary bill were filed.

referendum against laws approved by the legislative; to do so, simply gather the support of 25% of registered voters (art. 79). The citizenship cannot request a referendum on laws that establish taxes and when the initiative is private to the Executive Branch. There is no secondary law regulating the popular initiative (constitutional reform, in this case).

VENEZUELA

The *Constitución de la República Bolivariana de Venezuela* (VENEZUELA, 2009 [1999]) provides, in its article 204, that "the law initiative corresponds... To voters in a number not less than zero comma 1% of the registrants and inscribed in the Civil and Electoral Registry". The art. 205 sets out that the bill presented must have the discussion initiated by the Legislative in the period of ordinary sessions following what has been presented – otherwise the bill will be submitted to a referendum. The art. 341 provides for the possibility of popular initiative to amend the Constitution, through the support of 15% voters. In addition to the foregoing in the major law, and in the absence of secondary law, the internal regulations and of Debates of the *Asamblea Nacional de Venezuela* (2010) deals with the procedures by which a popular bill will pass, but in an unclear way. There is no indication that the bill has priority in legislative treatment; in addition, matters which cannot be legislated by the instrument are not foreseen. It is concluded, therefore, that the instrument was not regulated in the country.

Chart 1 - Requirement on subscriptions to PLI in each country (in descending order)

Country	Electorate	Percentage Required	Signatures Necessary
Colombia	32.975.158	5%	1.648.757
Brazil	142.821.358	1%	1.428.213
Bolivia	5.973.901	20%	1.194.780
Argentina	33.116.077	1.5%	496.741
Uruguay	2.620.791	10%	262.079
Venezuela	19.504.106	0.13/15 %	253.553/2.925.615
Costa Rica	3.078.321	5%	153.916
Mexico	83.563.190	0.13%	108.632
Paraguay	3.516.275	2%	70.325
Peru	22.901.954	0.3%	68.705
Ecuador	12.816.698	0.25/1 %	32.041/128.166
Guatemala	7.556.873	-	5.000
Nicaragua	3.800.000	-	5.000
Honduras	6.046.873	-	3.000

Source: Own elaboration from the laws, constitutions analyzed and data from IDEA (2019)⁸.

⁸ Voters registered in the most recent election to the lower chamber in each country (prior to December 2017), according to the database of the Institute for Democracy and Electoral Assistance (IDEA, 2019).

Chart 2 - Summary of the data on the Popular Legislative Initiative in Latin America

Country	Constitution	Secondary law	Signatures	Judicial deadline	Legislative deadline	Restrictions	Special requirements	Aid / Support
ARGENTINA	Art. 39	24.747/1996	1.5%	Sample verification (0.5% or more) within 20 days (extendable)	The bill receives priority and must be analyzed by the legislature within 12 months	Constitutional reform; international treaties; taxes budget criminal matters	Description of the costs and origin of the resources used (which cannot come from governments, foreign entities, among others). If 5% or more of the signatures are false the bill is revoked. Subscriptions must be collected in at least six electoral districts	-
BOLIVIA	Art. 11; 162; 411	-	20%	-	-	Ordinary laws	-	-

BRAZIL	Art. 14; 61	Resolution No. 17, 1989, art. 252 (Internal Rules of the Chamber of Deputies); Law 9709/1998	1%	-	There is no Express Priority	Constitutional reform; Laws that focus on topics of private initiative of the President (Art. 61, paragraph 1), which include: effective of the armed forces; positions, functions and jobs in the public administration; administrative and judicial organization; taxes and budget	Subscriptions must be collected in at least five electoral districts, with at least 0.3% in each	-
COLOMBIA	Art. 103; 154; 155	134/1994; 1757/2015	5%	Sample verification up to 45 days	Should the initiative get support of 20% of the electorate, it should start the procedure in 20 days. The Congress also assigns priority to popular initiatives	Laws that focus on themes of exclusive initiative of the President, Governor or Mayor; budgetary and tax issues; international relations; amnesty and pardon; preservation and reestablishment of public order	To promote an initiative, the initial support of 5000 people is required. After the registration of the bill and obtaining the forms by the judicial authority, a six-month deadline for collecting signatures-extendable for another three months	-
COSTA RICA	Art. 123	8.491/2006	5%	Verification in 30 days	Two years for the voting of the ordinary bill	Laws dealing with budget, taxes, approval of loans and contracts or acts of an administrative nature	-	Popular Initiative Workshop of the Legislative Assembly

