

**Zimbabwe Election
Support Network** ■

Promoting Democratic
Elections In Zimbabwe

**RECALLS, SUBSEQUENT
BY-ELECTIONS, LESSONS
LEARNT AND INSIGHTS
INTO DEMOCRATIC
PROCESSES
IN ZIMBABWE**

INTRODUCTION

This position paper attempts to interrogate whether and under which conditions Zimbabwe might maintain a right to decide to recall or 'un-elect' those elected representatives. A recall is a 'mechanism to allow the removal of an elected official from office before his or her term is complete, without waiting for the next general election'¹. From the premise of normative democratic theory, it is a valuable instrument of direct democracy that can give citizens more control over their representatives to expand opportunities for reinforcing legitimate and responsive governance and continuous accountability. This conceptualisation is more relevant in a political system based on representative democracy where citizens vote for representatives to act on their behalf and in their interest.² Yet once elected, officials do not exclusively represent their parties that nominated them to be candidates but must be representatives of the Zimbabwean People. This raises the global question as to whether and under which conditions voters might maintain a right to decide to recall or 'un-elect' those elected representatives.³

To provide insights to the question, a review was made to the relevant constitutional provisions, constitutional court rulings and related literature and the experiences of other jurisdictions in Europe, United Kingdom, North America, Latin America and Africa. One critical observation was that recalls are more prevalent in most undeveloped, emerging and semi- democratic states compared to more developed democracies. Yet the power to recall entails a citizen led rather than a party centric process. Within these global trends, it is observed that Zimbabwe, a semi-democratic state, first enacted recall laws in the late 1980s as a ruling Zimbabwe African National Union Patriotic Front (ZANU-PF) party strategy to ensure hegemonic control over their rivalries. However, some dominant opposition elites or reformists during the 2013 constitution making process, argued for its retention not necessarily as a tool to empower citizens but to largely contain excesses of a competitive authoritarian state by precluding the real possibilities of solicited and opportunistic defections by elected officials for personal prebends and to promote the stability and control of their political parties.

However, in practise, recalls have had a negative impact on Zimbabwe's electoral democratic processes and have led to the fragmentation rather than the intended consolidation and stability of opposition political parties. The recalls of elected representatives have resulted in the abuse of power by individual political rivalries to try and reverse previous elections. Recalls have also undermined the right of elected representatives to freedom of association and expression with many of them opting for party loyalty over the interests of the electorate or constitutional principles. This militates against the view that once elected representatives must be representatives of the Zimbabwean People as a whole not of the political party that nominated them as candidates. They have also led to the loss of confidence in electoral processes and erosion of democratic and legitimate representative governance in the subsequent by-elections. Consequently, the ideal route will be to repeal the recall mandate in the constitution. However, the country must avoid blanket recall laws which will cause -

¹Welp, Y. and Milanese, J.P., 2018. Playing by the rules of the game: partisan use of recall referendums in Colombia. *Democratization*, 25(8), pp. 1379–1396.

²Urbainati, N., 2011. Representative democracy and its critics. *The future of representative democracy*, pp. 23–49.

³European Commission for Democracy Through Law (Venice Commission). 2019. Report on the recall of mayors and local elected representatives.

capture by ZANU-PF as a dominant party-state. Hence practically, given that Zimbabwe is still a semi-democratic state and not a mature democracy high threshold conditions will be necessary. It is therefore argued that Zimbabwe's laws need to be reviewed in order to entitle the elected representatives to be led by the constitution itself and citizens' will not necessarily by their party position as is common in most mature democracies. In the case of exceptional circumstances, it should only be the people of a concerned constituency that can recall an elected representative through a democratic, participatory and transparent high threshold citizen initiated process, not the political party let alone dominant groups within a party that nominated his or her candidature. Regulations should provide for recall origins; reasonable timelines or a regulated period for recalls; substantive grounds for recalls; petition thresholds; petition verification; a recall referendum; judicial review; the by-election and curbing repeated calls.

In order to substantiate my argument, the paper is structured in five interrelated parts. First, it provides an overview of the methods. Second it presents the findings on international experiences. Third it zeroes in on the Zimbabwe experience. The fourth section provides recommendations and a conclusion is set in the final section.

METHODS

This article is based on a mix of qualitative methods of desktop research type. Consequently data was collected through the review of the Zimbabwe Constitution, Constitutional court rulings on recalls, Electoral Act, related primary and secondary literature and legislation pertinent to the meaning and nature, and application of recalls in different jurisdictions in Africa, Latin America and Europe. The literature pertinent to the Zimbabwe recall experience is mainly grey literature and scanty. Another critical source of information was newspapers. Use was made of the independent press critical of ZANU PF such as the *NewsDay*, *New Zimbabwe*, *News Hawks*, *Nehanda Radio* and *Zimbabwe Independent* and the state-controlled media sympathetic to ZANU PF such as *The Herald*, *The Chronicle*, *The Sunday Mail* and *Zimbabwe Broadcasting Cooperation*. At times these sources offered distinctively different views, but a careful reading of both and triangulation corroborated many internal first-hand accounts of ZANU PF politics and the related political rhetoric. When one analyses the diverse sources of data collectively, there is a satisfactory account and a systematic pattern of recall experiences. The data collected is also analysed through comparison with the lessons which can be drawn from comparative experience.

INTERNATIONAL EXPERIENCES

This section focuses on North America, Europe, Latin America and Africa. First, recalls happen at four tiers of government depending on the political system namely the presidential, parliamentary, regional and local authority level. Other jurisdictions provide for recall at all levels, whilst some provide for recall at only one level.

