



Issues relating to the recall mechanism
An Electoral Processes Team Working Paper

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This Working Paper is part of a process of debate and does not necessarily represent a policy position of International IDEA.

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Part I Introduction to direct democracy

International IDEA's work on recall and direct democracy

In February 2004, International IDEA launched a project focusing on the use of direct democracy in a global context. The project is focusing on the three main direct democracy mechanisms:

- Referendums;
 - Allowing the electorate a direct vote on a specific political, constitutional or legislative issue.
- Citizen initiatives;
 - Allowing the electorate to vote on a constitutional or legislative measure proposed by the people if the proponents of the measure gather enough signatures in support of it.
- Recall;
 - Allowing the electorate a recall vote on whether to end the term of office of an elected official if enough signatures in support of a recall vote are collected.

IDEA's interest in direct democracy concerns whether, when and how the use of direct democracy mechanisms is appropriate to enhance democratic systems. By involving voters directly in decision making processes, does the use of direct democracy increase voter participation? Does allowing voters the opportunity to initiate their own laws and to vote on others increase their satisfaction that political outcomes more accurately reflect their preferences? Does direct democracy reduce dissatisfaction with elected representatives, and does the existence of direct democracy mechanisms act as a discipline on the behaviour of elected officials? Criteria by which the success of direct democracy as a component of a democratic system might be judged include: levels of participation and engagement, or levels of satisfaction with the democratic system.

IDEA's project aims to produce a series of tools outlining options for the design of direct democracy institutions. In doing so, the project is pulling together comparative experience of direct democracy from Europe, Latin America and the rest of the world. Following a meeting in London in March 2004, five smaller working groups have now been established to focus on key areas of work relating to direct democracy. A global conference bringing together the work of the working groups is expected to be held during 2005.

It is in the context of its ongoing project that IDEA has prepared this briefing paper. Additionally, the recall vote on President Hugo Chavez in Venezuela on 15 August 2004 makes the recall mechanism a timely issue to consider. This paper does not aim to encourage policy makers to choose certain options rather than others, but simply to outline the different alternatives available to countries which adopt the recall mechanism.

Use of direct democracy

The use of direct democracy is usually contrasted with the wider use of representative democracy. Under representative democracy, voters choose which candidates and parties they want to elect to make decisions on their behalf. Conversely, when direct democracy is used, citizens are able to decide themselves about specific issues and do not delegate the decision making process to their representatives. For example, in referendums voters rather than their elected representatives make decisions about constitutional or policy issues; when using citizen initiatives, voters can actually seek to introduce constitutional or legislative measures themselves. Finally, the recall tool provides voters with a mechanism by which they can replace their elected representatives if they are not satisfied with their performance (i.e. with the decisions that have been taken on their behalf).

Impact on representative democracy

Critics of direct democracy argue that it weakens representative democracy by undermining the role and importance of elected representatives. Since it is unlikely that any democratic system will ever be purely direct, weakening elected representatives has a negative effect on the democratic system. However, supporters of the use of referendums argue that, in the context of increasing voter apathy and disenchantment with traditional forms of democracy, direct democracy can help to re-engage voters with politics and democracy. It is also argued that direct democracy acts as a useful discipline on the behaviour of elected representatives, ensuring that they fully consider the likely views of voters when taking decisions on their behalf.

Key overarching principles in recall design

Introduction

Broadly, there are two stages to the recall process. The first of these is whereby proponents of the recall initiate efforts to hold a recall vote in relation to the elected person whom they want to recall. Typically, this would require proponents to collect a specified number of signatures in support of the recall. Once the required level of support has been attained and verified, the second stage of the recall process, the recall vote, takes place. Therefore, in addition to the most important structural issues of to whom and when the recall mechanism can be applied, other important issues which must be made clear in the legislation governing the structure of the recall include:

- the requirements for forcing a recall vote;
- holding the recall vote;
- selecting a successor if the elected person is recalled.

Who can be the subject of the recall mechanism?

When designing the recall structure, it is clearly important to clarify to which elected positions it may apply. The recall mechanism is found more frequently in systems with full separation of legislative and executive powers, and a distinction may be made between elected members of the executive (for example directly elected presidents, governors or mayors) and elected legislators (members of a congress or parliament and local authority councillors). In addition, judges are elected in some jurisdictions.

Recall is used more frequently against elected members of the executive. Within the executive, it may be considered whether recall should apply to all elected persons, or just to some of them. While people may think of the politicians who run a local, state or country administration as possible subjects for recall, voters may also elect people to posts with a much lower profile, such as local education boards. A recall mechanism may also be designed to apply to non-elected officials working within a public administration, such as administrative officers, although it may be questioned whether this is appropriate given that such officials are not initially elected to their positions.

