

Citizens' Draft Bills for the Strengthening of Open Government Principles through the Collaborative Development of Laws

Marco Konopacki

Debora Albu

Fabro Steibel

Victor Vicente



Grupo de Investigación en
Gobierno, Administración
y Políticas Públicas

Open
Government
Partnership



Abstract

Brazil's Democratic Constitution of 1988 instituted six modes of participation in political life: direct suffrage, referendum, plebiscite, popular prosecution, policy councils and citizens' initiative draft bills. The latter mode allows the proposition of draft bills in the national, state or municipal legislative houses by civil society. Such a mechanism is important for increasing confidence and legitimacy in the political system, which in turn strengthens the principles of open government.

Since the adoption of the citizens' initiative draft bills, no bill has been presented to the National Congress using this mechanism. We argue that this phenomena happens due to the high costs of this process, both in terms of financial resources and in time of mobilization. In that sense, the paper outlines an overview of citizens' initiative draft bills in Brazil, highlighting possible challenges for the concretization of this right. Next, it presents a possible solution to reduce these costs with the application 'Mudamos', that collects electronic signatures for these bills. Finally, it analyzes the preliminary use of this proposal and new possibilities for the realization of this constitutional right with the use of information and communication technologies (ICTs).

Based on this analysis, we intend to construct brief comparisons between the opportunity to adopt electronic signatures for citizens' initiative draft bills in Brazil and the effective adoption of this signature modality by Spain, which approved a law allowing the procedure in 2006. Our preliminary analysis indicates that there was an increase in "Iniciativas Legislativas Populares" (ILP - citizens' initiative bills), only in 2011, when there were 13 new proposals presented to the Parliament. However, they were not sanctioned until 2012, when only one law proposed by citizens' initiative was approved. Hence, the questions that guide our comparison are: how does it impact population's trust in this participatory mechanism? Is there a problem of legitimacy in the mobilization process for an ILP?

The main objective of this article is to understand the adoption of electronic signatures using Mudamos application and what the differences and similarities with the Spanish case are, focusing on possible lessons that Brazil could learn from that experience and contribute to the full enjoyment of this civil right. Finally, this comparison could also function as a reference to



new studies in Latin America on the adoption of electronic signatures in participatory processes, strengthening the principles of open government in the continent.

Key words: citizens' initiative draft bills, crowdlaw

Field: Trust, legitimacy and open government

Introduction

In Brazil, there are a few different forms of democratic direct participation in politics, regulated by Brazil's Constitution of 1988 - the "Citizens' Constitution" - such as plebiscite, referendum and the citizens' initiative draft bill, which allows citizens to draft and present draft bills to any legislative house (at national, state or municipal levels) if signed by a minimum of the electorate. This direct democracy mechanism is crucial to elevate the level of trust and the legitimacy of decision making political processes (KONOPACKI e ITAGIBA, 2017).

Spain adopted this mechanism in its Constitution of 1978 and its regulation only came into force with the Organic Law 3/1984, from March 26th. The provinces gradually adopted the mechanism until the end of the 1990's (CUESTA LÓPEZ, 2007). Both countries have similarities and differences in the processes of implementation and evolution of this right regarding its institutional design and the level of dialogue between different stakeholders.

Considering the context in these two countries, this paper aims at comparing the two cases considering the specific institutional designs in each country and how they affect the rise in the approval of citizens' initiative draft bills. Which elements of these configurations facilitate the use of this democratic mechanism? How can it increase the population's level of trust in politics? Are there any features that bring more legitimacy to the mechanism?

This preliminary analysis demonstrates that improvements in the institutional design are not sufficient to increase the amount of citizens' draft bills approved: in Spain, in 2011, even with twelve propositions presented, only one was approved; in Brazil, there aren't any draft bills approved as such, as they had to be adopted by legislators in order to go through due legislative process. Besides institutional adaptations - such as the collection format and the signatures' verification method - it is necessary to create dialogue spaces for the stakeholders to participate



in based on the concept of *crowdlaw*, for example, guaranteeing a connection between the public sector and civil society. In this piece, we present a few such initiatives that seek solutions for these challenges such as the “Mi Firma” platform, the app “Mudamos” and the methodology of the “Virada Legislativa” (legal hackathon).