EUROPE

In Europe, there are few examples where one can find the imperative mandate in the national laws for recalls especially at a national level. The imperative mandate model, 'where representatives receive clear and legally binding instructions from their constituents and can usually be recalled if they deviate from these instructions' is not common in Europe.⁴ There are few European countries where recall at national level for either a President or Member of Parliament is possible.⁵ It is provided for in the Republic of Moldova and Romania for the President of the Republic.⁶ For Members of Parliament, a recall at national level is provided for in a few countries like Latvia, Liechtenstein and Slovakia. However, in these cases the recall clause enables citizens to recall the whole parliament not just individual MPs.⁷ The recalls have strict conditions such as high thresholds, turnout veto, timelines and other safety valve mechanisms to avoid abuse and political manipulation. A case study of Latvia can shed more light. Chapter 11, Article 14 of the constitution of Latvia clearly states that:

Not less than one tenth of electors has the right to initiate a national referendum regarding recalling of the Saeima [Parliament]. If the majority of voters and at least two thirds of the number of the voters who participated in the last elections of the Saeima vote in the national referendum regarding recalling of the Saeima, then the Saeima shall be deemed recalled. The right to initiate a national referendum regarding recalling of the Saeima may not be exercised one year after the convening of the Saeima and one year before the end of the term of office of the Saeima, during the last six months of the term of office of the President, as well as earlier than six months after the previous national referendum regarding recalling of the Saeima. The electors may not recall any individual member of the Saeima.

However, at a local level, a significant number of European countries provide for the recall of elected representatives like municipality officers through local referendums. These countries include Germany, Poland, Spain, Slovakia, Russian Federation, Croatia and Romania.⁸

UNITED KINGDOM

In the UK, only MPs can be recalled. Since 2015, 10% of the constituents can ask for a vote on the recall of MPs. MPs can be recalled under three circumstances. First, if an MP is convicted and given a custodial sentence, after all appeals have been exhausted. Second, if someone is suspended from the House for at least 10 sitting days or 14 days. Third, if someone is convicted of an offence under section 10 of the Parliamentary Standards Act 2009 even if it is not a custodial sentence. As Neil Johnston and Richard Kelly have aptly observed,

⁴Vandamme, P.E., 2020. Can the recall improve electoral representation?. *Frontiers in Political Science*, 2, p. 558075.

⁵European Commission for Democracy Through Law (Venice Commission), 2019. Report on the recall of mayors and local elected representatives.

⁶European Commission for Democracy Through Law (Venice Commission), 2019. Report on the recall of mayors and local elected representatives.

⁷Vandamme, P.E., 2020. Can the recall improve electoral representation?. *Frontiers in Political Science*, 2, p. 558075.

⁸See: European Commission for Democracy Through Law (Venice Commission), 2019. Report on the recall of mayors and local elected representatives.

'for a recall petition to be successful 10% of eligible registered voters need to sign the petition. If the 10% threshold is reached the petition officer informs the Speaker of the House of Commons. A recall petition is open for six weeks. On the giving of that notice the seat becomes vacant. A by-election is then required. If the 10% threshold is not reached the recall fails and the MP retains their seat. A recalled MP may stand as a candidate'.⁹

A recall is institutionalised in a modest form in the UK as there are no provisions that provide for the recall of any other elected official.

While many countries, *'especially those with more established democracies do not have anti-defection laws, rather they consider parliamentary defection or voting as manifestations of the right to freedom of association and expression, and democracy'*.¹⁰

NORTH AMERICA

At a national level, the United States Constitution does not provide for recall of the President, Vice President and elected federal officials.¹¹ The removal of senators and representatives is through the action of the Senate or the House of Representatives as enshrined in the United States Constitution, Article 1, Sec. 5 (2).¹² However, some states allow for a recall of members of state representatives in Congress but the United States Supreme Court is still to decide on the legality. Nevertheless, some Attorneys General in Arkansas, Louisiana, Kansas, Nevada, and Oregon have opined against the recall of members of the federal officials.¹³ The supreme courts of New Jersey, North Dakota and Michigan courts have also ruled against recall petitions for members of congress.¹⁴

At a local level, 39 states allow for the recall of state officers (the elected offices of Governor, Lieutenant Governor, Secretary of State, Treasurer, Controller, Attorney General, Superintendent of Public Instruction, Insurance Commissioner, Members of the State Board of Equalization, State Legislators, and Justices of Courts of Appeal and the State Supreme Court) and local officers (elective officer of a city, county, school district, community college district, or special district or a judge of a trial court).¹⁵ Who can recall? The proponents of a recall must be 'registered voters who, based on their residence, are qualified to vote for the office of the officer they seek to recall'.¹⁶ When can one be recalled? Most states provide a timeline as to when a state or local officer can be recalled. For example, in California one cannot be recalled after serving more than 90 days and six months before the end of the term.¹⁷ The petition is open for a specified period of time which differs between states from 60 days to 270 days.¹⁸ The threshold for recall signatures also varies from as low as 10% in states like Virginia to as high as 40% in states like Kansas.¹⁹

⁹Neil Johnston and Richard Kelly, 2024, Recall elections. House of Commons Library, United Kingdom, pg. 5.

¹⁰Tesfay, L.M., 2020, Anti-Defection Laws in Ethiopia: Is There Any Constitutional Room? Indonesian Journal of Social and Environmental Issues (IJSEI), 1(3), pp. 227-233.

¹¹Neil Johnston and Richard Kelly, 2024, Recall elections. House of Commons Library, United Kingdom.