Most countries that use the recall mechanism limit the positions to which the recall mechanism can be applied. In many places, the recall mechanism extends to local and state officials only. Venezuela, where the directly elected President may be subject to recall, is unique in applying the mechanism so widely.

What are the circumstances in which an incumbent can be recalled?

It is also important to clarify the circumstances in which an elected person can be recalled. The design of some recall mechanisms is such that simple unpopularity of the incumbent in question is enough; if sufficient numbers of people are prepared to sign a petition to the effect that they are dissatisfied with the incumbent, and if enough voters support this proposition in a recall vote, that is enough for the incumbent to be recalled. Other designs are based on the idea that the recall mechanism should only be used where there is evidence of some impropriety or incompetence on the part of the incumbent. The constitution of the US state of Minnesota, for example, specifies that an elected official may be recalled only on the grounds of serious malfeasance or nonfeasance during the term of office.

If the legal grounds for the recall require that some misdemeanour on the part of the elected person must be demonstrated, it is vital that the relevant law is clear about *who* is responsible for judging whether the elected person has in fact been guilty of the misdemeanour required to invoke the recall mechanism.

When can an incumbent be recalled?

A further issue to consider is when an incumbent might be subject to a recall campaign. Especially in systems with full separation of powers, it is normal for positions to be elected for a known, fixed period of office, and it is possible to identify when a person elected will be subject to re-election (or must leave office if limits on reelection apply). It might therefore be considered prudent to place some time restrictions on when it is possible to hold a recall vote. It could be argued that it would be unfair to an elected person to hold a recall vote within a year of his taking office, because an incumbent should at least be given the chance to perform competently in office (although this argument might not be viewed as applicable if the recall is restricted to cases where an incumbent is judged to have acted incompetently). In Venezuela, for example, the right of recall against the elected president may only be triggered after half of the term of office has passed. Similarly, it might be considered unnecessary to hold a recall vote towards the end of an incumbent's term of office since it is close to the time at which the electors will have the chance to remove him from office anyway. . In the Philippines, an elected local official may not be recalled within either the first or the last year of his term of office. In addition, only one recall petition is allowed against any local elected official in the Philippines during his term of office: if the recall fails, those dissatisfied are barred from trying again.

The likely financial and administrative burden of holding a recall vote may be an important consideration. This can be a significant cost for elections at any level, and will be particularly high in absolute terms for higher level elections: it is estimated that the cost of running the 2003 recall elections for the state governorship of California was USD 70m. While this consideration needs to be balanced with the aim of the recall mechanism to give democratic power to voters, it may lead to the conclusion that the period in which voters can change their mind about those whom they have elected should be time restricted.

What are the requirements for holding a recall vote?

The legal structure for the recall tool must specify how a group of recall proponents can actually achieve a recall vote. The generally accepted means of doing so is to require proponents to gather a specified number of signatures within a specified period of time. Clearly, the lower the number of signatures required and the longer the period of time allowed to collect them, the more likely it is that recall proponents will be able to achieve a recall vote.

Number of signatures

The number of signatures required in order to hold a recall vote varies.. The number of signatures required might be a fixed number (e.g., 500,000 signatures); a proportion of the electorate (e.g., 10% of the number of people on the electoral register); or a proportion of the electorate or number of people who voted for the elected person at the most recent election (e.g., 15% of the votes cast at the last election). Where, as in a number of US states, provisions for citizen initiative also exist, a higher number of signatures is often required to trigger a recall than is necessary to force a vote on a citizen initiative.

Deadline for collecting signatures

The number of signatures required to hold a recall vote must usually be collected within a limited time period, in order to prevent recall attempts dragging on indefinitely (potentially for the whole of an incumbent's term of office). The time allowed to collect the relevant number of signatures generally begins on the date on which a recall initiative is successfully filed with the office responsible for administering the recall process. The time allowed for collecting signatures can be determined in conjunction with the number of signatures required; a requirement for a higher number of signatures might justify a longer period in which to collect signatures. However, when deciding on the timeframe for signature collection, it is also important to consider the impact of the uncertainty that a recall campaign might create, and whether it is productive to design a process that goes on for much longer than, say, four months.

The recall vote

Once enough signatures in support of the recall vote have been verified, a recall vote must be held. As the 2004 Presidential recall vote in Venezuela showed, it is important that the verification process is conducted efficiently and transparently. The legal framework governing the recall mechanism must specify the timetable for holding the recall election, and who is to assume responsibility for the process if, for example, the person subject to the recall would normally have some involvement in the election process.