The next section presents the development and the specificities of citizens’ initiatives in Spain, highlighting the elements of comparison cited. The third section also stresses these features, but in relation to the Brazilian case, establishing points of convergence with the Spanish context. In section four, we analyse the elements of the institutional design of citizens’ legislative initiative in both countries, depicting how their development led to an increase in the number of such bills, but not their full approval in legislative houses. In this section, we also show how mechanisms of electronic signatures and crowdlaw transform the process into a more dynamic one, generating more trust between the population and legislators. The conclusion presents a few indications for further research in Latin America and highlights the relevance of institutions such as Open Government Partnership to bring this issue forward, giving value to open government mechanisms for more participation and democratization of rights.

The Spanish case

Spain introduced citizens’ initiative draft bills in their Constitution in 1978. Six years later, such bills were regulated by Organic Law 3/1984, from March 26th. After the Organic Law came into force, Spain’s provinces also started to implement their own local regulations regarding this right.

In the same year the Organic Law was approved, the parliaments in the principality of Asturias¹ and in the regions of Murcia² and Aragón³ also adopted the mechanism, and in the following year, the provinces of Navarra⁴, Castilla La Mancha⁵, La Rioja⁶, Cantabria⁷ and Extremadura⁸. In 1986,

¹ *Ley 4/1984*, June 5th, law making initiative regulation.

² *Ley 9/1984*, November 22nd, law making initiative regulation for States and Cities.

³ *Ley 7/1984*, December 27th.

⁴ *Ley Foral 3/1985*, March 25th.

⁵ *Ley 2/1985*, May 8th.

⁶ *Ley 3/1985*, May 20th.

⁷ *Ley 6/1985*, July 5th.

⁸ *Ley 7/1985*, November 26th.



Madrid⁹, Basque Country¹⁰ and Canarias¹¹ adopted the legislation and then, two years later, Galicia¹² and Andalucía¹³. In the first half of the 1990's, Islas Baleares¹⁴, Comunidade Valenciana¹⁵ and Cataluña¹⁶. The last province to institutionalize this right was Castilla y León. The Spanish courts waited until the statutory reform in 1999 - which allows for citizens to draft bills - before approving Law 4/2001, on July 4th, regulating, finally, the mechanism in Castilla y León.

The regulations at the province level also establish the procedures for citizens' initiative draft bills presentation at the municipal level. In general, the process through which the mechanism was established is very similar to the Brazilian case. Both in Spain and in Brazil, citizens' initiatives arise as an institution "which could make legislative houses more dynamic and enhance the relationship between them and citizens¹⁷". In Brazil, the Constitution of 1988 was coined the "Citizens' Constitution", as it sought to guarantee social rights and to empower the people as legitimate actors in politics, "both indirectly, through representatives, and directly"¹⁸. In both countries, the right to propose bills by the people is understood as a direct democracy mechanism, in which the people can exercise their sovereign power.

The processes of regulating also followed similar paths. Deriving from the Constitution, the national Congress would then regulate the enjoyment of this right as would the states and "comunidades autónomas", all following the Constitution. In Brazil, the regulating of 20 from the 27 states goes after what was established at the national level: citizens' draft bill could be submitted to legislative houses as long as they were signed by one percent of the total amount of voters from each state. Law No. 9709 from December 18 1998 specifies the details of this right, especially the necessary conditions in which it must be fulfilled. In Spain, the Organic Law 3/1984

⁹ *Ley 6/1986*, June 25th.

¹⁰ *Ley 8/1986*, June 28th.

¹¹ *Ley 10/1986*, December 11th.

¹² *Ley 1/1988*, January 19th.

¹³ *Ley 5/1988*, October 17th.

¹⁴ *Ley 4/1991*, March 13th.

¹⁵ *Ley 5/1993*, December 27th.

¹⁶ *Ley 2/1995*, March 23rd

¹⁷ LARIOS PATERNA, M. J., *Participación ciudadana en la elaboración de la ley*, Congreso de los Diputados, Madrid, 2003, p. 211.

¹⁸ Brazil's Constitution 1988, Article 1st. Available at:

http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm



was the text regulating the right and all “Comunidades Autónomas” reproduced the text established by the constitutional reference¹⁹.

In Brazil, Law 9709 established very simple and generic norms for the fulfillment of this right. Basically, the law states that there is a minimum of one percent of voters’ signatures needed (only registered voters can sign such bills) distributed in at least five different states; also, the bill cannot be rejected due to formal procedural flaws (i.e. be in disagreement with due legislative technicalities); and, finally, that each bill can only address one issue.