ECUADOR	Art. 61 (3); 103	Organic Law of Citizen Participation, 2010	0.25% for ordinary laws; 1% for constitutional reform	Verification in 15 days	180 days for ordinary laws; 1 year for constitutional reforms	Create, modify or suppress taxes, increase public spending or modify the territorial and political-administrative organization of the country. It is also restricted to the abolition of constitutional rights and guarantees	-	Access to the media on the part of the promoter committee
GUATEMALA	Art. 277	-	5000	-	-	Ordinary laws	-	-
HONDURAS	Art. 5; 213	Decree 190-2012	3000	Verification in 30 days	Fifteen days to initiate deliberation	-	-	The electoral authority will be responsible for supporting the organization, promotion and training of organizations, trade unions and groups interested in proposing bills
MEXICO	Art. 71	Title five, first chapter of the Organic Law of the General Congress of the United Mexican States (2014)	0.13%	Sample verification within 30 days	The committees must review the bill within regimental deadlines; otherwise, the popular initiative will be placed on the agenda of Congress at the next session.	Art. 73 of the Constitution (only matters of competence of the Union Congress)	-	-

NICARAGUA	Art. 2; 140	Law 475/2003	5000	-	There is no Express Priority	Constitutional reform; organic, tax, international, amnesty and pardon laws. In addition, according to secondary law: national budget, constitutional laws or reforms, defense and national security	Promoter Committee composed of at least fifteen people, formalized and with representative. From the constitution of the Committee it is necessary to collect the signatures required within six months or the initiative will prescribe	-
PARAGUAY	Art. 123	Law 834/1996	2%	-	It is possible to assign priority to the bill for up to 180 days, the period within which subscriptions should be collected. This deadline may be extended by 60 days if 75% of subscriptions are collected on time	Constitutional reform; issues relating to the legislation of departments and municipalities; approval of international treaties and agreements; expropriations national defense; real estate; tax, monetary and banking system, loans and national budget; elections in all spheres	Signatures must be authenticated by public notary, collected in forms provided by electoral justice, numbered and signed by one of the members of that body. It is necessary to form a promoter committee consisting of at least five duly identified voters with a fixed address	If the bill becomes law, it is made the reimbursement of expenses of the promoters of the proposal in up to 2,000 Guarani by subscription

PERU	Art. 2 (17); 31; 107	Law 26.300/1994	0.3%	-	The bill receives priority and should be voted up to 120 days	Budget and finance, territorial demarcation, international treaties, security and national sovereignty, state of siege, war and peace with other countries. Constitutional reforms cannot revise any of the guarantees provided for in art. 2	-	-
URUGUAY	Art. 79; 331	-	10%	-	-	Ordinary laws	-	-
VENEZUELA	Art. 70; 204	-	0.13% for ordinary laws; 15% for constitutional reform	-	-	-	-	-

Source: Own elaboration based on the constitutions and laws analyzed⁹.

⁹ The Constitutions of Chile, El Salvador and Panama do not contemplate the Popular Legislative Initiative.

ANALYSIS OF RESULTS

From the documentary analysis of the constitutions and laws of the countries, as outlined in the previous section, it was possible to gather the compiled data in tables 1 and 2. They allow to establish some comparisons to verify the level of demand to effect the popular legislative initiative – that is, to carry a bill or constitutional reform to be deliberated by the legislative body. This is the main objective of this section. In addition, data from some countries will be exhibited regarding the formulation and legislative procedure of PLI, which allow us to perceive the impact of restrictions placed on each political community. It is salient that an exploratory and non-exhaustive analysis has been elaborated, since the limited space of this article does not allow us to consider all countries in detail, on a case-by-event basis, and to affect a contextual assessment of each of them.