In addition, once a recall campaign has achieved the aim of forcing a vote on the recall of an incumbent, the issue of replacing the incumbent if he is

recalled becomes immediately important. In some cases, the design of the recall tries to ensure that the recall issue and the issue of a successor are considered separately (by holding two separate votes on the two); in others, the recall vote and the vote for a successor are held on the same ballot.

When is the recall vote held?

To protect the integrity of the recall process, it must be clear how soon a vote must take place after the requirements have been met. It may sometimes be the case that members of the administration responsible for arranging and managing the recall vote are political colleagues of the person subject to the recall, and it is therefore important that timetables and options for holding the recall vote are clearly specified, in order to avoid accusations of fudging and bias.

The legal requirements might require a recall vote to be held within a set period (for example, 60 days) of the date on which the recall measure formally qualified for a vote. Alternatively, the recall vote may have to take place on the date of the next scheduled election, although this could be some time in advance. In practice, a combination of these might be the best approach; for example, a recall vote must be held within 60 days unless another election is already scheduled to take place within the next four months, in which case the recall vote and other election could be held simultaneously.

Holding a simultaneous recall vote and vote to elect a successor

In some places, for example California, the vote on whether to recall an elected person is combined with the vote on a successor, who will take office only if the incumbent is recalled. If the recall vote is defeated, the vote on a successor is irrelevant and is ignored. However, if the recall vote passes, the candidate who achieves the most support on the second vote is elected as a successor to the person recalled. Whilst there are advantages to holding a simultaneous vote (for example, there are cost savings associated with only running one vote, rather than two), it is important to consider the extent to which combining the votes might confuse voters about the process and prevent voters from focusing solely on the recall issue. Voters might not fully comprehend the implications of the recall vote if it is combined with a 'normal' type of election ballot with a list of candidates - especially if the incumbent official is included on the ballot for re-election.

A further issue is that combining the recall and successor vote could mean that the vote in favour of (i.e. to retain) an incumbent who is nonetheless successfully recalled is actually *higher* than the plurality vote in favour of the successor, which could create a legitimacy problem. This scenario might be avoided by using voting systems such as the Alternative Vote or Supplementary Vote which require absolute majorities. However, this would mean that a combined vote would become increasingly complicated for voters.

Holding two separate ballots

The alternative to holding a simultaneous vote on the recall and successor is to hold the recall vote first. Arguably, this makes the process easier for voters to understand; first, there is a simple yes/no election on whether or not to recall the elected person, there is a second vote on who should replace him if the recall has been successful. Arguments against this design are that holding two separate votes increases the financial and logistical burden of the recall process, and creates a period of uncertainty in the period between the recall of the incumbent and the election of a successor.

Can the elected person being challenged stand for re-election?

The legal framework must make clear whether or not a person who is the subject of a recall vote can stand for re-election. There appear to be few arguments to support a design in which a recalled person is eligible to stand for re-election, since this would appear to undermine the entire point of the process; a situation in which a recalled person is subsequently re-elected would appear to render the process an expensive waste of time.

The decision on whether to allow the elected person to stand on the ballot for a successor may also be affected by whether or not the recall vote and vote for a successor are held simultaneously or separately. There may be more of a case for allowing an incumbent to stand on the ballot for a successor where the votes take place simultaneously, because the incumbent has not yet been recalled by the voters.

Is there an election to appoint a successor to a recalled incumbent?

The outline above assumes that, should electors vote to recall an incumbent from his term of office, they will also vote on who should succeed him. However, this is not always the case. A design feature of the Venezuelan recall mechanism is that although a person can still be recalled during the whole of his term of office, a successful recall after a certain point automatically leads to the installation of office of another specified person. Were the recall vote in respect of President Chavez of Venezuela to have taken place just four days later than it did, a vote in favour of the recall would have led to the installation of the Vice-President as President. The logic for this cut-off point may be an issue of timing, although the next Presidential election in Venezuela is not scheduled until 2007 (see *When can an incumbent be recalled?* above).

Participation thresholds

Referendums on other issues may sometimes be subject to participation or majority thresholds, and these could also be built into a recall process. For example, the process could be designed so that the recall vote is only valid if more than 50% of electors vote; or the recall might only be effective if more than 50% of electors vote to recall an incumbent.

Building in these design features could ensure that an official is only recalled if a sizeable number of electors support the measure, and prevent the mechanism being used as a partisan tool by political opponents.