In contrast, the Spanish legislature established much more rigid rules for the admission of citizens’ draft bills. In order to sign such bills, one must be a Spanish citizen with full political rights. Besides this condition, it is also necessary to have a valid voter’s identification. The minimum signatures necessary for a national project in Spain is 500.000, which corresponds to around 1,5% of a total of 34.631.581 of registered voters in 2015’s elections²⁰. Each province establishes the minimum signatures necessary for the presentation of citizens’ draft bills. Unlike in Brazil, the Spanish law does not require the diffusion of the signatures through various territories in the country, except for Castilla y León, in which is mandatory to have voters’ support among a minimum of five provinces.

The main difference between these bills in Spain and in Brazil resides in the process of collecting signatures. In Brazil, there is no regulation in relation to the form of signature collection. On the website of the Congress, there is only a template form and a recommendation that any citizen who wishes to collect signatures should use²¹. This form requests basic information from voters such as name, address, voters’ identification and the voters’ signature. There is no previous registration or notification procedure of official campaigns in progress, meaning that Congress does not have any control of the projects that could be presented in such format. It is only required that citizens collect the minimum signatures established in order to present a bill. In the next

¹⁹ CUESTA LÓPEZ, V. M. Participación directa e iniciativa legislativa del ciudadano en democracia constitucional. Tesis Doctoral. Facultad de Ciencias Jurídicas. Las Palmas de Gran Canaria: Universidad de Las Palmas de Gran Canaria, 2007.

²⁰ Oficina de Instituciones Democráticas y Derechos Humanos. Informe Final de la Misión de Evaluación Electoral. ELECCIONES A CORTES GENERALES de 20 de dezembro de 2015. Available at: <http://www.osce.org/es/odihr/elections/spain/227271?download=true>.

²¹ Available at: <http://www2.camara.leg.br/participacao/sugira-um-projeto>.



section, we describe in detail the institutionalization of citizens' initiative draft bills, its specificities in the state and municipal levels and the form of collecting signatures.

There is an effort to identify and promote the bills' proponents in Spain. The Spanish legislation establishes the importance of this stakeholder who formalizes demands in draft bills to the legislative houses. After this submission, the governing board analyses formal aspects of the bill and decides whether or not to authorize the start of the signature collection, which has a deadline depending on what region it addresses. At the national level, the time limit for the collection of 500,000 signatures is 9 months and it is possible to extend this limit for another 3 months. When the bill is registered, a monitoring commission is formed to follow the signature collection process, being responsible for publicizing the signatures collection campaign and the representation of the citizens who support the bill (CUESTA LÓPEZ, 2007, p.359).

Before this reform was established by Organic Law 4/2006 on May 26th 2006, the proposer of draft bills was also required to register an explanatory memorandum annexed to the draft itself to justify the bill. As Organic Law 4/2006 came into force, it facilitated the enjoyment of this right, institutionalizing electronic signatures as a valid form of collection.

Considering the material aspect, citizens' initiative draft bills should address issues under specific jurisdictions: a subject under national scrutiny cannot be ruled by provinces and vice-versa. Similar to Brazil, citizens' initiative draft bills must only address one specific issue (Article 5.2. from Spain's Organic Law and Article 13 from Brazilian Law 9709/98). Such bills are prevented from addressing constitutional, tax or international matters. Within these material limitations, in Spain there is another limitation regarding the "prerrogativa de gracia", which are matters exclusively ruled over by the king of Spain.

After the establishment of the Commission and the monitoring process the signature collection can start. At that point, standardized forms are distributed for signatures to be collected in the provinces. The Organic Law reform in 2006 also allowed the forms to be written in other co-official language such as Catalan.



Another difference between Brazil and Spain in the signature collection campaign resides in the fact that the electoral authority is also informed of the campaign start to guarantee the integrity of the process as well as validating and counting the signatures collected. In Brazil, as we will describe in the following section, the Congress should be responsible for this monitoring, however, due to technical and logistic limitations that has never been done.

The authentication of the signatures follows a strict procedure in Spanish citizens' initiative draft bills. Each signature should be carried out in the presence of someone who can attest public faith, meaning notaries or legal representatives from the jurisprudence the bill is under. To facilitate the collection of signatures, then, there is an exception in which the Commission nominates volunteer citizens who, under an oath pledged to the electoral authorities, assume the role of a special authenticator.

In comparison to Brazil, Spain has made the exercise of this right more rigid. This proceduralism was originally constructed due to the legislators' fear of demagogic manipulations (PÉREZ SOLA, 1994). Throughout the years, however, they realized these barriers diminished the effectiveness of the citizens' right to present draft bills.

