

“What do You Mean 20 Percent?” And Other Questions About Venezuela’s Recall Process

***By Jordan Bazak,
Research Associate at the Council on Hemispheric Affairs***

The current political and economic turmoil in Venezuela has prompted those who oppose the government to initiate a recall referendum process. A recall referendum is the use of a popular vote to remove a public official before the end of his or her term.ⁱ The process typically requires an initial petition demonstrating popular demand followed by a vote to determine whether the functionary will continue in office. In Venezuela, the ongoing recall efforts are directed at sitting President Nicolás Maduro.

In recent months, the recall supporters’ largest complaint has been the timeline established by the National Electoral Council (CNE). On May 2, the opposition party, *Mesa de la Unidad Democrática* (United Democratic Roundtable - MUD), submitted over 2 million names to the CNE as part of their application to initiate the formal process. Early this August, after a difficult validation effort in which many signatures could not be authenticated, the CNE announced that it had confirmed enough names¹ to proceed to the next step: a second petition, which must be signed by 20 percent of registered voters.^{ii iii} On September 1, hundreds of thousands of Venezuelans took to the streets of Caracas to protest the decision to schedule this petition in late October.^{iv} At the current pace, should the petition pass, the recall referendum itself would not take place until next year, at which point it would be too late to hold new elections, ensuring a Chavista presidency through 2018.

While frustrating for the opposition, COHA’s Erika Sato has pointed out that the CNE has the right, and even the responsibility, to set a timeline that ensures a fairly contested and well-administrated referendum.^v Of larger concern should be potential violations of Article 72 of the 1999 Constitution, which clearly lays out the conditions necessary for a recall. It is vital that the Maduro administration, opposition, and CNE abide by these rules over the coming months. First, the CNE should faithfully interpret “20 percent” as the proportion of all national voters. Second, the opposition must accept defeat should they carry the majority at the referendum but fail to win more votes than Maduro won in 2013.

¹ One percent of registered voters in each state

Recalls in Venezuela and Around the World

Five Western Hemisphere countries have provisions for recall elections at the local and state levels. In Argentina, Cuba, and Peru, citizens can initiate and approve a recall process to remove local and municipal officials, while in Colombia and in 18 U.S. states, governors are also fair game. Only 11 countries in the world have full recall elections—ones that are both initiated and voted on popularly—for national positions and in just two can such processes be used to remove the chief executive: Ecuador and Venezuela.^{vi}

The ability to recall all elected officials is a core principle of Venezuela’s democracy. Examples of the recall process in practice include the 2004 failed referendum against Hugo Chavez and 10 recalls against municipal officials in 2007.^{vii} The removal process is outlined in Article 72 of the 1999 Constitution, which begins, “All popularly elected positions are revocable.”^{viii} The article goes on to specify four necessary conditions for a recall. Following sections analyze each condition with respect to current proceedings.

Half of the official’s term must have transpired^{ix}

To respect the rights of the original voters, public officials can only be removed during the second half of their term. Hence the President, who serves a term of six years, can only be recalled after completing three years in office. President Maduro became interim president on March 5, 2013—after the death of Hugo Chavez— then won a special election on April 14, and is serving out Chavez’s term that began on January 10. It is not clear whether Maduro’s halfway point came this past January, March, or April, but either way he is now eligible for recall.

At least 20 percent of voters in the corresponding district must solicit the referendum^x

To initiate the recall vote, at least 20 percent of registered voters must petition for the referendum. In light of the tumultuous 2004 presidential recall, in which the opposition collected the signatures itself, the CNE will organize the petition this year.^{xi} The collection has been scheduled for three consecutive days at the end of October.^{xii} Some details, however, remain undetermined. One is whether the petition must get 20 percent in each state as well as nationally. Under a national interpretation the petition would need 3.9 million signatures. A state-by-state interpretation would raise the bar much higher.