A first criterion for differentiating countries is the existence of a secondary law that regulates the mechanism. Four in fourteen do not possess it: Bolivia, Guatemala, Uruguay and Venezuela. So, even if all these countries allow the reform of the Constitution via the PLI – remembering, however, that they do not allow their use for ordinary laws, with the exception of Venezuela – the procedures should be deduced from the few specifications present in the *Magna Carta*. The absence of regulation becomes an obstacle to the use of PLI – opening the scope for divergent and *ad hoc* interpretations by the institutions – even if it does not preclude its effectiveness in all cases. This statement corroborates the fact that it was not possible to find any record of popular initiatives formulated in Bolivia and Venezuela. For Guatemala we have evidence of two constitutional reform bills¹⁰ that reached the legislature between 1999 and 2016 – despite being one of the countries with the lowest requirement in signatures. Finally, moving away from other cases, Uruguay appears with six citizen legislative initiatives between 1989 and 2004 (ZOVATTO, 2014, p. 29-41; cf. LARROSA, 2010, p. 5)¹¹. As we have previously seen, every initiative that meets the requirements and between the General Assembly must undergo a popular vote (plebiscite) in the subsequent election, which may explain the greater engagement of organized sectors of Uruguayan society in use of this mechanism.

A second criterion can be delimited from the requirement in subscriptions. Considering that among those who have secondary law, only Ecuador differentiates the number of subscriptions for ordinary laws and constitutional amendments, it is observed that several countries have expressive requirements. On the one hand, Colombia, Brazil and Argentina are among the three most demanding for bills. On the other hand, Colombia, Costa Rica and Ecuador appear among those who most require signatures to propose constitutional reforms. In the first

¹⁰ According to *Centro de Investigaciones Económicas Nacionales* (Portuguese acronym: CIEN, 2016, p. 10), of the Guatemala, these are popular number bills 3727 (2007) and 4028 (2009).

¹¹ Zovatto (2014, p. 46) lists the initiatives that started "from below" (by the population) in Uruguay: "three constitutional Reforms approved (1989, 1994 and 2004) [and] three rejected (one in 1994 and two in 1999)".

modality, the mildest countries, in descending order, are Honduras, Nicaragua, and Ecuador. Finally, under the same criteria and in the second mode we find Honduras, Peru and Mexico.

The regulation of the mechanism in the Honduran country, as we have seen, is recent and can give clues about its use under small requirements (less than 0.01% of the electorate in absolute number). The law of participation was elaborated in the aftermath of the political crisis of the government Manuel Zelaya (2006-2009) that led to his deposition by the military (ARAÚJO; PEREIRA, 2018). A brief survey reveals that at least five bills have reached the country's national Congress since then: the "UNAH Law" (*Universidad Autónoma de Honduras*), proposed by the University student movement to reform its regulation in 2013 (LA PRENSA, 2013); a law to regulate the dissemination of violent images in the media, proposed by religious institutions in 2015 (LA PRENSA, 2015); a law to regulate presidential re-election, proposed by the *National Party of Honduras* in 2016 (LA PRENSA, 2016); and two others in 2018 that proposed granting salary adjustments to teachers (TIEMPO DIGITAL, 2018) and revoke the contract of the *Empresa Energía Honduras - EEH* (RADIO HRN, 2018). If the feeling of disenchantment with politics and corruption in the country has not yet dissipated completely, at least different social groups have been increasingly involved in the debate of ideas and formulation of bills¹².