Until 2006, when the Organic Law was reformed, Spanish citizens had initiated 49 processes to collect signatures in draft bills, an average rate of 2.2 per year. After the reform, 93 processes were initiated, an average of 8.45 per year. It is important to highlight that this rise in bills is not only due to the reform. Since 2011, Spain has gone through a serious financial and social crisis that lead to an outbreak of huge manifestations and transformations in the political activity of the country. If we consider only the period between 2006 and 2011, we realize that 20 processes were started, an average of 4 draft bills per year²².

Based on this data, the Organic Law has raised the incentives for the population to present draft bills. The 2006 amendment facilitated some aspects of the signature collection process. Among these changes are the possibility to use languages other than Spanish in the forms; a raise in time limitation for the collection process (up to 9 months, extendable for another 3 months - before the

²² Available at: <http://www.congreso.es/>.



amendment the limit was of 6 months); and the possibility of naming special members for the signatures' verification commission. Regarding the appreciation of proposals, there are three alterations: even if a legislative session is terminated, the drafts presented are still considered; the Spanish state compensates all the costs for the collection of signatures for every draft bill that attains the minimum required; and finally, and perhaps the most innovative change, is the possibility of the electronic format for collecting the signatures.

Electronic signatures in citizens' initiative draft bills in Spain are collected through electronic national identity cards. Every Spanish citizen has an identity number which corresponds to an electronic certificate to access public services. As the Commission is established and the signature collection process starts, the Electoral commissions make the online option available for citizens to sign the bills electronically. As the process ends, the electronic signatures contain a self-validation mechanism, therefore the certifying authority only needs to verify if the subscribers are duly registered as voters.

It is notable that since the institutionalization of citizens' initiative draft bills in Spain, only two drafts were approved and came into force: one that regulates bullfight festivals as cultural heritage²³ and the other on community debt²⁴. From a total of 50 draft bills registered from 1983 to 2016, only 12 achieved the minimum of 500,000 signatures necessary to be presented at legislative houses.²⁵ Even if this number is small, the number of approved bills is disproportionately smaller. As we will explain in the following section, from the citizen draft bills that are effectively protocoled at the Lower House in Brazil, practically all of them have been discussed by legislators and were approved. A question then arises: is it possible that new incentives in the presentation of such bills result in more institutional impact, i.e., the generation of new laws based on the population's proposals?

The third section of this paper will discuss the institutional impact of citizens' initiative draft bills over law production in Brazil and in Spain reflecting upon this issue. Before that, the next section

²³ *Ley 18/2013*, November 12th.

²⁴ *Ley 8/1999*, April 6th.

²⁵ Available at: <http://www.congreso.es/portal/page/portal/Congreso/Congreso>.



seeks to present the details over the Brazilian case, reinforcing the parallels between the two cases addressed in this research.

The Brazilian Case

Citizens' initiative draft bills were introduced in Brazil in the Federal Constitution in 1988 in article 14 with other direct democracy mechanisms: "Article 14. The sovereignty of the people shall be exercised by universal suffrage and by the direct and secret voting, with equal value for all, and, according to the law, by means of: (RCA No. 4, 1993; CA No. 16, 1997) I – plebiscite; II – referendum; III – people's initiative." The Constitution itself, in article 61, paragraph 2nd, regulates citizens' initiative, stating the following requisites: (i) subscription of at least 1% of the national electorate; (ii) that the voters are distributed in at least five different states and (iii) that in each of the five states there should be at least 0.3% of their electorate as supporters of the bill. In terms of figures, this amounts to around 1,462,751 signatures.

At the state level²⁶, the requisites for the presentation of citizens' initiative draft bill, such as the minimum number of supporters and geographical distribution of these signatures, can be found in each state's constitution. At the municipal level²⁷ the requirements for such proposals are established in the Federal Constitution: a minimum of 5% of voters' signatures in the city. Each municipality Organic Law regulates the specifics of the signature collection and draft presentation.²⁸

Besides the requirements established in the Federal Law and each states' and municipalities' legislation, each legislative house still has its internal procedure to operationalize popular initiatives and define, for example, which piece of information is needed such as name, address, document number, etc.

Citizens' initiative bills depend on the manifestation of agreements of citizens which, in this case, is given through signatures. At the federal level, a draft bill needs a minimum of 1.5 million signatures to be presented at the Lower House, which is considerably difficult due to the amount

²⁶ Article no. 25 of Brazil's Constitution 1988.

²⁷ Article no. 29 of Brazil's Constitution 1988.

