



## *Insights for design of direct public participation: Taiwan as a case study*

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### **What was the process for constitutional change in Taiwan?**

Taiwan's constitution changed in tandem with democratisation. Taiwan is known for its incrementalism, with the Constitution being frequently revised, a total of seven times over the years 1991-2005. The reason for the high frequency of constitutional revision was the monopolisation of power by the National Assembly, a constitutional institution designed for the dual purposes of electing the president and revising the Constitution. These rounds of revisions have helped Taiwan's democratic reform, however, they are also sometimes seen as 'elite settlements' as the general public were not well informed or given an opportunity to participate.

The last constitutional revisions in 2005 included substantial changes to the process of constitutional change with the National Assembly finally being abolished altogether and a public referendum introduced.

The current process of constitutional change involves two phases: first, legislative initiation and resolution and second, public referendum. An amendment to the Constitution has to be initiated by a proposal by a quarter of the members of the Legislative Yuan. The proposal then has to be passed by at least three-quarters of the members present at a meeting attended by at least three-quarters of the total members of the Legislative Yuan. The revision proposal passed by the Legislature then must be presented to the general public for debate and consideration six months before a scheduled public referendum. The ceiling for the public referendum is extremely high, requiring more than a 50% yes vote out of the total number of legitimate voters. It is commonly understood that a referendum needs to occur in conjunction with major national elections, such as presidential and/or congressional elections, in order to secure the necessary voter turnout.

### **To what extent has the public been involved in the shaping of proposals for constitutional amendment prior to the referendum stage?**

The referendum is designed to secure public participation in constitutional revisions. The previous constitutional revisions in Taiwan were carried out, however, as a form of elite settlement in which the National Assembly monopolised the forum for constitutional revision.

When seen it from a more contextual perspective, however, the general public has been greatly involved in the process of constitutional change since the beginning of democratisation in the late 1980s. Student movements, in particular, could be seen as one major contributor in the process, with the Wild Lily Movement (野百合學運) and the Sunflower Movement as good examples.

The Wild Lily Movement occurred in March 1990 when students gathered in front of the Chiang Kai-shek monument to chant for political reform and constitutional change. The students requested a reform agenda with four goals: (1) dissolving the National Assembly; (2) abolishing the Temporary Provisions; (3) calling for a national affairs conference; and (4) providing a timeline for political and economic reform. President Lee Teng-hui entered into an agreement with the student representatives to hold a National Affairs Conference for constitutional reform before the National Assembly took up the agenda. The National Affairs Conference mode of constitutional revision – which was outside the official procedure – was used regularly, similar to the round-table talks in East and Central Europe.

The Sunflower Movement represented a different form of participation after the public referendum for constitutional revision was established. In March 2014, a large group of university students broke into and occupied the Legislative Yuan for almost one month to protest against the black-box resolution of the Cross-Strait Service Trade Agreement by the Legislative Yuan. During and after the Sunflower Movement, there were calls for constitutional revisions relating to power sharing and public participation on the formation of China policy. In Taiwan's constitutional revision politics, the involvement of civil society groups can also be observed. For example, the Taiwan Association for Human Rights and other civil society groups held the 2015 Convention On The Action Plan For Constitutional Reform (台灣憲改藍圖會議) at the Legislative Yuan, and proposed their agenda for constitutional revision.

With the introduction of the public referendum requirement, public participation in the shaping of proposals for constitutional revision is of course more guaranteed.

### How did any public participation occur?

As mentioned above, the people of Taiwan can participate in or have an effect on the process for constitutional change in various ways. Each way had a different basis. The Wild Lily Movement arose from a dispute with the National Assembly. The Sunflower Movement was due to the Cross-Strait Service Trade Agreement, which did not comply with due process. To some extent, it can be said that both social movements were caused by the government's failure, and the public mobilised from the bottom-up against the government. Participants in the social movements included students, citizen groups, scholars and experts. Many citizen groups, despite their divergent focuses, formed a network or coalition, advocating issues of public interest. With the rise of digital governance, many social movements take advantage of social media for the dissemination of information and mobilisation. On many occasions, initiators launched easy-to-understand tips for dummies (懶人包) to explain the issues to the general public and seek their support. 'For dummies' meant that a brief description of an event or issue helped the public understand the event or issue quickly. Some group representatives appeared on TV talk shows to explain their arguments and enter into debates.

### What were the outcomes of any public participation?

It is difficult to specify the outcomes of any public participation. We can take the Wild Lily Movement and the Sunflower Movement as examples. The Wild Lily Movement led to a national affairs conference and contributed to the final abolition of the Temporary Provisions and formal launch of constitutional revisions in the early 1990s. The Sunflower Movement postponed the review of the Cross-Strait Service Trade Agreement and contributed to the change in the age requirement for participation in public referendums from 20 to 18 years old. It did not however substantiate any formal constitutional revisions. All in all, it is fair to say that these two social movements have changed the blood and soul of the constitutional order in Taiwan.

## How significant is the use of the referendum for constitutional change in legitimising the process of constitution building in Taiwan? Does it enhance popular ownership of constitutional change?

The public referendum for constitutional revision introduced in 2005 has not yet been actually used. However, the introduction of the referendum itself removed constitutional revision from the hands of the National Assembly to general public, building greater legitimacy for the Constitution which otherwise has been considered as externally imposed and revised not by the people. Therefore, the inception of the public referendum for constitutional revision, albeit not formally used so far, has greatly enhanced popular ownership of Constitution and constitutional identity.

## What information is given to the public during the referendum campaign to assist voters in casting their vote?

While the public referendum for constitutional revision has not yet been used, the referendum for public policies has been practiced in Taiwan for a long time, generating a rich experience. The most recent referendum in 2018 provides a good example. Ten proposals were put to public vote. In order to foster robust public deliberation, it was considered crucial to inform the public about the issues and their scientific, social, economic and political underpinnings. We can observe public information from two perspectives.

First, according to the *Public Referendum Act* article 17, the competent authority must announce the main text and a statement of reasons for the proposal, and the position papers made by government agencies on the proposal 28 days before the day of the referendum. The competent authority should also hold at least five presentations or debates through the national broadcast TV channels (*Public Referendum Act* article 18,). This makes sure that the representatives of those in support and those against the proposal have a way to debate the proposal to be put to referendum.

Second, many civil society groups made ‘for dummies’ information guides and special slogans to help the public understand the proposals to be put to referendum. Despite these efforts, however, it is easy to find ways that the level of public deliberation on the issues is not satisfactory. The process abounded with all forms of misinformation, disinformation and fake information, to the confusion of general public. It was also the case that too many issues were put up for the referendum during an election, and that compromised the quality of public deliberation.

## Insights from the experience of Taiwan on public involvement in constitutional change

This discussion of Taiwan’s participatory mechanisms in constitutional change reflects Taiwan’s social context. Taiwan underwent a constitutional change from authoritarian rule to democracy. The constitutional change was also incremental, with rounds of piecemeal revisions, each for a specific pressing political agenda. Taiwan’s experience might therefore be particularly relevant to other jurisdictions that share these features.

The introduction of the public referendum was the right move in the latest round of constitutional revisions, but the threshold is extremely high, making the next constitutional revision in Taiwan less likely to succeed, if not impossible.

Although, before 2005, formal constitutional change was by elite settlement in which the National Assembly monopolised the process, civil society remained vigilant and engaged throughout the process. Even after major constitutional revisions, the establishment of the new Congress, and more credible courts, Taiwan's citizens have remained active on constitutional issues, resulting in a unique 'civic constitutionalism', which stands in contrast to the crisis of new democracies in which engagement becomes dormant.

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