The case of Mexico is also relevant to assess the impact of PLI implementation with less stringent requirements in the use of citizenship. The popular initiative was added to the constitution in August 2012, three months after the start of the demonstrations promoted by the university student Movement #YoSoy132. This mobilization kept indistinct relations with the popular discontent of the direction of Mexican democracy, as noted by Téllez and Tamayo (2015)¹³. A recent survey by a researcher associated with the Instituto Belisario Domínguez of the Mexican Senate notes that since the implementation of the mechanism reached the Legislative (that is, fulfilled the requirements) eleven bills, being five of constitutional reform (CORREA, 2018). The themes included: internet access for all citizens; implementation of the second round in elections and mandate revocation; new mechanisms for administrative accountability and combating corruption in the public service, among other (cf. p. 9-16). The latter, known as 'Law 3 of 3', was the only one approved until the moment even though the others were in the proceedings. This fact demonstrates, given the nature of the instrument, that it is necessary more than the presentation of reasoned bills, but also the mobilization of the public with the representatives to convince them of their importance.

¹² Also, in 2018 a proposal was submitted to the legislature to reduce the price of fuels. The signatures, however, were not validated and the bill did not process (CONGRESO NACIONAL, 2018).

¹³ The student's organization was given after an unsatisfactory response in a lecture by the then presidential candidate Enrique Peña Nieto regarding the severe episode of San Salvador Atenco in 2006. On that occasion Peña Nieto, then governor of the State of Mexico, authorized a wide police repression to workers and sympathizers of *Frente de Pueblos en Defensa de la Tierra* (FPDT) that evolved into a battle, when two deaths occurred, several arrests and numerous human rights violations.

In contrast to the two examples listed above, Colombia, Brazil and Argentina present an insignificant number of bills that have reached the requirements to follow the legislative procedure. According to Colombian electoral justice data, nine popular initiatives were launched, of which only two were able to gather the number of firms required¹⁴. After the renovation of 2015 were released another seven that did not succeed in collecting signatures (REGISTRADURÍA, 2019)¹⁵. It is worth remembering that, in addition to the excessive requirement, there is a deadline for signatures to be collected in the country, among other formalities. In the Brazilian case, five bills were proposed, all according to the requirements and approved after deliberation of the legislative. To be able to do so, since the Chamber of Deputies and the High Electoral Tribunal (acronym in Portuguese: TSE) claimed they were unable to confer the signatures, the initiatives always had to be adopted by some representative (LIN, 2010; BONFIM, 2017). According to Cavalcante Filho (2017) the only bill to be processed with the nickname "popular initiative" was the PL 2710/1992 that created the National Fund for Popular Housing. Others were followed, which were assumed by members: PL 4.146/1993 (Heinous Crimes Act); PL 1.517/1999 (Law of Cassation of Mandate for Purchase of Votes); PLP 518/2009 (Clean Slate Law); and PL 4.850/2016 (Law of Ten Measures Against Corruption). Finally, in Argentina were launched by citizenship at least thirteen bills (up to 2004) of which only two collected the signatures necessary to follow the legislative procedure (ending approved): a law for revocation of privileged retirement in the public sector and another to establish a program to combat child hunger¹⁶ (HEVIA DE LA JARA, 2010).

Other variables present in table 2 help at least partially explain the evident discrepancy between these sets of cases. Although four Latin American countries adopt the federative model – Argentina, Brazil, Mexico and Venezuela – only the first two have a geographic distribution criterion for signatures. It can be argued correctly that this condition aims to filter initiatives that do not have representativeness at national level. However, in addition to a demanding requirement in signatures, it makes the task of proposing citizenship more difficult as it requires an organized committee in each locality – and without any institutional assistance for it. Aware of these difficulties, and in a scenario of social pressure on the political class, Argentines (SENADO DE LA NACIÓN, 2017) and Brazilians (CÂMARA DOS DEPUTADOS, 2013) representatives recently proposed revisions to the PLI instrument to allow the collection of signatures electronically – and to mitigate the requirement of signatures. As for Colombia, we have observed that to register an initiative it is necessary to obtain the initial support of 5000 people. The example of Nicaragua and Paraguay also has a deadline for collecting signatures. Formalities such as the

¹⁴ Taken from the calculation of a bill proposed by Antonio Galán Sarmiento, which was articulated by Councilors (*concejales*), support of 30% of these representatives in the country. Registraduría Nacional del Estado Civil (REGISTRADURÍA, 2012).