Key issues relating to the administration of the recall process

Filing a recall measure

In order to launch a recall measure, there are usually certain basic requirements that must be met. It is commonplace for a recall measure to require the backing of a small number of formal proponents (for example, 15), and an explanation of why the recall is sought might also be necessary. Once the recall measure has been formally approved by the office responsible for administering the process, supporters of the recall measure can begin the task of collecting the required number of signatures necessary to force a recall vote.

Overseeing the petition phase

The collection of signatures can be a contentious stage of both recall and citizen initiative processes.

Signature collection

Signatures in support of the recall measure are usually valid only if they are from individuals on the electoral register in the jurisdiction of the official who is the subject of the recall measure. Invariably, a proportion of the signatures will be invalid (for example, because the individual is not on the electoral register, or not on the register in the relevant jurisdiction), and so it is generally assumed that in order to meet a requirement for, say, one million signatures, proponents of the measure will need to gain well in excess of one million signatures in order to ensure that they meet the target of one million *valid* signatures.

In the United States, where signature collection in the citizen initiative process is a common feature of state politics, there has been much controversy about whether there should be any controls on signature collection. It has been argued that it goes against the nature of direct democracy to allow paid signature collectors and professional initiative firms to manage the collection of signatures, because then well-funded campaign groups will be more likely than less well-funded campaigns to meet the signature requirements since they have the funds to employ professionals.

Various restrictions can be imposed to try to minimise the influence of paid signature collectors if it is considered that the professionalisation of the process has a negative impact. One option is to ban outright the use of paid signature collectors to gather signatures. Another is to ban payment per signature. Alternatively, it could be a requirement for signature collectors to identify whether or not they are being paid or acting voluntarily.

A further issue to consider is how supporters should be required to indicate their support on the petition. In many countries, supporters will be required to sign their name under a statement of support for the recall measure. It might also be necessary for the signature gatherer to sign alongside, to verify that the supporter has indicated their support. However, in less developed countries, or areas where illiteracy may be common place, a thumb print might be an acceptable indication of support. Whichever method is chosen, the most important criteria are that firstly, the process is easy to understand and clear (to prevent the rejection of support because forms have not been properly completed) and secondly, there is a means of verifying the support indicated in the petition.

Signature verification

It is important that a transparent system of signature verification is in place. Depending on the level of the official subject to the recall attempt (e.g., local, state, national etc), verification of signatures (or otherwise) might take place at one central point within the jurisdiction of the official in question, or at various localities, with the main administration in the jurisdiction co-ordinating and collating the verification procedure.

Depending on the number of signatures required in order for the recall measure to qualify for the ballot, it is unlikely that it will be feasible to check all the signatures collected by proponents of the recall. Most countries and states will therefore opt to verify a random selection of the support indicated in the petition. Where this is the case, the basis on which signatures are selected should be clear.

It is also important that the organisation responsible for verifying the signatures is seen as impartial, and not closely linked with the officer who is the subject of the recall campaign. The signature verification phase of the campaign to recall President Chavez in Venezuela proved to be extremely controversial. Supporters claimed to have gathered one million more signatures than the 2.4m required, but the National Electoral Council initially ruled that 1.8m were valid, 1.1m required further verification, and 140,000 were invalid.¹ Recall campaigners accused pro-Chavez officials at the Council of seeking to unfairly block the campaign.

The recall vote

Once the recall measure qualifies for a vote, the administrative issues created will be similar to those involved in running an election or other type of referendum; the recall vote is, in effect, a type of referendum. However, although some of the issues will therefore be familiar, there are also key issues specific to a recall process.

Phrasing the recall question

¹ The Council later ruled that the required number of signatures had been collected, and a referendum date was set.

Research into the outcomes of referendums has shown that the phrasing of questions can be crucial, and it is likely that the way in which the question on a recall ballot is drafted is equally important to the outcome of the vote. It is therefore important that the recall question is seen to be drafted by an impartial organisation, and does not appear to be a loaded question designed to encourage voters to vote one way or the other.

One solution might be to have prescribe a recall question in the relevant legislation, for example 'Do you agree that State Governor John Smith should be recalled?' This avoids the need for any organisation to take responsibility for phrasing the question, because a set format exists. This might be appropriate in circumstances where an official can be recalled simply because he is unpopular, but may not be so if there are specific circumstances in which an official can be recalled, when more specific questions might be deemed appropriate.

Consideration must also be given to who is to draft the recall question, if a prescribed question is not agreed. One option is the Election Management Body of the jurisdiction in question, or the part of the administration overseeing the recall process (if the two are not the same).