¹²Office of the Secretary of State, 2024, Procedures for recalling state and local officials. Available, <https://elections.cdn.sos.ca.gov/recalls/recall-procedures-guide.pdf>, accessed 31 March 2024.

¹³See: https://ballotpedia.org/Laws_governing_recall#cite_note-recallblog-1, accessed 31 March 2024.

¹⁴See: https://ballotpedia.org/Laws_governing_recall#cite_note-recallblog-1, accessed 31 March 2024.

¹⁵See: https://ballotpedia.org/Laws_governing_recall#cite_note-recallblog-1, accessed 31 March 2024. Office of the Secretary of State, 2024, Procedures for recalling state and local officials. Available, <https://elections.cdn.sos.ca.gov/recalls/recall-procedures-guide.pdf>, accessed 31 March 2024.

¹⁶Office of the Secretary of State, 2024, Procedures for recalling state and local officials. Available, <https://elections.cdn.sos.ca.gov/recalls/recall-procedures-guide.pdf>, accessed 31 March 2024.

¹⁷Office of the Secretary of State, 2024, Procedures for recalling state and local officials. Available, <https://elections.cdn.sos.ca.gov/recalls/recall-procedures-guide.pdf>, accessed 31 March 2024.

¹⁸See: https://ballotpedia.org/Laws_governing_recall#cite_note-recallblog-1, accessed 31 March 2024.

¹⁹See: https://ballotpedia.org/Laws_governing_recall#cite_note-recallblog-1, accessed 31 March 2024.

In Canada, there is no state wide law that provides for recalls. Only two provinces currently allow recalls namely British Columbia and Alberta. Proponents of a recall should be voters in the affected constituency.²⁰ One can be recalled 18 months after being elected.²¹ The threshold for the petition is 40% of voters registered in the last election in the corresponding constituency. Just like in many countries, the petition is open for a specific period which is 60 days in this case. A Member of Parliament will lose his or her seat only if more than 50% of the voters vote yes.²² As of February 2019, none of the recalls had succeeded in British Colombia.²³

LATIN AMERICA

Latin America has the highest number of countries with recall laws. A recall may be activated against all elected authorities in Bolivia, Ecuador, Venezuela, Taiwan, Cuba and Ecuador. For example, in Ecuador a recall referendum was introduced in 1998 and reformulated in 2008. Article 105 of the 2008 Constitution provides for recall of all elected officials.²⁴ One can be recalled for corruption (but a court sentence is required) and for failure to implement electoral programs. In 2008, the threshold to trigger a recall was 15% of the people registered in the corresponding voters roll for the national President and 10% for other elected officials.²⁵ A recall can only be submitted after the first year and before the last year of the term of office. In Venezuela, article 72 of the constitution allows for the recall of all elected representatives, including the national President. This provision was used in the 2004 Venezuela referendum, which attempted to remove President Hugo Chavez. A recall can only be instituted after the first half of the term. The petition must be supported by at least 20% of registered voters in the corresponding constituency. There must be at least be 25% voter turn-out in the referendum and the number of voters must be equal to or more than those who elected the official initially. Chavez avoided a recall because he got 59.25% of the vote.²⁶ In Taiwan, the additional articles of the constitution enables the recall of all elected officials. The recall of the President and Vice President is initiated by at least 25% of the members of the unicameral legislature of Taiwan and also passed by two thirds majority of the members. However, the final recall must be supported in a recall referendum by more than 50% of the valid ballots in a vote in which more than 50% of the electorate participate. However, for other elected officials there is need for a threshold of more than 25% of the total voters in the affected constituency.²⁷ In Bolivia, for a referendum to be successful the yes vote it must be more than the vote the representative got in the previous election.

AFRICA

In Africa, many countries provide for recall of elected officials. For example, a recall may be activated against MPs in Ethiopia (Article 12 (3), Nigeria (section 69), Kenya (section 104) and Uganda (section 84).

²⁰Neil Johnston and Richard Kelly, ²⁰²⁴, Recall elections. House of Commons Library, United Kingdom.

²¹Neil Johnston and Richard Kelly, ²⁰²⁴, Recall elections. House of Commons Library, United Kingdom.

²²B.C. Elections. Recall.

²³B.C. Elections. Summary of Recalls.

²⁴Constitution of Ecuador, ²⁰⁰⁸.

²⁵Constitution of Ecuador, ²⁰⁰⁸.

²⁶Consejo Nacional Electoral. (in Spanish) [Chávez Ratificado Con el 59 Por Ciento de los votos Archived](#) ²⁷May ²⁰¹⁰ at the [Wayback Machine](#), ¹⁶August ²⁰⁰⁴.

²⁷"[Presidential and Vice Presidential Election and Recall Act](#)". Laws and Regulations Database of Taiwan, R.O.C.

KENYA

Section 104 of the Constitution of Kenya provides the electorate with the right to recall their Member of Parliament representing their constituency before the end of the term of the relevant House of Parliament.²⁸ However, the Electoral Act which provides the grounds on which a member may be recalled and the procedure to be followed is cumbersome to ensure the facility is not used to abuse the democratic process.²⁹ A Member of Parliament can only be recalled after 24 months of being in office and 12 months before the next General Election.³⁰ MPs can be recalled for violation of provisions of chapter six of the Constitution, mismanagement of public resources and if convicted under the Electoral Act.³¹ Sections 45 and 46 of the Electoral Act stipulates that petitioners must get 30 percent support from registered voters in that constituency in addition to 15 percent voters' support in every ward in the constituency.³² Those who lost in the previous election cannot recall. Petitioners and IEBC must verify the list of people supporting the recall petition within 30 days. The petition must be subjected to a judicial review by the High Court.³³ Once verified, the IEBC must send a notice of recall to the Speaker within 15 days. Thereafter, the IEBC must conduct the referendum within 90 days.³⁴ The recall passes if 50% +1 vote yes. However, at least 50% of the registered voters in the affected constituency must vote yes for the recall to be successful.³⁵ If the recall succeeds the IEBC will then call for a by-election and the recalled candidate is free to contest. A petition cannot be filed more than once during the term of office so that MPs are not constantly held under siege.