The same number or more voters must vote in favor of the recall than originally voted for the official^{xiii}

At the recall referendum itself, the opposition must secure at least 7,505,338 votes, the number of ballots that Maduro won in 2013.^{xiv} In the 2015 parliamentary elections, 71 percent of Venezuelan’s cast valid votes, a turnout comparable to that of the

2004 presidential recall referendum (69 percent).^{xv xvi} If participation is similar this time around, the recall campaign would need to get 55 percent of the vote, a target they are on track to hit as recent polls show that two-thirds of Venezuelans are in favor of the recall.^{xvii} Meeting this condition, however, could become more difficult if turnout is lower than expected.

At least 25 percent of voters must participate in the recall election^{xviii}

Venezuela has about 19 million registered voters. This means at least 4.75 million Venezuelans must participate in the recall referendum. In light of recent election turnouts, this figure is likely to be reached.

The Fight over 20 Percent

The next hurdle for the recall campaign is securing the signatures of 20 percent of registered voters on the October petition. Using the national interpretation, the petition would need around 3.9 million signatures to pass.

Given statements made by two rectors of the CNE, however, there is a chance that a state-by-state requirement will also be applied. For the MUD’s application, the CNE demanded signatures from one percent of voters in each of Venezuela’s 24 states. Rectors Socorro Hernandez and Tania D’Amelio recently suggested that the same rules should govern the 20 percent petition.^{xix} On August 27, Vice-President of the CNE, Sandra Oblitas, confirmed that, “whether the 20 percent corresponds to the state or national level is on the discussion table.”^{xx} Meanwhile, the MUD’s representative to the CNE, Vicente Bello, completely rejected this possibility stating, “for a governor [the corresponding district] is the state; a mayor, the municipality; and for the President, the entire country.”^{xxi} CNE President Tibisay Lucena has remained silent on the issue.

Venezuela’s 1999 Constitution supports Bello’s interpretation. First, the use of a state-by-state requirement for the application was permissible because rules for this stage are governed by CNE resolutions² and not provided for in the Constitution.^{xxii} However, Article 72 unequivocally states that the 20 percent petition pertains to registered voters in the “corresponding district,” which, by the CNE’s 2004 interpretation, would be the entire nation. Even the 2007 CNE resolution, which currently governs all current recalls, reiterates the precise language of “corresponding district” found in the Constitution.^{xxiii xxiv}

Given the 2015 parliamentary election results, a state-by-state interpretation would make things difficult for the recall petition scheduled for October. For instance, in 2015, just 23 percent of registered voters in the poor coastal state of Delta Amacuro cast valid ballots for the MUD (see table below). The MUD also won votes from less than a third of registered voters in Apure, Portuguesa, Sucre, Amazonas, and Guárico. In these states, compiling signatures against Maduro from 20 percent of registered voters will be no easy task. Already some observers are suggesting that the recall campaign

² Namely resolution No. 070207-036, which the CNE signed in 2007

concentrate efforts in such places to prepare for the possibility of a state-by-state requirement.^{xxv}

So just how much does a state-by-state requirement raise the bar? The petition must be signed by 20 percent of registered voters in the place where it is least popular. Given 2015 election results, this is likely Delta Amacuro. Assume that the petition is only signed by 19.9 percent of registered voters in Delta Amacuro and that the percentage of registered voters who sign the petition in each state is distributed similarly to party preference in the 2015 election. Accordingly, 40 percent of registered voters would sign the petition in the Capital District and 37 percent in the state of Miranda. In total, the petition would get 6.9 million signatures – 36 percent of registered voters and just 600,000 less than the votes needed in the actual recall election – and still fail a state-by-state requirement. Even if the petition were allowed to fall short of 20 percent in five states, it would probably need over 5 million signatures to pass.³ Thus, as a conservative estimate, a threshold of 20 percent in each state equates to a requirement of 28 percent of registered voters nationwide, higher than virtually every recall petition on earth.

A Losing Majority

Reviewing the constitutional conditions for a recall, there is a possibility that the opposition could win over 50 percent of the vote in the recall election but not more than the 7.5 million ballots that Maduro received in 2013. This becomes more likely the lower the turnout.