Non-partisan information provision

The recall process may be unfamiliar to many voters, and therefore it may be necessary to provide voters with information about the recall process and the implications of voting for or against the recall measure. In a normal referendum campaign, it is helpful for an impartial organisation to provide non-partisan information for voters about the issue that is the subject of the referendum. However, in the case of a recall vote, where the issue at hand is the performance of an incumbent official, it might arguably be difficult for even an impartial organisation to address the issue without being drawn into effectively political issues. It might therefore be more practical for any public voter education campaigns to focus on the mechanics of the recall process, explaining the vote required to recall the official, and the process by which a successor is elected, if necessary. If information about the performance of the official is to be provided, it might be wise to provide only factual and objective information and avoid any subjective issues.

Campaigning at the recall vote

Financial controls on campaigners

Controls on campaigning at the recall vote are likely to be similar to controls on candidates and parties at elections. Democracies that limit expenditure at elections as a means to try to ensure a 'fair' campaign are likely to take a similar view in relation to the campaign for a recall ballot, whilst those that do not have a tradition of regulating campaigners at elections are less likely to impose them. It might be argued that, if there are a number of groups campaigning against the incumbent, it would be fairer to impose campaign controls, to ensure that there is at least some

semblance of a level-playing field in terms of the campaign that voters are exposed to, and to discourage the proliferation of groups solely to gain access to campaign access. In contrast, the contrary argument is that if there are more groups favouring a certain outcome than another, it is democratic to allow the campaign to reflect this.

Different types of financial controls might be imposed. Campaign groups might be subject to controls limiting the amount of money that can be spent on campaigning, or restricting the level or sources of private contributions that can be accepted for the purpose of the campaign; in addition, disclosure of expenditure and contributions may apply after the recall vote takes place. In contrast, an alternative approach is to leave the campaign unregulated, allowing the incumbent official and his opponent, and, if applicable, other candidates and their supporters, the opportunity to spend as much money as they can raise.

If financial, contribution or disclosure thresholds are to be imposed, consideration must be given to the levels at which these should be set. If similar controls are imposed for routine elections, these might provide a useful comparative. A further important aspect to consider is the practicality of the controls: how will they be implemented and monitored?

Controls on incumbent official and candidates for a successor

An issue that may arise in relation to campaign controls if the recall vote and vote on a successor take place at the same time is whether or not the incumbent official and other candidates should be subject to the same controls. It could be argued that as there are effectively two separate votes taking place – the recall vote, and a vote in the form of a normal candidate election - it would be legitimate for two different sets of controls to apply; one set to the incumbent and those campaigning specifically in relation to the recall, and another to individuals and their supporters campaigning to replace him. The opposite argument is that if any controls apply, they should apply equally, so that the incumbent official is subject to the same controls as those individuals hoping to succeed him. In practice, it may of course be difficult to distinguish between campaigning in relation to the recall, and campaigning for a successor, since many candidates to replace the incumbent might choose to make attacks on the incumbent a theme of their campaign.

At the 2003 California recall, the recall part of the campaign was equated as a citizens initiative measure, which meant that no contributions or expenditure limits applied to the campaign to defeat the recall measure by incumbent Governor Gray Davis. Conversely, the simultaneous campaign for a successor was treated in accordance with normal candidate elections, and candidates were subject to contribution *and* expenditure limits.

Should the recall vote take place *before* a vote on who succeeds the recalled official, the issue of campaign controls will need to be considered separately in relation to each stage of the recall process (although as the

second vote will effectively be equivalent to a normal candidate election, it is assumed that usual controls will apply).

Use of government facilities

It is important to clarify the extent to which the incumbent official who is the subject of the recall vote can use the facilities that will be available to him in his capacity as a public official. Clearly, an incumbent official has significant resources at his disposal, which could be used in order to help him campaign against the recall measure. The legal framework regulating the campaign, or another framework (for example, a code of conduct for elected officials), should be clear about whether this is acceptable practice or not. There is a strong argument in favour of prohibiting the use of public facilities for political campaigns of this nature; in some countries, incumbent officials are not allowed to use certain facilities in the run-up to an election (e.g., members of the National Assembly for Wales are not allowed to use Assembly facilities for campaigning purposes) because it is perceived that this gives them an unfair advantage; in addition, it is not the purpose for which public resources are intended.

Role of the media

A further important issue in the campaign is the role of the media. Controls imposed to seek to ensure an even-handed campaign might be undermined if the media is heavily in favour of or opposed to the recall campaign. Similarly, if the media is state-controlled, it may be the case that the media simply follows the government line on the issue. However, in a country with a free and fair media, it may be politically difficult to implement controls to regulate the reporting of the press during the campaign period. If possible, it may be that an independent regulator could be appointed, or a self-regulatory system introduced to ensure accurate and fair reporting of the referendum issue in the press.