UGANDA

In Uganda the voters of any constituency and any interest group have the right to recall their MP before the expiry of the term of office. An MP can be recalled for physical or mental incapacity, misconduct and desertion of constituency. However, a recall petition must be signed by at least two-thirds of the registered voters of the constituency or the interest group, then a public inquiry into the matters alleged in the petition must be conducted by the Electoral Commission and if the commission is satisfied the Speaker of Parliament shall declare the seat vacant. The process is initiated by the citizens as an instrument of direct democracy and not by political parties.

ETHIOPIA

Unlike in Zimbabwe, the only circumstances under which an MP may lose his/her parliamentary mandate is if and only if the people in the constituency where the MP was elected lose confidence in him/her (FDRE Constitution, Article 12(3) & 54(7)). I am inclined to agree with Tesfay, Leake Mekonen that:

'in Ethiopia, the FDRE Constitution entitles MPs to be led by the Constitution itself, people's will, and their conscience, not necessarily by their party line. Accordingly, MPs can opine and vote contrary to the views of the political party of their membership in parliamentary debates; they can even change their party affiliation without risk of losing their parliamentary mandate. This makes Ethiopia one of the countries without anti-defection laws.'

²⁸The Constitution of Kenya, 2010.

²⁹Elections Act No. 24 of 2011 Kenya.

³⁰Elections Act No. 24 of 2011 Kenya.

³¹Elections Act No. 24 of 2011 Kenya.

³²Elections Act No. 24 of 2011 Kenya.

³³Elections Act No. 24 of 2011 Kenya.

³⁴Elections Act No. 24 of 2011 Kenya.

³⁵Elections Act No. 24 of 2011 Kenya.

NIGERIA

In Nigeria a recall is based on a three stage process and provided for in section 69 of the constitution. The first stage entails that more than 50% of the persons registered to vote in that member's constituency sign a petition alleging their loss of confidence and submit it to the Chairperson of the Independent National Electoral Commission. The second stage is for the Commission to verify the signatures to ensure that the names appear on the voters' register of that particular constituency and to ensure that verified signatures are more than 50%. The third stage is the holding of the referendum within ninety days of the date of receipt of the petition. The referendum will be approved by a simple majority of the votes of the persons registered to vote in that member's constituency. This process is laborious that is where there is no recorded successful recall in Nigeria since the enactment of the clause.

It is discernible from various international experiences that recalls are used more by the countries classified as semi-democracies and new-democracies than the countries classified as old democracies. The recalls are also more common for elected representatives with defined constituencies rather than appointed members of the executive. It is more prevalent at a local than national level. Recalls are not easy to implement and have strict procedures the world over, though varying in terms of degree of cumbersomeness. Recall can in principle play a role as a protective and preventive mechanism from corrupt and irresponsible holders of political power. However, conditions are there to ensure that recalls are not used to abuse a democratic process.

THE RECALL LEGAL FRAMEWORK IN ZIMBABWE

The Zimbabwe Constitution provides for the recall of MPs, mayor, chairperson or councillor of local authority. Section 129 (1) (k) stipulates that the seat of an MP becomes vacant if the Member has 'ceased to belong to the political party of which he or she was a member when elected to Parliament and the political party concerned, by written notice to the Speaker or the President of the Senate, as the case may be, has declared that the Member has ceased to belong to it'.³⁶

For elected representatives in local authorities, section 278 (1) of the constitution highlights that 278 (1) which states that:

'The seat of a mayor, chairperson or councillor of a local authority becomes vacant in the circumstances set out in section 129, as if he or she were a Member of Parliament, any reference to the Speaker or President of the Senate in section 129(1)(k) being construed as a reference to the Minister responsible for local government.'

According to section 158 (3), by-elections to parliament and local authorities must take place within ninety days after the vacancies occurred unless the vacancies occur within nine months before a general election is due to be held, in which event the vacancies may remain unfilled until the general election.

THE RECALL LEGAL FRAMEWORK IN ZIMBABWE

The recalls have been challenged in court. The constitutional court has considered the interpretation and scope of section 129(1)(k) regarding the role of the Speaker and President of the Senate'. The court rules that 'the provisions of s 129(1)(k) of the Constitution do not clothe the Speaker or the President of the Senate with power to inquire into the legality or otherwise of the fact of cessation of membership of the political party concerned by the Member of Parliament... The law requires the Speaker and the President of the Senate only to accept that a person has ceased to be a member of a political party as communicated by the written notice.'

From this premise, it is clear that the legal framework is designed to enable intra-party recalls where self-interested politicians find fertile grounds for political manipulation with potential to erode democratic governance. The genealogy, history and contemporary dimensions of recalls show that they have been largely used as an instrument to thwart inter and intra-party competition. The main feature inimical to representative democracy is that recalls are mainly done by political individuals and not political parties as organised institutions. This resonates with Welp Yanina, and Juan Pablo Milanese's recent findings on instigators of recall referendums in Colombia.³⁷ Here, a recall is clearly designed to resolve internal conflicts within a party and for personal power consolidation, forcing party discipline. There will be something wrong with any democracy if elected MPs become more afraid of their parties or dominant elites within their parties more than the people who elected them and the nation they are to represent.