¹⁵ Quoted from Antón and Welp (2019, n. p.).

¹⁶ This research found no record of other popular initiative laws approved in Argentina until the end of its writing.

accountability of organizers and restrictions on donations from individuals, present in Argentina and Colombia, can also discourage citizenship and hinder the work of dissemination of the bill and collection of signatures. In short, and in general, what is observed about the PLI in the region is a demanding set of constraints that often does not find counterpart in the judicial organs (procedures and deadline for validating signatures) and legislative (explicit deadline for voting on the popular initiative).

Good examples to remedy such a situation, however, can be found in the countries of Latin America. In addition to the cases Honduran and Mexican, previously analyzed, we have Ecuador as a supporter of a modest requirement in signatures. The latter differentiates the number of firms for ordinary laws and constitutional reform, imposes deadlines for authentication and voting of bills and provides access to the media for the promoter committee. As a result, we have nine bills fulfilled the requirements between 2009 and 2014 in Ecuador – only one was approved after deliberation of the Legislative (LLIVE; VINICIO, 2018, p. 73). The example of Costa Rica and Honduras could also be offered institutional spaces for public empowerment in the bills. In Brazil, the Committee on Legislative Participation (CLP) was created in the Chamber and the Commission on Human Rights and Participatory Legislation (acronym in Portuguese: CDH) in the Senate, but these organs only receive suggestions for bills of civil society entities – a shortcut to the demanding PLI (CAVALCANTE FILHO, 2017). Finally, still dealing with aid from the state, only Paraguay proposes the partial reimbursement of costs of prosecutors and promoters – although some countries demand accountability as we have seen. Enabling the proposition of constitutional amendments – only Argentina, Brazil, Nicaragua and Paraguay do not allow – and the direct voting of the PLI on any occasion – as do Colombia, Costa Rica, Ecuador, Peru and Uruguay – could also stimulate citizenship to mobilize politically and use the mechanism. It can be perceived, therefore, that there is a margin to make the popular initiative more attractive and effective, both by reviewing the requirements and by the cooperation of the authorities with promoters, financial support, deadline for the processing legislative, electronic collection of signatures, among other (FERRO, 2007).

Chart 3 - Summary of the data on popular bills or constitutional reform that fulfilled the requirements in the countries analyzed

Country	Bills that have achieved the legislative	Period considered
Mexico	11	2013-2018
Ecuador	9	2009-2014
Uruguay	6	1989-2004
Honduras	5	2013-2018
Brazil	5	1992-2018
Argentina	2	1994-2004
Colombia	2	2002-2018
Guatemala	2	1999-2016

Bolivia	0	2009-2018
Venezuela	0	1999-2018

Source: Own elaboration based on evidence collected and academic articles (2019).

Heading towards the end, table 3 summarizes the whole of the analysis presented by bringing together the number of bills or constitutional reform that reached each national legislature – independent of approval. It appears that the strictest countries in number of signatures, among other requirements, have a smaller number of bills that fulfilled the requirements for the proceeding – even in a larger time space. Two countries of the mildest as regards ordinary laws (Honduras and Ecuador) and one as regards constitutional reforms (Mexico) are in better positions. In addition, countries that do not have secondary law clearly come out worse, as observed in the performance of Guatemala, Bolivia and Venezuela – including Uruguay as an exception due to the peculiar model of PLI adopted. Therefore, at least in the evaluation of legal constraints, it is inferred that the adoption of cheap requirements and regulation of the mechanism facilitate the use of PLI for citizens. The effectiveness, from the point of view developed in this paper, should be measured by the capacity of citizenship to bring a bill to the constitutive stage of the legislative process, according to the categorization of Montero (2004).