²⁸ The Organic Law is an equivalent of the state's constitution.



of signatures and the verification process of them. The logistical barrier to collect and validate these signatures together with voters' identifications and addresses is one of the greatest limitations in this process²⁹.

As shown in the previous sections, the citizens' initiative is a way to initiate the legislative process by the population itself. The formal requirements for it are established in the Federal Constitution and in Law 9709 from November 18th, 1998. These requirements include a minimum amount of signatures, appropriate formal and material objects and due legislative process³⁰. Once the draft bill is presented, it follows the same procedure as any other project, observing all the proceeding steps, especially the discussion in the legislative houses. At this point, the house can reject or change the draft to the point where it could even make such significant alterations that the project does not reflect the citizens' will when they signed the project in the first place.

Until today in Brazil, no citizens' initiative draft bill has been approved due to the impossibility of verification of the signatures. In terms of logistics, it is very difficult to manually verify more than one million signatures. In practice, interested parliamentarians "adopt" the draft bill and present it as if it is from their authorship, which dismisses the need of verification of the signatures. Some of the projects that have been "adopted" include Law 8930 of 1994 (on femicide), Law 9840 of 1999 (to fight electoral corruption), Law 11124 of 2005 (that creates a National Fund for Social Housing) and Complementary Law 135 of 2010 (know as the "Clean Slate Law")³¹.

Brazil's Federal Constitution of 1988 was developed and written before the democratization of the Internet and the digital world we are immerse in. For that reason, signatures and information for citizens' draft bills have been collected in the formats available at the time, meaning through paper and pen. Brazil is a country with a huge population and a large territory, which results in even more hurdles to collecting this support. Besides this, since the signatures are paper-based there

²⁹ TEIXEIRA, L. A. (2008). A Iniciativa Popular de Lei no Contexto do Processo Legislativo: Problemas, Limites e alternativas. 2008: Monografia para Curso de Especialização. Câmara dos Deputados: Centro de Formação, Treinamento e Aperfeiçoamento. Available at: <http://bd.camara.gov.br/bd/handle/bdcamara/10190?show=full>. p. 9.

³⁰ VAZ, M. F. A rigidez dos requisitos constitucionais para a iniciativa popular e a concretização do direito ao acesso à justiça no âmbito do poder legislativo.

³¹ Konopacki, M., Itagiba, G. (2017) Relatório Projetos de Lei de Iniciativa Popular no Brasil. Instituto de Tecnologia e Sociedade. Available at: <https://itsrio.org/wp-content/uploads/2017/08/relatorio-plips-_final.pdf>.



is a logistical barrier both in their collection as well as in validation of the information needed (names, addresses, voters' identification numbers)³².

Since 1988, with the advent of the Internet and technology, public service delivery has changed. For example, the judiciary has adopted an electronic means and has digitized the monitoring of processes, and the legislature has digitized its accountability proceedings. Only the signature collection process has remained outdated and it is still done through pen and paper, representing a huge obstacle for the effectiveness of this right.

Currently, thanks to the Internet and other technologies, it is possible to collect signatures throughout Brazil and verify them automatically. Digital signatures already have their relevance recognized and used in common civic procedures through provisional measure 2200-2 from 2001 and in legal acts as instituted by Law 11419/064³³.

Among all the Brazilian states and capitals, only Rio de Janeiro³⁴, Santa Catarina³⁵ and Porto Alegre³⁶ have institutionalized citizens' initiative electronically through the Internet. The state of Amapá³⁷ announced the launch of a digital portal to receive such draft bills, but it is still not available. In the state of São Paulo, Law 162 of 2008 was presented to "regulate popular initiative started in the World Wide Web". However, the bill has still not been voted on, even after positive legal advice by the Commission of Constitution and Justice of the Legislative Assembly of the state of São Paulo. In Curitiba, project 005.00189 from 2013 also allows the collection of signatures in such draft bills digitally, but it is still being processed. At the federal level, constitutional amendment project number 286 from 2013 has the same goal as the aforementioned projects and it has not yet been voted on.

³² TEIXEIRA, L. A. (2008) A Iniciativa Popular de Lei no Contexto do Processo Legislativo: Problemas, Limites e alternativas. 2008. Monografia para Curso de Especialização. Câmara dos Deputados: Centro de Formação, Treinamento e Aperfeiçoamento. Available at: <http://bd.camara.gov.br/bd/handle/bdcamara/10190?show=full>. p. 9.

³³ Law No. 11419 of 2006 regulates the digitalization of the legal process.