THE RECALL HISTORY: 1989-2022

From its genealogy, the recall clause was introduced through the 1989 constitutional amendment to deal with internal ZANU-PF politics. The then leader of ZANU-PF, Robert Gabriel Mugabe, faced political competition from his party's Secretary General, Edgar Zivanai Tekere.³⁸ Tekere was critical of Mugabe's political plan to establish a one-party state.³⁹ Consequently, ZANU PF expelled Tekere from the party in October 1988.⁴⁰ Mugabe took the post as Secretary General. However, Tekere retained his seat in parliament much to the chagrin of Mugabe. This is because there was no legal provision to institute a recall. This triggered a constitutional amendment process to enact the recall clause at the behest of Mugabe. However, the recall was not eventually used on Tekere who formed a new party, the Zimbabwe Unity Movement (ZUM) and contested Mugabe in the 1990 presidential election.⁴¹

Paradoxically, the first party to use it was the Movement for Democratic Change (MDC) under the leadership of Morgan Richard Tsvangirai to deal with internal party frictions. As enshrined in its constitution, the MDC was founded as a social democratic party which believed in 'an open democracy' where national leadership should be 'accountable to the people through the devolution of power and decision-making to the provinces and local institutions and structures'.⁴² Munyaradzi Gwisai, the then MDC MP for Highfields, was expelled from the party on 22 November 2002. The MDC national executive found Gwisai guilty of contravening the party's constitution.

³⁷Welp, Y. and Milanese, J.P., 2018. Playing by the rules of the game: partisan use of recall referendums in Colombia. *Democratization*, 25(8), pp.1379-1396.

³⁸E.Tekere., 2009. *A Lifetime of Struggle*, Harare, Sapes Books

³⁹Tekere E. 2009. *A Lifetime of Struggle*, Harare, Sapes Books.

⁴⁰Tekere E. 2009. *A Lifetime of Struggle*, Harare, Sapes Books.

⁴¹Tekere E. 2009. *A Lifetime of Struggle*, Harare, Sapes Books.

⁴²Section 4.5 of the MDC Constitution (2000).

THE RECALL HISTORY: 1989-2022

However, Gwisai alleged that he was expelled over ideological (programmatic) differences as he preferred a radical socialist mode of governance. Gwisai became the first MP in post-colonial Zimbabwe to lose his seat after his party expelled him and notified the Speaker, Emmerson Dambudzo Mnangagwa, who declared the constituency vacant on December 3, 2002. Thereafter, Welshman Ncube, who led an MDC splinter faction recalled MPs for working with the rival opposition MDC-T party led by Tsvangirai in 2012.⁴³

Zimbabwe had an opportunity to repeal the recall clause in order to strengthen representatives' accountability toward citizens during the 2013 constitution making process. However, a party driven recall process was retained. This was not surprising because the constitution making process was led by politicians from dominant political parties in Parliament. For the opposition MDC, the retention was meant to largely contain excesses of a competitive authoritarian state by precluding the real possibilities of solicited and opportunistic defections by elected officials for personal prebends and to promote the stability and control of their political parties. On the other end, ZANU-PF had an array of strategies to reign in its MPs including state patronage, coercion and state sponsored arrests an arena the MDC could not 'compete'. This is more pronounced in a context where there are sparse livelihoods opportunities outside a ruling party that is integral to state resource-allocation through patronage networks. In addition, 'defectors may also be bankrupted, arrested, or even killed' in authoritarian states where the idea of loyal opposition hardly exists. However, ZANU-PF and in particular Mugabe who was in the twilight of his career could not reject any opportunity to further his party control for hegemony. There was a convergence of political parties' interests and hence the recall clause remained in the contemporary constitution.

From there on, the recall clause has continued to be used as a political tool to deal with intra-party conflicts by all the dominant political parties and players. For example, as ZANU PF faced the succession battle, MPs alleged to be belonging to Joice Mujuru's faction which was known as Gamatox (a banned toxic pesticide in Zimbabwe) were recalled from parliament. For example, Didymus Mutasa and Temba Mliswa were expelled following a meeting of the ZANU PF Politburo on 18 February 2015 without involvement of the citizens. On 3 March 2015 the Speaker of the National Assembly subsequently announced that the two seats in the National Assembly had become vacant in terms of section 129(1)(k) of the constitution. In June 2015 ZANU PF expelled members of parliament, for Mwenezi East (Kudakwashe Bhasikiti), Marondera Central (Ray Kaukonde) and Guruve North (David Butau), for alleged links with Joice Mujuru's Gamatox faction. In a twist of events, following the military coup that toppled Mugabe in November 2017, Mnangagwa and his allies used the recall clause to subjugate the Generation 40 (G40) which had opposed his rise to power. In political reality, G40 came to refer to a faction associated with former politburo, cabinet members and MPs including Jonathan Moyo, Walter Mzembi, Patrick Zhuwao and Saviour Kasukuwere. The G40 faction was publicly fronted by Grace Mugabe who was married to Mugabe as the succession race intensified.