This does not mean that other factors, also important to evaluate its viability, have less influence on the use of the instrument. Depending on the political context of each country and the trust of the population in the Legislative – that it is able to give swift treatment to the bills and according to the longing of the majority of citizens – initiatives may occur. Another point to consider, as highlighted in table 2 and also by Hevia de la Jara (2010), is the thematic restrictions. The prohibition of matters of economic nature (taxes, budget, among others), for example, reduces the sphere of influence of citizenship in public policies of greater relevance to the realization of social rights. This fact would contribute to discouraging the formulation of bills and/or channeling political action to other modalities of participation. Finally, although it was not possible to make this distinction between all cases in consideration, it is relevant to observe in which countries the initiatives in fact go through the legislative process as PLI. In addition to maintaining the popular character of the bill, differentiating itself from other laws in procedure and without the need for adoption by some representative as occurs in Brazil, it is important not to terminate the participation in the act of gathering the last signature. The designation of a person or group responsible for the representation of the PLI in the Legislative¹⁷ is an important step for publicizing and encouraging deliberation to improve bills and stimulate new initiatives. Therefore, in a broader and detained study, contextual factors such as these should also be

¹⁷ In a timely manner, some countries foresee the participation of the organizers in the debate on proposals, such as: Brazil (Regulations of Procedure of the Chamber of Deputies, art. 171 paragraph 3), Colombia (Congress Regulations, art. 96), Ecuador (Organic Law of Participation, art. 16), Honduras (Decree 190-2012, art. 14), Mexico (Organic Law of the General Congress, art. 133) and Peru (Law 26,300, art. 12).

considered to assess the motives that lead to citizenship of a particular country to formulate more or fewer bills of law.

CONCLUSION

This work sought, in principle, to evaluate the laws and constitutions of Latin American countries to ascertain the conditions for making use of the PLI instrument. After the documentary analysis, case by case, it was possible, in the preceding section, to establish the comparison between countries, to evaluate those more and less demanding and to analyze the possible effects of the legislation on the frequency with which the mechanism is mobilized by citizenship. It was possible to observe that the region has good examples of legislations that make the PLI an effective instrument of influence of citizens in public affairs and changes of *status quo*. However, a significant number of countries, totaling at least half, have not regulated the PLI or adopt restrictive requirements that impede their full use.

The inclusion of the PLI and other mechanisms of popular participation in the Constitution of the countries analyzed goes back to a great extent to the democratic transition in each. The study by Lissidini (2015) corroborates with the perspective that the cycles of deepening democratic institutions are a reflection of political conflicts in each context. Between the decades of 1980 and 1990, the democratization processes were highlighted and the movements opposed to the neoliberal policies culminated in the beginning of the next decade in a 'left turn' in several countries of the region. Considering both the political context of the countries and the conjuncture of popular dissatisfaction with the institutions that led to a global wave of protests from 2011 (FOMINAYA, 2014; GERBAUDO, 2017) it is clear that in recent regulatory countries (such as Ecuador and Mexico) there was a sensitivity towards the establishment of modest requirements for the PLI. In addition, as highlighted, in countries such as Argentina and Brazil, initiatives to ease the demanding requirements in force at the same time as the public pressure on the political class grow, due to the cases of corruption and economic crises.

From the notes brought by this article, it would be easier to explore the peculiarities of the implementation and use of the PLI in Latin America. It would be timely to search for data on all the initiatives formulated so far in each country, those that have reached or not the legislative process (whether they complied with the requirements) and those that have been approved. From the evidences presented, there are possibilities of study that also contemplate the relationship between adoption or flexibility of the instrument with the political cycles in each context – in addition to the examples listed. In this line, the PLI can be studied in conjunction with other MDD according to the institutional and socio-political specificity of the countries, according to the suggestion of Barrientos (2012). Finally, it is hoped that this study will provide subsidies for this research agenda to be put into practice.

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