One cause of low turnout could be a late referendum. According to Article 223 of the 1999 Constitution, if a President is removed within the last 2 year of his or her term, the Vice-President assumes office until the next election cycle.^{xxvi} Removal before then sparks a special election to determine who will serve out the term. Since Maduro’s term ends on January 10, 2019, he must be recalled before that date next year to prompt new elections.^{xxvii} If held later, opposition turnout may be low, as even a successful recall would only result in current Vice-President Aristóbulo Istúriz taking office.

Another source of low turnout could be an improved economic and political climate at the time of the referendum. Should the government successfully deal with Venezuela’s current malaise by early next year, the recall effort would lose steam.

If turnout is low but the recall campaign still carries a majority, it is conceivable that both sides would claim victory. Nevertheless, the Constitution clearly maintains that Maduro would stay in office.

Conclusion

The CNE is bound by the Constitution when setting the rules for the recall process. With regards to the presidency, the “corresponding district” is arguably intended to mean the entire nation of Venezuela. It was interpreted thusly in the 2004

³ Look beneath chart for more information on these two hypothetical situations

referendum and there does not appear to be a sound argument for modifying this precedent. Likewise, should a referendum be held in which the opposition carries a majority but falls short of 7.5 million votes, they must humbly concede defeat. In either case, upholding the rules outlined in the Constitution should take precedence over determining who will govern Venezuela for the next two years.

**By Jordan Bazak,
Research Associate at the Council on Hemispheric Affairs**

ⁱ "When Citizens can Recall Elected Officials," in *Direct Democracy: the International IDEA Handbook*, 109-123. (Stockholm: International Institute for Democracy and Electoral Assistance, 2008). Accessed August 29, 2016.

http://www.idea.int/publications/direct_democracy/upload/direct_democracy_handbook_chapter5.pdf

ⁱⁱ Erika Sato, "Politicization and Venezuela's Presidential Recall Referendum Timeline," Council on Hemispheric Affairs, August 12, 2016. Accessed August 29, 2016. <http://www.coha.org/politicization-and-venezuelas-presidential-recall-referendum-timeline/>

ⁱⁱⁱ "Venezuelan campaign for Maduro recall passes first hurdle," *BBC*, August 2, 2016. Accessed September 2, 2016. <http://www.bbc.com/news/world-latin-america-36949875>

^{iv} "Venezuela protests: Large anti-Maduro march held in Caracas," *BBC*, September 2, 2016. Accessed September 2, 2016. <http://www.bbc.com/news/world-latin-america-37243191>

^v Erika Sato, "Politicization and Venezuela's Presidential Recall Referendum Timeline," Council on Hemispheric Affairs, August 12, 2016. Accessed August 29, 2016. <http://www.coha.org/politicization-and-venezuelas-presidential-recall-referendum-timeline/>

^{vi} Ibid.

^{vii} "Referendos Revocatorios del Mandato - 7 de Octubre de 2007," *Consejo Nacional Electoral*, 2007. Accessed September 2, 2016.

http://www.cne.gov.ve/web/normativa_electoral/elecciones/2007/referendo_revocatorios/index_principal.php

^{viii} *Constitución de la República Bolivariana de Venezuela*, Gaceta Oficial, December 30, 1999, last updated September 13, 2005. Accessed August 30, 2016.

<http://pdba.georgetown.edu/Constitutions/Venezuela/ven1999.html>

^{ix} Ibid. (Author's translation)

^x *Constitución de la República Bolivariana de Venezuela*, Gaceta Oficial, December 30, 1999, last updated September 13, 2005. Accessed August 30, 2016.

<http://pdba.georgetown.edu/Constitutions/Venezuela/ven1999.html>

^{xi} "Solicitud de Referendo Revocatorio Presidencial," *Consejo Nacional Electoral*, August 9, 2016.