⁴³<https://www.herald.co.zw/speaker-blasts-ncube-over-unilateral-decision-to-recall-legislators/>

Following the death of Tsvangirai in 2017, there were three factions that intended to succeed Tsvangirai namely the Nelson Chamisa faction, Thokozani Khupe faction and Douglas Mwonozora faction. All the three factions, albeit to different degrees, used the recall clause as a way to assert their authority and power within the party. It is important to note that even Morgan Tsvangirai recalled 21 MDC T MPs and senators in March 2015 after they joined a splinter faction called the MDC Renewal that intended to depose him from power and succeed.⁴⁴ The Chamisa faction was the first to successfully recall Khupe from parliament in 2018. After Khupe won the court case to lead the MDC T, she also recalled MPs that were aligned to Chamisa in 2020. Following Mwonozora's ascendancy to presidency of the MDC T, he also started recalling MPs that belonged to Chamisa's faction and some who were not explicitly loyal to him in 2022. The recall clause was not only abused to try and deal with succession politics in ZANU PF but also within the main opposition.

CURRENT RECALLS, SUBSEQUENT BY-ELECTIONS AND IMPACT

Following the controversial 23-24 August 2023, Zimbabwe has been in a 'recall crusade' fronted by Sengezo Tshabangu. Tshabangu's actions were partly a result of simmering internal contradictions within the opposition but were quickly hijacked by ZANU PF and state elites in order to decimate and emasculate the popular opposition front, led by Chamisa. Tshabangu, a self-appointed Secretary General of the Citizens Coalition for Change, wrote a letter to the Speaker of Parliament, President of Senate and Minister of Local Government recalling 14 CCC members of the National Assembly (9 directly constituency MPs, 5 women's quota MPs and 1 youth quota MP), 9 senators and 17 councillors from their positions arguing that they had ceased to be members of the CCC on 3 October 2023. As a result of Section 129 (1) (k) of the Constitution that bestows power on political parties, the seats were declared vacant and Mnangagwa proclaimed December 9, 2023, as the day for by-elections.

The CCC then led by Chamisa challenged the recalls in Court and lost. The CCC argued that Tshabangu was not a member of their political party but rather an impostor with no right or authority to recall anyone hence the recalls were illegal, null and void and of no force and effect. However, the Court effectively accepted the recall letter 'despite the improbability that party members who had been elected on a party ticket just two months previously, some of whom had only just been sworn in, would have ceased to belong to their party'.⁴⁵ Further to this, on 7 December 2023, the High Court in Harare, granted Tshabangu an order to expunge the names of recalled MPs from the ballot paper for the by-elections.⁴⁶ Zimbabwe was left with a 'choiceless election' without the participation of the main opposition party led by Chamisa.⁴⁷

On 9 December 2023, ZANU PF won seven out of the nine parliamentary by-elections. The ruling party now had 184 seats (144 directly elected through first past the post, 33 proportional representation for women and seven youth quota) out of 280 seats in the National Assembly. ZANU-PF was now three seats away from having two thirds majority in the National Assembly.⁴⁸ Consequently, six more constituency by-elections were held on 3 February 2024 following the recall of six more opposition MPs by Tshabangu.

⁴⁴<https://www.voazimbabwe.com/a/zimbabwe-members-of-parliament-mdc-renewal-mps-recalled/2683871.html>

⁴⁵<https://www.thezimbabwean.co/2023/11/recall-of-members-of-parliament-and-ensuing-court-cases/>, accessed 9 December 2023.

⁴⁶<https://www.herald.co.zw/court-bars-22-recalled-ccc-legislators-from-polls/>, accessed 8 December 2023.

⁴⁷See, <https://www.aljazeera.com/features/2023/12/8/choiceless-elections-zimbabweans-cry-foul-before-bizarre-by-elections>, accessed 8 December 2023.

⁴⁸<https://www.herald.co.zw/zanu-pf-romps-to-victory-cements-dominance/>, Accessed 12 December 2023.

Following the by-elections held on 3 February 2024, the ruling party now has 190 seats (150 directly elected through first-past-the-post, 33 proportional representation for women and seven youth quota) out of 280 seats in the National Assembly. This translates to two thirds majority but only in the National Assembly.

Contrary to popular perceptions, the ruling ZANU PF party still does not and cannot have two thirds majority in Parliament necessary to pass a constitutional bill on its own. In Zimbabwe, a Parliament consists of the **Senate** and the **National Assembly**. For a constitutional bill to pass as expressed in section 328 (5), it needs affirmative votes of two-thirds majority of the membership of each House that is the National Assembly and the Senate. ZANU PF can never have two thirds majority in the senate because the proportional representatives are based on the 23-24 August general election outcome. ZANU PF got 33 out of 80 seats and will need 21 seats to get a two thirds majority in the senate, required to pass a constitutional amendment. Therefore, recalls cannot result in ZANU PF getting two thirds majority to pass a constitutional amendment. This is because the party that recalls simply fills the vacancy with its members. ZANU PF will therefore need to persuade the two representatives for people living with disabilities, the 18 traditional leaders and at least one MP from CCC. Politically, this is feasible for ZANU PF given its use of coercion, intimidation and patronage but is not given.

Nevertheless, the recalls have had a calamitous effect on Zimbabwe's democracy in ways dissected below.

- The recalls were not citizen driven and have allowed ZANU PF to maintain political hegemony and domination of Parliament through deals with opposition political elites. A strong opposition presence in Parliament is good for democracy. This recall pathway has led to the instrumentalization of the recall by losers to reengineer or reverse electoral results based on spite rather than programmatic differences.⁴⁹ ZANU PF managed to reverse electoral results in marginal constituencies. Winners must be able to exercise their power in line with the constitutional term limits. An election must be irreversible *ex post*. Once elections results are reversed then Zimbabwe's electoral chain of democratic choice is broken.
- The undemocratic recalls have eroded the people's confidence in electoral processes as signified by the low voter turn-out during the by elections. For example, in the February 2024 by-elections, voter turnout was low in the six constituencies. The voter turn was as follows: Mkoba North (14.06%); Pelandaba-Tshabalala (11.73%); Goromonzi South (18.1%) Chegutu West (33.5%); Zvimba East (31.6%) and Seke (30.18%). As ZESN has aptly argued, 'the influence of recalls on the democratic character of elections is apparent in the decreasing voter participation witnessed in by-elections after the 2023 Harmonised Elections. In a show of voter apathy, the total number of votes cast per Constituency was notably way below the votes garnered by the winning candidate alone in the August 2023 Harmonised Elections.'⁵⁰

⁴⁹See: Steven R. Levitsky and Lucan A. Way . 2012. Beyond Patronage: Violent Struggle, Ruling Party Cohesion, *Perspectives on Politics* , December 2012, Vol. 10, No. 4 (December 2012), pp. 869- 889.