³⁴ Article No. 119 of Rio de Janeiro state Constitution.

³⁵ Article No. 2 of Brazilian Law 16585 of 2015.

³⁶ Article No. 98 of Porto Alegre Municipal Organic Law.

³⁷ BARBOSA, C. Assembleia Legislativa do Estado de Amapá. Pela internet, cidadão poderá ajudar a produzir projetos de lei da Assembleia Legislativa. Available at: http://www.al.ap.gov.br/pagina.php?pg=exibir_not&idnoticia=1545.



Considering the progress of technologies of communications and information (ICTs), the legal adaptation for the collection of such signatures through the Internet is ever more necessary. Political behaviors of both citizens and politicians has been changing rapidly together with new technological, social and political contexts: political participation is not exclusive to the offline world and institutions are evolvingly more open to Internet usage.³⁸ To adapt citizens' initiative draft bills to this new reality, it is crucial to build new paths to facilitate the population's engagement, using technology to reduce participation costs.

Simultaneously, these new paths should establish safety parameters that transform this right into a robust means of participation, raising citizens' degree of trust in political institutions and contributing to the construction of the rules and norms they abide to. Therefore, we argue that for this right to be fulfilled new adequate formats should be developed, making this participation channel more effective and concretizing citizens' rights to present draft bills.

Institutional Design and Crowdlaw

One of the most important variables to evaluate participatory processes is their institutional design (FARIA, 2011; AVRITZER, 2009). This variable determines the rules of participation, meaning who, where, when and how the population can participate. Institutional design can be determined by the State-driven norms or simply by public administrators who intend to open participatory processes to act in collaboration with their public performance.

In general, institutional designs that present well defined rules of participation and entail any type of sanction to public actors is considered a "strong" design, meaning they have more chances to be effective, as the rules of participation clearly state what is the intended institutional impact, conditioning the actions of public actors to their implementation and compliance.

Taking both the Spanish and Brazilian cases as examples it is possible to realize that both institutional designs regarding citizens' initiative draft bills can be considered strong designs, as they establish that once the minimum of signatures necessary to present a bill at any legislative

³⁸ ALMEIDA, G. de A. (2015) Marco Civil da Internet – Antecedentes, Formulação Colaborativa e Resultados Alcançados. In: Gustavo Artese - Coordenador, Marco Civil da Internet Análise Jurídica Sob uma Perspectiva Empresarial.. São Paulo: Quartier Latin.



house is reached, the draft must be considered by the according legislative power. Therefore, a draft bill proposed by the population does not depend exclusively on the will of a congressperson to be considered.

However, if the institutional design of citizens' initiative bills in Spain and Brazil is strong, the question about their effectiveness still remains. In both countries, such bills rarely transferred into effective legislation: Only two in Spain, and only four in Brazil (which even with the minimum amount of signatures collected had to be "adopted" by congressmen). Despite the fact that popular initiative allows the population to debate proposals, the public does not have deliberative powers. It is also important to highlight that the legislative authorities do not nullify the due process of assessment of a bill. Elected representatives are expected to discuss the proposals and suggest modifications and then approve or decline the bill.

When we analysed the discussion of the proposals in Brazil and in Spain we found that there is an important difference: in Spain, of the twelve proposals presented, only two came into force; in Brazil, from the five presented, four were approved³⁹.

In Brazil, we analysed two cases more closely: the "Clean Slate" bill, which prevents politicians condemned on corruption cases to become elected, and the "10 anti-corruption measures" bill, which creates legal mechanisms to fight corruption. The "Clean Slate" bill was conducted by the Fight Against Electoral Corruption Movement (MCCE, in Portuguese), a network of more than 80 civil society organizations. The second bill was led by a group of organizations connected to the Department of Justice of Brazil. Another crucial difference is that while the signature collection was ongoing, there was an effort to create dialogue points with the legislative power, as describes Márlon Reis, one of the leaders of the "Clean Slate" bill campaign.⁴⁰ The construction of dialogue channels prior to the proposal presentation has apparently created a cooperation environment around the construction of the "Clean Slate" bill, which was not the case of the "10 measures" bill.

³⁹ The only proposal that was rejected was the "10 anti-corruption measures". Despite the absence of a formal rejection, because of the many amendments adjoined by the parliamentarians, the authors claim it lost its original character and did not represent the essence of the bill they had drafted. Available at: <http://www.dezmedidas.mpf.mp.br/todas-as-noticias>.