Accessed August 29, 2016. <http://www.cne.gov.ve/web/imagen/publicidad/2016/presentacion.pdf>

^{xii} Erika Sato, "Politicization and Venezuela's Presidential Recall Referendum Timeline," Council on Hemispheric Affairs, August 12, 2016. Accessed August 29, 2016. <http://www.coha.org/politicization-and-venezuelas-presidential-recall-referendum-timeline/>

^{xiii} *Constitución de la República Bolivariana de Venezuela*, Gaceta Oficial, December 30, 1999, last updated September 13, 2005. Accessed August 30, 2016.

<http://pdba.georgetown.edu/Constitutions/Venezuela/ven1999.html>

^{xiv} "Cuanto votos obtuvieron los candidatos en cada estado?" *Eleccionesvenezuela*. Accessed August 29, 2016. <http://www.eleccionesvenezuela.com/informacion-cne-resultados-elecciones-presidenciales-24.html>

- ^{xv} “Elecciones a la Asamblea Nacional,” *Conjeso Nacional Electoral*, last updated January 20, 2016. Accessed August 29, 2016. http://www.cne.gob.ve/resultado_asamblea2015/r/0/reg_000000.html
- ^{xvi} “Boletín Electoral Referendum 15 de Agosto de 2004,” *Consejo Nacional Electoral*, September 3, 2004. Accessed August 31, 2016. http://www.cne.gob.ve/referendum_presidencial2004/
- ^{xvii} “Venezuela opposition march over referendum delays,” *BBC*, 27 July, 2016. Accessed September 2, 2016. <http://www.bbc.com/news/world-latin-america-36903142>
- ^{xviii} *Constitución de la República Bolivariana de Venezuela*, Gaceta Oficial, December 30, 1999, last updated September 13, 2005. Accessed August 30, 2016. <http://pdba.georgetown.edu/Constitutions/Venezuela/ven1999.html>
- ^{xix} Alfredo Meza, “La crisis política en Venezuela arrecia en vísperas de una manifestación opositora,” *El País (Madrid)*, August 29, 2016. Accessed August 29, 2016. http://internacional.elpais.com/internacional/2016/08/28/actualidad/1472406883_325031.html
- ^{xx} José Luis Carrillo, “Bello: firmas del 20% deben ser de la circunscripción nacional,” *El Tiempo*, August 29, 2016. Accessed August 29, 2016. <http://eltiempo.com.ve/venezuela/politica/bello-firmas-del-20-deben-ser-de-la-circunscripcion-nacional/227683>
- ^{xxi} *Ibid.*
- ^{xxii} *Resolución No. 070207-036*, Consejo Nacional Electoral, República Bolivariana de Venezuela, February 7, 2007. Accessed September 5, 2016. <http://puzkas.com/normas-para-referendos-revocatorios/>
- ^{xxiii} “CNE ratifica los pasos a seguir para activar el Revocatorio,” *Sumarium.com*, April 29, 2016. Accessed September 2, 2016. <http://sumarium.com/cne-ratifica-los-pasos-a-seguir-para-activar-el-revocatorio/>
- ^{xxiv} *Resolución No. 070207-036*, Consejo Nacional Electoral, República Bolivariana de Venezuela, February 7, 2007. Accessed September 5, 2016. <http://puzkas.com/normas-para-referendos-revocatorios/>
- ^{xxv} Irving Briceno Perez, “MUD debe estar preparada para recaudar el 20% por estados,” *Efecto Cocuyo*, August 29, 2016.
- ^{xxvi} *Constitución de la República Bolivariana de Venezuela*, Gaceta Oficial, December 30, 1999, last updated September 13, 2005. Accessed August 30, 2016. <http://pdba.georgetown.edu/Constitutions/Venezuela/ven1999.html>
- ^{xxvii} Erika Sato, “Politicization and Venezuela’s Presidential Recall Referendum Timeline,” Council on Hemispheric Affairs, August 12, 2016. Accessed August 29, 2016. <http://www.coha.org/politicization-and-venezuelas-presidential-recall-referendum-timeline/>