⁵⁰ZESN.2024. By elections report 2024, pg8. Available <https://www.zesn.org.zw/wp-content/uploads/2015/10/By-Elections-Report-2024.pdf>

- In addition, it has made representatives to doubt the efficacy of political parties as a vehicle to deliver democracy. Chamisa eventually resigned as President of the CCC on 24 January 2024 partly as a protest to the abuse of the recall provisions by his political rivalries who did not respect the citizens' will. Fadzai Mahere the former MP for Mt Pleasant, Allan Rusty Markham the former MP for Harare East and Alleta Ushe, a Proportional Representative councillor for Mudzi Rural District Councils also resigned in solidarity with Chamisa. As a result of losing confidence in political parties, a number of CCC members have contested by elections as independent candidates to avoid potential subsequent recalls. These dynamics have also compromised the quality of representatives.

Tshabangu's actions were partly a result of simmering internal contradictions within the opposition but were quickly hijacked by ZANU PF and state elites in order to decimate and emasculate the popular opposition front, led by Chamisa.

RECOMMENDATIONS

Fundamental to the way forward is placing the citizens at the centre of *representative democracy*. The international versions of recall are informed by a citizens centred rather than a party centric process. All they differ in, is the degree of cumbersome. However, these international versions cannot just be exported to Zimbabwe. The political environment and the authoritarian nature of the party-state is different from other polities. Considering this risk, recall procedures should not be too easy to implement. The recall must be designed in such a way that it becomes a last resort option rather than the norm. To realise this goal, I conclude on the three models and propose a way forward.

MODEL A: INTRA-PARTY RECALL

The recall is initiated by a political party and such an action triggers the actual by-election with no intervening vote or views from the citizens. This is the least common model because it undermines the essence of representative democracy. Citizens lose the power to use recall as a tool of direct democracy meant to hold representatives accountable. After all, the degree to which political parties penetrate and represent the national territory and society down to the village, street and workplace is low in Zimbabwe. The scope of parties is low in Zimbabwe, just like in many countries, as most of the parties have low rates of membership and lack any real organisation. One can refer to this approach as *the Zimbabwe model* because it is best epitomised by section 129 (1) (k) of its Constitution as elaborated earlier. This pathway normally leads to the instrumentalization of the recall by political parties and is abused by losers to reengineer or reverse electoral results.⁵¹ After all decisions are hardly made by political parties as organised institutions but are confined to the President's palace or to the purview of a few dominant political elites. Zimbabwe therefore needs to move away from intra-party-initiated recalls if she is to restore citizens' trust in democratic representative institutions.

⁵¹See: Steven R. Levitsky and Lucan A. Way . 2012. Beyond Patronage: Violent Struggle, Ruling Party Cohesion, *Perspectives on Politics* , December 2012, Vol. 10, No. 4 (December 2012), pp. 869- 889.

MODEL B: LOW THRESHOLD CITIZENS CENTRED RECALL

The second model is the low threshold citizens centred recall. This involves an easy to do two stage process. A low threshold of about 10% of registered voters need to sign a recall petition. A petition is enough for the seat to be declared vacant and for a by-election to become vacant. On the other hand, if the low threshold is not reached the recall fails and the MP retains their seat. A petition is enough to trigger a recall with no intervening vote from the broader societal base. Here the right of recall to citizens is institutionalized in a modest form. One can refer to this as the UK model. Although citizens are supposed to be the initiators of a recall process, it is impossible to exclude Zimbabwe opposition parties to influence the process in order to topple competitors. In Zimbabwe's polarized society now characterized by fragmentation of opposition forces, an easy recall can simply be instrumentalized by 'coalitions of poor losers' against legitimate winners based on spite than programmatic differences.⁵² The recall process as a tool of direct democracy should only be valuable as a last resort instrument. An easy to implement recall process in competitive authoritarian states can be fatal to the proposal.

MODEL C: A HIGH THRESHOLD CITIZENS INITIATED RECALL PROCESS

This third model places citizens at the centre of representative democracy but at the same time places high thresholds for a recall to avoid inappropriate political manipulation. Broadly, it usually entails a four stage process with regulations. First, there is a petition that must be signed by a high percentage of the electorate with some jurisdictions making it more than 30% like in Canada, Nigeria and Uganda. Second, there is a judiciary review as in Kenya and or a parliamentary inquiry as in Uganda. Third, there is a vote on the question of recall, where the broader citizens of the constituency are asked whether or not they want to recall the representative as in Nigeria. Such a recall referendum also entails a turn out veto as in Kenya, Latvia, Romania and even in undeveloped democracies like Venezuela. Fourth, if a referendum is successful a by-election to fill the vacancy is then held and usually a simple majority is needed. Finally, recall attempts must only be once in a term. There are also strict timelines as when a recall can happen as in Canada, some states in America, Ecuador, Kenya et cetera as detailed earlier.