⁴⁰ REIS, M. (2017) "A Conquista da Lei da Ficha Limpa". In: KONOPACKI, M.; ITAGIBA, G. Relatório Projetos de Lei de Iniciativa Popular no Brasil. Instituto de Tecnologia e Sociedade. Disponível em: <https://itsrio.org/wp-content/uploads/2017/08/relatorio-plips-l_final.pdf>.



Considering the representation crisis experienced in several democracies, it is logical to consider direct democracy mechanisms as strong means to oppose “traditional politicians and politics”. The actors involved in the “10 measures” bill tried to create these conversation channels, however, due to the political polarization, the environment for the presentation of the bill was unproductive considering a more cooperative approach towards the construction of this bill. Despite the almost “messianic” tone in the legislation that regulates popular initiative bills, it is impossible to exclude the deliberation component of the equation, which is core to the fulfilment of this right not to be claimed as “majority dictatorship”.

In that sense, legal reforms that aim at including the population in rule-making should be guided by two premises: 1) a balanced incentive for the presentation of new draft bills; 2) the creation and implementation of collaborative means of decision and drafting of these proposals.

Considering the first premise, the 2006 reform in Spain’s Organic Law (LOILP) resulted in an increase in the amount of draft bills, doubling the annual average. The use of the electronic format for collecting signatures is also an important incentive, as it reduces the costs of participating and organizing a draft bill campaign, besides bringing innovation to the very construction of this process. In Spain, since the electronic format was approved, the platform “Mi Firma” was created in order to facilitate the process.

In Brazil, the electronic format for signature collection has not yet been fully regulated. At the federal level, draft bill 7574 of 2017 - which aims at establishing rules for electronic signatures - has not been voted on yet. In João Pessoa, capital of Paraíba state, municipal law 13041 from 2015 regulates the electronic format. However, since its approval, there were no safe technical tools to give effectivity to this law. In March 2017, the application Mudamos was launched in Brazil, creating a cheap and accessible technical model to allow electronic signatures in citizens’ initiative draft bills⁴¹. This app was officially adopted by the city of João Pessoa and it became a reference in the discussions for drafting of bill 7574 of 2017, still in negotiation in the Lower House.

⁴¹ Available at: <http://www.mudamos.org>.



Another relevant variable to boost popular participation in the formulation of draft bills is the number of signatures required and process of collecting those signatures. In Brazil, the minimum amount necessary to present a bill at the federal level is 1.5 million signatures; in contrast, the minimum necessary to create a new political party is 500,000 signatures. It is less costly to create a new party to take part in the political debate than to present a draft bill. In Spain, during the Organic Law (LOILP) Reform, there was an attempt to lower the minimum necessary from 500,000 to 100,000 signatures, but the proposal was rejected (CUESTA LÓPEZ, 2007). In both cases, the proportion of 1% or more voters' signatures to present a draft bill seems unreachable. It is interesting to cite the case of João Pessoa at this point again, as the same law that created the electronic mechanism has reduced to a minimum of 0.5% of the electorate's signatures to present a bill⁴².

It is important to consider that popular initiative serves as an instrument to promote dialogue among different democratic actors besides providing incentives to the exercise of direct democracy. Therefore, another fundamental pillar to the rise in effectivity of this mechanism is the creation of collaborative methodologies and tools to help the deliberation and the construction of such bills.

The presentation of a bill to the Lower House is part of a deliberation system developed at the same time the proposal is constructed; it follows through due legislative processes, when representatives discuss and amend the original bill and, finally, the bill is sanctioned by the executive power. These various parts of the deliberative system are coupled together and boosted by inductors that facilitate or not this effect. These inductors can be the media, bureaucracies, the very dynamics of the participating actors in the system and the institutional design and norms that delineate participatory institutions (MENDONÇA, 2013).

When analysing the Spanish and Brazilian cases, there are a few indications as to why Brazil was proportionately more effective than Spain in approving the draft bills presented at Congress. The majority of the citizens' initiative bills presented at the Lower House had a distinctive feature of

⁴² In the majority of Brazil's municipalities, the minimum of signatures required is 5%. KONOPACKI, M.; ITAGIBA, GI. Relatório Projetos de Lei de Iniciativa Popular no Brasil. Instituto de Tecnologia e Sociedade. Available at: <https://itsrio.org/wp-content/uploads/2017/08/relatorio-plips-l_final.pdf>.



great popular appeal, resulting in broad media coverage. The most emblematic of them, dubbed “Daniella Perez Law”, created the penal classification of heinous crime. The proposal was motivated by the brutal assassination of actress Daniella Perez, daughter of scriptwriter Glória Perez, who organized the signature collection for this bill. At the time, the media gave huge emphasis to the case, especially because both Daniella and Glória were employees of the main television broadcasting company in Brazil, Globo TV.