⁵²See: Welp, Y. and Milanese, J.P., 2018. Playing by the rules of the game: partisan use of recall referendums in Colombia. *Democratization*, 25(8), pp.1379-1396.

WHICH WAY FOR ZIMBABWE?

A high threshold citizen led recall process for Zimbabwe is more ideal for Zimbabwe. This will enable citizens to maintain the right of recall as a tool of direct democracy and a reinforcement of representative democracy in a context where politicians largely lack accountability and programmatic delivery. However, the recall has to be regulated to avoid political manipulations consistent with semi-democratic states.

Zimbabwe therefore needs to urgently consider a constitutional amendment that would give citizens and not political parties the power to recall failing politicians in a representative democracy without having to wait for five years. All elected representatives can face the prospect of recall including local authorities, MPs and the President. In states where power is centralised it is usually at the top level of representation that the citizens' political frustration is highest given the lack of accountability and delivery. However, because of the authoritarian nature of the politics, political opponents would always be tempted to invoke the provisions of a recall. Consequently, a recall needs to be both difficult to exercise and to be a clear expression of the people's will.

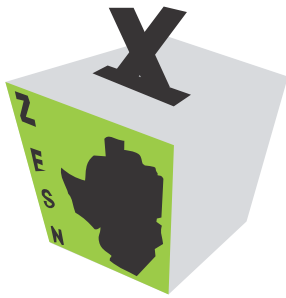
The constitution and the electoral act amendment process and ensuing national debates need to consider the following ten proposals.

1. Recall origins: The supreme law of the land should provide that a popular recall of elected representatives may only be initiated directly by citizens of the concerned constituencies through a written petition and not by political parties. This resonates with the practise in Kenya, Uganda, Nigeria, UK, parts of Canada, some states in America, Ecuador, Taiwan and even Venezuela.
2. Reasonable timelines or a regulated period for recalls: There is need to enact time limits within which recalls may be allowed to happen. For example, in Argentina, Colombia, Ecuador and Kenya the recall is possible at least only after the first year of the term in order to give the elected official ample time to prove his or her abilities and at least before the last 12 months of the term.
3. Substantive grounds for recalls: The constitution or electoral act must clearly lay out the substantive grounds for a recall as reflected in most jurisdictions. These are usually around mismanagement of public funds, neglect of duties prescribed by law and conviction during the term of office of a serious crime.
4. Petition thresholds: The number of signatures needed in support of the petition activating the recall by citizens must be sufficiently high. This is to ensure that is not up to a minority or dominant political and business elites having lost the elections to remove a democratically elected representative. At least this may not be less than a third of the registered voters.
5. *Petition inquiry/ verification by ZEC.* A possibility is to empower a statutory body like ZEC to assess the validity of the petition through verification of signatures as in Ecuador, Kenya and British Colombia in Canada.
6. *A recall referendum:* There must be a referendum approved by a simple majority of the votes of the persons registered to vote in that member's constituency provided a certain threshold agreed to by stakeholders turns out to vote.

7. Judicial review: a judicial review of the substantive and procedural requirements is important to minimise inappropriate recalls. There is need to validate whether a recall has reached both the substantive and procedural grounds. A recall is an important process which is highly sensitive and subject to various possibilities of abuse and manipulation. In Kenya, a recall of an MP shall only be initiated upon a judgement or finding by the High Court confirming the grounds of recall.
8. The by-election for first past the post: When all processes have been met there is need to have a by-election to fill in the vacant constituency. This can be won by a simple majority as enshrined in the electoral law.
9. Replacement of PR MPs: This will still be done by the political party which won the previous election.
10. Repeated recalls: In order to avoid repeated recalls or permanent electioneering by rivalries and the distraction of elected officials only one attempt at a recall should be allowed within a term as in many polities, unless there are special circumstances.

CONCLUSION

Recalls have had a negative impact on Zimbabwe's electoral democratic processes and have led to the fragmentation rather than the intended consolidation and stability of opposition political parties. Five modest contributions have been made. First, recalls are enshrined in the constitution as anti-defection laws. Second, the party has sovereign power to recall representatives it nominated as candidates during the election which is against best international practise. It is a party led initiative rather than a citizen led initiative. Third, recalls have become a strategy of dealing with party competition where politicians find fertile grounds to reverse the previous election. Yet for an election to be democratic it must be irreversible. Fourth, recalls have undermined the right of elected representatives to freedom of association and expression with many of them opting for party loyalty over the interests of the electorate or constitutional principles. This militates against the view that once elected leaders must be representatives of the Zimbabwean People as a whole not of the political party that nominated them as candidates. Fifth, loss of confidence in electoral processes and erosion of democratic and legitimate representative governance in the subsequent by elections. Consequently, the ideal route will be to repeal the recall mandate in the constitution. However, the country must avoid blanket recall laws which will cause capture by ZANU PF as a dominant party-state. Hence practically, given that Zimbabwe is still a semi-democratic state and not a mature democracy high threshold conditions will be necessary. It is therefore argued that Zimbabwe's laws need to be reviewed in order to entitle the elected representatives to be led by the constitution itself and citizens' will not necessarily by their party position as is common in most mature democracies. In the case of exceptional circumstances, it should only be the people of a concerned constituency that can recall an elected representative through a democratic, participatory and transparent high threshold citizen initiated process, not the political party let alone dominant groups within a party that nominated his or her candidature. Regulations should provide for recall origins; reasonable timelines or a regulated period for recalls; substantive grounds for recalls; petition thresholds; petition verification; a recall referendum; judicial review; the by-election and curbing repeated calls.



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