Another inductor that might explain Brazil’s higher rate of popular initiative bills approval is the design of the signature collection itself and its presentation. Even though there is a law regulating the exercise of this participation mechanism in the country, its effectiveness is hindered by the limitation related to the verification of these signatures. This challenge creates a gap in the design, obligating the citizens proposing the bill to transfer the initiative to legislators, who present the proposal to the House. Though this facilitates the approval of these bills, it detracts the mechanism from its original purpose: to establish a *direct* channel between the population and the legislative power. This same inductor would have a negative effect in the Spanish case, since the process is already highly bureaucratized.

Crowdlaw, a concept coined by the research group on governance from TheGovLab, implements multistakeholder law making practices through the use of methodologies that integrate different actors and offer a more inviting environment for collaboration. The openness for participation in lawmaking can provide great efficiency gains for modern democracies.

The challenge in the implementation of crowdlaw processes lies on the fact that it depends on public agent’s political will, since their willingness to “share law making efforts” with the population is directly related to how threatened they feel that this act could delegitimize their mandates. In that sense, investing in democratic innovation tools to close the gap between the government and civil society, connected by citizens’ initiative draft bills, has a great potential to engage the population and recover citizens’ trust in their representatives.

João Pessoa’s case serves as another example: in October 2017, the city hosted a legislative hackathon, an event called “Virada Legislativa”, with the support from the Institute for Technology and Society and the app “Mudamos”. The event centered on the application of a methodology



created to transform populations' ideas into draft bills, counting on a multistakeholder participation and, specifically, the participation of the city counselors. One of the phases of the methodology emphasizes the improvement of the drafts written during the event with the direct participation of the counselors through an open consultation.

Holding events such as this one in national contexts with the participation of thousands of citizens is still a challenge, but institutional democratic innovation mechanisms have the role of developing solutions that pair technology with civic and political processes to improve lives in society. Seeking solutions for the empowerment of the population must be part of an agenda to solve complex political problems experienced by various societies in the XXIst century. Rethinking popular initiative with this lens is crucial to the construction of fairer and more democratic societies.

Concluding Remarks

In this paper, we tried to briefly describe the operationalization of citizens' initiative bills in Spain and in Brazil. Our goal was to establish a comparison between the two cases, identifying both similarities and differences that could indicate which are the most relevant factors for the strengthening of this direct democracy mechanism.

We have observed that the institutional design of this tool in both countries has great potential of generating impact, as it clearly states the form of participation of the citizens and it conditions the legislative power to assess a proposal if it is signed by a minimum number of voters. However, despite this diagnosis, we have identified that Brazil has a larger proportion of draft bills presented that came into force.

Among the variables that were highlighted to explain this difference are the inductors of the coupling between popular demands and deliberation in the legislative powers. In Brazil, the media and a looser regulation of the presentation of citizens' draft bills generate positive inductors, while in the Spanish case, the highly proceduralized process of signature collection is a negative inductor in this coupling effect.



References

- AVRITZER, L. (2009). *Participatory Institutions in Democratic Brazil*. Baltimore: The Johns Hopkins University Press.
- CUESTA LÓPEZ, V. M. (2007) *Participación directa e iniciativa legislativa del ciudadano en democracia constitucional*. Tesis Doctoral. Facultad de Ciencias Jurídicas. Las Palmas de Gran Canaria: Universidad de Las Palmas de Gran Canaria.
- FARIA, C. F.; RIBEIRO, U. C. (2011) *Desenho Institucional: Variáveis Relevantes e Seus Efeitos Sobre o Processo Participativo*. In: Roberto Rocha C. Pires (org). *Efetividade das instituições participativas no Brasil: estratégias de avaliação*. Brasília: IPEA.
- KONOPACKI, M.; ITAGIBA, G. (2017) *Relatório Projetos de Lei de Iniciativa Popular no Brasil*. Instituto de Tecnologia e Sociedade. Available at: <https://itsrio.org/wp-content/uploads/2017/08/relatorio-plips-l_final.pdf>.
- MENDONÇA, R. F. (2013) *The Conditions and Dilemmas of Deliberative Systems*. Paper prepared for the 2013 APSA Annual Meeting. Chicago, August 29th – September 1st. Panel: Discursive, 2013.

